

Judicial Commission of Inquiry into State Capture Report: Part VI

Vol. 3: Public Funds Diverted to Gupta Enterprise,
The Dissipation of State Capture Derived Funds,
The Proceeds from the Acquisition of the Optimum Coal Mine and
Various Individuals and Topics



This is the report of the Judicial Commission of Inquiry into allegations of
State Capture, Corruption and Fraud in the Public Sector including organs of
state, also known to the public and the media as the Zondo Commission

Chairperson: Justice RMM Zondo
Chief Justice of the Republic of South Africa

Report of the Judicial Commission of Inquiry into State Capture: Part VI: Vol. 3



PART VI: VOLUME 3

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Judicial Commission
of
Inquiry into Allegations
of
State Capture, Corruption and Fraud in the
Public Sector Including Organs of State

Report: Part VI

Vol. 3: The Public Funds Diverted to the Gupta
Enterprise through State Capture,

The Dissipation of State Capture-Derived
Funds through Local and International Money
Laundry Networks

and

The Acquisition of the Optimum Coal Mine

Chairperson: Justice R.M.M Zondo
Chief Justice of the Republic of South Africa

THE PUBLIC FUNDS DIVERTED TO THE GUPTA ENTERPRISE THROUGH STATE CAPTURE

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THE PUBLIC FUNDS DIVERTED TO THE GUPTA ENTERPRISE THROUGH STATE CAPTURE

Introduction

1. From at least 2011 onwards, government departments and SOE's were targeted for capture by the Gupta Enterprise. This led to the awarding of a vast array of contracts and the payment of billions of rand to entities paying kickbacks to, or controlled by, the Gupta Enterprise. This chapter details the flow of funds from SOE's or government departments in this regard.

The Capture of Provincial Government in the Free State

2. In the earliest phase of State Capture, the Gupta Enterprise operated according to a crude *modus operandi*, namely, to work with officials to generate projects from which the Gupta Enterprise would directly steal funds that were directed to the Gupta's offshore network. This model was used most notably in the provincial governments of the Free State and North-West Province.
3. The Free State Government Contract with Nulane Investments
 - 3.1. On 31 October 2011, the Free State Department of Agriculture and Rural Development entered into a contract with Nulane Management Services.
 - 3.2. The contract was irregularly awarded without any competitive bidding process and appears to have been designed primarily as a device to funnel Free State public funds into the Gupta Enterprise.

- 3.3. Nulane was paid R24,984,240 by the Free State Department of Agriculture. The only apparent deliverable work provided by Nulane to the Free State Department of Agriculture in respect of this contract appears to have been performed by Deloitte who concluded a subcontract with Nulane to provide consulting services on the core topics covered by the project.
- 3.4. Deloitte received an amount of R1 538 547 from Nulane in relation to the Free State project. Nulane thus earned a profit of R23 445 693 on the contract.
- 3.5. Mr Holden shows that after being received by Nulane, R21 300 000 of the R23 445 693 profit was laundered through several companies controlled by the Gupta family before being expatriated to the Dubai Gupta family company, Gateway Limited in Nulane payments of \$1 067 500 and \$1 227 500 on received aggregate amounts of Nulane made on 3 and 7 July 2012 respectively.
4. The Free State Government and the Estina/Vrede Dairy Project
- 4.1. A separate chapter of this report addresses the irregularities relating to the Estina / Vrede Dairy Project and the payment of hundreds of millions of Free State government funds to the Gupta Enterprise under cover of that project.
- 4.2. For present purposes it noted merely that of the total amount of R287 220 534.88 in payments from the Free State government to Estina aggregating to R280 202 653.00 and accumulated interest on these payments,
- 4.2.1. R229 038 271.82 was transferred to Gateway and Vargafield, two companies forming part of the Gupta enterprise,

4.2.2. A further R34 563 580.12 was transferred to SARS to settle Estina's VAT obligations, and

4.2.3. a mere R21 746 697.18 was transferred to accounts or recipients other than SARS, Gateway and Vargafield. Many of these transfers, moreover, were made as salary or other payments to individuals closely associated with the Gupta enterprise such as Messrs Kamal Vasram and Chandrama Prasad.¹

5. The Free State Government and the Purchase of Laptops from Sunbay Trading²

5.1. The contract concluded by the Free State Government with Sunbay Trading was another contract irregularly concluded with a Gupta Enterprise company.

5.2. As part of a "laptops for bursaries" program announced in Premier Ace Magashule's State of the Province address in March 2012, the Free State government ordered laptops from Sunbay Trading for distribution to learners. Sunbay Trading was nominally controlled by Mr Kamal Vasram, who also nominally controlled Estina.

5.3. The laptops for bursaries program was directed out of the Office of the Premier where Mr Ashok Narayan was an advisor to Premier Magashule, and, to the knowledge of the parties driving the program in the Premier's Office, actively involved on the Sunbay Trading side of the contract with the Free State.

¹ Holden Estina Report p VV5-PEH-107 paras 288 to 291;

² Holden Money Flows Report p VV10-SCFOFA-46 to 50 paras 21 to 28 p VV10-SCFOFA-50 para 28; Holden First Submission VV5-PEH-976 to 983 paras 38 to 62

- 5.4. While Sunbay Trading was the contracting party, the actual supplier of laptops was Sahara Computers. The price paid per laptop by the Free State government was considerably more than Sahara's standard retail price.
- 5.5. Sunbay Trading was paid R28 500 000.00 by the Free State Department of Education in 3 payments in September 2012. It was paid a further R4 578 810.00 by the Free State Office of the Premier on 28 May 2014.
- 5.6. Sunbay Trading's bank records reflect that it received no other large inward payments from other suppliers following these payments, nor was the account properly active from its opening on the 29th of June 2011 until the first Free State government payment on the 6th of September 2012.
- 5.7. Of the R33 078 810.00 paid to Sunbay Trading by the Free State government, R32 211 030.00 was paid to Sahara Computers.

6. Contracts Placed with Dinovert/Cureva/Mediosa³

- 6.1. Dinovert (Pty) Ltd was a Gupta Enterprise company that was incorporated on 13 March 2015, and changed its name to Cureva in September 2015 before changing it again to Mediosa in late 2017.
- 6.2. With the assistance of Mr Ashok Narayan and Mr Tony Gupta, Dinovert/Cureva/Mediosa appears to have been irregularly awarded contracts to provide mobile medical services to the Free State and North West Provincial Governments at inflated prices.

³ Holden Money Flows Report p VV10-SCFOFA-50 to 51 paras 29 to 32; Holden First Submission VV5-PEH-987 to 994 paras 83 to 104

- 6.3. Dinovert/Cureva/Mediosa was paid R25 111 188.00 by the Free State Department of Health and R30 000 000.00 by the North West Province's Department of Health.
7. Cureva paid aggregate amounts of R15 960 000.00 and R1 000 000.00 respectively to the Gupta Enterprise laundry vehicles Shacob Commerce and Albatime. It also made aggregate payments of R1 556 561 49 to the Gupta Enterprise company Sechaba Computers and paid Mr Kuben Moodley, the sole director of Albatime, R1 538 948.00.⁴
8. The Free State Contracts with Tsebo Business Intelligence Services and Pygma Consulting.⁵
- 8.1. Following a recommendation made by the Free State Department of Agriculture and Rural Development Bid Evaluation Committee at its meeting of 8 June 2012, the Department awarded a contract to Tsebo Business Intelligence Services (Tsebo) to provide engineering services to the Department.
- 8.2. The award of the contract to Tsebo was manifestly irregular because the Bid Evaluation Committee scored Sebogo Maloka and Viljoen Civil Engineers (Pty) Ltd considerably higher than Tsebo, but decided nevertheless to award the contract to Tsebo "as that is what the Department requires".
- 8.3. In total, Tsebo Business Intelligence was paid R12 492 500.00 in relation to this contract out of which it transferred a total of R9 390 350.89 to Innova Management Services.

⁴ Holden Money Flows Report pp VV10-SCFOFA-158 to 159

⁵ Holden Money Flows Report p VV10-SCFOFA-50 to 57 paras 29 to 46 and Pygma Rule 3.3 affidavit VV10B-Rule3.3-041 to 46 paras 29 to 53

- 8.4. Innova Management Solutions (“Innova”) was owned by Ms Chwayita Mabude who was an Eskom board member from 2011 to 2017 and whose conduct in that capacity is discussed in the Eskom Chapter of this report.⁶ Innova appears to have been managed by Mr Salim Essa and Mr Ashok Narayan. Thus, Mr Narayan used the email address innova.management2012@gmail.com and the Free State Department of Tourism and Economic Affairs treated Mr Essa as Innova’s representative.
- 8.5. At the same meeting of 8 June 2012, the Free State Department of Department of Agriculture and Rural Development Bid Evaluation Committee also awarded a bid to Pygma Consulting. This bid was to assist the Department in relation to the rollout of broadband internet across the Free State Province.
- 8.6. The Department of Agriculture had no budget for the roll-out of broadband in the Free State which would not ordinarily have fallen within its mandate. So, it ended up having to fund the Pygma Consulting contract by means of a budget allocated to its Mohoma Mobung project which appears to have functioned as a slush fund for payments to the Gupta Enterprise.
- 8.7. There is no evidence that Pygma was party to, or aware of, any irregularity in the award of the Free State contract to it. However, after Pygma received its letter of appointment, Mr Narayan, ostensibly in his capacity as advisor to the Premier, convened meetings between Pygma and the Free State government at which Pygma was persuaded to conclude a sub-contract with Innova.

⁶ Part 4 Volumes III and IV

- 8.8. Pygma was paid a total of R2,487,480 by the Free State Department of Agriculture of which R1,271,920 was paid on to Innova Management Services under the subcontract that Pygma had been pressurised to sign.
- 8.9. Innova laundered on to Aerohaven, a Gupta Enterprise company, R8,900,000.00 of the payments made to it by Pygma and Tsebo.
- 8.10. On 15 November 2013, Aerohaven Trading returned the R8 900 000 into Innova's account by means of bank transfer. The payment commingled with a deposit of R1 052 631.58 paid in by Tsebo on 3 October 2013. Later on 15 November 2013, Innova transferred R9 756 500.00 (\$950 000.00) to Gateway Limited, the Gupta Enterprise entity in Dubai.
- 8.11. Of the amounts transferred by Tsebo and Pygma to Innova that were not paid to Aerohaven/Gateway, R470 000.00 was paid by Innova to Mr Tau Mahumapelo, then North West Premier Supra Mahumapelo's younger brother of who was elevated by Minister Lynne Brown to the Denel Board in July 2015.

9. The Free State Contract with Innova

- 9.1. In 2014, the Free State Department of Economic Development, Tourism and Environmental Affairs awarded Innova a contract with a total value of R6 972 395.04.
- 9.2. Of the R6 972 395.04 paid to Innova under this contract, an aggregate amount of R6 384 000 was immediately paid by Innova to Homix, a primary Gupta Enterprise laundering vehicle.

Transnet Contracts in which Offshore Kickbacks were paid to the Gupta Enterprise

10. The Gupta Enterprise received kickbacks that were paid offshore in respect of at least six major contracts:
 - 10.1. the ZPMC cranes contract in respect of which kickbacks were paid to JJ Trading,
 - 10.2. the Liebherr cranes contract in respect of which kickbacks were paid to Accurate Investments,
 - 10.3. the four Chinese locomotive contracts in respect of which kickbacks were paid to JJ Trading, Century General Trading, Regiments Asia and Tequesta:
 - 10.4. the China South Rail 95 locomotives contract
 - 10.5. the China South Rail 100 locomotives contract
 - 10.6. the China South Rail 359 locomotives contract, and
 - 10.7. the China North Rail 232 locomotives contract.
11. Apart from the offshore kickbacks paid in respect of the China North Rail 232 locomotives contract, kickbacks aggregating to R76 586 903.16 were paid inside South Africa by China North Rail to Business Expansion Structured Services. These kickbacks were for the contract concluded by Transnet and China North Rail to relocate the local workshops on the 232 locomotives contract to Durban. CRRC (the entity into which China South Rail and China North Rail merged) also paid kickbacks aggregating to R7 892 226.77 inside South Africa to the Gupta Enterprise laundry vehicle, Fortime Consultants.

12. The irregularities in all of the Transnet locomotive and crane contracts are discussed elsewhere in this Report.⁷ For present purposes we merely record that Transnet paid a total amount of R28 046 227 991.66 in respect of these contracts, made up as follows:

Contract	Total Amount (ZAR)
95 Locomotives (CSR)	3 432 869 565.21
232 Locomotives All-In Cost incl. Durban Relocation (CNR)	2 823 869 773.71
100 Locomotives All-In Cost (CSR)	5 159 831 654.92
359 Locomotives All-In Cost (CSR)	14 910 751 921.66
Sub-Total: Locomotive Contracts	26 327 322 915.5
Liebherr Crane Contract	841 098 842.64
ZPMC Crane Contract	877 806 234
Sub-Total: Crane Contracts	1 718 905 076.16
TOTAL	28 046 227 991.66

13. Over and above the R76 586 903.16 paid inside South Africa by China North Rail to Business Expansion Structured Services and the R7 892 226.77 paid to Fortime Consulting by CRRC, Holden calculates that an aggregate amount of R7 305 156 943.30 was paid to the Gupta enterprise in offshore kickbacks on these Transnet contracts, made up as follows:

Project	Kickback Amount (ZAR)
Purchase of Liebherr Cranes	26 586 799.49
Purchase of ZPMC Cranes	33 379 031.04
95, 100, 359, 232 Locomotive Procurements including Maintenance Contracts: Payments Confirmed by Primary Documentation	3 400 558 016.24
CNR Relocation Contract	76 586 903.13
95, 100, 359, 232 Locomotive Procurements including Maintenance Contracts: Suspected Further Kickbacks	3 768 046 193.40
TOTAL	7 305 156 943.30

⁷ See Part 2 of the Report.

Regiments Contracts with Organs of State in respect of which Kickbacks were paid to the Gupta Enterprise

14. In 2012, the Regiments group of companies concluded an arrangement with Issar Capital, the then company of Mr Iqbal Sharma and Mr Essa in terms of which Regiments would pay substantial kickbacks to Issar in return for Messrs Sharma and Essa's assistance in securing Regiments' appointments to contracts with organs of state. Issar was ultimately sold to the Gupta family company Islandsite for the nominal amount of R100 and it appears that the arrangement with Issar was a vehicle for the Gupta Enterprise to take substantial kickbacks on contracts that they procured for Regiments with organs of state.⁸

15. Pursuant to this original arrangement,

15.1. Regiments went on to pay laundry vehicles nominated by Mr Essa or Mr Narayan "business development" fees in the form of commissions ranging between 50% and 95% on payments made to it by organs of state who had apparently been influenced by the Gupta Enterprise to appoint Regiments;

15.2. Regiments also paid much smaller commission on these payments (between 1% and 5%) to Albatime, the company of Mr Kuben Moodley who had introduced Regiments to Messrs Essa and Sharma.⁹

16. This arrangement was plainly unlawful from the beginning.

⁸ See Annexure VV9 pp FOF-08-201, FOF-08-293 to 301 and FOF-08-308 to 309

⁹ Regiments maintained a running reconciliation of all of these kickback payments by contract on a spreadsheet entitled "Advisory Invoice Tracking". A version of this spreadsheet with payment dates up to 30 November 2015 appears at Annexure VV9 pp FOF-08-466 to 468

17. There are no legitimate “business development” services that could justify commissions of 50% and more for assistance to obtain appointments by organs of state who are constitutionally bound to make those appointments on the basis of procurement systems that are “fair, equitable, transparent, competitive and cost-effective.”¹⁰
18. Furthermore, many of the original “opportunities” identified by Issar and Regiments were appointments to be made by Transnet where Mr Sharma chaired the Board Acquisitions and Disposals Committee,¹¹ and the bulk of the fees ultimately extracted by Regiment out of this kickback arrangement were fees paid by Transnet. So Issar was, for the most part, selling Mr Sharma’s influence over Transnet procurement.
19. Pursuant to the kickback arrangement that it originally concluded with Messrs Essa and Sharma in 2012, Regiments ultimately was paid aggregate amounts of R1 303 272 979.09 in fees paid by various organs of state and amounts misappropriated from the Transnet Second Defined Benefit Fund by Regiments Fund Managers.¹² Holden provides full details of the payments by these organs of state to Regiments¹³ and the onward kickbacks aggregating to R671 974 364 807.09 from Regiments to laundry vehicles nominated by Messrs Essa and Narayan and to Albatime.¹⁴ For present purposes, the Commission merely documents the aggregate amounts paid to Regiments by each organ of state in the contracts governed by these kickbacks:

SOE	Amount (ZAR)
Transnet	1 023 161 529.89

¹⁰ Section 217 of the Constitution.

¹¹ See the spreadsheets of “opportunities” at Annexure VV9 pp FOF-08-293 to 301 and FOF-08-308 to 309

¹² See Holden Money Flows Report pp VV10-SCFOFA-070 to 75

¹³ Holden Money Flows Report pp VV10-SCFOFA-060 to 68

¹⁴ Holden Money Flows Report pp VV10-SCFOFA-161 to 172. This aggregate amount does not include the amount of R1 800 000 paid by the Regiments subsidiary, Burlington Strategy Advisors that was linked to a Transnet contract where it was appointed as Liebherr’s supplier development partner.

Transnet Defined Benefit Pension Fund (amounts misappropriated by Regiments Fund Managers and paid to Regiments Securities)	248 729 210.00
SA Airways	6 241 500.00
SA Express	8 218 123.20
Free State Provident Fund	2 319 216.00
SAFCOL	6 623 400.00
Denel	7 980 000.00
TOTAL	1 303 272 979.09

Trillian Contracts with Organs of State

20. With effect from 1 March 2016, Mr Eric Wood left Regiments to join Trillian with Mr Essa. Mr Wood took with him to Trillian the Transnet, Eskom and SA Express advisory mandates which had been procured through the unlawful kickback arrangement originally concluded with Messrs Sharma and Essa in 2012. On his own version, the then Group CFO of Transnet, Mr Gary Pita met Mr Essa at the Gupta compound in Saxonwold to discuss the cession of Transnet's Regiments contracts to Trillian.¹⁵ Trillian continued to pay kickbacks in respect of these contracts to laundry vehicles nominated by Mr Narayan.
21. In addition, Mr Essa and Trillian used the Gupta Enterprise's influence over Transnet and Eskom to secure Trillian new contracts with the two SOEs. Details of the irregularity of these contracts are traversed in the respective volumes of the Commission's Report dealing with Transnet and Eskom.¹⁶
22. Trillian ultimately secured an aggregate amount of R935 319 263.28 in fees from Transnet, Eskom and SA Express and amounts misappropriated by Regiments Fund

¹⁵ Transcript 1 June 2021, p 139

¹⁶ Transnet is addressed Part 2 of the Report and Eskom is addressed in Part 4 Vol III and Vol IV

Managers from the Transnet Second Defined Benefit Fund.¹⁷ Holden provides full details of the payments by these organs of state to Trillian¹⁸ and the onward kickbacks aggregating to R192 649 514.00 from Trillian to laundry vehicles nominated by Essa and Narayan and to Albatime.¹⁹ For present purposes, the Commission merely documents the aggregate amounts paid to Regiments by each organ of state in the contracts governed by these kickbacks:

SOE	Amount (ZAR)
Eskom	595 228 913.29
Transnet (Net Total)	169 859 999.91
Transnet Defined Benefit Pension Fund	185 530 350.08 (included in the 228 983 985 misappropriated by Regiments Fund Managers)
SA Express	5 700 000.00
TOTAL	319 263.28

Payments Made to McKinsey in Connection with Contracts Shared With Regiments and/or Trillian

23. Pursuant to the kickback arrangement originally reached between Regiments and Issar Capital, Regiments and Trillian secured considerable work as a partner to McKinsey in contracts with Transnet and Eskom in a succession of contracts awarded to McKinsey without any competitive process.²⁰
24. The McKinsey partner, Mr Vikas Sagar, appears to have been aware of the impropriety linked to Regiments and Trillian's appointments at Eskom and Transnet. Mr Sagar had a longstanding relationship with Mr Sharma and was dealing with Mr Essa in relation to

¹⁷ See Holden Money Flows Report pp VV10-SCFOFA-070 to 75

¹⁸ Holden Money Flows Report pp VV10-SCFOFA-076 to 79

¹⁹ Holden Money Flows Report pp VV10-SCFOFA-172 to 180

²⁰ Holden Money Flows Report pp VV10-SCFOFA-79 to 80

McKinsey fees and contracts at Transnet as early as February 2014.²¹ Mr Sagar met regularly with Mr Essa from 2014 to 2016 and dealt directly with Mr Essa in November 2015 in relation to the proposed McKinsey appointment at Eskom for the MSA contract.²² Other irregularities in McKinsey's appointments at Transnet and Eskom are discussed in detail in the Transnet and Eskom chapters of this report.²³

25. A Regiments/McKinsey consortium secured a contract at SAA through the corrupt relationship between Mr Wood and Mr Phetolo Ramosebudi who was the then SAA Treasurer although the Commission could find no evidence that McKinsey, as opposed to Regiments, was aware of this corrupt relationship.²⁴
26. In total, McKinsey was paid R1 855 926 423.86 with regards to contracts shared with Regiments or Trillian and tainted by State Capture, as set out below:²⁵

SOE	Amount (ZAR)
Eskom	1 108 164 558.26
Transnet	741 518 655.60
SAA	6 243 210.00
TOTAL	855 926 423.86

27. After being informed by the Commission of the irregularities underlying its Transnet and SAA contracts, McKinsey undertook to repay these amount in full to the two SOEs and has now done so. It had previously repaid the full amount of the fees it was paid by Eskom. McKinsey is the only beneficiary of contracts tainted by State Capture to have taken this position. It is to be commended for doing so.

²¹ Holden Money Flows Report pp VV10-SCFOFA-819 to 820

²² Annexure VV9 pp FOF-08-393 to 395

²³ Parts 2 and Volumes III and IV of Part 4 of this Report

²⁴ The relevant contract is discussed in Part 1 of this Report at pp 306 to 317.

²⁵ Holden Money Flows Report pp VV10-SCFOFA-80

The T-Systems Contracts with Transnet and Eskom

28. On 19 December 2009, T-Systems and Transnet concluded a contract for the provision by T-Systems of IT equipment and data services to Transnet for a period of 5 years. The contract provided for Transnet to have a two year right of renewal. T-Systems appears to have used Gupta Enterprise connections to secure its position at Transnet and to more than double the term and value of its MSA contract.
29. Over the period August 2012 until mid-July 2015 T-Systems paid an aggregate amount of R3 051 639.21 to Zestilor, the company of Ms Zeenat Osmany who is married to Mr Essa. This amount was paid in made regular monthly payments of R81 830.91.²⁶
30. T-Systems relationship with Mr Essa and Zestilor was cemented when T-Systems ceded to Zestilor the equipment sale and rental elements of the MSA with effect from 19 May 2015 after Transnet agreed to extend the MSA for the full two years allowed for extension under the MSA. The cession agreement between T-Systems and Zestilor was concluded on 1 December 2014, less than a month before the original term of the T-Systems MSA would have expired. Pursuant to the cession, Zestilor was paid aggregate amounts of R13 407 883.18 directly by Transnet and R222 839 809.93 by Innovent Rental and Asset Management Solutions, a SASFIN subsidiary to which it onced the agreement in mid-2015 when it experienced difficulties delivering on the obligations to Transnet which it had taken over from T-Systems.²⁷
31. In November 2015 Transnet initiated a new procurement process to replace the MSA. As the procurement process dragged on, the MSA was extended with a succession of short term extensions. In February 2017, Transnet resolved to re-appoint T-Systems

²⁶ Holden Money Flows Report p VV10-SCFOFA-91

²⁷ Holden Money Flows Report pp VV10-SCFOFA-94 to 99

despite the fact that Gijima had submitted a higher ranked bid at a substantially lower price than T-Systems. The manifest irregularity of the Transnet decision is discussed in detail elsewhere in this Report.²⁸

32. During the period in which T-Systems derived income from the extension of its contract with Transnet, it not only ceded the equipment sales and rentals business to Zestilor, but also facilitated the diversion of Transnet funds to the Gupta enterprise Sechaba, the Gupta family company which was appointed as T-Systems' supplier development partner. In total T-Systems transferred R323 413 332.51 to Sechaba between February 2015 and December 2017.
33. Transnet rewarded T-Systems for its new relationship with the Gupta Enterprise, not only by extending the term of the T-Systems MSA, but also by dramatically increasing the value of the payments made under the MSA. In the five years of the original term of the MSA, Transnet made MSA payments to T-Systems in the aggregate amount of R1 317 043 801.63. In the two-year extension of the MSA from 1 January 2015 to 31 December 2016, Transnet made MSA payments to T-Systems which aggregated to R1 533 626 953.39, almost 3 times as much in annual payments as it had made in the original term of the MSA, despite the fact that from May 2015 the T-Systems MSA turnover no longer included any equipment rental or sale business because that had been ceded to Zestilor. This trend continued over the additional extensions of the MSA until its termination in December 2018. So in the four years of extensions of the MSA from January 2015 to December 2018, T-Systems received aggregate payments of R3 213 333 995.83 from Transnet.²⁹

²⁸ Part 2 of the Report Chapter 11

²⁹ Holden Money Flows Report pp VV10-SCFOFA-91 to 94

34. At Eskom, T-Systems exploited its relationship with the Gupta Enterprise to even greater effect. Events at Eskom followed a pattern strikingly similar to those at Transnet.³⁰
35. On 10 November 2009, the Eskom Board Tender Committee approved the award to T-Systems of five year MSA from January 2000 to December 2014 for an amount of R2 575 642 000.00 exclusive of VAT (R2 936 231 880.00 inclusive of VAT).
36. The MSA was ultimately modified and extended repeatedly so that the total amount Eskom paid T-Systems under the MSA rose to R7 805 558 985.49. In the period 2014 to 2019, Eskom repeatedly cancelled the RFPs that it had issued to replace the T-Systems MSA and the T-Systems contract was renewed five times.
37. These extraordinary extensions and modifications of the MSA took place notwithstanding the fact that Eskom repeatedly decided not to extend the MSA beyond its original 5-year term and twice notified T-Systems of this fact.
38. The payment of just under R8 billion to T-Systems on a contract which had been awarded pursuant to an open tender process for an amount of less than R3 billion was, on its own terms, irregular. However, the irregularity went much further. An internal T-Systems Group compliance report dated 24 June 2015 shows that T-Systems flouted their own internal rules informally to engage Salim Essa as a consultant *inter alia* because T-Systems recognised that he “has a strong network to Eskom officials and its stakeholders”. The informal engagement of Salim Essa occurred after T-Systems had taken advice on its exposure under the Prevention and Combating of Corrupt Activities

³⁰ Holden Money Flows Report pp VV10-SCFOFA-100.1 to 100.6

Act 12 of 2004 and “decided not to formally engage with S.E. [Essa] as a sales agent but to informally use his network”.³¹

39. The “informal” use of Mr Essa’s network appears to have involved the T-Systems’ payments to Zestilor and subcontract with Sechaba that have been mentioned above and that straddled both the Eskom and Transnet contracts. It also involved T-Systems’ cession of part of its contract back to Eskom so that Eskom could contract directly with T-System’s service providers in respect of Wide Area Network services. Through this device, Eskom paid Zestilor an amount of R2 490 484.50 over the period 2015 to 2018.³²

The Systems Applications Products (SAP) Contracts with Transnet and Eskom

40. Transnet and Eskom awarded Systems Applications Products (SAP) for contracts for which SAP paid kickbacks in the form of sales commission fees to Gupta Enterprise companies, Global Softech Solutions and Cad House. The total contract value of these four contracts was R790 616 247.45.³³
41. The first contract was awarded to SAP on the 27th of December 2014 by Transnet. SAP South Africa were contracted to deliver services related to a Software License and Support Agreement. The total value of the contract (excluding annual support fees) was R98 132 000 plus VAT (R111 870 480.00) against which a VAT exclusive Transnet credit of R33,132,000 was set off leaving an amount of R74 100 000 to be paid (R65

³¹ Holden Money Flows Report Annexure 23.4 p VV10-SCFOFA-914.13

³² Holden Money Flows Report pp VV10-SCFOFA-89 to 91

³³ Holden Money Flows Report pp VV10-SCFOFA-100.4 to 100.6

million plus VAT). On 23 June 2015, SAP South Africa paid Global Softech Solutions R7 410 000 – a 10% commission on the payment made by Transnet.³⁴

42. The second contract was awarded to SAP on the 30th of September 2015 by Transnet. SAP South Africa were contracted to deliver services related to a Software License and Support Agreement related to Hybris and Remix software. The total contract value (excluding annual support fees) was R114 012 644.88 inclusive of VAT and was paid by Transnet on 1 April 2016.
43. The third contract was awarded to SAP on 31st of March 2016 by Eskom. SAP South Africa were contracted to deliver services related to a Software License and Support Agreement. The total contract value (excluding annual support fees) was R70 158 284.70 and was paid by Eskom on 17 June 2016.
44. The fourth contract was awarded to SAP on the 25th of November 2016 by Eskom. SAP South Africa was contracted to deliver services related to a Software License and Support Agreement. The total contract value (excluding maintenance) was R494 574 837.87 and was paid by Eskom on 23 December 2016.
45. On the second to fourth contracts, SAP paid CAD House aggregate amounts of R99 924 993.94 in sales commission payments over the period 8 April 2016 to 28 December 2016.³⁵

³⁴ Holden Money Flows Report p VV10-SCFOFA-213

³⁵ Holden Money Flows Report p VV10-SCFOFA-214

Contracts Awarded by Eskom and Transnet to Nkonki Incorporated following Acquisition by the Trillian Group³⁶

46. In 2016, Trillian acquired the auditing firm Nkonki. In the same period, Nkonki was appointed as supplier development partner to a series of contracts at Eskom in which the primary partner was Deloitte, KPMG or PWC. All of these contracts were irregular.
47. Deloitte have acknowledged as much in respect of Eskom task orders SM002 and SM004 on which Deloitte engaged Nkonki as a subcontractor and have agreed to repay Eskom R150 million from the R207,716,243.80 fees paid to them on the relevant contracts.
48. PWC's Eskom contract with Nkonki was the "Capital Scrubbing" contract. PWC's engagement of Nkonki on the Eskom Capital Scrubbing contract followed an unsuccessful attempt in September 2016 by Trillian to partner directly with PWC. Eskom allowed Nkonki to be considered for partnering with PWC despite the fact that Nkonki had not met the requirements for Eskom's Panel B – the pool from which partner firms previously were to be drawn. It appears that Eskom constituted a Panel C specifically to accommodate the position of Nkonki. Eskom then concluded a "risk based" contract with the PWC Nkonki consortium. This was irregular because Eskom had not obtained the necessary Treasury approval for such a contract but Eskom misrepresented to PWC that it had obtained the necessary Treasury approval.
49. KPMG's Eskom contract with Nkonki was in respect of task order SM008. The process for task order SM008 was manifestly irregular and appears to have been designed to ensure that 40% of the value of the contract would be allocated to Nkonki. KPMG ended up submitting proposals for this Task Order four times as the requirements kept on

³⁶ Holden Money Flows Report pp VV10-SCFOFA-106 to 112. See also the Transnet Chapter of this Report, Part 2 pp 297 to 300

changing. KPMG was appointed on the basis of its fourth submission which proposed subcontracting to four different subcontractors, Nkonki who (as pointed out above) had failed to qualify for Eskom's Panel B and three other subcontractors who had qualified for Eskom's Panel B. After being appointed KPMG were told by Eskom that they could subcontract only to subcontractors on Eskom's Panel C. This effectively ensured that the full 40% value for subcontractors was subcontracted by KPMG to Nkonki.

50. Aggregate amounts of R85 447 833.60 were paid to Nkonki by Deloitte, KPMG, PWC and Eskom in relation to these contracts:

Period	Lead Auditing Firm	Value (ZAR)
Jan-Dec 2017	PWC	16 031 535.00
Oct 2017 to March 2019	KPMG	11 379 802.62
Oct 2016 to Dec 2017	Deloitte	42 401 008.38
March to June 2017	KPMG (Nkonki invoices paid directly by Eskom)	5 141 894.00
	Total (VAT Excl)	74 954 240.00
	VAT	10 493 593.60
	Total (VAT Incl)	85 447 833.60

The aggregate amount paid by Eskom to Deloitte, KPMG, PWC and Nkonki in relation to these contracts (which include all amounts that Deloitte, KPMG and PWC paid on to Nkonki and to other subcontractors) was R413 142 093.15 inclusive of VAT made up as follows:

Source	Amount (ZAR)	Amount (ZAR)
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	(VAT Exclusive)	(VAT Inclusive)
Payments to PwC by Eskom	94 538 104.00	107 773 438.56
Payments to Deloitte by Eskom	207 216 243.80	236 226 517.93
Payments to KPMG by Eskom	55 509 103.07	63 280 377.50
Direct payments to Nkonki by Eskom	5 141 894.00	5 861 759.16
TOTAL	405 344.87	413 142 093.15

51. Prior to its acquisition by Trillian, Nkonki was appointed as service provider to Transnet for an internal audit function which went out on open tender in 2013. The total contract was for R500 million over five years.
52. In January 2017 Transnet received unsolicited bids from Nkonki and Oliver Wyman for a variety of proposed non-audit services. The Transnet executives proposed that Transnet utilise the existing internal audit contract with Nkonki for these unsolicited proposals, many of which duplicated services that were supposed to be rendered by McKinsey and Regiments. This was patently unlawful and the contention that the existing contract allowed for non-audit "ancillary services" was simply false.
53. To facilitate the new mandate, the Nkonki internal audit contract was extended by 20 months to March 2020. The value of the contract was also increased by R500 million (100%). This contract extension was in violation and contravention of Transnet's procurement rules, the PFMA, and the National Treasury instruction and practice notes.
54. Transnet had paid R26.1 million to Nkonki in respect of these irregularly procured non-audit services.

The Transnet Neotel Contracts³⁷

55. Neotel, received two contracts from Transnet, from which payments aggregating to R75 573 519.88 were made to the Gupta Enterprise laundry vehicle, Homix. These contracts were a Cisco equipment contract concluded on 21 February 2014 and an MSA concluded on 19 December 2014 to provide Network Services to Transnet (including provision for an asset buy back). In addition to these contracts, in May 2014 and March 2015, Neotel concluded two CCTV contracts with Transnet, from which payments aggregating to R286 635 487.77 were made to the Gupta Enterprise company, Techpro. Techpro then paid R119 700 000.00 on to Homix directly and another R51 300 000.00 indirectly to Homix via Digital Video Solutions trading as Central High Trading.
56. The irregularities in the awards of the Neotel contracts are addressed in Chapter 10 of Part 2 of this Report. For present purposes it suffices to point out that Neotel's auditors, Deloitte, identified payments made by Neotel to Homix in connection with these contracts as reportable irregularities that gave rise to reasonable inferences of corruption. Indeed, it was through Deloitte's professional approach to their auditing responsibilities in their Neotel audit, that the Gupta Enterprise's corrupt influence over public enterprises first came to light.
57. The payments made by Transnet to Neotel on these contracts aggregated to R5 581 955 471.63 made up as follows:

Date / Period	Contract	Payment
07 March 2014	Cisco Equipment	69 067 039.72

³⁷ Part 2 of the Commission Report (the Transnet Report) pp 390 to 429. See also Holden Money Flows Report pp VV10-SCFOFA-80 to 81.

14 May 2014	Cisco Equipment	276 268 158.90
23 December 2014	MSA asset buy back fee	228 000 000.00
23 December 2014	MSA mobilisation fee	256 500 000.00
2015-2018	CCTV	827 441 799.18
2015-2019	MSA fees	3 924 678 473.83
	TOTAL	5 581 955 471.63

Security Services Contracts Awarded to Combined Private Investigations³⁸

58. Combined Private Investigations (CPI) is a security services provider that received a large number of contracts from organs of state. Between January 2013 and the January 2016, CPI paid aggregate amount of R47 475 362.22 to the Gupta Enterprise laundry vehicles Homix, Forsure Consulting, Medjoul and Fortime Consultants. The payments were made monthly. Initially the monthly amount was R500,000. This increased to R1,459,200 per month from October 2013, and to R1,575,760.37 from the 17th of November 2015 until the final payment at the end of January 2016.
59. On its own version, CPI states that it was approached in late 2012 by Salim Essa on behalf of Chivita. Salim Essa indicated that he could assist CPI secure further business as he was 'well-connected', and a 'deal broker' and 'rainmaker.' CPI further alleges that Essa worked alongside and with Mr. John Duarte (the son of Mrs. Jesse Duarte) and Malcolm Mabaso, the latter a former advisor to Mosebenzi Zwane, and that the three members would provide 'consultancy services' through Chivita to CPI to help it secure business.
60. CPI did not provide any detail in relation to the precise services provided by Chivita or any of the other laundry vehicles to which it subsequently made payments. The invoices against which Chivita and other entities were paid simply stated that they provided 'consultancy services', or undertook the 'management of information' and provided

³⁸ Holden Money Flows Report pp VV10-SCFOFA-81 to 89.

'logistic support services'. CPI's attorneys state that the commercial rationale for contracting the Gupta Enterprise entities was that 'the team presented to our client that it was "well connected" and could add commercial value to our client's business.' CPI does not indicate whether 'the team' assisted in securing any contracts, nor do CPI provide any indication of what services could have been legitimately provided by Essa et al. in securing work for CPI.

61. Over the period that CPI paid kickbacks to laundry vehicles designated by Salim Essa, organs of state paid it an aggregate amount of R426 453 577.70 made up as follows:

State Entity or SOE	Amount (ZAR)
Eskom	71 937 415.05
City Power (City of Johannesburg)	47 802 005.78
City of Tshwane	59 269 561.31
City of Ekurhuleni	95 746 222.42
Transnet	151 698 373.17
TOTAL	426 453 577.70

Contracts Awarded to Kapditwala Incorporated t/a Dentons South Africa³⁹

62. Kapditwala Incorporated is a law firm that trades as Dentons South Africa. Dentons' senior partner, Mr Noor Kapdi, has deposed to an affidavit in which he approached Rafique Bagus, a client of Dentons South Africa and then Chairperson of Alexcor, to 'advertise' Dentons to the public sector.

³⁹ Holden Money Flows Report pp VV10-SCFOFA-99 to 105.

63. On 17 April 2015, Dentons was appointed by Eskom to perform a forensic investigation. The contract was referred to by Dentons and Eskom as 'Project Picardie.'
64. Mr Kapdi states that, subsequent to being awarded the Project Picardi contract, he contacted Mr Bagus to "thank him for his efforts to market the Firm [Dentons]. I also raised the issue of remuneration to which I believed he would be entitled for work done in marketing the Firm." According to Mr Kapdi, Mr Bagus indicated that he would not require any remuneration but that a third party would contact Dentons in relation to payment for marketing their services.
65. Mr Kapdi was subsequently contacted by Ashok Narayan to discuss arranging payment. Mr. Kapdi, states that he then entered into a consultancy agreement with an entity designated by Narayan to provide for payment to Narayan in relation to the Eskom contract. The entity designated by Narayan was Fortime Consultants which was the then current laundry vehicle used by the Gupta Enterprise to receive kickbacks on public contracts.
66. Mr Bagus admits to introducing Mr Kapdi to the Guptas but denies Mr Kapdi's version in relation to the Dentons contracts. In particular, he denies agreeing to advertise Dentons, knowing Ashok Narayan or being aware of the fact that Dentons was tendering for an Eskom contract.⁴⁰
67. Dentons SA was paid R20 892 885.56 by Eskom Holdings in relation to Project Picardie. On 22 August 2015, it paid Fortime R1 231 200.00 in relation to this contract.
68. In 2015, Dentons was appointed to Denel's legal panel. According to Mr Kapdi, he was approached in September 2015 by the Head of Legal at Denel and informed that

⁴⁰ Rule 3.3 Affidavit of Bagus pp VV10B-RULE3.3-004 to 7

Dentons had been selected to submit a Request for Proposal in relation to an investigation that was required by Denel. Dentons submitted a bid for the work, quoting a fee capped at R4 100 000.00. On the 9 October 2015, Dentons was formally appointed by Denel to undertake the work under the name 'Project Betty.'

69. Dentons invoiced Denel R5 971 266.24 under Project Betty. This exceeded the capped fee of R4,100,000 in the bid.
70. According to Mr Kapdi, in January 2016, following the completion of the work at Denel, Dentons' was once again approached by Mr. Narayan to negotiate a marketing fee in relation to this contract. Mr Kapdi agreed to negotiate a fee with Fortime. Fortime was ultimately paid R642 588.36 in relation to this contract in three payments between December 2015 and February 2016.
71. It is not possible to resolve the dispute of fact between Mr Bagus and Mr Kapdi as to how Ashok Narayan was introduced to Dentons. This is a matter that must be investigated further by the appropriate authorities. For present purposes, it suffices to point out that on any version, the involvement of Ashok Narayan and Fortime points to irregularity in relation to the appointment of Dentons at Eskom and Denel:
 - 71.1. In both cases, the 'marketing fees' paid by Dentons to Fortime were only negotiated *after* the relevant contracts had been awarded.
 - 71.2. There was no written agreement between Dentons and Fortime in relation to the Denel contract. In the case of the Eskom contract, the written agreement that was concluded was backdated to 1 February 2015 to give the appearance of an agreement that was signed prior to the award of the contract to Dentons. However, it is clear that the agreement was signed long after the contract had

been awarded because the parties were still exchanging drafts of the agreement as late as 21 August 2015.⁴¹

71.3. The backdated agreement contained detailed provisions purporting to regulate the services that Fortime was to provide⁴² but on Mr Kapdi's version any "services" provided by Fortime had been provided before he or Dentons was aware of the existence of Mr Narayan and Fortime.

71.4. Dentons was unable to produce any marketing material or reports that Mr Narayan or Fortime had ever produced for Dentons. So, it appears that the 'marketing' work performed by Mr Narayan could only have been influence peddling. Given the identity of Mr Narayan, that influence would have been the influence of the Gupta Enterprise over Eskom and Denel.

Payments Made by SABC to Lornavision/The Customer Communication Services Company⁴³

72. In 2017, the Special Investigating Unit successfully procured a high court judgment to set aside a contract entered into between Lornavision and the SABC. Lornavision, of whom Kuben Moodley was a director, were contracted by the SABC to provide debt collection services.

73. Lornavision was ultimately paid R62 733 557.24 by the SABC between September 2015 and February 2017. Out of these funds Lornavision diverted an aggregate amount of

⁴¹ See the emails at Annexure NK12 to the affidavit of Mr Kapdi at VV10-SCFOFA-1124 in particular

⁴² The Agreement is Annexure NK7 to affidavit of Mr Kapdi. See clauses 1 and 2 at pp VV10-SCFOFA-1086 to 1087

⁴³ Holden Money Flows Report pp VV10-SCFOFA-105 to 106.

R8,799,544.63 to, to Shacob Commerce and Birsaa Projects, two Gupta Enterprise laundry vehicles.

Amounts Paid by State Departments and SOEs to Companies under the Direct Control of the Gupta Enterprise

74. The irregularities in the award of contracts by State Departments directly to companies under the direct control of the Gupta Enterprise are traversed in other sections of this Report. This section documents the amounts paid out of public funds pursuant to these contracts:

74.1. Eskom paid an aggregate amount of R2 442 523 980.56 to Tegeta Resources and Exploration.⁴⁴

74.2. In the period from 14 April 2016, after Optimum Coal Holdings passed into the hands of the Gupta Enterprise, Eskom made aggregate payments of R1 682 026 066.26 to Optimum.⁴⁵

74.3. On 11 April 2010, the Industrial Development Corporation advanced R250 000 000.00 to Oakbay Resources and Energy to enable it to purchase Shiva Uranium from the erstwhile owner, Uranium 1.⁴⁶

74.4. The New Age Media ("TNA") was paid R254 752 699.30 by Eskom, Transnet, Department of Water and Sanitation, the Offices of the Premier for Free State,

⁴⁴ Holden Money Flows Report pp VV10-SCFOFA-113 to 116

⁴⁵ Holden Money Flows Report pp VV10-SCFOFA-116 to 117

⁴⁶ Holden Money Flows Report pp VV10-SCFOFA-117 to 118

North West and Mpumalanga, and the Free State Provincial Treasury through irregular procurement practices between February 2011 and May 2016.⁴⁷

74.5. Denel paid VR Laser aggregate amounts of R242 425 736.70 in respect of the following irregularly procured contracts:⁴⁸

74.5.1. the platform hulls contract awarded to VR Laser Services in October 2014

74.5.2. the single source supplier contract awarded by Denel Land Systems ("DLS") to VR Laser in May 2015, and

74.5.3. the single source supplier contract awarded by Denel Vehicle Systems ("DVS") to VR Laser in December 2015.

74.6. After Sahara Systems acquired a 50% share in Global Softech Solutions in 2014, Transnet Awarded Global Softech Solutions the Wagon Performance Optimisation Contract which was valued by Transnet at R500 000 000 but ultimately resulted only in the payment of a once off fee to Global Softech Solutions of R16 199 400.00 on 11 April 2017.

74.7. After Sahara Holdings acquired a controlling interest in Cutting Edge Commerce (previously known as Leonardo Business Consulting) in 2014,

74.7.1. Transnet concluded a two-year contract with Cutting Edge to provide Transnet with a "Solution for a Systems Analytical Tool and capability to Report on Key Procurement Metrics". The contract was awarded to Cutting Edge on a confinement basis without any competitive bidding and

⁴⁷ Holden Money Flows Report pp VV10-SCFOFA-118 to 135

⁴⁸ Holden Money Flows Report pp VV10-SCFOFA-135 to 141

resulted in aggregate payments of R41 294 949.60 from Transnet to Cutting Edge

74.7.2. On 9 May 2016 Eskom concluded a contract with Cutting Edge in the amount of R71 166 780.00 on the basis of an unsolicited proposal that was not subject to competitive bidding and in respect of which the full contract price of R71 166 780 was paid by Eskom to Cutting Edge within 17 days of submission of the unsolicited proposal.

74.7.3. Eskom paid Cutting Edge additional amounts aggregate to R24 432 133.44 in the course of 2017 under ad hoc appointments of Cutting Edge to contracts by virtue of its position on the Eskom IT Panel of service providers.

74.8. The Commission has identified payments aggregating to just over R102 million made to Sahara by organs of state who have been unable to produce evidence to the Commission to show that these payments were made in terms of acceptable procurement practices. The Commission is not in possession of evidence that proves that these payments were the product of irregular procurement practices, so they are not included in the overall totals of irregular payments made to the Gupta Enterprise.

75. **State Capture: the Aggregate Amounts**

76. Mr Holden has produced a detailed analysis of the payments from public funds affected by State Capture.⁴⁹ On the basis of his analysis, the Commission estimates that the

⁴⁹ Holden Money Flows Report Table 73 pp VV10-SCFOFA-153 to 155

total amount disbursed by organs of state in expenditure tainted by State Capture was R57 344 912 379.34⁵⁰ broken down as follows:

Government Entity	Paid To	Total State Expenditure (ZAR)	Percentage of Total
FS Department of Agriculture and Rural Development	Nulane Investments 204	24 984 240.00	0.04%
FS Department of Agriculture and Rural Development	Estina	280 202 652.00	0.49%
FS Department of Education	Sunbay Trading	28 500 000.00	0.05%
FS Office of the Premier	Sunbay Trading	4 578 810.00	0.01%
FS Department of Health	Cureva/Mediosa Health	25 111 188.00	0.04%
NW Department of Health	Cureva/Mediosa Health	30 000 000.00	0.05%
FS Department of Agriculture and Rural Development	Tsebo Business Intelligence	12 492 500.00	0.02%
FS Department of Agriculture and Rural Development	Pygma Consulting	2 487 480	0.00%
FS Department of Economic Development, Tourism and Environmental Affairs	Innova Management Consulting	6 972 395.04	0.01%
SAA	Regiments Capital	6 241 500	0.01%
SA Express	Regiments Capital	8 218 123.20	0.01%
Transnet	Regiments Capital	1 023 161 529.89	1.78%
FS Provident Fund	Regiments Capital	2 319 216	0.00%
Denel	Regiments Capital	7 980 000	0.01%
SAFCOL	Regiments Capital	6 623 400.00	0.01%
Transnet Defined Benefit Pension Fund	Regiments Capital	248 729 210	0.43%
Transnet	Trillian Group	169 859 999.91	0.30%
Eskom	Trillian Group	595 228 913.29	1.04%
SA Express	Trillian Group	5 700 000.00	0.01%
Transnet	Neotel	5 581 955 471.63	9.73%
Eskom	McKinsey Inc	1 108 164 558.26	1.93%
Transnet	McKinsey Inc ⁵¹	741 518 655.60	1.29%
SAA	McKinsey Inc	6 243 210.00	0.01%
Eskom	Combined Private Investigations	71 937 415.05	0.13%

⁵⁰ This figure differs slightly from Mr Holden's figure of R57,269,900,004.43 in his Table 73 because Holden appears to have transposed incorrect figures into his table in respect of the Transnet McKinsey payments, the Transnet Cutting Edge payments and the Denel Dentons payments. His table also did not take account of the R26.1 million aggregate payment made by Transnet to Nkonki in respect of the non-audit services because he was not aware of the amount paid in this regard. All of the relevant discrepancies are noted on the table below.

⁵¹ Holden's Table 73 uses the incorrect figure of R687 970 961.05

Transnet	Combined Private Investigations	151 698 373.17	0.26%
City of Johannesburg	Combined Private Investigations	74 802 005.78	0.13%
City of Tshwane	Combined Private Investigations	59 269 561.31	0.10%
City of Ekurhuleni	Combined Private Investigations	95 746 222.42	0.17%
Transnet	Nkonki Inc ⁵²	26 100 000.00	0.05%
Eskom	Nkonki Inc	5 861 759.16	0.01%
Eskom	Deloitte	236 226 517.93	0.41%
Eskom	KPMG	63 280 377.50	0.11%
Eskom	PWC	107 773 438.56	0.19%
Transnet	Cutting Edge ⁵³	41 294 949.60	0.07%
Eskom	Cutting Edge	95 598 913.44	0.17%
Eskom	SAP	564 733 122.57	0.98%
Transnet	SAP	225 883 124.88	0.39%
Transnet	Zestilor	13 407 883.18	0.02%
Transnet	Zestilor (via Innovent Asset Management)	222 839 809.93	0.39%
Eskom	T-Systems	7 805 558 985.49	13.61%
Transnet	T-Systems	4 529 377 797.46	7.90%
Eskom	Zestilor	2 490 484.50	0.00%
Eskom	Dentons South Africa	20 892 885.56	0.04%
Denel	Dentons South Africa ⁵⁴	5 971 266.24	0.01%
SABC	Lornavision	62 733 557.24	0.11%
Eskom	Tegeta Resources	2 442 523 980.95	4.26%
Eskom	Optimum Coal	1 682 026 066.26	2.93%
IDC	Oakbay	250 000 000.00	0.44%
Eskom	TNA Media	35 401 246.60	0.06%
Transnet	TNA Media	144 147 790.00	0.25%
Department of Water and Sanitation	TNA Media	5 924 333.64	0.01%
Office of the Premier: FS	TNA Media	42 062 906.36	0.07%
FS Treasury	TNA Media	11 331 233.68	0.02%
Office of the Premier: Mpumalanga	TNA Media	6 581 301.20	0.01%
Office of the Premier: NW	TNA Media	9 308 888.02	0.02%
Denel	VR Laser	242 425 736.70	0.42%
Transnet	Global Softech Solutions	16 199 400.00	0.03%
Transnet (95 Locos)	CSR	3 432 869 565.21	5.99%

⁵² Holden's Table 73 did not include this figure

⁵³ Holden's Table 73 uses the incorrect figure of R45 904 113.24

⁵⁴ Holden's Table 73 uses the incorrect figure of R5 997 422.24

Transnet (100 Locos)	CSR	5 159 831 654.92	9.00%
Transnet (359 Locos)	CSR/CRRC	14 910 751 921.66	26.00%
Transnet (232 Locos)	CNR/CRRC	2 823 869 773.71	4.92%
Transnet	Liebherr Cranes	841 098 842.64	1.47%
Transnet	ZPMC	877 806 234.00	1.53%
TOTAL		269 900 004.43	

77. A wide range of organs of state experienced the impact of State Capture, but the financial effect was focused on Transnet and Eskom who together, account for more than 97% of all the expenditure tainted by State Capture. The full breakdown of State Capture tainted expenditure by organ of state is the following:

SOE or Government Department	Total Amount Disbursed Related to State Capture (ZAR)	Percentage of Total
Transnet incl. Transnet Second Defined Benefit Fund	41 182 401 987.39	71.82%
Eskom	14 837 698 665.23	25.87%
FS Provincial Government	441 042 621.08	0.77%
Denel	256 377 002.94	0.45%
IDC	250 000 000.00	0.44%
City of Ekurhuleni	95 746 222.42	0.17%
City of Johannesburg	74 802 005.78	0.13%
SABC	62 733 557.24	0.11%
City of Tshwane	59 269 561.31	0.10%
NW Provincial Government	39 308 888.02	0.07%
SAA and SA Express	26 402 833.20	0.05%
Mpumalanga Provincial Government	6 581 301.20	0.01%
SAFCOL	6 623 400.00	0.01%
Department of Water and Sanitation	5 924 333.64	0.01%
TOTAL	57 269 900 004.43	

78. Holden calculates that the Gupta Enterprise was paid directly or indirectly via money laundering vehicles, a total of R16 217 793 047.18 out of public funds tainted by State Capture. The Commission has performed its own independent calculations and concluded that the Gupta Enterprise benefited at least to the amount of R15 543 960

171.22. There are two primary reasons for the discrepancy between the Commission's figure and the figure reached by Holden.

- 78.1. First, the Commission has erred on the side of caution in relation to the risk of double counting amounts.
- 78.2. Second, for the purposes of his calculation, Holden does not treat Trillian, or its subsidiary, Nkonki as Gupta Enterprise entities and, instead, accounts only for the amounts traceable as having been paid out of Trillian or Nkonki to known Gupta Enterprise subcontractors or laundry vehicles. Given the fact that Mr Essa at all relevant times held a controlling interest in Trillian, the Commission sees no basis for treating Trillian as an entity independent of the Gupta Enterprise. So in this report, for the purposes of calculating amounts paid to the Gupta Enterprise in relation to State Capture contracts, payments to Trillian and Nkonki are included in the calculation.
79. The full breakdown of the Commission's amount of R15 543 960 171.22 is the following:

<i>Direct Payments to Gupta Enterprise by Organs of State</i>		
Organ of State	Gupta Enterprise Recipient	Amount
FS Department of Agriculture and Rural Development	Nulane	24,984,240.00
FS Department of Agriculture and Rural Development	Estina	280,202,652.00
FS Department of Education	Sunbay Trading	28,500,000.00
FS Office of the Premier	Sunbay Trading	4,578,810.00

Transnet	Cutting Edge ⁵⁵	41 294 949.60
Eskom	Cutting Edge	95 598 913.44
Transnet	Trillian	169 859 999.91
Eskom	Trillian	595 228 913.29
SA Express	Trillian ⁵⁶	5 700 000.00
Transnet	Nkonki	26 100 000.00
Eskom	Nkonki ⁵⁷	5 861 759.16
Transnet	Zestilor	13,407,883.18
Transnet	Zestilor (via Innovent Asset Management)	222,839,809.93
Eskom	Zestilor	2,490,484.50
Eskom	Tegeta Resources	2,442,523,980.95
Eskom	Optimum Coal	1,682,026,066.26
IDC	Oakbay Investments/Oakbay Resources/Action Investments	250,000,000.00
Eskom	TNA Media	35,401,246.60
Transnet	TNA Media	144,147,790.00
Office of the Premier: FS	TNA Media	42,062,906.36
FS Treasury	TNA Media	11,331,233.68
Office of the Premier: Mpumalanga	TNA Media	6,581,301.20
Office of the Premier: NW	TNA Media	9,308,888.02
Denel	VR Laser	242,425,736.70
Transnet	Global Softech Solutions	16,199,400.00
Sub-Total Direct Payments to Gupta Enterprise⁵⁸		6 398 656 964.78
Payments by State Contractors Derived from State Capture Contracts		
Payee and Project	Recipient	Amount (ZAR)
Tsebo/Innova Management/Free State Department of Agriculture and Rural Development	Gateway Limited	9 756 500.00
Regiments Transnet TSDBF Interest Swaps	Trillian	185 530 350.08

⁵⁵ Holden's Table 248 uses the incorrect figure of R45 904 113.24

⁵⁶ Holden's Table 248 does not include the Trillian figures

⁵⁷ Holden's Table 248 does not include the Nkonki figures

⁵⁸ Holden's Table 248 erroneously includes amounts paid to SAP under this heading

T-Systems	Zestilor ⁵⁹	3 051 639.21
T-Systems Supplier Development Agreement	Sechaba Computer Systems	323 413 332.51
Neotel	Technology and Procurement Holdings ⁶⁰	286 535 487.77
SAP	Global Softech Solutions	7 410 000.00
SAP	CAD House	99 924 993.94
Deloitte	Nkonki	48 337 149.55
KPMG	Nkonki	12 972 974.99
PWC	Nkonki ⁶¹	18 275 949.90
Cureva/Mediosa	Sechaba Computer Systems	1 556 561.49
Sub-Total: Indirect Payments via State Contractors (including Innova contracts in Free State)		996 764 939.44
Payments to First-Level Laundry Entities by State Capture Partners⁶²		
Parntner and Project	Recipient	Amount (ZAR)
Cureva/Mediosa	Shacob Commerce	15 960 000.00
Cureva/Mediosa	Albatime / Moodley	2 538 948.00
CNR Durban Relocation/Bex	Medjoul	15 228 070.98
CNR Durban Relocation/Bex	Ismer	14 147 400.00
CNR Durban Relocation/Bex	Fortime Consultants	18 140 820.00
CNR Durban Relocation/Bex	Maher Strategy	18 605 940.00
CNR Durban Relocation/Bex	Block Mania	10 154 226.18
Regiments (All Projects)	Albatime	232 267 385.20
Regiments (All Projects)	Chivita Trading	129 299 827.25
Regiments (All Projects)	Forsure Consultants	16 890 928.70
Regiments (All Projects)	Fortime Consultants	53 880 753.93
Regiments (All Projects)	Homix	179 506 583.48
Regiments (All Projects)	Maher Strategy	10 322 510.00
Regiments (All Projects)	Medjoul	29 558 898.91
Regiments (All Projects)	Hastauf	12 360 769.62
Regiments (All Projects)	Birsaa Projects	2 277 150.00

⁵⁹ Holden's Table 248 includes amounts paid to Zestilor by Trillian and Sechaba Computer Systems. These have been removed to avoid double counting

⁶⁰ Holden's Table 248 does not include the Techpro figures

⁶¹ Holden's Table 248 does not include the Nkonki figures

⁶² Holden's Table 248 includes amounts paid to laundry vehicles by the Gupta Enterprise companies Trillian, Sechaba Computers, Zestilor, Techpro and CAD House. Now that the primary payments to these companies have already been included in this table in the two categories above, the laundry payments by those vehicles have been removed from the table to avoid double counting. Similarly, the amounts under the heading "Regiments and Trillian laundry cases" in Holden's Table 248 have been removed from this table to avoid double counting now that the primary payments are already included in this table under earlier categories.

Liebherr: Burlington Cranes	Homix	1 800 000.00
Neotel: Transnet	Homix	75 573 519.88
Combined Private Investigations	Chivita	14 673 600.00
Combined Private Investigations	Homix	17 510 400.00
Combined Private Investigations	Forsure Consulting	2 918 400.00
Combined Private Investigations	Medjoul	12 372 962.22
Dentons	Fortime Consultants	1 873 788.36
Lornavision	Birsaa Projects	3 019 868.23
Lornavision	Schacob Commerce	5 779 676.40
CRRC	Fortime Consultants	7 892 226.77
Sub-Total: Payments to First-Level Laundry Entities by State Capture Partners		919 968 226.83
Kickbacks to the Gupta Enterprise⁶³		
Project	Kickback Amount (ZAR)	
Purchase of Liebherr Cranes	26 586 799.49	
Purchase of ZPMC Cranes	33 379 031.04	
95, 100, 359, 232 Locomotive Procurements including Maintenance Contracts: Payments Confirmed by Primary Documentation	3 400 558 016.24	
95, 100, 359, 232 Locomotive Procurements including Maintenance Contracts: Suspected Further Kickbacks	3 768 046 193.40	
Sub-Total: Kickbacks to the Gupta Enterprise	7 228 570 040.17	
TOTAL	15 543 960 171.22	

⁶³ The amount in Holden's Table 248 under the heading "CNR Relocation Contract" has been removed because it is already included under the CNR Durban Relocation/Bex line items above.

Assessing the Financial Cost of State Capture

80. The amounts set out above do not represent the full loss suffered by the State as a result of Gupta Enterprise related State Capture. The first amount of R57 269 900 004.43 is the aggregate amount of total payments made to contractors in contracts with the State in which the Gupta Enterprise was involved in State Capture activities. The second amount of R15 543 960 171.22 is the aggregate amount of total payments to the Gupta Enterprise made by the State itself, or by contractors in contracts with the State in which the Gupta Enterprise was involved in State Capture activities. In order to calculate the total cost to the State of State Capture activities it would be necessary to conduct eight different quantification exercises:

80.1. The total value of kickbacks paid to the Gupta Enterprise by third party contractors who concluded contracts with the State whether in the form of direct kickbacks or indirect kickback paid to laundry entities. This amount can be assumed to be a loss by the State because in an open and honest competitive procurement process without interference by the Gupta Enterprise or other corrupt parties, it can be assumed that bidders would have fixed prices at a level that did not need to accommodate the kickbacks that they had committed to pay to the Gupta Enterprise.

80.2. The total value of gratuitous expenditure where such expenditure was incurred with little motivation beyond ensuring the enrichment of the Gupta Enterprise.

80.2.1. By way of illustration, organs of state made aggregate payments of R248 833 365.86 to TNA for advertising, marketing and newspapers. It can safely be assumed that most, if not all of this expenditure would have

been avoided if the Gupta Enterprise had not exercised the influence over the State that it did, and that very little of this expenditure resulted in any real value for the State.

80.2.2. Likewise, the entire Estina Dairy project seems to have been conceived for the primary purpose, not of providing any value to the Free State Provincial Government and the residents of the Free State, but rather to provide a pretext for the transfer of public funds to the Gupta Enterprise. There was little, if any value that the province derived from the project.

80.3. The total value of gratuitous expenditure where entities were entities linked to the Gupta Enterprise were given new contracts for which they had already been paid or for which other entities linked to the Gupta Enterprise had already been paid. The State Capture at Transnet abounds with examples in this category:

80.3.1. The R189 million "success fee" paid to Regiments in relation to the China Development Bank loan when Regiments had already been paid for all services relating to this work;

80.3.2. The R93 million paid to Trillian for services for which Regiments had already been paid in respect of the Club Loan;

80.3.3. The R26.1 million paid to Nkonki for services for which Regiments and McKinsey had already been paid.

80.4. The payment by organs of State of amounts far in excess of the contract values awarded to entities linked to the Gupta Enterprise. The most obvious example of this is the 745% increase in the payments made to Regiments Capital for its services relating to funding for the 1064 locomotive procurement. So

Regiments fees escalated from the R35.2 million in the initial contract to R265.5 million.

80.5. The price inflation attendant on contracts made with the Gupta Enterprise by State entities, especially in the cases where no competitive bidding process took place, where such contracts incurred significantly higher costs for the delivery of goods and services compared with going market rates, or even the usual rates charged by the Gupta Enterprise for its non-State Clients. An obvious example of this is the case of Sunbay Trading and its contracts with the Free State government to supply laptops for needy learners. As set out above, Sunbay Trading was paid an aggregate amount of R33,078,810.00 to deliver laptops. Almost all of this was transferred to Sahara Computers, who supplied the laptops. Sunbay Trading was effectively a front company for Sahara. The unit price charged by Sunbay Trading/Sahara Computers in this regard was nearly double the unit price charged by Sahara Computers to its commercial and corporate clients. There was no competitive bidding process for the award of the contracts.

80.6. The price inflation in the contract prices charged to the State by third party contractors who did business with the State in circumstances where they were protected by their relationship with the Guptas, over and above the value of the kickbacks those third party contractors paid to the Gupta Enterprise.

80.6.1. Gupta Enterprise State Capture created a culture of corruption and indifference to cost in many State Owned Enterprises and Government Departments. There is reason to believe that third party contractors who were protected by their relationship with the Gupta Enterprise, exploited this culture to charge the State excess amounts even beyond those

necessary to recover the cost of the kickbacks they were paying to the Gupta Enterprise.

80.6.2. By way of illustration, T-Systems was awarded a five year MSA agreement with Transnet from January 2010 to December 2014. T-Systems used its relationship with Salim Essa to procure the extension of this contract from January 2015 to March 2019. Over the four-year period of the extension to December 2018, the average annual amount paid by Transnet to T-Systems was more than three times the average annual amount paid to T-Systems under the same contract from January 2010 to December 2014.

80.7. The total value of contractual damages suffered by organs of state in their contracts with the Gupta Enterprise itself or with third party contractors who were protected by their relationship with the Gupta Enterprise.

80.7.1. In some cases, the counterparties of the State would have properly performed their contractual obligations and the State would have suffered no contractual damages. In others, however, the Gupta Enterprise linked counterparties would not have performed and the State would have suffered losses which may even have exceeded the amounts paid to the relevant counterparties

80.8. The OCM Eskom State Capture case illustrates the potential extent of such losses. In case 35689/20 in the Gauteng High Court, Pretoria, Eskom seeks to recover from parties implicated in State Capture the losses that it alleges that it suffered as a result of OCM's failure to deliver the quantity and quality of coal it was obliged to deliver while under the control of the Gupta Enterprise. It quantifies its losses at R2 441 161 443 in relation to coal quantity and at R89

335 464.07 in relation to coal quality.⁶⁴ These alleged losses far exceed the total amount of R1,682,026,066.26 that Eskom paid OCM while it was under the control of the Gupta Enterprise.

80.9. Collateral wasteful expenditure incurred by organs of state to accommodate State Capture contracts. Apart from the payments to Gupta Enterprise companies and third party contractors paying premiums to Gupta Enterprise companies, State Capture caused indirect loss to the State in the form of excessive payments to “innocent” third party contractors so as to prevent the inflated payments to Gupta linked third party contractors from standing out. The 1064 locomotive procurement is an illustrative case – China North Rail and China South Rail were paid prices that accommodated kickbacks to the Gupta Enterprise of amounts in excess of 20%. In order to make this possible, the prices paid to Bombardier and General Electric also had to be increased to levels where the China North Rail and China South Rail prices did not look excessive.

81. Of the eight categories of losses set out above, the Commission has been able to quantify the first category of losses. The amount of the kickbacks paid can be determined with some degree of accuracy. As is set out above the direct kickbacks aggregated to R7 228 570 040.17 and the indirect kickbacks aggregated to R919 968 226.83. So the total known value of kickbacks was R8 148 538 267.

82. The Commission has not, however, attempted to quantify the other seven categories of loss. So this report does not purport to quantify the total loss suffered by the State as a result of Gupta related State Capture. It can safely be predicted, however, that this

⁶⁴ The Eskom summons is at VV10C-FURTHER-DOCS-074 to 146. The relevant allegations are at p VV10C-FURTHER-DOCS-118 paras 103 and 104

amount would far exceed the amount of R15 543 960 171.22 that was paid directly or indirectly from public funds to entities forming part of the Gupta Enterprise.

THE DISSIPATION OF STATE CAPTURE-DERIVED FUNDS THROUGH LOCAL AND INTERNATIONAL MONEY LAUNDRY NETWORKS

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THE DISSIPATION OF STATE CAPTURE-DERIVED FUNDS THROUGH LOCAL AND INTERNATIONAL MONEY LAUNDRY NETWORKS

Introduction

83. The Gupta enterprise used a range of different money laundering networks to dissipate the funds it generated from State Capture. These money laundering networks became more sophisticated over time:
84. To begin with, the Gupta enterprise externalised its State Capture profits with extremely simple money laundering devices:
- 84.1. domestic Gupta companies that received irregular contracts with the South African State would transfer the benefits of those contracts directly into Gupta companies in the UAE whereafter they would circulate through offshore Gupta enterprise accounts before being reintroduced to Gupta companies in South Africa;⁶⁵
- 84.2. kickbacks extracted from third party foreign contractors with Transnet would be paid directly into the accounts of Gupta companies in the UAE⁶⁶ or to JJ Trading FZE and Century General Trading FZE. The latter were companies within the

⁶⁵ See for example the laundering of the payments made by the Free State Government to the Estina Dairy. These are traced in detail in Mr Holden's Estina Dairy Report (Annexure VV5.1) at pp VV5-PEH-061 to 108

⁶⁶ An obvious example would be the Liebherr payments to Accurate Investments in respect of the Transnet cranes contract awarded to Liebherr. These payments are analysed by Mr Holden in his Transnet report (Annexure VV5.2) at pp VV5-PEH-1135 to 1151.

Worlds Window Network of companies and laundered these payments directly into UAE accounts of Gupta enterprise companies.⁶⁷

85. From around 2013, the Gupta Enterprise started using sophisticated domestic and international money laundering networks to move its proceeds of crimes against the South African State:

85.1. in respect of the Transnet locomotive kickbacks, CRRC and related companies paid offshore kickbacks into HSBC accounts of Tequesta and Regiments Asia in Hong Kong, out of which accounts the kickbacks were laundered through a Hong Kong / China money laundering network; and

85.2. domestic Gupta companies that received irregular contracts with the South African State would launder the proceeds of those contracts through established South African money laundering networks, which, in turn, would launder the relevant funds into international money laundering networks, including the Hong Kong China money laundering network referred to in the previous paragraph.

86. These domestic and international money laundering networks used by the Gupta enterprise to move proceeds of crime for around 2013, are independent of the Gupta Enterprise. They seem to have pre-existed the Gupta Enterprise and to have serviced a wide range of clients other than the Gupta Enterprise.

⁶⁷ In his Transnet Report (Annexure VV5.2) Mr Holden describes the payments of hundreds of millions of rands into Gupta enterprise accounts via JJ Trading and Century General Trading. These payments originated in kickbacks paid by ZPMC in respect of a Transnet crane contract (see pp VV5-PEH-1110 to 1112 and 1185 to 1186) and by China North Rail and China South Rail in respect of the Transnet locomotive contracts (see pp VV5-PEH-1186 to 1192).

87. Because the Commission had no extra territorial information gathering powers, it was able to investigate the domestic money laundering networks much more effectively than the international money laundering networks. The primary focus of this Chapter is accordingly on the domestic money laundering networks used to dissipate the proceeds of State Capture and a range of remedial measures that should be considered to target these domestic money laundering networks. Before reaching this primary domestic focus of the chapter, however, it is possible to make some observations in relation to an international money laundering network that was used to launder billions of Rands of proceeds of State Capture. This is the money laundering network based in Hong Kong / China that was used to launder the kickbacks paid to the Gupta Enterprise by the Chinese locomotive companies in respect of the Transnet locomotive contracts. The same money laundering network also appears to have been used to launder State Capture kickbacks paid inside South Africa, after these were laundered out of the country through domestic money laundering networks.

The Hong Kong / China Money Laundering Network Used by Tequesta, Regiments Asia, and Morningstar

88. Holden shows that, over the period 8 December 2014 to 1 September 2016 an aggregate amount of \$145 177 086.91 was paid into the Hong Kong HSBC accounts of by CRRC and its related companies as kickbacks in respect of the Transnet locomotive contracts awarded to China South Rail and China North Rail, two locomotive companies which merged to create CRRC.⁶⁸

⁶⁸ Annexure VV5.2 pp VV5-PEH-1195 to 1199

89. The kickbacks paid into the Regiments Asia and Tequesta HSBC accounts were dissipated through transactions which have obvious hallmarks of money laundering:⁶⁹
- 89.1. The funds paid into the Regiments Asia and Tequesta HSBC accounts were dissipated almost immediately after they were received;
 - 89.2. A large proportion of the funds received by Regiments Asia and Tequesta were paid into Chinese textile and domestic appliance exporters, which were companies with which there was no plausible reason for Regiments Asia or Tequesta to be doing business;
 - 89.3. There were obvious signs of “smurfing” in the dissipation of the payments made by the Chinese locomotive companies into the Regiments Asia or Tequesta HSBC accounts. Thus, individual payments from the Chinese locomotive companies were invariably broken up into a series of smaller payments out of Regiments Asia or Tequesta so as to avoid the attention and regulatory compliance checks that may have been drawn by the movement of single large amounts out of Regiments Asia or Tequesta; and
 - 89.4. Most of the amounts paid out of Regiments Asia and Tequesta were round number amounts.
90. Despite these obvious signs of money laundering which were present from December 2014 HSBC Hong Kong allowed the Tequesta and Regiments Asia accounts to continue operating until well into 2017, long after all of the payments from the Chinese locomotive companies had been dissipated in full and the HSBC accounts had become empty shells with the Gupta Enterprise having redirected kickbacks from the Chinese

⁶⁹ Holden Day 319 7 December 2020 pp 344 to 345; Annexure VV5.2 pp VV5-PEH-1209 to 1215 paras 291 to 303

locomotive companies into Tequesta and Regiments Asia accounts at Habib Bank in Dubai.⁷⁰

91. The amounts paid out of Regiments Asia and Tequesta were paid into what appears to be a substantial pre-existing money laundering network based operating out of Hong Kong and China.

91.1. An internal HSBC investigation into HSBC's exposure to the Gupta Enterprise with regards to Regiments Asia, Tequesta and Morningstar (another entity laundering kickbacks for the Gupta Enterprise) showed that 92 of the companies receiving payments from these three entities held accounts at HSBC bank. As of late 2016, 60 of these accounts were active. HSBC's investigation revealed that just these 60 accounts received 50339 payments worth **\$4.2 billion**. These 60 accounts made onward payments to 5576 further beneficiaries, of which 55 were also paid by Regiments Asia, Tequesta Morningstar. The total value of onward payments was \$3.78bn in 32653 transactions.⁷¹

91.2. HSBC's investigation was limited to only 60 accounts paid by Tequesta, Regiments Asia and Morningstar. It is likely that, as a result, HSBC's internal investigation only apprehended a portion or sliver of the entirety of this global money laundering network which appears to have been laundering billions of dollars internationally.

⁷⁰ Affidavit of Shenfield FOF6-995.11 to FOF6-995.18. Annexure PP to the Holden Transnet Report pp VV5-PEH-1909 to 1916

⁷¹ Holden Money Laundering Report (Annexure VV10) at pp VV10-SCFOFA-388 to 389 para 684 and HSBC report Annexure 89 to Holden Money Laundering Report at p VV10-SCFOFA-5490

92. As we show below, the Hong Kong / China money laundering network identified by HSBC was also receiving laundered funds from a range of South African money laundering companies which performed the function of “onshore-offshore bridges” - joining domestic South African money laundering networks with international money laundering networks and laundering proceeds of State Capture (and other criminal activity) in this way.

The South African Money Laundering Networks Used by the Gupta Enterprise

93. The preceding section has addressed the laundering of State Capture related kickbacks which were paid by the Chinese locomotive companies into accounts held by Gupta Enterprise companies in Hong Kong. This section addresses the laundering of State Capture related kickbacks that were paid within South Africa.
94. The first stage of the laundering of State Capture-derived funds within South Africa involved payments to “first-level” laundry entities. The first-level laundry entities received kickback payments from third party companies in return for contracts that those companies had been awarded by state owned enterprises and government departments, apparently under the influence of the Gupta Enterprise. The Gupta enterprise made use of 15 known first-level laundry entities. These first-level laundry entities were used in roughly chronological fashion, and made use of four separate laundering routes.
95. In total, R1,232,286,003.48 was paid by contractors to the state to the first level laundry entities, as follows:⁷²

Name	Amount (ZAR)
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⁷² Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-194 to 198

Albatime	320,596,621.86
Birsaa Projects	51,507,887.23
Block Mania	10,154,226.18
Chivita Trading	144,093,427.25
Forsure Consultants	19,809,329.70
Fortime Consultants	105,543,369.69
Hastauf	12,360,769.62
Homix	395,418,856.44
Ismer	14,147,400.00
Jacsha Trading	2,150,000.00
Maher Strategy	28,928,450.00
Matson Capital	1,970,000.00
Medjoul	96,724,132.11
Pactrade	4,291,766.00
Shacob Commerce	24,589,767.40
TOTAL	1,232,286,003.48

96. These entities received State Captured-derived funds from:

96.1. Bex Structured Products;

96.2. CAD House;

96.3. Combined Private Investigations ("CPI");

96.4. Cureva/Mediosa;

96.5. CRRC;

96.6. Dentons South Africa;

96.7. Liebherr Cranes;

96.8. Lornavision;

96.9. Neotel;

- 96.10. the Regiments group of companies;
- 96.11. Sechaba Computers;
- 96.12. Techpro/Digital Video Solutions;
- 96.13. the Trillian groups of companies; and
- 96.14. Zestilor

97. The table below sets out the payments to each first-level laundry entity arranged by the source of the payment:⁷³

First-Level Laundry Entity	Amount [ZAR]
<i>Cureva/Mediosa</i>	
Shacob	15,960,000.00
Albatime / Moodley	2,538,948
<i>CNR Durban Relocation/Bex Structured Products</i>	
Medjoul	15,228,070.98
Ismer	14,147,400.00
Fortime Consultants	18,140,820.00
Maher Strategy	18,605,940.00
Block Mania	10,154,226.18
<i>Regiments Group (all State Capture contracts)</i>	
Albatime (paid from Regiments Capital)	232,267,385.20
Albatime (paid from Regiments Securities)	5,609,572.72
Birsaa Projects	2,277,150.00
Chivita Trading	129,229,827.25
Forsure Consultants	16,890,928.70
Fortime Consultants	53,880,753.93
Hastauf	12,360,769.62

⁷³ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-194 to 198

Homix	179,506,583.48
Maher Strategy	10,322,510.00
Medjoul	29,558,898.91
<i>Trillian Group – Transnet Club Loan</i>	
Albatime	74,784,000.00
<i>Trillian Group – Transnet Property Database</i>	
Birsaa Projects	4,847,893.00
Medjoul	10,362,200.00
Fortime Consultants	4,981,800.00
<i>Trillian Group – SA Express</i>	
Birsaa Projects	3,420,000.00
<i>Trillian Group – Transnet GFB and SWATII</i>	
Albatime	3,500,000.00
Birsaa Projects	12,000,000.00
Medjoul	19,380,000.00
Fortime Consultants	4,959,000.00
<i>Trillian Group – Eskom Corporate Plan</i>	
Birsaa Projects	4,847,093.00
<i>Trillian Group – August 2016 Eskom MSA</i>	
Birsa Projects	17,045,000.00
Medjoul	9,822,000.00
Fortime Consultants	12,427,328.00
Matson Capital	1,970,000.00
Pactrade	3,030,000.00
Shacob Commerce	2,850,000.00
Jacsha	2,150,000.00
<i>Neotel – Transnet R300m and R1.8bn Contracts</i>	
Homix	75,573,519.00
<i>Liebherr Cranes</i>	
Homix	1,800,000.00

<i>Sechaba Computers (Prior to T-Systems/Transnet Supplier Development Contract)</i>	
Homix	828,569.10
Albatime	942,569.10
<i>Sechaba Computers (As result of T-Systems Supplier Development Contract)</i>	
Homix	499,783.00
Albatime	954,146.84
Fortime Consultants	1,387,652.63
<i>Zestilor</i>	
Chivita Trading	120,000.00
Birsa Projects	630,883.00
Pactrade	1,261,766.00
<i>Combined Private Investigations</i>	
Chivita	14,673,600.00
Homix	17,510,400.00
Forsure Consulting	2,918,400.00
Medjoul	12,372,962.22
<i>Dentons South Africa</i>	
Fortime Consultants	1,873,788.00
<i>Lornavision</i>	
Birsaa Projects	3,019,868.23
Schacob Commerce	5,779,767.40
<i>Techpro/Digital Video Solutions from Neotel/Transnet CCTV Contract</i>	
Homix	119,700,000.00
<i>CRRC</i>	
Fortime Consultants	7,892,226.77
<i>SAP/CAD House</i>	
Birsaa Projects	3,420,000
	1,232,286,003.48

TOTAL	
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98. The Gupta Enterprise made use of four roughly distinct local money laundering networks that were used chronologically or sequentially to receive and dissipate funds from 'first-level' laundry vehicles, a substantial portion of which was dissipated abroad into pre-existing international money laundering networks. The payments were made into the international laundry networks by what Holden calls 'onshore-offshore bridges.' These bridges acted as the final stop of the local money laundering chain. The bridges were used to receive payments from multiple sources and, once bulked, transfer the funds abroad into further international money laundering networks, in particular the Hong Kong/China money laundering network, which is described in further detail below.

The First Money laundering network: Chivita, Ballatore Brands, Gamso Trading and Syngen Distribution, May 2013 to May 2014

99. The first money laundering network was centered on Chivita Trading and ran from May 2013 to May 2014. Chivita Trading operated as a high-volume laundry entity prior to its receipt of funds for the Gupta Enterprise Chivita was paid R154,406,247 by Regiments, Combined Private Investigations, Zestilor, Homix and Denel.⁷⁴
100. The payments made to Chivita were dissipated in two streams. Firstly, Chivita paid funds into Ballatore Brands, which records show acted as a laundry entity prior to receiving payments from the Gupta Enterprise. The Gupta Enterprise funds commingled with an extremely large number of cash payments from mixed sources,

⁷⁴ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-232 to 235 Table 135 and Paragraphs 327 to 330

and, once bulked, paid to an entity called Gamso Trading. In total, R5,321,776 was paid to Gamso Trading deriving from State Capture Funds.⁷⁵

101. Gamso Trading was an 'onshore-offshore bridge.' Gamso Trading received and bulked payments from multiple sources, but most notably Chivita, and paid vast sums abroad into the Hong Kong/China money laundering network. Gamso Trading made use of AngloRand Forex or Foremost Finance: Forex brokers that were involved in movement of extraordinary sums from South Africa into, inter alia, the Hong Kong/China money laundering network.
102. In the second stream, Chivita paid funds directly into an entity called Syngen Distribution Pty Ltd ("Syngen"). Syngen acted as an onshore-offshore bridge. Syngen also made use of AngloRand Forex and Foremost Finance as its Forex broker. According to Holden's calculations, a total R141,959,811.61 was paid to Syngen by Chivita using State Capture funds and approximately R1 million of commingled funds from other sources. These funds were then distributed into the same Hong Kong/China money laundering network that was used by Tequesta and Regiments Asia to launder the kickbacks paid into their HSBC Hong Kong bank accounts by CRRC and related parties in relation into the Transnet locomotive contracts.⁷⁶

⁷⁵ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-235, Table 136

⁷⁶ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-236, Table 137

The Second Money laundering network: Homix, Bapu, FGC Commodities and Morningstar International

103. The second local money laundering network ran from April 2014 to May 2015, during which time Homix acted as the Gupta Enterprise's primary first-level laundry vehicle. In total, Homix was paid R395,418,856.44 from State Capture proceeds.⁷⁷
104. Homix also used two separate streams to launder its funds.
105. First, Homix transferred State Capture funds from its Standard Bank account into its Mercantile Bank account. From there, the funds were transferred to one of two Hong Kong-based companies, Morningstar International and YKA International. Bank records released by HSBC, who banked Morningstar, show that the funds paid into Morningstar were paid into, *inter alia*, the broader Hong Kong/China money laundering network described in the previous section. In total, Homix paid R66,329,001 into its Mercantile Bank account for transfer to YKA and Morningstar.⁷⁸
106. Second, Homix transferred R324,095,719.87 into an entity called Bapu Trading ("Bapu") in 130 transactions between September 2013 and June 2015. The only other sources of funds paid into Bapu were other first-level laundry entities. Holden suggests

⁷⁷ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-198 to 199 Table 115

⁷⁸ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-245 to 246 Table 139

that this indicates that Bapu was used exclusively for laundering Gupta enterprise funds.⁷⁹

107. Bapu Trading made the following payments using State Capture funds to known entities:⁸⁰

- 107.1. R4,413,369 on the 9th of April 2014 to Hulley & Associates;
- 107.2. R2,830,000 on the 10th of April 2014 to Abbas Latib;
- 107.3. R1,000,000 in two payments of R500,000 on the 8th and 9th of April 2014 to Isidingo Personnel, a company with connections to the Gupta Enterprise;
- 107.4. R450,000 on the 30th of September 2014 to Targatorque, of which Salim Essa was a director;
- 107.5. R593,500 on the 5th of September 2014 to LSM Distributors, who act as the sole distributors of luxury Bentley Cars in South Africa;
- 107.6. R590,000 in two payments of R550,000 and R40,000 on the 30th of September 2014 and 8th of October 2014 to Land Rover Vereeniging
- 107.7. R630,000 on the 10th of April 2014 to Union Motors Lowveld, a dealer in Mercedes Benz cars.

108. Of the R4,413,369 paid to Hulley & Associates, R200,000 was paid to Advocate Kemp J Kemp SC. Of this amount paid to Advocate Kemp SC, R60,676.37 settled an outstanding bill in respect of professional fees provided by Advocate Kemp SC to

⁷⁹ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-249, paragraph 365

⁸⁰ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-249, paragraph 367

President Jacob Zuma in relation to President Zuma's unsuccessful attempt to oppose an application by the Democratic Alliance to overturn the NDPP's decision not to prosecute Zuma in relation to the Arms Deal.⁸¹

109. A further R543,706.92 was paid to ENS by Hulley & Associates using funds paid to it by Bapu. This payment was made to settle an outstanding invoice issued by ENS to Nemascor (Pty) Ltd ("Nemascor"). ENS conducted due diligence for Nemascor on Evraz Highveld Steel in the context of a possible acquisition of Evraz by Nemascor. At the time of the payment, one of the three directors of Nemascor was Linda Makatini, an associate of the Zuma family who served as President Zuma's legal advisor when President Zuma was then Deputy President. In 2014, Makatini became a co-director in Deviate Information Technology (Pty) Ltd alongside Duduzane Zuma.⁸²
110. In addition to the above, Bapu paid R71,922,955.65 to Syngen, which was then transferred into the Hong Kong/China money laundering network described above.⁸³
111. Bapu also paid R10,900,000 to Bay Breeze Trading/Holdings, the majority of which was withdrawn in cash.⁸⁴
112. Finally, Bapu paid R186,700,560.81 to FGC Commodities ("FGC") in 71 transactions between October 2014 and May 2015.⁸⁵ FGC Commodities acted as an onshore-offshore bridge used to transfer funds into the Hong Kong/China money laundering network.

⁸¹ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-250, paragraph 370

⁸² Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-250, paragraph 370

⁸³ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-252, Table 140]

⁸⁴ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-254, Table 141]

⁸⁵ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-255, Table 142]

113. Of the R387,629,804.58 paid to Homix from State Capture funds, Holden identifies that R324,952,517.46 was paid into the Hong Kong/China money laundering network by Homix directly, or via either Syngen Distribution or FGC Commodities.

The Third Money laundering network: Forsure Consultants and Hastauf, May to July 2015

114. In May 2015, Homix was subject to freezing orders issued by the South African Reserve Bank. Homix was thus jettisoned in favour of Forsure Consultants and Hastauf by the Gupta Enterprise.
115. Forsure Consultants was paid R16,890,928.70 by Regiments in relation to State Capture contracts. Hastauf was paid R12,360,369.62 by Regiments in relation to State Capture contracts.⁸⁶
116. Forsure Consultants was also paid R14,820,000 by Albatime emanating from funds paid to Albatime in relation to the fee paid by Transnet to Regiments regarding the China Development Bank loan. Hastauf was paid R17,670,000 by Albatime from the same source.⁸⁷
117. The funds paid to Forsure and Hastauf were dissipated in two ways. Firstly, R4,105,000 was paid by Forsure and Hastauf to Bapu for onward payment into the Hong Kong/China money laundering network.⁸⁸

⁸⁶ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-261, Table 145]

⁸⁷ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-263, Table 146

⁸⁸ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-266, Table 150

118. Secondly, Forsure paid R11,356,000 and Hastauf R14,201,614.53 to IPocket Global.⁸⁹

119. IPocket Global was an offshore-onshore bridge that was represented by, Ms. Tian Wang who was convicted in a sting arranged by SARB and DIPCI after Ms. Tian Wang had indicated she was willing to bribe a SARB official.⁹⁰

The Fourth Money laundering network: July 2015 to July 2017

120. From late July 2015 until July 2017, the Gupta Enterprise made use of an extraordinarily busy and complex money laundering network. Holden dubbed this network the 'spider web.'

121. The 'spider web' made use of four sets of first-level money laundering entities that were used roughly chronologically (monetary figures are from Holden's Table 114):⁹¹

First-Level Entity	Period of Operation as a First-Level Laundry for the Gupta Enterprise	Total Paid From State Capture Contracts [ZAR]
Fortime Consultants	July 2015 to August 2016	105,543,369.69
Medjoul	August 2015 to August 2016	95,148,371.74
Birsaa Projects	January 2016 to September 2016	49,230,737.23
Maher Strategy	November 2015 to January 2017	28,928,450.00
Pactrade	October 2016	4,291,766.00
Matson	October 2016	1,970,000.00
Jacsha	October 2016	2,150,000.00
Shacob Commerce	October 2016 to July 2017	24,589,767.40
Birtusa	April 2017	3,097,200.00
TOTAL		314,949,662.06

⁸⁹ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-264, Table 148 and p 265, Table 149

⁹⁰ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-346, Paragraph 583 to 590

⁹¹ Holden Flow of Funds Report (Annexure VV10) p VV10-SCFOFA-198

122. Holden describes how the first-level laundry entities made payments into what he called 'intermediary' accounts. These accounts bulked payments from the first-level laundry vehicles and then made onward payments into streams that led to onshore-offshore bridges and the Hong Kong/China network, or into streams whose end-point was not traceable by Holden during the period of his inquiry.
123. The three primary intermediary accounts identified by Holden were Ismer, Saamed Bullion Group and Taraqhi Traders.
124. The sole director of Ismer was Mohamed Ismail Maher who also directed Maher Strategy. The sole director of Saamed Bullion Group was Sabbir Ahmed, who also directed Fortime, Medjoul and Birsaa. The sole director of Taraqhi Traders was Mohamed Patel.⁹²
125. The amounts these three intermediaries were paid by first-level laundry entities was as follows:

	Ismer (ZAR) [Holden Table 155]	Saamed Bullion Group (ZAR) [Holden Table 161]	Taraqhi Traders (ZAR) [Holden Table 172]	TOTAL (ZAR)
Bex Structured Products	14,147,400.00			14,147,400.00
Fortime Consultants	13,671,430.77	47,417,009.85		61,088,440.62
Medjoul	7,764,180.22	73,183,392.73		80,947,572.95
Ismer		5,238,299.74		5,238,299.74
Maher Strategy	6,722,019.94	900,000.00		7,622,019.94
Birsaa Projects		65,579,556.66		65,579,556.66
Pactrade			2,168,000.00	2,168,000.00

⁹² Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-272 to 283]

Jacsha Projects			2,147,843.14	2,147,843.14
Matson Capital			1,965,767.37	1,965,767.37
Shacob Commerce			17,111,444.82	17,111,444.82
Birtusa			3,049,915.00	3,049,915.00
TOTAL (ZAR)	42,305,030.93	192,138,258.98	26,442,970.33	260,886,260.24

126. The funds paid into Ismer, Saamed and Taraqi Traders were transferred into an extended web of individuals and companies, and also drawn out in cash. The Commission was unable to complete a full tracing of the onward flow of these funds. However, Holden identifies the that the following entities were paid by Ismer: Park Village Auctions, Mykatrade 87CC, Saiyan Textiles, Triple Desire Trading, Universal Auctions, Dial Square Commodities, Bongos Products, ERZ Telecom, Firzaz Cosmetics, I7 Trading, Matayo Trading, Rich Rewards Trading 409, Trend Mania 1123CC and Zak's Radio and TV.⁹³
127. Ismer also paid R5,143,000 to ENY International and R1,250,000 to Charly Wholesalers; both of which acted as conduits to onshore-offshore bridges and the Hong Kong/China money laundering network.⁹⁴
128. Holden also makes the following observations in relation to the onward distribution of the funds paid into Saamed Bullion:

⁹³ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-294 to 301

⁹⁴ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-296 to 297, Tables 176 and 177

- 128.1. In total, R17,704,920 was paid to individuals from Saamed Bullion.⁹⁵ Six payments of R1,000,000 were made to six individuals, who then immediately transferred the funds abroad. R2,000,000 of these funds were transferred into Morningstar International.⁹⁶ R4,000,000 was paid into PAI International, a Hong Kong/China laundry vehicle.⁹⁷
- 128.2. Investigations undertaken by SARB indicate that the payments were actually overseen by Sheldon Jared Breet. Sheldon Breet is currently facing charges of conspiracy to commit murder and to commit housebreaking to commit murder related to the killing of Brian Wainstein, the so-called 'Steroid King' of the Western Cape. Sheldon's brother, Matthew, pleaded guilty to conspiring to kill Wainstein.⁹⁸
- 128.3. An aggregate of R20,665,754.47 was paid into entities that received a maximum of two payments. These entities included AC Cash & Carry, Calicom Trading, Centwise 66CC, Fouche Motors, Lappie Motor CC, Momobile Trading, Shibis Cash & Carry and Syed Cellular.⁹⁹
- 128.4. Most notably, an aggregate of R156,236,698.33 was paid into companies that acted either directly as onshore-offshore bridges, or as conduits that passed funds onto onshore-offshore bridges, as follows:¹⁰⁰

⁹⁵ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-302, Table 183

⁹⁶ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-303, Table 184

⁹⁷ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-305, para 499

⁹⁸ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-305, paras 498 to 500

⁹⁹ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-306, Table 186

¹⁰⁰ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-311, Table 189

Entity	Amount	Route Offshore
Pine Peak Wholesalers	58,003,894.70	Payments made directly to Hong Kong/China Laundry
ENY International/Studio De Pablo	35,174,496.46	Payments made directly to Hong Kong/China laundry
Shazari Trading	23,509,527.16	Payments made to Seattle Clothing Manufacturers or Lion Head Trading for payment into Hong Kong/China laundry
Graincor Distribution	11,637,501.85	Payments made to ENY International or Pine Peak Wholesalers for payment into Hong Kong/China laundry
Dial Square Commodities	10,033,078.16	Payments made to Damla Trading for payment into Hong Kong/China laundry
Zokubyte	9,175,000.00	Payments made into Varlozone, Coral General Traders or additional Zokubyte accounts at Sasfin for payment into Hong Kong/China laundry or Griffin Line Trading LLC
Charly Wholesalers	6,370,000.00	Payments made into Damla Trading for payment into Hong Kong/China laundry
ENG 38 Project	2,333,200.00	Payments made directly into Hong Kong/China laundry
TOTAL	156,236,698.33	

129. Saamed Bullion also paid R5,384,728.64 derived from State Capture funds to Lechabile Technology. These funds were transferred outwards to a company called Success Stand Limited, which appears to be part of the Hong Kong/China laundry.¹⁰¹

¹⁰¹ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-309, Table 188

130. Lechabile Technology's two directors are Zainul Abadeen Nagdee and Sarfaraz Nagdee. Zainul Nagdee was appointed to Transnet's notorious Board and Acquisitions Disposal Committee (BADC) on the 11th of December 2014. Nagdee was thus receiving and dissipating State Capture funds while serving on the BADC. Mr. Nagdee informed the Commission that the payments to Success Stand were for the purchase of I-Tunes vouchers.¹⁰²

The Dissipation of Payments from China North Rail to Bex Structured Products Using the Fourth Money laundering network

131. Bex Structured Products was paid R76,586,903.16 by China North Rail pursuant to the CNR relocation contract on the 25th of September 2015.
132. R33,730,000 was paid to the Gupta family property company, Confident Concepts, from these funds. The funds were paid to Confident Concepts in three streams by three separate first-level laundry entities: Fortime, Medjoul and Ismer. Upon receipt of funds from Bex, these three entities paid funds onto a company by the name of Universal Auction. From Universal Auction, the funds were transferred to Confident Concepts.¹⁰³
133. Another notable recipient of funds from the CNR payment to Bex was Integrated Capital Management (ICM). ICM's directors at the time included Stanley Shane, a Transnet director. Holden calculates that ICM was paid **R9,370,800** in November 2015 deriving from the payments made to Bex by CNR. The route to ICM was as follows: funds were paid from Bex into a company called Block Mania in three transfers, from where a

¹⁰² Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-308, para 503 to 505

¹⁰³ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-400, Table 234

portion was paid onwards to company called Green Blossom and, finally, from Green Blossom to ICM.¹⁰⁴

The Onshore-Offshore Bridges

134. The act of tracing State Capture funds has led to the identification and examination of twelve companies that performed the function of onshore-offshore bridges for established money laundering networks within South Africa. The volume of funds leaving South Africa through these routes is extremely alarming.

135. Holden calculates that **R388,630,198.41** emanating from State Capture funds that were paid to onshore-offshore bridges, the vast majority of which was paid into the Hong Kong/China laundry. The funds followed the routes set out below:

Onshore-Offshore Bridge	Route of Funds	Amount (ZAR)
FGC Commodities	Homix to FGC Commodities	186,700,560.81
IPocket	Hastauf to IPocket	14,201,614.53
IPocket	Forsure to IPocket	11,356,000
One Last Trading	Fortime to One Last Trading	34,919,987.01
ENY/Studio de Pablo	Ismer and Saamed Bullion directly to ENY	33,851,201.30
ENY/Studio De Pablo	Saamed Bullion to Graincor to ENY	6,287,522.61
ENY/Studio De Pablo	Saamed to Dial Square to ENY	3,584,078.16
Pine Peak Wholesalers	Saamed to Pine Peak Wholesalers and Saamed to Graincor to Pine Peak	43,536,506.83
Eng 38 Pty Ltd	Saamed to Eng 38 Pty Ltd	2,833,200
Damla Trading	Saamed to Dial Square and Charly Wholesalers to Damla Trading	19,175,000
Seattle Clothing Manufacturers/Lionhead	Saamed to Shazari to Seattle/Lionhead	23,509,527.16

¹⁰⁴ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-405, Table 235

Varlozone	Saamed to Zokubye to Varlozone	7,675,000
CCE Holdings	Saamed to CMC to CCE Holdings	1,000,000
TOTAL		388,630,198.41

136. Certain features of these onshore-offshore bridges are worth noting:

- 136.1. A number of the onshore-offshore bridges, most notably Syngen Distribution, Gamso Trading and Studio de Pablo, made use of the Forex brokers AngloRand Forex and Foremost Finance. Foremost Finance was run by Shaheem Humby; Bank records provided by Mercantile Bank indicate that ENY International and Studio de Pablo were directed by the same person, Wesley Botha. However, further details provided by Mercantile Bank show that Botha was introduced to the Bank by Shaheem Humby of Foremost Finance. Mandate documents signed by Studio de Pablo appointed Foremost Finance as the company's treasury agent.¹⁰⁵
- 136.2. The links between the onshore-offshore bridges and other forms of criminality are striking. In the case of Ukuzuza, for example, the company was represented by Tian Wang, later convicted of attempting to bribe a SARB official during a 'string.' Upon SARB's seizure of Ukuzuza funds, Yusuf Omarjee, a convicted fraudster, presented himself as the company's representative.¹⁰⁶
- 136.3. On two occasions, onshore-offshore bridges made payments abroad to only one or two companies, rather than a raft of Chinese/Hong companies apparently forming part of the Hong Kong / China money laundering network. The company One Last Trading, which was paid R34,919,987.01 by Fortime

¹⁰⁵ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-353, paras 602 – 604

¹⁰⁶ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-353, paras 602 – 604

Consultants and Medjoul, made all of its payments to an entity called Discovery Trading based in the UAE.¹⁰⁷ Studio de Pablo transmitted the majority of its funds abroad to a company called Flybridge DMCC. Flybridge DMCC was one of the only companies that received funds from all of Regiments Asia, Tequesta Group and Morningstar. Studio de Pablo transferred **R326,753,139.35** abroad between September 2007 and July 2016, of which **R313,794,562.84** was paid to Flybridge between July 2015 and July 2016.¹⁰⁸

- 136.4. A large number of the onshore-offshore bridges were identified by SARB and were subject to seizure orders. The records appended to Holden's evidence from SARB indicates that SARB conducted substantial and detailed investigations into these entities and issued forfeiture orders in respect of funds held by several of these entities.¹⁰⁹ However, the NPA does not appear to have instituted any money laundering prosecutions arising out the SARB investigations.

Payments to the Gupta Entity, Griffin Line via the Extended Local Laundry Network and Onshore Offshore Bridges

137. In most cases, the State Capture funds laundered through the domestic money laundering networks were transferred through the onshore-offshore bridges into companies that appear to form part of offshore money laundering networks. Once funds cross over the border, it is not possible to follow their flow from within South Africa. So the Commission has not been able to trace these funds to their final destinations. However, there were cases where those responsible for laundering these funds became

¹⁰⁷ Holden Flow of Funds Report (Annexure VV10) p VV10-SCFOFA-265 para 398 and p 349 para 590

¹⁰⁸ Holden Flow of Funds Report (Annexure VV10) p VV10-SCFOFA-362 para 619

¹⁰⁹ Holden Flow of Funds Report (Annexure VV10) p VV10-SCFOFA-305 para 498, p VV10-SCFOFA-347 para 586, p VV10-SCFOFA-392 para 689

undisciplined and allowed them to be transferred directly into the offshore Gupta company, Griffin Line Trading.

- 137.1. Griffin Line Trading, was a Gupta family company registered in Dubai.¹¹⁰ Griffin Line funding was the ultimate source of R842 million of the purchase price paid by Tegeta for the Optimum Coal Mine.¹¹¹
- 137.2. On 22 April 2016, the onshore-offshore bridge Seattle transferred \$200,000 emanating from State Capture funds into Griffin Line Trading.¹¹² The funds paid to Seattle for onward payment to Griffin Line were the unlawful proceeds of frauds on Transnet and thefts from the Transnet Second Defined Benefit Fund which had been laundered into a fixed deposit held by Albatime at the Bank of Baroda before being laundered domestically through to Seattle.¹¹³
- 137.3. A further four payments equal to \$245,416 were made to Griffin Line by the onshore-offshore bridge Varlozone between the 22nd and 26th of April 2016.. This amount also derived from the closure of Albatime's Fixed Deposit used to purchase Optimum Coal Holding, and thus also derived from by frauds on Transnet and thefts from the Transnet Second Defined Benefit Fund.¹¹⁴

¹¹⁰ Griffin Line appears to have been controlled by Gupta Enterprise employees in South Africa. See Holden 22 June 2021 Day 414 pp 146 to 152

¹¹¹ Holden Flow of Funds Report (Annexure VV10) p VV10-SCFOFA-450 para 817 to p 452 para 824

¹¹² Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-382, Table 226]

¹¹³ Holden Day 417 25 June 2021 pp 58-60; Holden Flow of Funds Report (Annexure VV10) p VV10-SCFOFA-4236 Annexure 70 and p VV10C-FURTHER-DOCS-048

¹¹⁴ Holden Day 417 25 June 2021 pp 58-60; Holden Flow of Funds Report p VV10C-FURTHER-DOCS-048

The Scale of South African Funds Moving into the Hong Kong/China Money Laundering Network

138. The Gupta Enterprise made use of multiple existing local money laundering networks, all paying into the Hong Kong/China laundry. The following table sets out the alarming scale of transfers into the Hong Kong/China laundry from South Africa:¹¹⁵

Onshore-Offshore Bridge	Number of Transactions	Value
Ukuzuza	1586	3,839,193,805.63
Syngen Distribution	409	1,325,007,774.56
FGC Commodities	360	1,030,605,584.68
Lionhead	613	940,048,019.02
CCE Motor Holdings	360	767,601,728.73
Studio De Pablo	185	328,326,130.97
Seattle Clothing Manufacturers	215	256,842,214.20
Truhaven	143	146,208,484.42
Pine Peak Wholesalers	53	116,676,411.57
Damla Trading	20	40,419,762
Varlozone	37	26,788,55.71
Eng 38 Pty Ltd	38	17,860,180.84
TOTAL	4019	8,808,816,940.33

South African Money Laundering Networks and the Khanani Money Laundering Organisation

139. The domestic South African money laundering networks clearly had international partners beyond the Hong Kong China money laundering network. As mentioned above, One Last Trading, made all of its onshore-offshore bridge payments to an entity called Discovery Trading based in the UAE. Studio de Pablo transmitted the majority of its funds abroad to a UAE based company, Flybridge DMCC which also received payments from Tequesta, Regiments Asia and Morningstar. So, it is possible that there

¹¹⁵ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-389, Table 230

is a separate UAE based money laundering network with which the South African domestic money laundering networks are interacting.

140. Moreover, at least South African laundry vehicles – Truhaven and Donsantel 133CC - were making payments both into the Hong Kong laundry and into companies that formed part of the Khanani money laundering organisation ("MLO"). The Khanani MLO was placed under US OFAC sanctions in 2016, along with its mastermind Altaf Khanani, described as the world's most wanted money launderer and his family. The Al Khanani MLO allegedly laundered money for international drug cartels and for terrorist groups including Al Qaeda. The US OFAC sanctions designated five companies associated with the MLO: Mazaka General Trading LLC, Jetlink Textiles Trading, Seven Sea Golden General Trading LLC, Aydah Trading LLC and Wadi Al Afrah Trading LLC.¹¹⁶
141. SARB records show that Donsantel 133CC paid R23,966,952.69 (\$2,060,231) in February and March 2015 to Seven Sea Golden Trading and R19,480,113.37 (\$1,670,940) between February and May 2015 to Aydah Trading. Donsantel 133CC was simultaneously paying funds into Hong Kong/China laundry entities such as Pavantex HK, Samantha Trading, Champion Merit and Derik Fashion. Donsantel 133CC was subject of a SARB forfeiture order executed in 2018 for violations of exchange control regulations.¹¹⁷
142. The director of Donsanetel 133CC also directed a company called StyleUp Fashions CC. StyleUp also made payments into the Hong Kong/China money laundering network, including payments to Pavantex and Derik Fashion.

¹¹⁶ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-390, paras 686 to 687

¹¹⁷ Holden Flow of Funds Report (Annexure VV10) p VV10-SCFOFA-392 para 688 to p 393 para 695; and Table 231

143. Truhaven transferred R52,202,220 (\$3,945,000) to four different Khanani MLOs including Aydah Trading, Jetlink Trading, Seven Seas Golden Trading and Wadi Al Alfrah Golden Trading.¹¹⁸ Truhaven also made payments to the Hong Kong/China laundry, including many of those paid by Donsantel 133CC such as Pavantex and Samantha Trading. Like Donsantel 133CC, Truhaven was subject to a SARB forfeiture order executed in 2018.¹¹⁹
144. Holden shows that at the same time that Truhaven and Donsantel were using the Khanani MLO, they were also paying funds into the local laundry used by the Gupta Enterprise.¹²⁰

Recommendations

The Offshore Laundering of State Capture Proceeds of Crime

145. Billions of Rands were paid to the Gupta Enterprise as kickbacks related to State Capture contracts. If the South African state is to recover any of these amounts from offshore, it will first have to trace the current whereabouts of these funds. To this end it is recommended that
- 145.1. South African authorities should urgently engage with HSBC to require HSBC to assist in the tracing and dissipation of the funds out of Tequesta, Regiments

¹¹⁸ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-395, Table 232

¹¹⁹ Holden Flow of Funds Report (Annexure VV10) p VV10-SCFOFA-392 para 688 to p 393 para 695

¹²⁰ Holden Flow of Funds Report (Annexure VV10) pp VV10-SCFOFA-397, paras 700 to 702

Asia and Morningstar and into the Hong Kong/China laundry network using HSBC accounts.

- 145.2. The Financial Intelligence Centre (FIC) and the National Prosecuting Authority (NPA) should engage with their counterparts in Hong Kong and China to seek their assistance in the tracing and dissipation of the funds out of Tequesta, Regiments Asia and Morningstar and into the Hong Kong/China laundry network using HSBC accounts.
- 145.3. The FIC and the NPA should engage with their counterparts in the UAE to seek their assistance in the tracing and dissipation of the funds out of the Tequesta and Regiments Asia accounts in Dubai.
- 145.4. If the current whereabouts of any proceeds of State Capture payments made to Tequesta, Regiments Asia or Morningstar can be located, the Asset Forfeiture Unit (AFU) of the NPA should approach its counterparts in the relevant jurisdiction(s) with a view towards having those proceeds frozen and then forfeited to the South African State as proceeds of State Capture crimes.

The South African Laundering of State Capture Proceeds of Crime

146. Tracing the flows of State Capture proceeds of crime has revealed the existence of widespread sophisticated money laundering networks operating within South Africa. The money laundering networks used by the Gupta Enterprise were complex, well established and embedded in a pre-existing *milieu* of criminality and wrongdoing. The money laundering networks appear to service criminal enterprises straddling offences currently regulated and policed by multiple enforcement agencies and have links with international money laundering networks with multi billion rand turnovers.

147. It appears that thus far, enforcement action against these networks has been confined primarily to forfeiture orders issued by the South African Reserve Bank. Important though these forfeiture orders are, they are unlikely to have any significant deterrent effect on the domestic money laundering networks because the scale of their operations is such that forfeiture orders can be absorbed as a cost of doing business. If money laundering is to be brought under control in South Africa, it is essential that those controlling and participating in the domestic money laundering networks in South Africa are prosecuted and subjected to asset forfeiture proceedings so that the costs of the money laundering profession can be made to outweigh its benefits.

148. Sections 4 to 6 of the Prevention of Organised Crime Act 108 of 1998 create statutory money laundering offences in the following terms:

"4 Money laundering

Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and-

(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or

(b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person,

which has or is likely to have the effect-

(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or

(ii) ...

shall be guilty of an offence."

"5 Assisting another to benefit from proceeds of unlawful activities

Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby-

(a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or

(b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way,

shall be guilty of an offence."

"6 Acquisition, possession or use of proceeds of unlawful activities

Any person who-

(a) acquires;

(b) uses; or

(c) has possession of,

property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence."

149. The evidence contained in the three reports of Mr Holden to the Commission¹²¹ should provide ample basis for the investigation and prosecution of a wide range of individuals under sections 4 to 6 of POCA for their role in laundering proceeds of State Capture crimes. It is accordingly recommended that the National Prosecuting Authority consider the three reports of Mr Holden with a view to instituting criminal prosecutions under sections 4 to 6 of POCA against persons involved in laundering the proceeds of State Capture crimes.

¹²¹ Estina Dairy Report (Annexure VV5.1); the Transnet Report (Annexure VV5.2) and the Money Laundering Report (Annexure VV10).

150. However, one of the hall marks of the money laundering networks that laundered proceeds of State Capture crimes within South Africa was their flexibility. As soon as particular companies were exposed as laundry vehicles, the networks were able to bypass those companies and to reroute State Capture funds through different entities built into different networks. So, prosecutions for historical contraventions alone, are unlikely to make much of an impact on the money laundering industry within South Africa unless they are part of a sustained ongoing process to target that criminal industry.

151. How best to target money laundering within South Africa is not something that this Commission can prescribe. It is possible however to make a number of general observations in this regard:

151.1. First, because the money laundering industry services a range of criminal enterprises operating across fields regulated or policed by different regulatory and law enforcement agencies, a holistic approach is required on the side of government. A co-ordinated and co-operative approach to targeting money laundering is required from all of the relevant enforcement agencies, and at least the:

151.1.1. Asset Forfeiture Unit of the NPA

151.1.2. Directorate of Priority Crime Investigation (Hawks);

151.1.3. Financial Intelligence Centre (FIC);

151.1.4. Investigating Directorate of the NPA (ID);

151.1.5. South African Revenue Service (SARS);

- 151.1.6. South African Reserve Bank (SARB);
- 151.1.7. Special Investigating Unit.
- 151.2. Second, it is necessary to use the anti-money laundering resources of the banks in a more pro-active manner than is currently the case. The South African Anti-Money Laundering Integrated Task Force ("SAMLIT") has been set up under the auspices of the FIC to enable banks to share with each other and with the authorities anonymized information and to discuss general trends. However, the absence of a statutory framework providing for the controlled sharing of detailed anti-money laundering information by banks appears remain an obstacle to fighting financial crime.
- 151.3. Third, there is a need to investigate the effectiveness of the current system of suspicious transaction and cash threshold reporting to the FIC under the FIC Act. If banks are failing to make the necessary reports to the FIC, the FIC needs to take action against them, but if Banks are making the necessary reports to the FIC but no action is being taken against the money laundering networks, that suggests either a flaw in the current system or its implementation by the FIC and downstream enforcement agencies. In this context, the Commission recommends that the FIC should conduct an urgent review
 - 151.3.1. into the compliance of the South African banks with the FIC Act in relation to proceeds of State Capture laundered through accounts held by them, identifying whether, and to what extent, the FIC was alerted to these activities by reports under the FIC Act;

- 151.3.2. what action was taken by the FIC pursuant to any relevant reports received from South African banks in this regard;
- 151.3.3. what reports or recommendations were made by the FIC to other law enforcement agencies; and
- 151.3.4. what steps, if any, were taken by those enforcement agencies to act on the recommendations of the FIC.

THE ACQUISITION OF THE OPTIMUM COAL MINE

152. The acquisition of Optimum Coal Holdings Ltd (“OCH”) by Tegeta Exploration and Resources (Pty) Ltd (“Tegeta”) is part of what triggered the establishment of this Commission. That acquisition was the central focus of the Public Protector’s investigation that culminated in her October 2016 “State of Capture” Report.
153. The investigations of the Commission have borne out the findings of the Public Protector in relation to the acquisition of OCH and have shown that this acquisition was a State Capture project pursued through unlawful means and funded almost entirely by proceeds of crime.
154. The ownership structure of Tegeta at the time of the acquisition was follows:
- 154.1. 29.05% was owned by the Gupta family company Oakbay Investments (Pty) Ltd,
- 154.2. 28.53% was owned by Mabengela Investments (Pty) Ltd in which
- 154.2.1. Mr Duduzane Zuma held a 45% interest,
- 154.2.2. Mr Rajesh “Tony” Gupta held a 25% interest,
- 154.2.3. Aerohaven Trading, a company wholly owned by Ronica Ragavan, held a 15% interest,
- 154.2.4. the Gupta family UAE based company, Fidelity Enterprise Limited held a 10% interest, and

- 154.2.5. Mr Ashu Chawla and other Gupta Enterprise employees held an aggregate 5% interest,
- 154.3. 21.5% was owned by Elgasolve (Pty) Ltd in which Mr Salim Essa held a 31.29% interest and Mabengela Investments (Pty) Ltd held a 68.71% interest,
- 154.4. 12.91% was held by the Gupta family UAE based company, Fidelity Enterprise Limited, and
- 154.5. 8.01% was held by the Gupta family UAE based company, Accurate Investments Limited.
155. So, the ultimate beneficial ownership of Tegeta was the following:
- 155.1. 65.13% was owned directly or indirectly by Gupta family members and their companies,
- 155.2. 19.49% was indirectly owned by Mr Duduzane Zuma,
- 155.3. 6.73% was indirectly owned by Mr Salim Essa,
- 155.4. 6.49% was indirectly owned by Ms Ronica Ragavan, and
- 155.5. 2.16% was indirectly owned by Mr Ashu Chawla and other Gupta enterprise employees.

156. The criminal project to acquire OCM is described in the Eskom chapter of this report.¹²² It involved the following steps, all of which appear to have been performed under the improper influence of the Gupta family and / or Salim Essa:

- 156.1. In March 2015 four senior Eskom executives including the Group CEO, of Eskom, Mr Tshediso Matona, were suspended;
- 156.2. In April 2015, Mr Brian Molefe was seconded from Transnet to Eskom in April 2015 as Acting Group CEO;
- 156.3. Mr Molefe immediately set about scuppering advanced settlement negotiations between Eskom and Glencore over a penalties claim by Eskom against OCM;
- 156.4. In July 2015 the suspension of Mr Matshela Koko was lifted;
- 156.5. Also in July 2015 Eskom demanded immediate payment from OCM of a R2.17 billion penalty claim, despite the fact that its own attorneys had questioned the merits and quantification of this claim;
- 156.6. In September 2015 Mr Molefe and Eskom Board Chairperson, Dr Ben Ngubane, unsuccessfully attempted to persuade the then Minister of Mineral Resources, Mr Ngoako Ramatlhodi, to suspend all mining licences of Glencore;
- 156.7. On 22 September 2015, President Zuma replaced Mr Ramatlhodi as Minister of Mineral Resources with a long term friend of the Gupta family, Mr Mosebenzi Zwane;

¹²² Report Part IV Vol III pp 716 to 793

- 156.8. In October 2015, Mr Brian Molefe scuppered the sale of OCM to Phembani Group (Pty) Ltd by insisting that Eskom would not consent to the transaction unless Phembani assumed responsibility for the full R2.15 billion penalty claim made by Eskom (a claim that would drop to R255 million after Tegeta had acquired control of OCM);
- 156.9. On 4 November 2015, Mr Koko leaked to Mr Essa's infoportal1@zoho.com address, legal advice given to Eskom that it could not remove the business rescue practitioners of OCM;
- 156.10. On 12 November 2015 Oakbay / Tegeta concluded a non-binding term sheet with the OCM business rescue practitioners for the sale of the OCM shares;
- 156.11. Later, in November 2015, the Department of Mineral Resources ("DMR") and Mr Koko intervened to insist that the sale should relate not only to OCM but to all the subsidiaries of Optimum Coal Holdings ("OCH") which included Koornfontein Mine (Pty) Ltd and Optimum Coal Terminal (Pty) Ltd which held the lucrative coal export allocation at Richard Bay Coal Terminal;
- 156.12. On 22 November 2015, Eskom Board member, Mr Mark Pamensky, advised Mr Atul Gupta that Oakbay should ensure that a condition precedent for the OCH acquisition sale should be Eskom's withdrawal of the R2.17 billion penalty claim and his invitation to Mr Atul Gupta to involve him in the OCH acquisition;
- 156.13. On 25 November 2015, Mr Koko leaked to Mr Essa's infoportal1@zoho.com address, a confidential internal Eskom document setting out its investments in cost plus mines;

- 156.14. After Glencore rejected a R1 billion offer from Oakbay for OCM on 25 November 2016, the DMR issued a series of spurious notices under section 54 of the Mine Health and Safety Act 29 of 1996 to shut down operations at several Glencore owned mines between 26 and 30 November 2015;
- 156.15. Gupta family associates, Mr Kuben Moodley and Mr Malcolm Mabaso, attempted to direct the inspections that gave rise to the section 54 notices;
- 156.16. After Glencore decided on 29 November 2015 to fund OCM so as to take it out of business rescue, Minister Zwane met Mr Glasenberg of Glencore on 1 December 2015 in Zurich, urged Glencore to sell the Optimum mine to the Guptas and informed him that Mr Rajesh "Tony" Gupta wanted to meet Mr Glasenberg the following day in Zurich;
- 156.17. Mr Zwane's attended the meeting of Mr Tony Gupta and Mr Essa with Glencore in Zurich on 2 December 2015;
- 156.18. Mr Zwane accompanied Mr Tony Gupta and Mr Essa when they flew back from the Zurich meeting to India in the Gupta family jet;
- 156.19. Mr Zwane then flew with Mr Tony Gupta and Mr Essa to Dubai from India in the Gupta family jet and the Guptas paid for a chauffeured BMW for Mr Zwane in Dubai on 7 December 2015;
- 156.20. On 7 December 2015, the DMR addressed a letter to Eskom promising to fast track the transfer of mining rights application in relation to the Optimum transaction and making the unsolicited suggestion that Eskom should pre-pay Tegeta / Oakbay for a year's supply of coal;

- 156.21. On 7 December 2017, Mr Koko and Mr Singh prepared a motivation for Eskom to prepay Tegeta R1.68 million for coal to be acquired from the Optimum mine;
- 156.22. A draft of the motivation was provided to Mr Essa, who sent instructions to Mr Eric Wood of Regiments to remove all references to the need for National Treasury approval for the prepayment as required under the Public Finance Management Act 1 of 1999 ("the PFMA");
- 156.23. The final motivation that served before the Board to support a round robin resolution made no reference to Treasury approval under the PFMA.
- 156.24. The motivation inexplicably sought approval for a pre-payment, not to OCM which would be supplying the coal to Eskom but rather to Tegeta, which was not yet the owner of OCM but which was attempting to acquire it from Glencore. The motivation was transparently designed to benefit not Eskom, but Tegeta that would have to come up with a R2.1 billion purchase price if it was to acquire the mine.
- 156.25. To this end, the motivation contained several fraudulent misrepresentations designed to secure the pre-payment for the benefit of Tegeta:
- 156.25.1. It referred to a "potential proposal from the business rescue practitioner" for the prepayment when no such proposal had ever been contemplated by the business rescue practitioners;
- 156.25.2. It invoked a risk of coal supply to the Hendrina power station when no such risk existed because OCM and Glencore had committed to honouring the Coal Supply Agreement and Eskom had concluded an interim arrangement with the business rescue practitioners that secured

Eskom's coal supply to Hendrina until the end of July 2016. In fact, Hendrina appeared to be oversupplied because in January 2016, Eskom informed the business rescue practitioners that it did not require the minimum contracted supply of coal from OCM;

156.25.3. It suggested an urgent need for prepayment (and hence the need for a special Board meeting by round robin resolution) when no apparent urgency was present for the reasons set out in the preceding paragraph;

156.25.4. It invoked the spectre of liquidation and job losses at OCM when Glencore had already committed to Eskom that it would fund OCM and honour the terms of the coal supply agreement;

156.26. When some board members raised queries in relation to the motivation, Mr Singh forwarded those queries to Mr Wood, Mr Mohammed Bobat of Regiments, Mr Nazeem Howa of Oakbay and Mr Essa and then sent their responses to the board members as his own;

156.27. Despite the fact that the pre-payment was in the interests only of Tegeta, and not Eskom, it was unanimously adopted by the Board on 9 December 2015;

156.28. On 10 December 2015 the business rescue practitioners signed the Optimum sale agreement ("the Optimum agreement"). On the same day, Mr Essa emailed Mr Koko setting out the terms of a pre-purchase agreement he wanted Eskom to conclude with Tegeta and which would provide for a guarantee to be procured by Eskom in favour of Tegeta for the full pre-purchase amount;

156.29. Mr Koko forwarded the email to Ms Daniels, the Eskom legal advisor, and she instructed Eskom's attorneys, CDH, to draft a pre-purchase of coal agreement

on the terms set out in Mr Essa's email. When the draft agreement was returned by CDH, Mr Singh forwarded it to Mr Wood who forwarded it on to Mr Essa;

- 156.30. The Board resolution made no provision of any guarantee and was predicated on an urgent need for the coal supply to Hendrina to be supplied immediately. Nevertheless, Mr Singh proceeded to conclude the guarantee agreement (which was not authorised by the Board) and which included suspensive conditions that could be fulfilled as late as 31 March 2016 thus negating the ostensibly acute urgency upon which the Board resolution had been predicated.
- 156.31. The purpose of the guarantee seems now to be clear. The guarantee was shown by the Guptas to the Bank of Baroda to persuade the Bank of Baroda to issue a letter of comfort for the consortium of banks to whom the purchase price under the Optimum agreement was to be paid, confirming that the Bank of Baroda would make payment of the Optimum acquisition purchase price of R2.15 million;
- 156.32. On 18 December 2015, the Bank of Baroda issued the letter of comfort that Tegeta required and this served to persuade the consortium of banks to consent to the Optimum agreement;
- 156.33. Pursuant to the Optimum agreement, Eskom released OCH from its guarantee of the liabilities of OCM under the coal supply agreement, thus freeing Glencore from its exposure to the R2.17 billion penalty claim of Eskom. Although the Optimum agreement required Tegeta to provide a substitute guarantee for the obligations of OCM to Eskom, Eskom never required Tegeta to furnish such a guarantee;

- 156.34. By early April 2016, it was clear that Tegeta was R600 million short of the R2.15 million purchase price it had to pay the consortium of banks by 14 April 2016 barring which the Optimum sale would fail;
- 156.35. After Glencore and the consortium of banks refused to assist Tegeta to come up with the R600 million shortfall, under the Optimum sale agreement, Tegeta contrived to procure the shortfall from Eskom by means of an immediate pre-payment of R659 million for coal sourced from Optimum, ostensibly to avert a potential coal supply crisis at the Arnot power station;
- 156.36. A Board Tender Committee was scheduled for 21h00 on 11 April 2016. At 20h17 the members of the committee were emailed a motivation prepared by Mr Koko for the prepayment;
- 156.37. Mr Koko's motivation was predicated on a central fraud – there was no shortage of coal for the Arnot power station in April 2016. In fact, the Arnot power station had healthy stock levels of coal until September 2016. Moreover, even if Arnot was in need of coal, the obvious way for Eskom to address that problem would have been to take up its full contractual entitlement from the Optimum Coal Mine (which was adjacent to the Arnot power station) under the Hendrina coal supply agreement rather than declining to do so and instead pre-paying Tegeta for coal that it would source directly from Optimum;
- 156.38. None of the Board Tender Committee members interrogated the alleged urgency that required them to consider a pre-payment of R659 million at an extraordinary meeting called for 21h00 on the strength of a motivation that had been emailed to them less than an hour before the meeting. Instead they duly authorised the pre-payment without demur and thereafter appear to have contrived to submit emailed questions to allow falsified minutes to be prepared

to give the impression that they had interrogated the reasons for the prepayment prior to approving the resolution;

156.39. On 13 April 2016, Mr Singh belatedly disclosed to the Board Tender Committee that there was doubt whether Tegeta was able to continue as a going concern because of the refusal of the banking sector to provide Tegeta with banking facilities. With full knowledge of the insecure status of Tegeta, the Committee nevertheless proceeded to implement the pre-payment decision – thus extending R659 million credit to a company that may not be able to continue as a going concern;

156.40. The prepayment agreement was signed by Mr Singh and Mr Koko on 13 April 2016. By this stage, Eskom had already accepted a Tegeta invoice for the prepayment on 12 April 2016;

156.41. The payment was then rushed through on 13 April 2016 under pressure from Mr Molefe and Mr Singh.

157. Quite apart from the fact that the acquisition of the Optimum Coal Mine was itself a criminal project, the funds used in this acquisition were, for the most part, proceeds of crime.

158. On 14 April 2016, Tegeta paid the amount of R2 084 210 as its share of the purchase price under the Optimum sale agreement.

159. Tegeta obtained the money to pay this purchase price from seven sources which are set out in Holden's report at Table 255¹²³ which is reproduced below:

¹²³ Holden Money Flows Report Table 255 pp VV10-SCFOFA-434 to 435

Date	Amount	Source
13/04/2016	660,000,000.00	Eskom pre-payment
13/04/2016	68,000,000.00	Eskom payment to Tegeta
13/04/2016	158,500,000.00	Oakbay 'loan' to Tegeta
14/04/2014	104,500,000.00	Albatime 'loan' to Tegeta
14/04/2016	152,000,000.00	Trillian 'loan' to Tegeta
14/04/2016	842,231,000.00	Centaur Mining 'loan' to Tegeta
	100,479,206.10	Residual funds in Tegeta's Bank of Baroda account derived from multiple sources
TOTAL	2,085,710,206.10	

160. It can be concluded that at least R1,758,942,861.16 of the R2,084,210,206.10 used to purchase Optimum derived from criminally sourced funds. These are all of the funds identified in the above table other than the R68 million Eskom payment, the Oakbay loan and the residual funds in Tegeta's Bank of Baroda account.

161. The Eskom prepayment of R660 million has been discussed above.

162. The R104 500 000.00 Albatime loan was sourced in two unlawful payments to Albatime (Pty) Ltd ("Albatime"):

162.1. A payment of R42 000 000.00 from Regiments Capital. This was part of R56 179 779 stolen from the Transnet Second Defined Benefit Fund ("TSDBF") on 4 December 2015.¹²⁴

¹²⁴ Holden Money Flows Report pp SCFOFA-071 to 75

- 162.2. A payment of R74 784 000.00 from Trillian Asset Management. This was part of R93 400 000 fee unlawfully paid by Transnet pursuant to the so called Club Loan on which Trillian did not work whatsoever.¹²⁵
- 162.3. Holden shows that from these two sources, Albatime transferred R110 000 000.00 into a fixed deposit account at the Bank of Baroda on 14 April 2016.
- 162.4. This Albatime fixed deposit was then made available as security against which the Bank of Baroda advanced a loan of R104 500 000.00 to Tegeta on the same day.¹²⁶
163. Trillian contributed R152 000 000.00 to Tegeta's acquisition of Optimum. The funds for this loan are directly traceable to funds that Regiments Fund Manager stole from the TSDBF in the following tranches:¹²⁷
- 163.1. R63 916 019.00 on 8 March 2016;
- 163.2. R1 093 115.00 on 9 March 2016;
- 163.3. R67 403 305.00 on 5 April 2016; and
- 163.4. R39 851 767.00 on 11 April 2016.

¹²⁵ See Report Part 2 Vol 1 pp 322 to 336

¹²⁶ Holden Money Flows Report pp SCFOFA-0438 to 440

¹²⁷ Holden Money Flows Report pp SCFOFA-071 to 75

164. Once stolen from the TSDBF, the funds moved from Regiments, to Trillian group companies and into the Trillian Management Consulting account with the Bank of Baroda.
165. On 14 April 2016, Trillian Management Consulting transferred R160 246 000.00 of these funds, and interest thereon into a fixed deposit account with the Bank of Baroda. That fixed deposit was then made available as security against which the Bank of Baroda advanced a loan of R104 500 000.00 to Tegeta on the same day.¹²⁸
166. Centaur Mining contributed R842 231 000.00 towards the purchase of Optimum. It obtained the funds from back-to-back loan facilities. The modus operandi was as follows:¹²⁹
- 166.1. Centaur Ventures Limited ("CVL") is the parent company of Centaur Mining. CVL is a Bermuda based joint venture between Mr Daniel McGowan's Centaur Group Limited and Mr Akash Gargh, the bridegroom at the Gupta Sun City Wedding.
- 166.2. Griffin Line was a Gupta family company in Dubai, nominally controlled by Mr Kamal Singhala, the son of Mr Ajay Gupta. It was set up between 12 October 2015 and 19 December 2015 in a process in which Mr Tony Gupta and Ms Ronica Ragavan played a central role.
- 166.3. Holden shows that Griffin Line was a recipient of laundered proceeds of crime relating to Gupta Enterprise contracts within South Africa.

¹²⁸ Holden Money Flows Report pp SCFOFA-0440 to 445

¹²⁹ Holden Money Flows Report p SCFOFA-0403 and pp 0446 to 459

- 166.4. Griffin Line provided CVL with a \$100 million loan facility on which CVL drew down aggregate amounts of \$48 801 642.39 between 16 February 2016 and 22 March 2016.
- 166.5. CVL used the drawdowns on the Griffin Line loan to fund the bulk of R885 449 000 aggregate payments that it made to Centaur Mining between 26 February and 1 April 2016.
- 166.6. From these payments and interest thereon, Centaur Mining transferred R886 559 781.00 into a fixed deposit with the Bank of Baroda on 12 April 2016.
- 166.7. On 14 April 2016, Bank of Baroda advanced a loan of R842 231 000 to Tegeta against security of the Centaur Mining Fixed Deposit.
167. If the interests of the ultimate beneficial owners of Tegeta are applied to the aggregate amount of R1,758,942,861.16 of the R2,084,210,206.10 Optimum purchase price derived from criminally sourced funds we see the following:
- 167.1. the 65.13% beneficial interest of Gupta family members and their companies equates to a benefit of R1 145 527 852.53 from criminally sourced funds,
- 167.2. the 19.49% beneficial interest of Duduzane Zuma equates to a benefit of R342 750 991.89 from criminally sourced funds,
- 167.3. the 6.73% beneficial interest of Salim Essa equates to a benefit of R118 330 242.57 from criminally sourced funds,
- 167.4. the 6.49% beneficial interest of Ronica Ragavan equates to a benefit of R114 250 330.63 from criminally sourced funds, and

167.5. the 2.16% beneficial interest of Ashu Chawla and other Gupta enterprise employees equates to a benefit of R38 083 443.54 from criminally sourced funds.

168. The persons who benefitted from the acquisition of OCM by Tegeta as shown above benefitted from the proceeds of crime. They include:

168.1. members of the Gupta family and their companies who received R1 145 527 852, 53.

168.2. Mr Duduzane Zuma who received R342 750 991, 89.

168.3. Mr Salim Essa who received R118 330 242, 57.

168.4. Ms Ronica Ragavan who received R114 250 330, 63.

168.5. Mr Ashu Chawla and other Gupta enterprise employees who received R38 083 443, 54.

169. Section 2 of the Prevention of Organised Crime Act¹³⁰ (POCA) makes it a criminal offence to receive proceeds of crime. It reads:

“2 Offences

(1) Any person who-

(a) Retains or receives any property derived, directly or indirectly from a pattern of racketeering activity...within the Republic or elsewhere, shall be guilty of an offence”

170. There are reasonable grounds to believe that the persons referred to above including Mr Duduzane Zuma Mr Salim Essa, Ms Ronica Ragavan, Mr Ashu Chawla and

¹³⁰ No. 121 of 1998.

members of the Gupta family may be guilty of contravening section 2 of POCA. In the circumstances it is recommended that law enforcement agencies should conduct such further investigation as may be necessary with a view to the possible criminal prosecution of the said persons by the NPA.

Judicial Commission
of
Inquiry into Allegations
of
State Capture, Corruption and Fraud in
the Public Sector Including Organs of
State

Report: Part VI

Vol. 3: Various Individuals and Topics

Chairperson: Justice R.M.M Zondo
Chief Justice of the Republic of South
Africa

LORD PETER HAIN: SUMMARY OF EVIDENCE

171. Lord Peter Hain is a member of the House of Lords, United Kingdom. He testified before the Commission on 18 November 2019. He did so voluntarily. His evidence was based largely on information in the public domain.
172. Lord Hain grew up in South Africa and in 1966, at the age of 16, went into exile in the United Kingdom. Lord Hain's involvement in the anti-apartheid struggle is well known publicly.
173. Lord Hain observed at the outset of his evidence that, as he understood state capture, it was facilitated "by the massive complicity of international financial and other institutions, global corporates and foreign governments".
174. Lord Hain's evidence was divided into two parts. First, a review of the involvement of particular actors in the state capture project, namely, international actors, corporates, banks and "professional enablers". Second, a series of recommendations for consideration by the Commission. These include reforms in regard to the operation of banks and corporates. They also include recommendations in regard to transparency, self-policing and information sharing.
175. Lord Hain observed that money laundering was an international criminal activity of vast proportions. He referred to an estimate that around 5% of global gross domestic product - 2 trillion US dollars - is laundered every year. Domestic regulatory mechanisms in South Africa are unable to curb the free flow of money laundering and international (financial) crime. This phenomenon, observed Lord Hain, results in significant domestic impoverishment.

176. Lord Hain relied on various sources for his information – particularly statistical information. These included documentation and information sourced from the United Nations. As stated above, all factual information relied upon in his evidence was information in the public domain.
177. In order to prevent a repeat of the international money laundering aspects of state capture, Lord Hain stressed that better and co-ordinated action was needed from a range of stakeholders, including Governments, business, banks and non-governmental organisations. Both prevention of money laundering and recovery of monies unlawfully laundered was required.
178. In particular, Lord Hain pointed to the international financial and banking systems and remarked that the movement abroad of the proceeds of criminal activity, largely undetected, could not have happened without their involvement. This took place through the creation of complex corporate structures disguising the true ownership of (laundered) funds and complicating their tracing. International actors also provided refuge for corrupt individuals – particularly in less regulated economies – where they could continue their activities.
179. Lord Hain described how the electronic banking system was the quickest and easiest way of transferring illicit funds abroad. He described further how the Guptas were able to open accounts at well-known banks thus gaining access to the banks' global networks in foreign jurisdictions. He was emphatic in his criticism of foreign banks in not detecting and putting a stop to international money laundering. He described attempts by the banks to avoid or evade responsibility for their complicity in money laundering as "disingenuous".
180. In particular, Lord Hain referred to the factors which facilitated money laundering. These included the secretive nature of banking transactions; the obscuring or concealment of

the true owners of the accounts involved; and unexplained payments from third parties with little or no apparent connection to the underlying transactions. He also referred to the use of “*shell companies*” or “*front companies*”. These companies do not trade but allow funds to flow through them. They are often part of a complex network of companies and shareholders in different jurisdictions – designed to conceal the source and beneficial ownership of funds. He stated too that often the information held by company registries was false.

181. Related to the above, Lord Hain expressed his concern that the concealment of true or beneficial ownership of laundered funds was assisted in by professional enablers – lawyers and accountants.
182. Given the increasing awareness of corruption and state capture in South Africa, Lord Hain was critical of the continued complicity of the international banks and corporates in the money laundering activities of the Guptas, and their failure to prevent these activities. He gave examples of such transactions which he regarded as suspicious and said should have been investigated. (These examples are dealt with directly in other evidence before the Commission).
183. When dealing with reported money laundering activities related to the Estina Dairy Farm case, Lord Hain observed that banks should have access to customer data and transaction data for all accounts they open and the transfers they facilitate; they should be in a position to monitor the legitimacy of any transaction; they should also report timeously to law enforcement agencies where illegal transactions are suspected. Lord Hain observed that in his opinion, banks’ recourse to the principle of client confidentiality where criminal activity was involved (or suspected) was misplaced.
184. As the direct evidence in regard to the Estina Dairy Farm and related money laundering activities is dealt with elsewhere in this report, the recordal of Lord Hain’s evidence will

be confined to the general observations made by him and his commentary thereon, together with the issues of principle raised by him.

185. Lord Hain went on to raise three issues of concern:

185.1. The first such area of concern was the reliance on the principle of client confidentiality. This, he said, stood in the way of transparency and the free flow of information. He commented that, notwithstanding this principle, banks should nevertheless be under a duty, as they are in South Africa, to report suspicious transactions – but on an international scale.

185.2. The second area of concern was the fact that monies can be transferred to jurisdictions where there are less stringent regulatory requirements. This would result in the unlawful proceeds of crime being less likely of detection.

185.3. The third area of concern was the apparent stance taken by international banks to the effect that what happens (by way of transactions) in one branch in one country is not accessible to that bank's head office in another country.

186. Lord Hain then dealt with what he referred to as “professional enablers”, that is, professional persons or entities that become involved, whether knowingly or otherwise, in what he referred to as the “cleaning” of laundered money, in return for a fee. He described the role of these enablers as one to disguise the source, the location, and the ownership of funds.

187. These professional enablers would include lawyers, auditors, accountants and estate agents. Lawyers might assist by setting up complex corporate structures to enable the movement of monies between countries – say to a country with a low degree of transparency. Accountants might audit a company's finances incorrectly with the result

that suspicious transactions are concealed in the accounts. Estate agents may receive money into their accounts without checking the original source.

188. Having given some examples in evidence of the activities he was highlighting, Lord Hain proceeded to draw some conclusions and to make further observations. He noted that professional services firms have access to client data that law enforcement authorities would not ordinarily have. As a result, they were well placed to detect, monitor and report on suspicious transactions and suspicious customer activities. Accordingly, these entities can and should be "the first line of defence against criminality, money laundering and state capture".
189. Lord Hain also emphasised that allegations of corruption were often directed at government executives and officials. However, the complicity of private companies (corporates) should not be ignored.
190. Lord Hain also referred to the practice engaged upon by private companies where the price of a contract tendered for is inflated to provide for bribes, (referred to as "rent-seeking"). This often occurs, he said, where the company involved was also incapable of discharging its contractual responsibilities and where no fair bidding process occurred.
191. Lord Hain also referred to the involvement of foreign governments in enabling or facilitating money laundering. Criminals exploit this involvement by seeking to benefit from lower or absent regulatory standards. He stated that many governments pay lip service to the curbing of financial crime. He pointed out that despite anti-money laundering regulations in South Africa and the United Kingdom, money laundering has taken place "on a prodigious scale" in both jurisdictions. He urged states globally to "own up and take responsibility". He also referred to the tendency of criminals to take

refuge in states where there were no extradition agreements or where such agreements were not properly enforced.

192. In summary, Lord Hain was highly critical of countries that appeared to condemn international corruption and money laundering and yet did little or nothing to prevent it.
193. Lord Hain then proceeded to deal with the second part of his evidence, namely, what could be done in the international sphere to prevent a recurrence of what he had described in his evidence thus far.
194. He began by saying that to the extent that international actors had been integral to the South African experience of corruption, money laundering and state capture, lessons could be learnt from this experience. This would provide an opportunity for the international community – including the banks and businesses concerned – to learn from their experiences, to identify the weaknesses in the global regulatory system and to bring about and enforce the necessary changes.
195. At a general level, Lord Hain proposed the establishment of a transparent international environment in which there would be proactive co-operation between banks, professional enablers (including lawyers, accountants and auditors), companies and governments and where corruption and money laundering could not be concealed. Unless this was put into practice, the corruption and money laundering outlined by him in his evidence would simply continue.
196. Given what he described as the digital footprint of monetary transactions (a digital record of the movement of money) Lord Hain encouraged the tracing of money and its recovery – which he regarded as entirely possible.

197. In order to be able to ascertain the true and ultimate beneficial ownership of companies or assets, Lord Hain recommended the creation in South Africa of a public register of beneficial owners. In addition, he recommended the strengthening of the audit programme of banks and the due diligence responsibilities of professional enablers. He went further to suggest that the South African government ought not to do business with any company that would not or could not disclose its true and ultimate beneficial ownership.
198. In particular, Lord Hain recommended more frequent and carefully targeted audits of banks by the South African Reserve Bank under the provisions of the Financial Intelligence Centre Act 38 of 2001. He proposed that these audits be conducted without notice and that they include the review of random samples of due diligence files. He went further to say that some audit results and analysis 'scores' should be made publicly available.
199. Lord Hain recommended that South Africa follow international precedent by establishing oversight bodies similar to those established in foreign jurisdictions. By way of example, he referred to the Joint Money Laundering Steering Group in the United Kingdom. This group deals with policy and good practice amongst stakeholders including all the leading UK trade associations. Its activities include activities aimed at countering money laundering.
200. Lord Hain referred to another UK institution: the Joint Money Laundering Steering Group. This body aims to secure the enforcement of the provisions of money laundering legislation. He proposed that it be replicated in South Africa. The body is in essence a collaborative effort between law enforcement agencies and financial institutions, including banks. According to Lord Hain, banks are able to share confidential client

information within the confines of this entity. This information sharing would enable banks to better understand and deal with money laundering cases or practices.

201. Lord Hain referred to the Financial Action Taskforce. Apparently South Africa is a member of this body. It is an inter-governmental body comprising some 37 members. Its focus is to combat money laundering, terrorist financing and related threats to the international financial system. It is a policy body which makes recommendations on legislative and regulatory reforms for the combating of money laundering and other matters. It makes public recommendations. According to Lord Hain this body was, at the time he was giving evidence, conducting an investigation into matters within its remit in South Africa. Lord Hain stressed that it was wholly inadequate for a few select countries to follow the recommendations of such a body. What was required was universal and concerted joint action of countries across the globe if anti-money laundering efforts were to be successful. He recommended that the South African government appeal to other countries to co-operate to achieve this.
202. One such money laundering issue the banks needed to deal with, said Lord Hain, was the practice of "passporting"; criminals would use access to a bank in a less regulated jurisdiction to gain access to its international network of banking institutions. Criminals could and would do so within several banking institutions at the same time.
203. When it was pointed out that in South Africa banks have a legal obligation to report suspicious transactions to the Financial Intelligence Centre it was stressed that what was needed in addition was an opportunity or forum for banks to share such information – particularly to enable more prompt responsive action where criminals were using several banks intermittently over time. The point was also raised as to whether and in what circumstances banks should be compelled to share information rather than just be permitted to do so voluntarily.

204. Lord Hain recommended further that (additional) statutory penalties be implemented for banks and professional enablers that failed to detect criminal activity in relation to their entities. In other word such entities or persons should be compelled themselves to monitor their affairs and detect criminality, rather than to remain passive and wait for law enforcement agencies to do so.
205. Lord Hain went on to propose that banking licences should be withdrawn from banks repeatedly guilty of involvement in money laundering operations. In addition, he recommended that senior management be held personally criminally accountable for money laundering contraventions of the law, to the extent that might be appropriate.
206. Lord Hain referred to Extractive Industry's Transparency Initiative. It has established global standards of transparency, accountability and good governance within the extractive industry. He proposed that South African mining entities join this initiative and that the model be replicated in other industries as well.
207. Lord Hain also referred to the undermining and distortion of the laudable aims of Black Economic Empowerment (BEE) by corrupt individuals who sought improperly and unlawfully, through various means, to exploit the system for personal enrichment. He cited the Estina Dairy Project (dealt with elsewhere in the Commission's report) as a prime example. He proposed better regulation and promotion of the BEE programme. He made several detailed recommendations in this regard.
208. In relation to the all-important need for regulators to recover the proceeds of crime, Lord Hain referred to the UK regulators' powers in relation to unexplained wealth orders. In this regard where persons have wealth that cannot be explained – the onus being on those persons to do so – the relevant assets may, in defined circumstances, be confiscated. Lord Hain recommended the introduction of similar provisions in South Africa. It was in this context that the issue of lifestyle audits was also discussed –

although a lifestyle audit in itself and without more would not permit confiscation of assets. So, the unexplained wealth order provisions would allow for confiscation of assets, making it an enforcement tool. Lifestyle audits on the other hand are an investigative tool.

209. Lord Hain referred to mutual legal assistance treaties and extradition agreements. He stressed the need for their use and their enforcement. He also referred to Mutual Legal Assistance Treaty and Extradition Agreement with Hong Kong, signed in 2009 by South African representatives, but not yet submitted to parliament for ratification.
210. In his concluding statements, Lord Hain referred to his own efforts to persuade the British Government to impose specified sanctions on the Gupta brothers and certain banks that had assisted them in their alleged money laundering activities. He noted that the United States government had already done so.
211. Lord Hain also referred to the sophisticated digital nature of international money laundering – cybercrime. It is fast developing and ever-changing. For government and law enforcement counter-responses to be effective, it was essential that action be taken much faster than appeared to be the case at the time he was giving evidence.
212. Finally, Lord Hain summarised his recommendations as follows:
 - 212.1. To increase transparency in regard to the true beneficial owners of companies; to strengthen auditing and due diligence processes of banks and professional enablers and to ensure that these comply with anti-money laundering legislation, regulations and policies.
 - 212.2. To increase sharing of relevant data between banks, professional enablers and the state.

- 212.3. To create additional penalties for entities and individuals who fail to “*self-police*” (to act to detect contraventions of the law within their own ranks) and otherwise to act in accordance with anti-money laundering laws and procedures.

- 212.4. To recommend that the relevant South African entities (principally mining entities) join the Extractive Industries Transparency Initiative; to consider replicating that initiative in other financial and industrial sectors.

- 212.5. To increase transparency around the Black Economic Empowerment Programme to ensure that its legitimate aims are not subverted for unlawful and improper private gain.

- 212.6. To ensure the proper use and enforcement of anti-money laundering and anti-corruption legislation; implementing additional legislative measures in order to hold public officials to account and to enable the recovery of money and other assets. To this end he recommended providing increased funding for law enforcement agencies – both state funding and private corporate and bank levies.

- 212.7. To implement all Financial Action Taskforce recommendations.

- 212.8. To increase the establishment and use of mutual legal assistance treaties.

- 212.9. To increase the establishment and use of extradition agreements.

- 213. Lord Hain was asked to comment on a possible recommendation that public officials above a certain level as well as executives of companies wishing to do business undergo compulsory and regular lifestyle audits. He commented favourably on the suggestion, noting that this would supplement the proposal in relation to unexplained wealth orders.

**ANALYSIS AND EVALUATION OF THE EVIDENCE OF
MS MABEL PATRONELLA ("VYTJIE") MENTOR**

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MS MABEL PATRONELLA ("VYTJIE") MENTOR'S EVIDENCE

INTRODUCTION

214. The purpose of this part of the Report is to analyse the evidence of Ms Mabel Patronella ("Vytjie") Mentor, which was presented to the Commission. The terms of reference of the Commission specifically require this Commission to investigate the veracity of Ms Mentor's allegation that the Gupta's offered her a Ministerial position.
215. Ms Mentor joined the ANC in the 1980, she was also associated with the United Democratic Front, a formation of women within the ANC and the UDF called SA Federation of Transvaal Women, the SA Youth Congress and the National Education Coordinating Committee. These latter organisations were formed at a time when the ANC was still banned. In addition, she was a member of the National Union of SA Students.
216. In about 1999, after the second democratic local government elections, Ms Mentor was appointed a councillor in the district municipality serving the Kimberley region and became the deputy secretary of the ANC in that region. In 2000 she was appointed to serve as a public representative in the SA Nursing Council. In 2002 she became an MP for the ANC in the National Assembly. In 2004, she was elected as the chair of the Portfolio Committee on Public Enterprises. In 2004 she was appointed as an ANC whip for discipline and, soon after that, the national chair of the ANC caucus in Parliament, where she served until 2008, when, shortly after President Zuma became the ANC president, she was removed from that position and left Parliament.
217. While she held office as an MP, Ms Mentor served on several committees, including portfolio committees for public enterprises, education, public service and administration,

intelligence, parliamentary rules committees, private members' legislative proposals, justice, as well as ad hoc committees on events relating to the conduct of President Zuma and Mr B Ngcuka, the protection of state information, and the caucus dealing with food security in South Africa.

218. In about November 2010, Ms Mentor ceased to be the chair of the portfolio committee on public enterprises. She believes that she was removed because she had offended President Zuma while they were both in China on state business.¹³¹
219. In the latter part of 2014, Ms Mentor suffered what she described as gruesome injuries, sustained in mysterious circumstances and was treated in hospital. She resigned as an MP at the end of 2014.
220. Ms Mentor made two statements to the Commission, i.e. her first statement signed on 25 July 2018 and a supplementary statement to the Commission signed on 15 September 2021, as well as a statement to the Public Protector signed on 9 May 2016 and two supplementary statements to the Public Protector, signed on 28 June 2016 and 14 December 2016. She had an interview with the Public Protector on 21 July 2016, which was transcribed and placed before the Commission. In addition, Ms Mentor was a party in proceedings in court, in which she made affidavits.
221. On 26 May 2016, Ms Mentor laid charges against President Zuma, certain members of Cabinet and certain board members of SOEs with the SAPS. For this purpose, she made a handwritten statement, which was later typewritten. Ms Mentor thereafter removed President Zuma's name from the statement and made certain changes to the manuscript. She was dissatisfied at the progress of the investigation into her charges

¹³¹ Ms Mentor's statement to the Commission signed on 25 July 2018

and laid charges of obstructing justice against certain persons she believed were tasked with conducting the investigation.

222. Ms Mentor gave oral testimony to the Commission on 27-29 August 2018 and 11-12 February 2019.

223. It is therefore fair to say that from 2016 Ms Mentor made strenuous efforts to make her allegations publicly known and investigated by the appropriate authorities.

Gravamen of Ms Mentor's evidence

224. In her first statement to the Commission, Ms Mentor claimed that in about October 2010, about a week before a Cabinet reshuffle took place, Mr Ajay Gupta made an offer to Ms Mentor that she should accept the position of Minister of Public Enterprises, provided she agreed to use that position to cancel the flight which SA Airways conducted between South Africa and India. She went on in the same statement to set out how she said she disclosed the fact of the alleged offer.

225. Ms Mentor gave a great deal of detail in which she described the context in which the alleged offer was made. Mr Ajay Gupta denied the allegation in a series of affidavits but did not himself give oral testimony to the Commission. As is well known, the entire Gupta family, including Mr Ajay Gupta, left South Africa and have one and all refused to give evidence before the Commission, on spurious grounds. President Zuma himself, in whose power it was to make ministerial appointments to the National Cabinet, at a stage declined, on similarly spurious grounds, to give further testimony to the Commission.

Relevant content of the Public Protector's State of Capture Report

226. Ms Mentor's allegations, featured prominently in the SOCR.¹³² The Public Protector observed that there seemed to be no evidence of action taken by anyone to verify Ms Mentor's allegations.¹³³

Terms of reference of the Commission relevant to present topic

227. Item 1.1 to the Schedule establishing the Commission explicitly requires the Commission to inquire into, make findings, report on and make recommendations concerning the veracity of allegations that Ms Mentor was offered a Cabinet position by the Gupta family.

228. In addition, ToRs 1.2 and 1.3 require the Commission to inquire into, make findings, report on and make recommendations concerning whether President Zuma had any role in the alleged offers of Cabinet positions to Ms Mentor by the Gupta family and whether the appointment of any member of the National Executive, functionary and/or office bearer was disclosed to the Gupta family before such appointments were formally made and /or announced.

Approach to the analysis and evaluation of the evidence of Ms Mentor

229. It is trite that the evidence of a witness should not be accepted simply because it is uncontradicted by the evidence of other witnesses. Ms Mentor's evidence will be examined in the light of other established facts and the probabilities.

¹³² SOCR para 5.15

¹³³ SOCR para 7.2

THE EVIDENCE

230. I begin by recounting the evidence relating to the alleged offer made to her of the position of Minister of Public Enterprises as set out in her first statement to the Commission.

Ms Mentor's trip to China in about August 2010

231. In about August 2010, Ms Mentor travelled to the Peoples Republic of China to explore solutions to the issue of repeated power outages, which was at that stage already a severe problem for Eskom and the government. Ms Mentor undertook the trip alone, as the chairperson of the portfolio committee for public enterprises. This was a preliminary visit. The entire committee had applied for permission to travel to China for this purpose, and the thinking was that the full committee would travel to China on a later date. Ms Mentor had already been to China for the same purpose. Ms Mentor's visit was part of a state visit to China by President Zuma and his entourage.

232. Ms Mentor was advised by Transnet, which was paying for her trip, to obtain accreditation through the Department of Trade and Industry. She was directed to a DDG in that department named Mr Iqbal Sharma, known to the Commission as a Gupta associate.

233. Ms Mentor travelled to Dubai on a first class ticket, via Dubai. She said that she was told that only first class tickets were available. During the flight, she was introduced to the son of President Zuma, Mr Duduzane Zuma, who was in the company of a man to whom Mr Duduzane Zuma introduced to her as his partner. She later learnt that this man was Mr Rajesh Gupta, who mentioned to MS Mentor that his brother was a member of President Zuma's advance team.

234. Mr Duduzane Zuma also introduced Ms Mentor to another passenger, Mr Fana Hlongwane, described by Duduzane Zuma as his chairman.
235. On arrival in China, Ms Mentor undertook the process of obtaining accreditation, so that she could attend the business meetings associated with the state visit and attend the state banquet scheduled for later that evening. She observed three men, whom she described as Indian men, with two way radios who appeared to be very busy arranging the logistics for the state visit. She later learnt that these three men were the Gupta brothers Ajay, Atul and Rajesh.
236. After the ceremonial part of the proceedings, the South Africans present gathered in a large hall. Amongst them were some twelve SA Ministers. Ms Mentor found the Ministers cold towards her, which she found puzzling and hurtful.
237. After the proceedings, Ms Mentor went to her hotel room. There she received a call from the hotel reception to say that two Indian men, who claimed to be South Africans and part of the state visit were asking for her room number. She asked the receptionist to ask the men some questions. One of the men took the phone and introduced himself to her by the name of Gupta. She assumed that this man was one of the three Indian men, she had encountered earlier that day.
238. The man told Ms Mentor that President Zuma had sent him to invite Ms Mentor to meet President Zuma at the Chinese presidential guesthouse. He offered to take her to the guesthouse and thereafter to the banquet. Ms Mentor declined to go with the man. She asked how she could possibly agree to be driven by complete strangers at night in a foreign country. The man assured her he took care of all President Zuma's state visits and that he led the President's advance team. This suggested to Ms Mentor that the man was one of the Gupta brothers because Rajesh Gupta had told her on the flight to China that his brother was a member of President Zuma's advance team.

239. The man said he would contact President Zuma and get back to her. He called again to say that President Zuma would not leave for the banquet until he had spoken to her. Ms Mentor again declined and the man's tone became threatening. She ultimately left the phone off the hook. She remained in her hotel and neither met President Zuma nor attended the banquet.
240. On the following day, Ms Mentor had a lengthy meeting at her hotel and obtained firm proposals which she could take back to Eskom and her committee. She decided to bring forward her return to South Africa and travelled back home.

The offer to Ms Mentor of the position of Minister of Public Enterprises

241. In about October 2010, Ms Mentor received a call from Ms Kaunda, an assistant to President Zuma. Ms Mentor had been trying for some time to meet with Mr Zuma regarding, amongst other issues, a nuclear study project of the SA government described by the witness as the Pebble Bed Modular Reactor. This was a project of Eskom, in partnership with an American company, Westinghouse. Ms Kaunda told Ms Mentor that Mr Atul Gupta would contact her to arrange the meeting for which President Zuma was available on the following day, and that if Mr Gupta did not contact Ms Mentor, Ms Mentor should contact Mr Gupta at a telephone number supplied by Ms Kaunda.
242. Later that evening, Ms Mentor and Mr Atul Gupta spoke and arrangements for the meeting were made. Ms Mentor flew to Johannesburg and was met by Atul and Rajesh Gupta. Ms Mentor was still on crutches from her injuries and needed assistance to get around. She was taken first to the offices of Sahara Computers, a Gupta computer business, where she met Mr Ajay Gupta. Mr Ajay Gupta struck up a conversation with Ms Mentor and then told her that President Zuma had been delayed because there had been a "COSATU strike" that day.

243. During the conversation, Ms Mentor was struck by the ring which Mr Ajay Gupta was wearing, a gold ring with a ruby stone which he wore on his index finger. She asked him about the ring. Mr Ajay Gupta volunteered the information that the ring had belonged to his late father and that in the Hindu culture that ring was now required to be worn by Mr Ajay Gupta, who had by reason of his father's death risen to the status of patriarch (presumably of his family), to demonstrate his status and rank.¹³⁴
244. During the discussion between Mr Ajay Gupta and Ms Mentor, Mr Gupta made unsolicited offers to Ms Mentor of the use of the Guptas' box at Newlands cricket ground and a new bat for her son who, Ms Mentor had disclosed, played cricket for a Western Province junior team. Ms Mentor declined these offers.
245. While waiting at the offices of Sahara, Ms Mentor called her friend Ms Daphne Nkosi and asked her if she could stay overnight with Ms Nkosi.¹³⁵
246. Ms Mentor was then taken by Atul and Rajesh Gupta to the Gupta compound in Saxonwold. This was the first time she had been there. She gave a description of the layout of the compound and the main house, whose interior impressed her as being "very beautiful". She described the cloakroom fittings, which had some gold plating, in admiring terms. She had thought the meeting with President Zuma would be at the Union Buildings. While she was waiting, she was offered lunch and chose a mutton curry.¹³⁶ She also made another call to Ms Nkosi, who assured Ms Mentor that she could spend the night at Ms Nkosi's house.¹³⁷

¹³⁴ Ms Mentor's statement to the Commission signed on 25 July 2018 para 76. This was one of a series of descriptions given by Ms Mentor to demonstrate, no doubt, that she had actual personal knowledge of the allegations she made and was not just making them up.

¹³⁵ Ms Mentor's statement to the Commission signed on 25 July 2018 para 70

¹³⁶ Ms Mentor's statement to the Commission signed on 25 July 2018 para 83

¹³⁷ Ms Mentor's statement to the Commission signed on 25 July 2018 para 84

247. Some hours later, Mr Ajay Gupta came into the room in which Ms Mentor was sitting. He asked her about the uranium in the Northern Cape, the province from which Ms Mentor came. Ajay Gupta said he knew Ms Mentor came from the Northern Cape. Mr Ajay Gupta said uranium was needed for nuclear energy and that the Guptas would soon be the main supplier of uranium for the government's nuclear program.
248. Mr Ajay Gupta further referred to a legal problem which Denel had in India and said that he could solve that problem as the Guptas were close to the Indian government. This matter was top secret. Ms Mentor was surprised that Mr Ajay Gupta knew about it.
249. Mr Ajay Gupta said that he knew that Ms Mentor was meeting President Zuma to discuss the Pebble Bed Modular Reactor. He said that the project ought to be closed because it was "burning money".
250. Mr Ajay Gupta opined that the turnaround strategy of SA Airways was not yielding results. He observed that the SAA route to India was not profitable. Ms Mentor asked him what would happen to the passengers and goods transported over that route. Mr Ajay Gupta told Ms Mentor not to worry as they were in partnership with an airline which could take over this route.
251. Mr Ajay Gupta thereupon, very casually, offered Ms Mentor the position of the next Minister of Public Enterprises if she would agree to facilitate the closure of SSA's India flight when she became Minister. He said there would be a Cabinet reshuffle in the next week or so.
252. Ms Mentor was shocked and told Mr Ajay Gupta that the SAA statistics showed that the India route was doing very well. She asked how he could be in a position to offer her a position as a Minister. After a silence, Mr Ajay Gupta said "We usually do". She asked him who "we" were but he did not respond.

253. Ms Mentor became agitated and angry and raised her voice. At that moment, President Zuma entered the room. Ms Mentor testified that she entered the room from one direction and Ajay Gupta and President Zuma from another. Ms Mentor stood to greet President Zuma. Mr Ajay Gupta remained seated. He and President Zuma did not greet each other. She told President Zuma what Ajay Gupta had just said.
254. President Zuma did not seem concerned or surprised when she told him that Ajay Gupta had just offered her a ministerial position. He kept telling Ms Mentor to calm down. Ms Mentor decided it would be best if she left. She called Ms Nkosi to say that she was going back to Cape Town and would later tell her what had happened.
255. President Zuma carried Ms Mentor's bag for her to the vehicle in which she was to be taken to the airport and helped her into the vehicle. Ms Mentor then flew back to Cape Town.
256. As President Zuma and Ms Mentor were leaving the house, Mr Ajay Gupta asked President Zuma if he wanted anything to eat. President Zuma responded that he would eat at the house of his son Duduzane, who was always complaining that President Zuma did not take meals with them. Ms Mentor looked at President Zuma with surprise and President Zuma explained that Duduzane lived next door to the Guptas.
257. A week or so later, President Zuma reshuffled his Cabinet and replaced Ms Barbara Hogan as Minister of Public Enterprises with Mr Gigaba. She understood that after the reshuffle, SAA abandoned its India route, which was taken over by a Gupta-associated airline.

Ms Mentor's disclosures of the offer made to her by Mr Ajay Gupta

258. Ms Mentor alleged in her first statement to the Commission that she made the following disclosures of the alleged offer made to her by Mr Ajay Gupta:

258.1. Shortly after the encounter with Mr Ajay Gupta and President Zuma at the Saxonwold compound, she disclosed the encounter to the chairperson of the Joint Standing Committee on Intelligence, Mr Siyabonga Cwele, and members of the committee Mr Hlengiwe Mgbadeli and Mr Dennis Bloem.

258.2. In her interview with the PP, Ms Mentor said that she recounted the incident to a female member of the Joint Standing Committee on Intelligence, whom she trusted. She did not give this person's name and did not mention this disclosure on her first statement to the Commission.¹³⁸

258.3. She told Mr Mantashe and Ms Duarte at a meeting at Luthuli House on an unspecified date.

258.4. In response to a post on Facebook by an opposition MP, Ms Mentor responded on 14 March 2016 as follows:

But they hap [sic] previously asked me to become Minister of Public Enterprises when Barbara Hogan got the chop, provided that I would drop the SAA flight-route to India and given to them. I refused and so was never made a Minister. The President was in another room when they offered me this in Saxonwold.

259. Ms Mentor laid criminal charges against President Zuma and others in a statement which was typewritten and bore the typed date 9 May 2016. In this statement she recounted the offer to her made by Mr Ajay Gupta at the Saxonwold compound.

¹³⁸ Transcript of interview of Ms Mentor by PP typed page no 79

260. On 21 July 2016, Ms Mentor recounted the offer made to her by Mr Ajay Gupta during an interview with the then Public Protector. During the interview, Ms Mentor described a large supporting pillar in the room in which she sat waiting in the main house in the Saxonwold compound, as she thought, for President Zuma to arrive for their meeting.¹³⁹

OTHER SOURCES OF INFORMATION WHICH BEAR UPON MS MENTOR'S VERSION AS SET OUT IN HER STATEMENT TO THE COMMISSION

261. In this section, I examine other sources of information and relate such information to the version advanced by Ms Mentor in her statement to the Commission.

Ms Mentor's oral testimony

262. Ms Mentor gave oral testimony to the Commission on days 4, 5, 6, 47 and 48, i.e. 27, 28 and 29 August 2018 and 11 and 12 February 2019.
263. Relative to her trip to China, Ms Mentor was referred to a book she had written by her which was published in 2017. On p137 of that book, she said that the black man introduced to her on the flight to China by Mr Duduzane Zuma was Mr Brian Hlongwane, which was the name of a former MEC for Health in Gauteng. She explained that the book misstated the fact and that the black man to whom she was introduced was indeed Mr Fana Hlongwane. She ascribed the mistake to the similarity of the two surnames.¹⁴⁰
264. Ms Mentor referred to the coldness she experienced towards her from other South Africans in the briefing session before the state visit as such commenced. She did not

¹³⁹ Transcript of interview of Ms Mentor by PP typed page no 59.

¹⁴⁰ Transcript: Mentor day 4 p 21.

ascribe that treatment to anything being investigated by the Commission but to something else unconnected, which she did not identify.¹⁴¹

265. On a collateral point of otherwise no significance, Ms Mentor described how, at the baggage carousel in Hong Kong on her way home from China, she came to notice a woman whom she identified in her mind as a South African because she was struck by that woman's luggage, which she described as expensive and beautiful and frankly stated that the luggage made her envious.¹⁴²
266. On a similar note, Ms Mentor described the coffee table and sofa in an ante-room in the Sahara building where she was asked to wait as being "fairly worn out, not fancy at all" and the office of Mr Ajay Gupta in that building as being "Not so big" with a desk that was "not very glamorous".¹⁴³
267. Ms Mentor testified that the gold in the ring on Mr Ajay Gupta's index finger did not look like 9 carat gold but like 18 or 24 carat because it was "very bright".¹⁴⁴
268. Ms Mentor deduced from the fact Mr Ajay Gupta referred to certain issues which Ms Mentor was going to discuss with President Zuma at their proposed meeting that Mr Gupta knew the agenda of that proposed meeting.¹⁴⁵
269. Ms Mentor believed the steps leading up to the main house in the Saxonwold compound as being made of marble, although she believed they could have been made of granite.¹⁴⁶

¹⁴¹ Transcript: Mentor day 4 p36

¹⁴² Transcript: Mentor day 4 p42

¹⁴³ Transcript: Mentor day 4 p65-66

¹⁴⁴ Transcript: Mentor day 4 p71

¹⁴⁵ Transcript: Mentor day 4 p74

¹⁴⁶ Transcript: Mentor day 4 p77

270. Ms Mentor described the room in which she waited for her proposed meeting as a large lounge/reception area, which was too sparsely furnished because it had only two couches and a coffee table. The room contained a giant pillar, which lacked beauty because it was not properly covered. Behind it there was a “very gigantic” window, which she appreciated because it was massive and brought in a lot of light. She also observed artwork on the walls, which she looked at and wondered whether it was an actual painting or wallpaper.¹⁴⁷
271. Ms Mentor described how the chef who came to take her lunch order almost kneeled before her to take her order and how she asked him to rise because “a person should not kneel before me”.¹⁴⁸
272. In relation to the cloakroom used by Ms Mentor, she said that she remembered the gold detail and wondered whether it was real gold or gold gilded. She found the mirror beautiful and thought it might be French because all the mirrors she loved were French. She observed “expensive hand lotions and stuff” there.¹⁴⁹ The cloakroom was shown to Ms Mentor by Mr Atul Gupta, who asked her if he could show her the other cloakrooms, which Ms Mentor declined to do.
273. In her testimony, Ms Mentor said that Mr Ajay Gupta told her that the airline in which he was in partnership was called Jet Airways and that after Mr Gigaba became Minister of Public Enterprises, SAA’s flight to India was indeed cancelled and taken over by Jet Airlines.¹⁵⁰

¹⁴⁷ Transcript: Mentor day 4 p78

¹⁴⁸ Transcript: Mentor day 4 p79

¹⁴⁹ Transcript: Mentor day 4 p80

¹⁵⁰ Transcript: Mentor day 4 pp 87 and 92

274. Ms Mentor testified that during her exchange with President Zuma after Ajay Gupta had offered her the ministerial post, she apologised to President Zuma for refusing to go to see him in China. President Zuma responded that it was okay, she must not worry.¹⁵¹
275. Ms Mentor also testified that as they were leaving the house for the vehicle to take her to the airport, President Zuma said to Ms Mentor that if he had known she was on crutches, he would not have asked her to come to meet him. She understood that they would meet again because President Zuma said to her in isiZulu, take care of yourself, we will meet again.¹⁵² Ms Mentor described in her testimony how President Zuma might have been listening to the exchange between her and Mr Ajay Gupta and how he did not appear to be surprised or angered or annoyed when she told him that Ajay Gupta had offered her the ministerial post.¹⁵³ Nor did he ask Mr Ajay Gupta if what Ms Mentor had reported to President Zuma was true.¹⁵⁴

RESPONSES FROM PERSONS IN CONTRADICTION OF ASPECTS OF MS MENTOR'S EVIDENCE

276. A number of persons filed affidavits with the Commission or otherwise responded, disputing aspects of Ms Mentor's testimony.

Ms L Kaunda

277. Ms Kaunda was a DDG in the Presidency at the relevant time. Ms Kaunda filed an affidavit disputing aspects of Ms Mentor's version in her statement to the Commission. There is one important difference between the two versions. Ms Mentor said that it was Ms Kaunda who called her to set up the meeting with President Zuma after she returned

¹⁵¹ Transcript: Mentor day 5 p24

¹⁵² Transcript: Mentor day 5 p26

¹⁵³ Transcript: Mentor day 5 p31

¹⁵⁴ Transcript: Mentor day 5 p38

from China. Ms Kaunda filed an affidavit denying that she had called Ms Mentor and tendering the records of her office to substantiate her denial and seeking leave to cross-examine Ms Mentor.¹⁵⁵

278. In an affidavit signed by Ms Mentor on 24 October 2016 in support of an application to intervene in litigation between the President of the Republic and the Public Protector,¹⁵⁶ Ms Mentor said that she did not know the name of the person who called her to arrange the meeting.
279. Ms Mentor sought to explain away the contradiction by claiming that there was a miscommunication between herself and her lawyers who drafted the affidavit. I do not find the explanation convincing.
280. Ms Kaunda was granted leave to cross-examine Ms Mentor.¹⁵⁷ Pursuant to such leave granted, Ms Mentor was cross-examined by Ms Kaunda's representative.¹⁵⁸
281. There are other differences in the versions of the two persons but in my view none of the other material which was raised by Ms Kaunda bore significantly upon the testimony of Ms Mentor. It is therefore unnecessary to delve into the detail of the two versions in that respect.
282. However, the dispute about whether Ms Kaunda called Ms Mentor to arrange the meeting is of a different calibre. Despite being confronted with the differences in her versions from time to time on the point and the records produced by Ms Kaunda, Ms Mentor refused to acknowledge that she might have been mistaken on the issue.

¹⁵⁵ Exhibit D6(a) p113

¹⁵⁶ Gauteng Division case no 79808/16 para 8 ExhD4 p235

¹⁵⁷ Transcript day 48 p9

¹⁵⁸ Transcript day 48 p117

283. Ms Mentor's adamant refusal to concede that she might have been mistaken on the point has a deeper significance. It shows either that she is very reluctant to accept that she might be mistaken in her recollection or that her testimony as a whole is unworthy of belief. After all, as was put to Ms Mentor, the trigger event which caused Ms Mentor, on her version, to travel to Johannesburg to see President Zuma was the call from the member of President Zuma's staff whom she identified unequivocally as Ms Kaunda. In my view, Ms Kaunda made no such call. I therefore consider very carefully whether Ms Mentor's testimony can broadly be believed.

President Zuma

284. In response to Ms Mentor's Facebook post on 14 March 2016, that she had been offered a ministerial post if she facilitated the abandonment by SAA of its flight to India, the Presidency issued a statement on 15 March 2016 in which the President stated that he had no recollection of Ms Mentor and was therefore unable to comment on any alleged incident in her career.¹⁵⁹ That was the only response of President Zuma to Ms Mentor's testimony.

285. Ms Mentor responded to the presidential assertion by explaining that President Zuma sat next to and spoke to Ms Mentor in the ANC caucus each Thursday when Parliament was in session and President Zuma was in the country for more than four years. This, she said happened more than 20 times. She sat with him in the ANC's political committee each month. President Zuma was deployed by the ANC executive to tell Ms Mentor that the ANC had deployed her to chair of caucus.¹⁶⁰

286. The assertion in the statement of the Presidency that President Zuma had no recollection of Ms Mentor is simply not credible. Ms Mentor held prominent

¹⁵⁹ Transcript: Mentor day 5 p99; Exhibit MPM5 to statement of Ms Mentor to the Commission.

¹⁶⁰ Transcript: Mentor day 5 pp103 and 105

parliamentary positions over a number of years. It is so highly improbable that President Zuma could have forgotten about the incident at the Saxonwold compound to which Ms Mentor testified that the President's assertion should be rejected as false.

287. It is telling that President Zuma sought refuge in alleged loss of "recollection" and found himself unable to deny that he and Ms Mentor were together that day at the Saxonwold compound, together with Mr Ajay Gupta.

Ms Mentor's flight from Dubai to China

288. On day 47, 11 February 2019, Ms Mentor said that she retracted her allegations against Mr Fana Hlongwane.¹⁶¹ The allegation in question is that Mr Duduzane Zuma introduced her to this person on the flight from Dubai to China as "my chairman". Neither the allegation nor the retraction appear to take the issue for consideration by me further, except that it demonstrates the unreliability of Ms Mentor's recollection.

Ms Mentor's flight from China back to South Africa

289. On day 47, 11 February 2019, after documents were presented to Ms Mentor, she accepted that she had not travelled back to South Africa from China via Hong Kong.¹⁶²

Ms Mentor's flights to and from Johannesburg on the day of her alleged meetings with Mr Ajay Gupta and President Zuma

290. Ms Mentor was presented with records of SAA which purported to cast doubt on the allegation that she travelled to Johannesburg on the day in question and returned to Cape Town on the same day.¹⁶³

¹⁶¹ Transcript day 47 p51

¹⁶² Transcript day 47 p45

¹⁶³ Transcript day 47 p77

291. Ms Mentor questioned the accuracy of these records and adhered to her version.

Inspection in loco at the Saxonwold compound

292. Reference was made on day 47 to an inspection in loco at the Gupta compound in Saxonwold and MS Mentor was questioned on discrepancies between her testimony and how the property looked on the date of the inspection. It is clear that Ms Mentor was inaccurate in her recollection of certain details. It should be born in mind that the issue is whether a corrupt offer of a cabinet position was made to Ms Mentor by Mr Ajay Gupta and, if such an offer was made, what inferences should be drawn from President Zuma's reactions when he was told of the offer.

The ring allegedly worn by Mr Ajay Gupta

293. Mr Ajay Gupta disputed through an affidavit that Hindu culture required him to wear a ruby ring or any ring on his index finger. Ms Mentor produced a photograph from media reports showing that Mr Ajay Gupta wore such a ring.¹⁶⁴

294. Ms Mentor adhered to her version that Mr Gupta told her he wore the ring as required by Hindu culture. The fact that Mr Gupta disputed that he wore the ring for that reason does not bear upon Ms Mentor's credibility: she merely repeated what she said Mr Gupta told her.

Whether Ms Mentor was served mutton curry in the Saxonwold compound

295. Mr Ajay Gupta denied that Ms Mentor was offered mutton curry although he admitted that the family employed a chef. He said that they would not have allowed any form of

¹⁶⁴ Transcript day 47 p184

meat, let alone chopped up sheep, to enter their home. Ms Mentor adhered to her version.¹⁶⁵

296. The undated statement of Mr Pratap Kumar Penulama was introduced into evidence before the Commission by Ms Mentor.¹⁶⁶ Mr Penulama is a professor emeritus of comparative religions at the school of religion, philosophy and classics at the University of KZN. Mr Penulama was asked by Ms Mentor's attorneys to give his views on the cultural issues raised by the versions of Ms Mentor and Mr Ajay Gupta.
297. Mr Penulama expressed the view that many adherents to the Hindu faith do not regard the consumption of mutton as unacceptable and that it was not uncommon for Hindu families who themselves are vegetarian to offer non-vegetarian foods such as cooked mutton to their guests.¹⁶⁷
298. Mr Penulama said that the practice of passing down an item of heirloom nature had nothing to do with Hindu custom as such but that it was quite common in Indian society for such an item to be handed down to the eldest son and that in wealthy families, the eldest son would head the family business.

Disclosure of Offer to members of the Portfolio Committee on Intelligence

299. Records were produced showing that Mr Siyabonga Cwele was no longer a member of the Portfolio Committee on Intelligence when Ms Mentor made the disclosure to certain of its members. She retracted her evidence that she made the disclosure to Mr Cwele

¹⁶⁵ Transcript day 47 p184

¹⁶⁶ Annexure M1 to a further supplementary statement by Ms Mentor signed on 9 September 2021.

¹⁶⁷ It may be of interest to the Commission that there is a well-known butchery in Midrand, called B Nagiah's Butchers (<https://www.facebook.com/Bnagiahsbutchers/>) that supplies mutton, lamb, chicken and fish but not beef or pork, on large scale to the non-Muslim (i.e. predominantly Hindu and Christian) Indian community.

but insisted that she had disclosed the offer to the other two members she had mentioned, Mr Bloem and Ms Mgabadeli.¹⁶⁸

300. Mr Bloem made a statement to the Commission which he signed on 13 November 2018.¹⁶⁹ He confirmed that Ms Mentor had made the allegation to him around August 2010. Mr Bloem testified before the Commission on day 49 and confirmed what he had said in his statement.¹⁷⁰ He said that Ms Mentor had asked him to treat what she had told him as confidential. Mr Bloem kept the disclosure confidential until 2016, when Mr Mcebisi Jonas and Ms Mentor publicly repeated their allegations. Mr Bloem then laid a criminal charge of corruption against President Zuma and the Guptas.¹⁷¹

301. In a statement to the Commission,¹⁷² Ms Mgabadeli said she could not recall any such disclosure made to her by Ms Mentor. She also gave oral evidence where she said the same thing.

Calls to Ms Daphne Nkosi

302. In a statement to the Commission signed on 23 November 2018, Ms Mashile-Nkosi confirmed that she and Ms Mentor were friends and that Ms Mentor frequently stayed overnight with her but she could not remember the specific conversations described by Ms Mentor.¹⁷³ She also gave oral evidence to the same effect.

Inspection in loco at Saxonwold compound

303. On 3 December 2018 the legal representatives of the Commission and witnesses and several experts inspected the Saxonwold compound and recorded their observations in

¹⁶⁸ Transcript day 48 p69

¹⁶⁹ Bundle D6A p176

¹⁷⁰ Transcript day 49 p7

¹⁷¹ Transcript day 49 p13

¹⁷² Exhibit D8(a)

¹⁷³ Exhibit D8(b)

various media. The observations made by various individuals on their visits were recorded in various media and described during testimony as the inspection in loco of the Commission.

304. For present purposes, the inspection is only of relevance to the extent that it casts light on the observations Ms Mentor said she made in 2010.
305. Ms Erna Wiese, an architect employed by the Department of Public Works, carried out an inspection at the Gupta compound as part of a Public Works team and submitted a report to the Commission dated 1 February 2019. The PWD team were particularly looking to establish whether certain features which Ms Mentor said were present in the property were in fact visible. These were: the steps to the main entrance; a pillar in the waiting room; a striking mural; a large feature window; to adjacent guest cloakrooms, with gilded features in the ladies' cloakroom; an access door leading from the passage into the waiting room where Ms Mentor alleges she sat.
306. The DPW team found none of the features in question to be present on 3 December 2018. They were asked to express an opinion on whether these features could have been removed by alterations after August 2010. The DPW team concluded it had insufficient expertise for this purpose and declined to express an opinion. The evidence was as follows:

“CHAIRPERSON: Now bearing in mind the features that you had been asked to go and see if they could be found in the property, in other words bearing in mind your brief, did you find any of the features in the house that you had been asked to go and establish whether they were there?

MS ERNA WIESE: No, Chair, we could not.

CHAIRPERSON: Not even one?

MS ERNA WIESE: Not even one.”

Response of Mr Ajay Gupta to Ms Mentor's statement to the Commission

307. In response to Ms Mentor's statement to the Commission, Mr Ajay Gupta made an application to cross-examine Ms Mentor.¹⁷⁴ In his affidavit accompanying the application, signed in Dubai on 2 September 2018, said the following:

- 307.1. He admitted that he, Mr Rajesh Gupta and Mr Duduzane Zuma attended the events forming part of the presidential state visit to China in August 2010.
- 307.2. He denied that he was introduced to Ms Mentor on the flight to China.
- 307.3. He denied that he or his brother Rajesh would ever have said that they were part of President Zuma's advance guard or that they played an oversight role in the logistics, registration of administration relative to the visit.
- 307.4. He denied that he or Rajesh had more than one security tag or carried two way radios while in China.
- 307.5. He denied that he or Rajesh called Ms Mentor from the hotel lobby in China.
- 307.6. He denied that two of the Gupta brothers picked Ms Mentor up at the airport, that she visited the offices of Sahara or that he later had a meeting with her at the Saxonwold compound and that his family owned a black twin cab bakkie or that his brothers ever drove around in one.
- 307.7. He denied making an offer to Ms Mentor of the kind alleged or at all.

¹⁷⁴ Exhibit D3.

- 307.8. He admitted that the offer of space in the suite at Newlands cricket ground and the offer of a cricket bat were the kind of things he did say, but he denied that he ever made these offers to Ms Mentor.
- 307.9. He denied that he owned or wore on his index finger a gold ring with a ruby. He admitted that he wore other rings, one belonging to his late father which he wore on his middle finger.
- 307.10. He denied that the description of the interior of the main house in the Saxonwold compound had features such as were described by Ms Mentor. He denied specifically that there was a giant reception room in which she sat or that there was any pillar of the type she described. He denied that the entrance area contained any couches (on which Ms Mentor alleged she sat) and said that the space was dominated by a grand piano covered in a red velvet cloth. He denied that there was more than one cloakroom.
308. He admitted that the Guptas had a chef but denied that anybody would have been offered mutton curry in his home because he was strictly vegetarian and would not have allowed meat to be served in his home.
309. In denying the fact of the meeting, he denied that President Zuma entered the room in which Ms Mentor said she was.
310. He denied that he had been in partnership with any airline that could take over the SAA route to India or that he ever had any interest in taking over that route.

EVALUATION AND FINDING

311. I consider that there are too many unsatisfactory features in Ms Mentor's evidence to enable me to make a finding that she was made an offer of a Ministerial position by a Gupta family member is true. Although there are features which count in her favour, in my view, there is not enough to justify a finding that the incident did take place. The Commission went to great lengths to try and establish from the record of airlines whether she had travelled from Cape Town to Johannesburg on the day in question but such evidence could not be found. No Parliamentary records about her trip could be found that could corroborate her evidence that she had undertaken an official trip from Cape Town to Johannesburg on the day in question. Most of the features of the Gupta house that she had testified about or that she had included in her affidavit could not be found when an inspection in loco was undertaken. Her two friends, Ms Mgabadeli and Ms Nkosi did not corroborate her versions. The close friendship that she had had with them for many years was such that in my view there is no way that she would not have told them about what had happened to her at the Gupta residence if the incident had happened and if she had told them, there is no way that both would not have remembered that she had told them about such an incident. It seems to me that she never told them. It is true that she told Mr Bloem but it strange that she told Mr Bloem and did not tell even one of her two close friends.

312. I conclude that, on the probabilities and on the evidence before the Commission, the incident did not happen and Ms Mentor was not offered a position as Minister of Public Enterprises by a member of the Gupta family at the Gupta residence.

MR DUDUZANE ZUMA’S ROLE IN STATE CAPTURE

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MR DUDUZANE ZUMA'S ROLE IN STATE CAPTURE

Introduction

313. In Vol II of Part II of this Commission's Report I had this to say about Mr Duduzane Zuma ("Mr D Zuma") and Mr Tony Gupta (referred to as either Tony or Rajesh):

He [Rajesh 'Tony' Gupta] would bring him [Duduzane Zuma] along to meetings that he had with government officials attached to state owned entities and he would do all the talking and Mr Duduzane Zuma would simply be there but not really take part in the discussion. Mr Tony Gupta's idea was that the government officials and SOE officials would have realized that through Mr Duduzane Zuma he had easy access to Mr Duduzane Zuma's father, President Zuma. In other words, they better co-operate because otherwise, if they did not co-operate, their non-cooperation could be reported to President Zuma.¹⁷⁵

314. This observation is borne out in the evidence before the Commission in various workstreams as well as in publicly available information obtained by Commission investigators. The evidence further shows how Mr D Zuma may have been central to the capture of several SOEs, that he stood to gain personally from state capture and he played a role in manipulating the public narrative regarding state capture.

Publicly Available Information

315. Mr D Zuma worked for several years at Sahara Computers, a Gupta company - eventually becoming a director. He was 26 years old when he was appointed to the Board of Mabengela Investments (Pty) Ltd in August 2008. This was followed by a further 11 directorships in Gupta-owned companies in the following 20 months.¹⁷⁶ He

¹⁷⁵ Page 33 para 97.

¹⁷⁶ CIPC, directorship information obtained for Mr Duduzane Zuma ID no. 8205205254086 by the Commission.

was also given shares in the Gupta companies, starting with a 25% share in Mabengela Investments in July 2008, and another 20% in June 2009; Mabengela in turn obtained large stakes in the Gupta businesses, including Tegeta.¹⁷⁷ Mabengela also purchased his R4 million home for him in Saxonwold.¹⁷⁸

316. The Commission investigators' examination of public records revealed that Mr D Zuma held sizeable shareholdings and nearly a dozen directorships in a wide range of their companies.¹⁷⁹ In particular, he was a director and/or shareholder of a number of companies in the 'Gupta Enterprise', which handled, transacted with, dissipated or ultimately benefitted from criminal funds.¹⁸⁰ Of these companies, Mr D Zuma partially owned Westdawn Investments, Shiva Uranium, Tegeta Resources & Exploration, VR Laser and Mabengela Investments. He also sat on the boards of Sahara Holdings, Mabengela, Westdawn, Shiva Uranium, and Islandsite Investments. As such, he would have benefitted from the proceeds of corruption, fraud and State Capture which involved these companies.

¹⁷⁷ Copies of share certificates obtained by the Commission.

¹⁷⁸ Search Works, XDS Consumer Trace for Duduzane Zuma (8205205254086) and Search Works, CIPC Director for Duduzane Zuma (8205205254086). Search Works, Deeds Office Property Erf, Erf 235, Saxonwold.

¹⁷⁹ CIPC, directorship information obtained for Mr Duduzane Zuma ID no. 8205205254086. Share certificates obtained by Commission.

¹⁸⁰ See VV10-SCFOFA-473 ff.

Evidence in the Commission

Evidence of Mr D Zuma

317. Mr D Zuma testified about his business partnership and close relationship with the Guptas, calling Mr Rajesh 'Tony' Gupta "a very dear and close friend" and "more than particularly close, that is my guy." They spent a lot of time together, on a daily basis.¹⁸¹
318. Mr D Zuma confirmed in his testimony that he owned a property in Saxonwold 600 metres from the Gupta residence, and testified that the Gupta residence was "preferred meeting place outside of an office environment" and that he conducted many meetings from their home.¹⁸²
319. Mr D Zuma has disputed some of the allegations detailed below; each dispute or denial has been specified.

Evidence of Mr JG Zuma

320. Mr JG Zuma testified that the Gupta family had helped his son, Mr D Zuma, with a job when he battled to find work, partly because he (JG Zuma) had been (in his opinion, maliciously and wrongly) discredited in the media and the public domain. It was natural to ask them for help because they were good 'comrades' of the ANC. He stated:

"They started knowing this family when they used to come to me, when I was still a Deputy President. When he finished his studies, he has done IT, he went to work in the Intelligence, National Intelligence of the country. When these attacks on me started he was ill- treated there. He finally came to me to say I wanted to work for government but I cannot because I am your son. I am not even accepted there. He looked for employment. Now that he knew this family that they running an IT

¹⁸¹ Duduzane Zuma, Transcript Day 178 (7 October 2019), p 153.

¹⁸² Duduzane Zuma, Transcript Day 178 (7 October 2019), p 22.

company, he looked for a job in that company and he was employed and worked there as an employer – as an employee rather.

When I was taken to court he was quite agitated. Left the job. He wanted to take videos of my appearance in court and set up with his friend. I said you cannot leave a job. He said no I am leaving this job. Of course the case disappeared at some point. He came back to me to say Daddy you were right I am not finding a job. I have been looking for a job in Gauteng. Nobody can take me because I am your son. I have been looking for partners, nobody can take me. I said to him – you know what I said to your brother, you must go to Durban. Go to Durban. He went to Durban. Started some business with some partners. But later he discovered something that he did not like in the company. On his own he went to talk to the Guptas that he would like to come back but not as an employee this time he wants to be part of the company. They discussed and finished. I did not even know. I was only informed afterwards. And he has been there working. Because he is my son he has suffered a great deal."¹⁸³

321. This accords with the testimony of Mr Ngoako Ramathlodi. According to Mr Ramathlodi, Mr JG Zuma told African National Congress' National Executive Committee (ANC NEC) that the Guptas helped Mr D Zuma and Mr Edward Zuma with jobs when he (Mr JG Zuma) was a pariah.¹⁸⁴

Evidence against Mr Duduzane Zuma

Evidence concerning National Treasury

322. Mr Mcebisi Jonas testified that he was brought to a meeting at the Guptas' Saxonwold residence by Mr D Zuma. At this meeting, he was offered a substantial bribe as well as the position of Finance Minister in exchange for his compliance with their agenda. Mr Gupta also told him that the Guptas had made Mr D Zuma a billionaire. Although this

¹⁸³ Jacob Zuma, Transcript Day 133 (15 July 2019), pp 33-34

¹⁸⁴ Ngoako Ramathlodi, Transcript Day 32 (28 November 2018), p 31.

has been contested by Mr D Zuma, the Commission has accepted Mr Jonas's version (see Part IV: Vol 1 of the report, pages 70 and 80.)

323. The Commission has found that Mr Nhlanhla Nene was dismissed from his position as Minister of Finance because he was not co-operating with the Guptas and because he was resisting former President JG Zuma's attempts to get National Treasury to approve projects that were not in the interests of the country (see Part IV: Vol 1 of the report, page 113.). One of these projects was the nuclear deal. Mr D Zuma, as a director and shareholder of Shiva Uranium, may have stood to benefit had the nuclear programme gone ahead. Further, Oakbay Resources and Energy was able to purchase Shiva Uranium due to a loan agreement with the IDC. Flow of funds analysis demonstrates that a significant portion of the loan repayment amounts can be shown to have emanated from proceeds of crime.¹⁸⁵

324. The major domestic banks closed Mr D Zuma's accounts with them in 2015 and 2016, along with the accounts of Gupta family members and companies. There were numerous attempts to improperly intervene in this matter on the Guptas' – and Mr D Zuma's – behalf.¹⁸⁶

Evidence concerning the Free State

325. Mr Mxolisi Dukwana, a former MEC of the Free State, testified that he was taken to a meeting at the Gupta residence in Saxonwold with Mr Rajesh Gupta under false pretences by Mr Ace Magashule, where Mr D Zuma was present. At this meeting, Mr Dukwana claims that he was offered a bribe in return for ensuring that a particular

¹⁸⁵ See Flow of Funds analysis, Exhibit VV10, pp. VV10 p 117 to 118 and 459 ff.

¹⁸⁶ See for example Transcript 17 September 2018 pp 46-47; Exhibit H1, p 205 para 7. See also Transcript 19 September 2018 pp 36-38.

company, Nulane Management Services, was appointed to a Free State project, 'City of Tomorrow'.¹⁸⁷ Mr D Zuma denied he was there and testified that he did not attend any meeting involving Mr Dukwana.¹⁸⁸ These allegations have been dealt with in pages 260 ff. of Part IV: Vol 2 of the Commission's report.

Evidence concerning mining and the Department of Mineral Resources

326. Mr Mxolisi Dukwana further testified that Mr Rajesh Gupta told him about a 'Jagersfontein mine deal' where R3 million was distributed between Mr Gupta, Mr Magashule and Mr D Zuma every month. According to Mr Dukwana, Mr D Zuma nodded in agreement when this deal was mentioned.¹⁸⁹ However, Mr D Zuma claimed that he did not have any interest in a mine in Jagersfontein, nor any knowledge of such a mine that he could be receiving money from, and that the Guptas do not have a mine in Jagersfontein.¹⁹⁰

327. In her affidavit to the Commission, Ms Susan Shabangu claimed that, after she had been appointed Minister of Minerals and Energy in 2009, Mr D Zuma arranged a meeting with her. Mr D Zuma arrived with Mr Rajesh Gupta, where he explained his interest in getting involved in mining. At a subsequent meeting with the two, Mr Gupta asked her to pressure a mining company, Lonmin, to take them on as their Black Economic Empowerment (BEE) partner. Ms Shabangu found this inappropriate and arranged for the Minister in the Presidency, Mr Essop Pahad, to tell them to desist from

¹⁸⁷ Mxolisi Dukwana, Transcript 5 April 2019, pp 77-83. Exhibit X: Affidavit & Annexure of Mxolisi Dukoana, p 18 ff.

¹⁸⁸ Duduzane Zuma, Transcript 7 October 2019, pp 91-96.

¹⁸⁹ Mxolisi Dukwana, Transcript 5 April 2019, pp 77-83.

¹⁹⁰ Duduzane Zuma, Transcript 7 October 2019, pp 167 & 93-94.

approaching her for favours. Mr Pahad arranged a subsequent meeting where Mr Ajay Gupta was present and apologised on behalf of Mr D Zuma and Mr Rajesh Gupta.¹⁹¹

328. Mr Gibson Njenje, former Director-General of the State Security Agency, was asked to mediate a dispute where Mr Ajay Gupta was demanding a 90 percent share in a mining company called Imperial Crown Trading (ICT) in return for his proclaimed financial muscle and political backing to get the award of a mining application granted. ICT, the Guptas and Mr D Zuma, amongst others, would go on to try to acquire prospecting rights at Sishen iron ore mine, but the award was successfully disputed by Sishen.¹⁹²
329. Mr Ngoako Ramatlhodi testified that, after he was appointed Minister of Mineral Resources, Mr D Zuma repeatedly invited him to meet with the Guptas, after he had declined invitations from the Guptas themselves. He was first invited to discuss the rumour that Mr Ramatlhodi was “badmouthing” Mr Ajay Gupta. He was subsequently asked to discuss a “stop order” (to stop operations) issued on one of the Guptas’ mines by Mr Ramatlhodi’s department. Mr Ramatlhodi said he refused it and reported what he regarded as Mr D Zuma’s inappropriate approaches to former President Zuma.¹⁹³ Mr D Zuma denied all of Mr Ramatlhodi’s claims.¹⁹⁴
330. Mr Mosebenzi Zwane and Mr Rajesh Gupta were in telephone contact on 31 July 2015; on the same day Mr France Oupa Mokoena emailed a copy of Mr Zwane’s CV to Mr Gupta, who in turn forwarded the CV to Mr D Zuma on 1 August 2015. In late September 2015. Mr Zwane was appointed as Minister of Mineral Resources.¹⁹⁵ The Commission

¹⁹¹ Susan Shabangu, Exhibit GG (Additional Bundle 45), p 4249 to 4250 paras 9-23; Ms Shabangu’s testimony occurred after Mr Duduzane Zuma’s appearance at the Commission. If Mr Zuma responded to these allegations, the response has not been made known to the author of this submission.

¹⁹² Susan Shabangu, Exhibit GG (45) pp 4249-4251 paras 9-32; Njenje, Exhibit GG(h), p 2994 para 25. See also *Minister of Mineral Resources and Others v Sishen Iron Ore Company (Pty) Ltd and Another* (CCT 51/13) [2013] ZACC 45; 2014 (2) BCLR 212 (CC); 2014 (2) SA 603 (CC) (12 December 2013).

¹⁹³ Ngoako Ramatlhodi, Exhibit GG (b), p 539 f. paras 4-11 & 15-18.

¹⁹⁴ Duduzane Zuma, Transcript 7 October 2019, pp 156-158

¹⁹⁵ Email: Tony Gupta to Duduzane Zuma, ‘Fwd: CV of MJ Zwane’ (1 August 2015), <HDDH: CN-000141257>.)

has found that Mr Zwane was appointed Minister of Mineral Resources because the Guptas wanted him to be appointed to that position or because of his connection with the Guptas. (See Part IV: Vol 4 page 1048 of the report.)

Evidence concerning SAA

331. Mr Vuyisile Kona, the CEO at SAA and at one time the Acting Chair of the interim Board of SAA, testified that he was brought to a meeting at the Gupta residence in Saxonwold on 29 October 2012 by Mr Siyabonga Mahlangu, advisor to Minister of Public Enterprises Mr Malusi Gigaba. The meeting included Mr Rajesh Gupta, Mr D Zuma and Mr Tshepiso Magashule (son of Mr Ace Magashule). Mr Kona was allegedly offered R100,000 and then R500,000, in return for the award of a contract for a turnaround strategy for SAA, which Mr Kona refused.¹⁹⁶ These allegations have been dealt with in pages 616-618 of Part I: Vol 2 of the Inquiry's report.

Evidence concerning Transnet

332. Mr Mafika Mkwanaazi, at the time the Chairperson of Transnet, testified that he was invited to a meeting with the Guptas in Saxonwold in January 2011. They allegedly emphasised their relationship with former President Zuma and asked for 30-50% of Transnet's R1 billion marketing budget to be allocated to their newspaper, *The New Age*. Mr D Zuma was present at the meeting. Mr Mkwanaazi testified that he asked Mr D Zuma whether what Mr Tony Gupta said about former President Zuma was correct and Mr D Zuma confirmed that it was. That was the only statement that Mr D Zuma made during the meeting – otherwise, he was silent and Mr Tony Gupta did all the talking.¹⁹⁷ Mr Mkwanaazi testified that a second meeting took place two weeks later and

¹⁹⁶ Vuyisile Kona, Transcript of Day 206, pp 100–101 and Exhibit DD 17, p 8 paras 33–41.

¹⁹⁷ Mafika Mkwanaazi, Transcript 17 July 2020, pp 168–185.

was attended again by Mr D Zuma and Mr Rajesh Gupta. These allegations have been dealt with in pages 582-584 of Part I: Vol 2 of the Commission's report.

Evidence concerning Denel

333. Mr Riaz Saloojee testified that he had been invited to a series of meetings at the Guptas' Saxonwold residence by Mr Salim Essa in 2012, shortly after his appointment as GCEO of Denel. At one of these meetings Mr Rajesh Gupta, Mr D Zuma and one of Mr Ace Magashule's sons were present, whom he was told worked for the Guptas. Mr Saloojee was told that the Guptas wanted to assist Denel to enter new business markets such as the Middle East and Asia, and they wanted to know what business opportunities there were with Denel. These allegations have been dealt with in pages 16-18 of Part II: Vol 2 of the Commission's report.
334. Mr D Zuma was a shareholder of VR Laser alongside Mr Rajesh Gupta through their interest in Westdawn Investments. VR Laser was partly owned by one of Mr Salim Essa's companies, and partly owned by Westdawn Investments.¹⁹⁸ Westdawn Investments was owned by Mr D Zuma and Mr Rajesh Gupta.¹⁹⁹ Mr D Zuma was a director of Westdawn Investments between 2008 and 2016.²⁰⁰
335. The Commission found that Denel designed sole supplier contracts to ensure that VR Laser could participate in any lucrative undertaking in which Denel became involved. "the entry into VR Laser by the Guptas and Mr Essa was effected with the intention of

¹⁹⁸ Per the Public Protector's State of Capture Report cited at the Commission's report Part II: Vol 2, p 497.

¹⁹⁹ Daniel Mantsha, Transcript 26 March 2021, p 95

²⁰⁰ See Exhibit W5, p 141 ff.

using it as a vehicle with which to capture Denel". (See Part 2: Vol II of the report, p 129.)²⁰¹

336. An invoice for flights to Dubai in October 2015 was sent to Westdawn Investments by the travel agent involved, Travel Excellence. The invoice was for flights for Mr D Zuma, his wife, and Mr Daniel Mantsha (the chair of the board of Denel).²⁰² Mr D Zuma therefore appears to have been in contact with Mr Mantsha and may have been actively involved in the Denel Asia deal.

Evidence concerning Eskom

337. Mr D Zuma was a shareholder of Tegeta (through Mabengela Investments), which the Commission has found benefitted from unlawful contracts awarded by Eskom. The Commission has also found that criminal funds were used for the purchase of Tegeta by Oakbay Resources and Energy.²⁰³
338. Mr Collin Matjila, a Board member, was made Acting GCEO in April 2014. Just days before, his CV had been emailed by Mr Essa to Mr Rajesh Gupta and on to Mr D Zuma.²⁰⁴ The Commission has found that Mr Matjila facilitated State Capture at Eskom, particularly the unlawful awarding of contracts to TNA Media (See Part I: Vol 2 of the report, p 576). Mr D Zuma can therefore be linked to Mr Matjila's appointment, and the capture of Eskom.

²⁰¹ See also Exhibit VV10, 135

²⁰² Daniel Mantsha, Transcript 26 March 2021, pp 92-105

²⁰³ Exhibit VV10, VV10-SCFOFA-434 ff.

²⁰⁴ Report of the Portfolio Committee on Public Enterprises on the Inquiry into Governance, Procurement and the Financial Sustainability of Eskom, Exhibit U13(TJM), p 151

Evidence concerning the Department of Public Enterprises

339. Mr Malusi Gigaba knew the Gupta brothers and made regular visits to the Gupta Saxonwold compound while he was Minister of Public Enterprises. His special advisor, Mr Siyabonga Mahlangu, was tasked with managing the Guptas and was a buffer between Mr Gigaba and Mr Ajay Gupta so as not to confuse the roles of friendship and business. Mr Gigaba permitted Mr Mahlangu to travel with Mr D Zuma to a Gupta wedding in India. The trip was paid for by Sahara Computers and Mr Mahlangu was paid his salary during his absence.²⁰⁵ Mr Mahlangu met with Mr Rajesh Gupta and Mr D Zuma on a number of occasions, which according to Mr Mahlangu was specifically in his capacity as Mr Gigaba's advisor.²⁰⁶
340. Mr Richard Seleke, an associate of the Gupta family, sent his CV to infoportal1@zoho.com, who forwarded it to Mr D Zuma. Three months later Mr Seleke was appointed Director General of the Department of Public Enterprises under questionable circumstances.²⁰⁷
341. Ms Vytjie Mentor testified that in August 2010, aboard a flight to China to join former President Zuma's State Visit to that country, Mr D Zuma approached her and introduced her to one of the Gupta brothers, who was with a man who might have been another Gupta brother. She claimed that, during the visit, one of the Gupta brothers called her with the message that former President Zuma wanted to meet her at his guesthouse. Ms Mentor says she found this strange and did not comply.²⁰⁸

²⁰⁵ Transcript 27 May 2021, p 276

²⁰⁶ Exhibit BB24, pp 906 to 907

²⁰⁷ Fundudzi, 'Forensic Investigation into Various Allegations at DPE', July 2019, p 115; Mokholo, Transcript of Day 238, p 35

²⁰⁸ MP Mentor, Exhibit GG (a), pp 27-31 paras 34-53

342. From these examples it appears that Mr D Zuma may have acted as a conduit between the Guptas and the Department of Public Enterprises.

Evidence concerning communications and the SABC

343. Mr Siphiwe Nyanda testified that the Guptas and Mr D Zuma visited his office when he was Minister in 2009-2010 to introduce their company, and subsequently sent several requests via 'emissaries' for him to meet them at Saxonwold, but he turned this down.²⁰⁹
344. Ms Lulama Mokhobo testified that soon after her appointment of GCEO of SABC in February 2012, Mr Hlaudi Motsoeneng took her to Saxonwold where the Guptas congratulated her and relayed to her that they wanted to create a news channel on the SABC's Digital Terrestrial Television (DTT) network. Mr D Zuma was present at the meeting.²¹⁰
345. Former Minister of Communications Ms Faith Muthambi shared information with Mr Rajesh Gupta, Mr D Zuma and Sahara's CEO Mr Ashu Chawla by e-mail in 2014.²¹¹

Evidence concerning PRASA

346. Mr Lucky Montana, former CEO of PRASA, claimed that in September 2012 he met with Mr Ben Martins, then Minister of Transport. According to Mr Montana, Mr Rajesh Gupta and Mr D Zuma joined the meeting and tried to influence the bidding process for PRASA's Rolling Stock Fleet Renewal Programme.²¹²

²⁰⁹ Transcript 28 February 2019), p 101.

²¹⁰ Lulama Mokhobo, Transcript 4 September 2019, p 74.

²¹¹ Faith Muthambi, Transcript 21 May 2021.

²¹² Lucky Montana, Transcript 16 April 2021, p74. For some reason the transcript omits Duduzane Zuma's name but he clearly says it in the hearing: <https://youtu.be/3uNXrY-dPaM?t=7424> . (Video will start at the correct timestamp). However, the Commission may not find Mr Montana to be a reliable witness.

Evidence concerning law enforcement

347. General Johan Booysen testified that Mr D Zuma brought him to the Guptas' Saxonwold home where Mr Rajesh Gupta mentioned Mr Booysen's upcoming interview for the position of National Head of the Hawks. Mr Gupta told him that if he was appointed, they should have dinner together in Durban. General Booysen testified that he got the impression that if he got the position he should understand that the Guptas had a hand in it.²¹³ Mr D Zuma denied this in his testimony to the Commission, claiming that he took General Booysen there simply because General Booysen was curious to meet them for a "meet and greet".²¹⁴

Evidence concerning ANN7

348. ANN7 benefitted substantially from the improper involvement of Mr JG Zuma. According to Mr Rajesh Sundaram, ANN7 would be provided with a "healthy flow of commercials" from government by Mr JG Zuma through Mr D Zuma.²¹⁵ Mr Sundaram said that he was told that Mr D Zuma owned about a third in the company.²¹⁶

²¹³ Johan Booysen, Exhibit GG (f), pp 2272-2274 paras 158-163.

²¹⁴ Duduzane Zuma, Transcript 7 October 2019, pp 140-142 & 142-147 and Booysen, Exhibit GG(f) 23, pp 2272 to 2275.

²¹⁵ Rajesh Sundaram, Transcript 3 June 2019, p 135-136.

²¹⁶ Rajesh Sundaram, Transcript 3 June 2019, p 39.

Other evidence

Evidence concerning Bell Pottinger/media

349. Bell Pottinger was approached by Mr D Zuma²¹⁷ to strategise a campaign aimed at “creating a hard hitting message along the lines of the #EconomicEmancipation or whatever it is.”²¹⁸ They were hired by Oakbay to run this campaign, as well as to provide traditional PR services for Oakbay, including “crisis communications.” Bell Pottinger’s work in South Africa included the covert dissemination of articles, cartoons, blog posts, and tweets implying that the Guptas’ opponents were upholding a racist system.²¹⁹

350. The Guptas, Mr D Zuma and some of their associates (such as Nazeem Howa) worked on PR for Mr Mosebenzi Zwane, writing answers to questions he was receiving about his relationship with them. These answers reiterated several Gupta talking points, including:²²⁰

- 350.1. A focus on “black economic emancipation”;
- 350.2. Insistence that the Guptas were not involved in Estina;
- 350.3. Insistence that the Department of Mineral Resources’ intervention in the Optimum Coal Mine sale was only to “save jobs”;
- 350.4. Blanket denials of other allegations that surfaced in the media.

²¹⁷ There was no testimony but proof is contained in the GuptaLeaks. HDDH emails – CN-000350570 and CN-000350573.

²¹⁸ HDDH email CN-000350566.

²¹⁹ See also Gordhan, Exhibit N1 para 124; Gordhan, Transcript of Day 027, p 50.

²²⁰ (HDDH), CN-000351577

Email evidence

351. Emails contained on the Commission's digital records also show:

- 351.1. The Guptas planned and paid for Mr D Zuma's wedding;
- 351.2. They frequently paid for his trips and hotel stays;
- 351.3. In July 2014, Mr D Zuma travelled to India with Mr Salim Essa and Mr Malcolm Mabaso. Mr Mabaso was the special advisor to Mr Mosebenzi Zwane when he was a Minister. He was also unofficially one of Mr Des van Rooyen's advisors during his short stint as Finance Minister;
- 351.4. In later 2015/early 2016, the Gupta brothers, Mr D Zuma and a number of key public servants travelled to Dubai. Guests were hosted at the Oberoi hotel, paid for by the Guptas. Among the guests present were: Salim Essa, Fana Hlongwane, Gift and Thato Magashule, Ayanda Dlodlo, Anoj Singh, Des van Rooyen, Kim Davids, Tom Moyane, Daniel Mantsha, Siyabonga Gama and Matshela Koko.

Conclusion

- 352. The outline of evidence above shows that Mr D Zuma was a shareholder in several Gupta-related companies and thereby stood to gain financially from contracts awarded to those companies. In some instances, Mr D Zuma appears to have taken part in the decision-making that would lead to the award of those contracts by SOEs to the Gupta-linked companies.
- 353. Mr D Zuma also seems to have been involved in the appointment of key individuals in SOEs, who in turn facilitated the capture of those SOEs. He also seems to have acted

as a conduit between the Guptas and government, particularly his father, Mr JG Zuma. In several cases, Mr D Zuma was present when bribes were offered to individuals at the Guptas' Saxonwold residence.

354. It is recommended that the law enforcement agencies conduct investigations whether Mr D Zuma has not committed any offence by facilitating acts of corruption or by facilitating bribes or by failing to report corruption that may have been committed in his presence by Mr Tony Gupta when he offered a bribe to Mr Mcebisi Jonas, Mr Mxolisi Dukwana and Mr Vusi Kona.

President Zuma's removal of Mr Mxolisi Nxasana as NDPP²²¹

355. Mr Mxolisi Nxasana, a former National Director of Public Prosecutions (“NDPP”), testified to the Commission about the role of former President Zuma in his appointment and dismissal as the NDPP. The account of his tenure as NDPP reveals a stark example of the extent of improper interference and disregard for the constitutional principle of prosecutorial independence by former President Zuma and his associates.
356. The appointment of the NDPP is governed by section 179 of the Constitution. It requires there to be a single National Prosecuting Authority (“NPA”) structured in terms of an Act of Parliament. The NDPP is the NPA's head. The President appoints the NDPP. Section 179(2) of the Constitution provides that the NPA has the power to institute criminal proceedings on behalf of the state. Section 179(4) of the Constitution requires there to be national legislation to ensure that the NPA exercises its functions without fear, favour or prejudice. Section 9 of the National Prosecuting Authority Act²²² (“the NPA Act”) sets out the requirements of a person appointed as NDPP. Such person must be a South African citizen and possess legal qualifications that entitle him or her to practise in all courts in the Republic; and be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office of the NDPP. The suspension and removal from office of the NDPP are governed by section 12 of the NPA Act.

²²¹ The evidence regarding this matter is found at Transcript 12 June 2019; Transcript 19 August 2019; Transcript 2 September 2019; and Exhibit EE 1-6. See also – *Corruption Watch NPC and others v President of the Republic of South Africa and others* 2018 (10) BCLR 1179 (CC).

²²² Act 32 of 1998.

357. It is well known that the NPA has been beset by problems of stability in its leadership since 2000. Mr Bulelani Ngcuka was appointed as NDPP in 2001. His term of office ended in 2004 following an enquiry into his fitness to hold office. He was falsely alleged to have been an apartheid spy. He was cleared by Judge Hefer. Mr Vusi Pikoli succeeded him. He too was subjected to an enquiry into his fitness to hold office. He had instituted corruption charges against former President Zuma and Mr Jackie Selebi, the National Commissioner of Police. His term of office came to an end prematurely in February 2009. During Mr Pikoli's suspension, Mr Mpshe acted as NDPP. He was not permanently appointed. He withdrew charges against President Zuma on a spurious basis. President Zuma then appointed Mr Menzi Simelane as NDPP. His appointment was declared invalid by the Constitutional Court. He was then replaced by Ms Nomgcobo Jiba – in an acting position. Mr Nxasana was appointed with effect from 1 October 2013.
358. Thus, none of the NDPP's before Mr Nxasana lasted the full term of office of 10 years as provided in section 10 of the NPA Act. This was plainly as a result of political interference or outside interference in the decision-making in the NPA.
359. Mr Nxasana was appointed as NDPP for 10 years by former President Zuma with effect from 1 October 2013. The circumstances of his appointment were unusual and reveal a disregard for the ordinary conventions applicable to such appointments.
360. During 2013, Mr Hulley, a legal adviser to President Zuma, visited Mr Nxasana at his office in Durban. Mr Hulley told him that certain of his colleagues had recommended him for appointment as NDPP. Mr Nxasana was surprised by the approach as he had not applied for the post, had not sought it out, or indicated to anyone that he was interested in it. However, he told Mr Hulley that he would be willing to take the position if it was offered to him.

361. In August 2013, Mr Nxasana attended a meeting with former President Zuma, Mr Hulley, and the President's legal advisor, at the President's official residence in Pretoria. The main concern of the President was whether Mr Nxasana had the necessary courage required of the post. Mr Nxasana took that to mean that the President wanted to know whether he understood that a main requirement of the post was prosecutorial independence. Mr Hulley asked him if there was anything that needed to be disclosed. Mr Nxasana informed him that his father had been a trade unionist who had interacted politically with the President on occasion, a long time ago.
362. On 30 August 2013, Mr Hulley telephoned Mr Nxasana to request a copy of his CV. On 31 August 2013 the former President announced his decision to appoint Mr Nxasana as NDPP.
363. The position was not advertised and there was no formal selection process involving Mr Nxasana other than the meeting with Mr Hulley and the meeting with former President Zuma and others at the presidential residence. Mr Nxasana was not interviewed (in a way ordinarily characteristic of a job interview) by the President or anyone on his behalf and was not required to complete any application form or similar document (except for my security clearance application which he completed on 4 December 2013 after he had already been appointed).
364. Although Mr Nxasana was warmly received by staff at the NPA, there was no formal handing-over to him. When Mr Nxasana instructed Ms Jiba to "hand-over", she refused. In Mr Nxasana's opinion, Ms Jiba's reluctance to hand over bordered on insubordination. At the time there had been criticism of Ms Jiba's professional conduct in various judgments of the High Court and the Supreme Court of Appeal. Ms Jiba also did not brief Mr Nxasana on the status of the investigation into President Zuma on corruption charges.

365. During his first year in office, it became clear to Mr Nxasana that his leadership of the NPA was being actively resisted by Ms Jiba and Mr Lawrence Mrwebi, the Special Director Specialised Commercial Crime Unit of the NPA (whose conduct also had been subjected to severe criticism by the High Court and the Supreme Court of Appeal). Mr Nxasana believed they were determined to undermine his standing with the President. Even before he assumed the position he was aware that Ms Jiba and Mr Mrwebi had taken steps aimed at discrediting him by showing that he was not fit and proper to hold the office of NDPP.
366. Shortly after his appointment, two NPA officials approached him (independently of each other) and informed him that Ms Jiba and Mr Mrwebi were plotting to oust him. Acquaintances of his in Umlazi, where he grew up, also reported to him that unknown people had been making enquiries about his arrest and acquittal on charges of murder in 1985.
367. Mr Terence Joubert, a Risk Specialist for the NPA, deposed to an affidavit in which he explained how he had been approached by Colonel Welcome Mhlongo, a member of the Directorate of Priority Crimes Investigation ("the DPCI") - commonly referred to as the "Hawks" for information about Mr Nxasana. Colonel Mhlongo claimed to be acting on the authority of Ms Jiba. In the affidavit Mr Joubert explained that on 18 September 2013 he was meant to fetch Ms Jiba from the airport in Durban but was phoned by her secretary and told that he no longer needed to do so as arrangements had been made for Colonel Mhlongo to fetch her.
368. Colonel Mhlongo later spoke to Mr Joubert (who recorded the conversation and sent a copy of the recording to Mr Nxasana). During the conversation Colonel Mhlongo informed Mr Joubert that Ms Jiba had told him that she thought Mr Nxasana was not the correct person for the job of NDPP and they should try to find some dirt on him as

they had done with Mr Stanley Gumede, a regional court magistrate who had been tipped to become NDPP. The proposal to appoint Mr Gumede was withdrawn following media reports that he was being investigated by the Magistrates Commission for misconduct. Colonel Mhlongo informed Mr Joubert that he was following up on information that Mr Nxasana had embezzled money from the Road Accident Fund.

369. Importantly, it seems that at the same time Ms Jiba and Mr Mrwebi may have advised former President Zuma that Mr Nxasana intended to reinstate the criminal charges against him that Mr Mpshe had withdrawn, even though at that time he had in fact made no such decision.
370. At a subsequent meeting with former President Zuma, Mr Nxasana raised the issues regarding Ms Jiba and Mr Mrwebi. Mr Zuma in turn raised with Mr Nxasana the question of whether he had met with former NDPP, Mr Bulelani Ngcuka, at a flat in Durban. Mr Ngcuka had previously announced on national television that there was a prima facie case of corruption against Mr Zuma. Mr Nxasana told Mr Zuma that he had never met Mr Ngcuka and that he was being misled.
371. Mr Nxasana believes that Ms Jiba initiated the campaign against him because she was resentful about not being appointed as NDDP. The rumour that Mr Nxasana intended reinstating the corruption charges against former President Zuma had also begun to circulate. Mr Nxasana believed that the rumours may have been started by Ms Jiba and Adv Mrwebi and knew that they had told President Zuma that he intended to reinstate the charges. He mentioned that to President Zuma in their meeting who did not deny it.
372. After obtaining a legal opinion from senior counsel regarding the findings of the High Courts and the Supreme Court of Appeal of misconduct and impropriety on the part of Ms Jiba, Mr Mrwebi and Mr Sibongile Mzinyathi (Mzinyathi) the Director of Public Prosecutions North Gauteng Division, Mr Nxasana established an inquiry headed by

Justice Yacoob, a retired judge of the Constitutional Court, to inquire into the instability within the NPA leadership. The legal opinion of senior counsel had recommended that Ms Jiba be suspended from office and prosecuted for perjury and that her conduct be referred to the General Council of the Bar.

373. Justice Yacoob was appointed to investigate, establish and determine: i) the alleged involvement of the NPA's employees, including senior officials, in the leaking of information to the media and other interested parties; ii) the alleged unethical and unprofessional conduct on the part of the NPA's employees; and iii) whether any member of the NPA committed an unlawful act. Ms Jiba and Mr Mrwebi refused to assist the inquiry despite Mr Nxasana's instructions for them to do so. Justice Yacoob recommended that criminal charges should be instituted or continued against certain members and that the NPA should appoint a judicial commission of inquiry with powers of compulsion to investigate allegations of impropriety in the NPA.
374. Thereafter Mr Nxasana repeatedly requested a meeting with the President to seek his intervention to address the situation at the NPA by instituting disciplinary action against Ms Jiba, Mr Mrwebi and Mr Mzinyathi. He provided him with a file of relevant documentation, including the legal opinion, reports and memoranda. His efforts were of no avail; and it appeared that the proposed disciplinary action was not supported by the President and the then Minister of Justice, Mr Masutha. Instead of initiating proceedings against Ms Jiba and Mr Mrwebi, the former President commenced proceedings to remove Mr Nxasana.
375. In July 2014, Mr Nxasana was informed by the former President that he had taken a decision to institute an inquiry to determine whether he was fit and proper to hold office, in terms of section 12(6)(a)(iv) of the NPA Act. Prior to that, either in late 2013 or early 2014, Mr Nxasana had met with the then Minister of Justice, Mr Jeff Radebe, who had

suggested to him that he resign on the ground that he had not acquired a security clearance because of his non-disclosure of relevant information concerning his earlier conduct. Mr Nxasana testified that his security clearance had not in fact been denied and he accordingly refused to resign. Mr Radebe then advised him that there would be an inquiry into his fitness to hold office.

376. On 30 July 2014, Mr Nxasana received a notice from the former President informing him that he was considering suspending him on full pay pending the finalisation of the inquiry. The notice stated that the enquiry would examine his fitness to hold the office of NDPP having regard to whether his criminal conviction for violent conduct, alleged unbecoming comments by him in the media bringing the NPA into disrepute, and his failure to disclose the circumstances of prosecutions he had faced were consonant with the conscientiousness and integrity of an incumbent to the NDPP.
377. Thereafter there were unsuccessful negotiations initiated by the Presidency in an attempt to resolve the matter.
378. By letter dated 5 February 2015 the President informed Mr Nxasana that he had appointed Adv Nazeer Cassim SC (assisted by LG Nkosi-Thomas and SKD Mdladla) to chair an inquiry. The inquiry's terms of reference directed the Chairperson to inquire into whether it was fit or proper for Mr Nxasana to hold the office of the NDPP in light of: i) two previous separate convictions on charges of assault; ii) complaints of professional misconduct laid against him with the KwaZulu Natal Law Society; iii) his having faced criminal charges for acts of violence; iv) his arrest and detention on criminal charges; v) media statements either issued by me or on my instruction that undermined or brought the office of the NDPP or the NPA into disrepute; and vi) any other matter as might be relevant to the abovementioned issues and his fitness and

propriety to hold the office of the NDPP as contemplated in section 9 (1)(b) of the NPA Act.

379. Submissions filed on behalf of the President and the Minister filed in May 2015 accused Mr Nxasana of alleged failures: i) to disclose to the President or his advisors that he had two previous convictions for assault; ii) to take steps to expedite the finalisation of a complaint to the Law Society made against him in 2008; iii) to disclose in his security clearance application questionnaire that in he had been acquitted on a charge of murder and in October 2012 had been arrested, but not charged, for inconsiderate driving; and iv) to disclose whether he had taken any steps to resolve a complaint against the two police officers who arrested him unlawfully (during October 2012) for inconsiderate driving. In addition, it was alleged that he had made statements to the media that: i) were not in the public interest; ii) fuelled media speculation; iii) negatively affected the public's confidence in the NPA; and iv) breached the code of conduct.
380. The proceedings of the inquiry by Adv Cassim SC were curtailed and no findings were made by it against Mr Nxasana. Nor was Mr Nxasana ever suspended from office pending the inquiry.
381. Thereafter further negotiations commenced for the removal of Mr Nxasana from office. In an earlier letter, dated 10 December 2014, from the attorneys acting for Mr Nxasana it appears that former President Zuma had earlier engaged Mr Nxasana to get him to agree to vacate office. In the letter Mr Nxasana made it plain that he did not want to vacate office as there was no basis for him to do so. He stated that he would, however, consider stepping down if he was fully compensated for the remainder of the contract period.
382. The settlement negotiations culminated in a settlement agreement in terms of which Mr Nxasana agreed to leave office against payment of approximately R17.3 million. Mr

Nxasana was paid an amount of R10 240 767.47 as the rest was retained by the state for income tax.

383. Throughout the entire negotiation process that culminated in the settlement agreement, Mr Nxasana unequivocally stated that he did not wish to resign and that he considered himself to be fit for office. His preference was for former President Zuma's allegations that he was no longer fit for office to be tested in a formal inquiry.
384. Mr Nxasana justified entering into the settlement agreement on the grounds that it was the best means to resolve an intractable, undesirable and ongoing dispute between himself and the President. He maintains that the allegations against him were spurious, baseless and were raised to force him out of office, and that he is a fit and proper to hold the office of NDPP. He ultimately accepted the terms of the settlement agreement so as to resolve the dispute that had arisen with the President and the pending litigation he had been forced to initiate. He did so on the basis that the President was entitled by the governing legislation and contractually to resolve the dispute by reaching a settlement that was acceptable to all parties. However, he was adamant that the settlement agreement was not, and was never intended to be a request on his part to vacate office in terms of section 12(8) of the NPA Act. He also believed that entering into the settlement agreement would better protect the integrity of the office of the NDPP. The dispute and his difficulties with Ms Jiba and Mr Mrwebi had been ongoing and the former President did not seem willing to intervene to resolve them. There was also considerable media attention paid to the dispute and speculation on the issues at stake regarding the integrity and functionality of the NPA.
385. During May 2015, the President, the Minister and Mr Nxasana concluded a settlement agreement in terms of which he agreed to relinquish his position as NDPP. Mr Nxasana received a settlement amount equivalent to what he would have received as a salary

had he served his full term as NDPP. In the settlement agreement, the President acknowledged that Mr Nxasana was a fit and proper person to hold office as the NDPP. He then vacated the office as the National Director of Public Prosecutions, but refused to accept that he was doing so in terms of section 12(6) of the NPA Act, which provides for removal on grounds of misconduct, ill-health, incapacity or no longer being fit and proper. As stated, Mr Nxasana has persistently maintained also that he never requested to vacate office in terms of section 12(8) of the NPA Act which permits the NDPP to vacate office on grounds deemed by the President to be sufficient, but in essence was succumbing to pressure from the former President.

386. In October 2015, subsequent to a legal challenge to the legality of the settlement by the NGOs, Corruption Watch and Freedom Under Law ("FUL"), Mr Nxasana met with the Minister of State Security, Mr David Mahlobo at the Beverley Hills Hotel in Durban. He was acquainted with Mr Mahlobo from university. Mr Mahlobo instructed his Chief of Staff, Mr Maduma, to arrange for Mr Nxasana to meet with President Zuma's legal adviser Mr Hulley on 23 October 2015 at the Beverly Hills Hotel in Durban.
387. At the meeting, Mr Hulley enquired how Mr Nxasana intended to approach the application by Corruption Watch and FUL. Mr Hulley proposed that Mr Nxasana should work with the former President on the matter and offered to pay his legal costs, including the costs attendant on appointing a senior counsel. Mr Nxasana refused to accede to the request until he saw the response which the President intended to file. It was evident to Mr Nxasana that Mr Hulley wanted him to attest that he had made a request to the President to vacate his office in terms of section 12(8) of the NPA Act. He advised Mr Hulley that he was not prepared to make that statement since that was not what had occurred factually. He reminded him that he was an officer of the court and that he would not mislead the court. He emphasised to him that there was correspondence

between his legal representatives and the President that made it clear that he had never made such a request.

388. The former President's answering affidavit came to Mr Nxasana's notice in February 2016. It contained an averment that Mr Nxasana had voluntarily vacated his office. Mr Nxasana contacted Mr Mahlobo and complained about the version contained in the President's affidavit and Mr Hulley's conduct. Mr Nxasana then met Mr Mahlobo at his official residence in Waterkloof. Mr Maduma was also present at the meeting. Mr Nxasana told Mr Mahlobo about his meeting with Mr Hulley, and in particular about Mr Hulley's undertaking to provide him with the President's affidavit before it was filed, which was not fulfilled. He told Mr Mahlobo that he was not happy about what had happened and the version in the affidavit and made it clear that he would consult with his legal representatives to take steps to protect his reputation.
389. Mr Mahlobo then immediately telephoned the Minister and explained to the Minister that the President had deposed to an affidavit in which he had stated that Mr Nxasana had requested to vacate office, even though there was correspondence which clearly indicated that this was not correct. Mr Mahlobo told Mr Nxasana that Mr Hulley had informed the Minister that he had agreed that he had made a request to vacate office. Mr Nxasana disputed this with Mr Mahlobo.
390. Corruption Watch and FUL approached the High Court seeking inter alia the review and setting aside of the settlement agreement, an order that Mr Nxasana repays the R17.3 million settlement pay-out and the review and setting aside of the appointment Adv Shaun Abrahams who had been appointed as NDPP by President Zuma in June 2015. The High Court granted the relief sought. Before the Constitutional Court it was not in dispute that Mr Nxasana had not vacated office in terms of section 12(8). The

contest concerned the question whether the manner in which he vacated office was lawful.

391. The Constitutional Court held that the facts clearly indicated that former President Zuma was bent on getting rid of Mr Nxasana by whatever means he could muster. What plainly evinced to the court how determined former President Zuma was to get rid of Mr Nxasana was a draft settlement agreement in which the settlement amount was left blank and Mr Nxasana being told to pick whatever figure he preferred. The very idea that former President Zuma was willing, at least, to consider whatever amount Mr Nxasana inserted, in the view of the court, spoke volumes and lent credence to the view that he wanted to get rid of Mr Nxasana at all costs. It gave the lie to the opinion supposedly held by the former President that he had a basis for holding that Mr Nxasana was no longer fit for office. If that had been true surely former President Zuma would have pursued the inquiry instead of offering Mr Nxasana a significant amount of money. If the evidence against Mr Nxasana was not sufficiently cogent former President Zuma ought to have abandoned the inquiry and have left Mr Nxasana in office. After all, the Constitutional Court pointed out, he was exercising powers as President and was not involved in a personal dispute which he could settle as he pleased.
392. In the view of the Constitutional Court, the inference was inescapable that former President Zuma effectively bought Mr Nxasana out of office. His conduct wholly compromised the independence of the office of NDPP. It conduced to the removal of "troublesome" or otherwise unwanted NDPPs through buying them out of office by offering them significant amounts of money. The payment of such a large amount was inconsistent with the specific provision dealing with benefits on resignation in section 12(8) of the NPA Act which provides that when an NDPP vacates office for "any other reason which the President deems sufficient" he or she shall be deemed to have been retired in terms of section 16(4) of the Public Service Act, and he or she shall be entitled

to such pension as he or she would have been entitled to under the pension law applicable to him or her if he or she had been so retired. The problem with benefits (in this case a payment of R17.3 million) that are not capped by the section 12(8) limit is that they give rise to the real possibility of NDPPs being bought out of office which compromises the independence of the office of NDPP.

393. While the court had sympathy with Mr Nxasana, it was critical of the fact that he had allowed former President Zuma to buy him out of office if the price was right. I did not think that was the reaction expected of the holder of so high and important an office. The NDPP is "an office the holder of which --if she or he is truly independent -- is required to display utmost fortitude and resilience". Mr Nxasana's conduct led the court to conclude that it would be a just and equitable remedy not to allow him to return to office; and he was ordered to repay the settlement amount.

THE GUPTAS' PRIOR KNOWLEDGE OF MR MBALULA'S APPOINTMENT AS MINISTER OF SPORTS

394. On 31 October 2010 President Zuma announced an extensive Cabinet reshuffle. Some of the Ministers he dropped from the Cabinet were Minister Barbara Hogan who was the Minister of Public Enterprises, Minister Sphiwe Nyanda who was the Minister of Communications and Minister Mdladlana who was the Minister of Labour and Minister Malusi Gigaba replaced Minister Hogan as Minister of Public Enterprises. Minister Faith Muthambi replaced Minister Nyanda and Minister Mildred Oliphant replaced Minister Mdladlana as Minister of Labour. Mr Fikile Mbalula had been a Deputy Minister prior to that Cabinet reshuffle. President Zuma appointed him as the Minister of Sports and Recreation.
395. There was an allegation in the media that at a certain meeting of the National Executive Committee of the ANC in 2011 Mr Fikile Mbalula had told those attending the meeting that, prior to him being told by President Zuma that he was appointing him as Minister of Sports and Recreation, he had been told by one of the Gupta brothers that he would be promoted to the position of Minister of Sports and Recreation and had congratulated him. One version heard by the Commission is that at the NEC meeting Mr Mbalula said he had been told by Mr Ajay Gupta. Another version was that he told the NEC meeting that he was with the Gupta brother concerned when the latter told him this news. Another version is that the Gupta brother phoned him to tell him this development.
396. Term of Reference 1.3 of the Commissions Terms of Reference requires this Commission to investigate and inquire into “whether the appointment of any member of the National Executive, functionary and/or office bearer was disclosed to the Gupta family or any other unauthorised person before such appointments were formally made and/or announced, and if so, whether the President or any member of the National

Executive is responsible for such conduct". It was, therefore, necessary for the Commission to investigate the allegations that Mr Mbalula was told by one of the Gupta brothers that he was going to be appointed as the Minister of Sports and Recreation before the President officially told him or officially announced Mr Mbalula's appointment.

397. Initially, the Commission wanted its investigators and/or members of the Commission's Legal Team to consult with Mr Fikile Mbalula so that they could take a statement from him with a view to him testifying before the Commission about the allegation. The reports given to me as the Chairperson of the Commission by either the relevant members of the Commission's Legal Team suggested that Mr Mbalula seemed not to be keen to come and testify before the Commission. Those were the reports that were given to me. When the reports I received suggested that efforts to persuade Mr Mbalula to meet with the Commission's investigators or members of the Commission's Legal Team were not bearing fruit, I directed that Mr Trevor Manuel, former Minister of Finance, and Mr Sphiwe Nyanda, former Minister of Communications be asked to assist the Commission because there was information that suggested that they were present at the ANC NEC meeting concerned. Both Mr Trevor Manuel and General Sphiwe Nyanda agreed to assist the Commission and came and testified in the matter.
398. It was only after Minister Manuel and General Nyanda had testified about the matter and confirmed that, indeed, the allegation of what Mr Mbalula had said at the NEC meeting was true that Mr Mbalula agreed to come and testify. Had Mr Mbalula not dragged his feet about testifying before the Commission about testifying before the Commission about the matter, there would have been no need to call Mr Manuel and General Nyanda to come and testify about the issue. I got a clear impression that Mr Mbalula was reluctant to come to the Commission and confirm the veracity of the allegation or to depose to an affidavit and confirm the allegation and only came because, with Mr Manuel and General Nyanda having testified and confirmed the

allegation to be true, he had no choice but to come and testify. It seems to me that Mr Mbalula's reluctance to come to the Commission and confirm the veracity of the allegation is consistent with the fact that, when he was interviewed by the Office of the Public Protector about the allegation, he tried to effectively deny the allegation. That this was his attitude is reflected in the transcript of his interview with the Office of the Public Protector. It will now be necessary to have regard to the evidence given by Mr Trevor Manuel, General Nyanda and Mr Mbalula about the allegation.

Evidence of Mr Manuel and Gen Nyanda

399. Did Mr Mbalula indeed tell the ANC NEC in August 2011 what he now says he told the meeting? His version to the Commission in that regard is confirmed in crucial respects by the evidence under oath of former Ministers Mr Trevor Manuel and retired General Siphile Nyanda.²²³ Their evidence is not identical – but this shows that they had not coordinated their versions. This is true of completely honest witnesses, who would not deliberately invent anything at all. Mr Manuel and General Nyanda did not themselves witness the “congratulations” but only saw and heard Mr Mbalula’s account of it to the NEC. As is known from the experience of everyday life, very few people are able to recount with complete accuracy a story or report that they have heard from another person, even shortly afterwards, let alone years before.

400. Mr Manuel recalled attending the ANC NEC meeting in 2011 at which he said: “*we discussed the influence of the Gupta family on government affairs, amongst other matters.*”²²⁴ At this meeting, Mr Manuel continued —

223 Mr Manuel's oral evidence was led for the Commission by Leah Gcabashe SC, and that of Gen Nyanda by Adv Mahlape Sello.

224 Affidavit of Trevor Andrew Manuel, Exhibit V1 p TAM-02 (also Exhibit V3(a) p FM-026) para 6.

7. Mr Mbalula tearfully recounted that he had been summoned to the Gupta residence in Saxonwold, Johannesburg, where he was informed by Mr Atul Gupta that he would be promoted from Deputy Minister of Police to Minister of Sport and Recreation.

8. Mr Mbalula recounted that Mr Zuma's announcement of the Cabinet reshuffle and his appointment as Minister of Sport and Recreation was made after his meeting with Mr Atul Gupta at his Saxonwold residence. I recall that he was visibly disturbed that Mr Atul Gupta had been the person to inform him of the ministerial appointment.

401. Pressed on the matter during his oral evidence to the Commission, Mr Manuel acknowledged that he could well have been mistaken as to which Gupta brother was referred.²²⁵

EVIDENCE LEADER: You said Atul, Mr Manuel.

MR TREVOR ANDREW MANUEL: Atul, yes but you know that that may have been what I thought I heard but I, I, because I do not know the individuals I do not think that I would ever attempt to distinguish between one and the other and, and I do not think it is material. ...

402. There is no evidence that Mr Atul Gupta ever conveyed congratulations of any kind to Mr Mbalula. Mr Ajay Gupta acknowledges that he was the one who did the congratulating. Mr Ajay Gupta did this in an affidavit he furnished to the Commission. Whether Mr Mbalula was certain of the identity of the relevant Gupta brother when making his revelation to the ANC NEC in August 2011, or whether his certainty in that regard may have formed only subsequently, is not altogether clear. As we shall see below, he testified that he had a later encounter with Mr Ajay Gupta in which a press report of his revelation to the NEC was discussed. It is not impossible that he may have mentioned Mr Atul Gupta's name in error during his revelation to the NEC; it is also possible that Mr Manuel simply misheard or genuinely misremembered what Mr Mbalula had said in this particular respect. Ultimately, the point is not material to

225 Transcript Day 058 (28 February 2019) p 48.

whether or not Mr Ajay Gupta was privy to information about the impending appointment of Mr Mbalula as Minister of Sport and Recreation which he ought not to have had when he congratulated Mr Mbalula. It is also not material to the question whether or not Mr Mbalula's evidence that the congratulations included reference to the particular Ministerial portfolio.

403. Mr Manuel's recollection that Mr Mbalula specifically mentioned the particular portfolio in his revelation to the NEC was reinforced by its significance in his (Mr Manuel's) mind at the time, because it involved "*a kind of diagonal move*" from Deputy Minister of Police to another portfolio where there was "*no evident skill set*".²²⁶
404. General Nyanda, who was also at the ANC NEC meeting, could not recall which Gupta brother was referred to. However, he clearly remembered Mr Mbalula telling the meeting that he "*had been told by the Gupta brothers or one of them before his actual appointment that he would be elevated from a deputy minister to Minister of Sport.*"²²⁷ "Mr Mbalula knew exactly where he was going", said General Nyanda. General Nyanda continued and said that Mr Mbalula had said to the NEC: "*They told me I was going to become the Minister of Sport and indeed I was appointed as Minister of Sport.*"²²⁸
405. The fact that General Nyanda had been dropped from President Zuma's Cabinet in the October 2010 reshuffle²²⁹ and was not well disposed to the President, is not a sufficient reason to doubt the veracity of this evidence regarding what occurred at the ANC NEC

226 Transcript Day 058 p 49.

227 Statement by Gen (ret) Sipiwe Nyanda, Exhibit V2 p SN-01 (also Exhibit V3(a) p FM-068).

228 Transcript Day 058 pp 89-90 (Gen Nyanda). Adv Mahlodi Samuel Muofhe (former advisor to the former Minister of Public Service and Administration, Adv Ngoako Ramatlhodi) recalled hearing Mr Mbalula saying on radio that he had heard that he was going to be appointed as a Cabinet Minister from the Gupta family – but he could not recall whether or not Mr Mbalula had mentioned the particular portfolio. He did not recall the radio station, and did not indicate the date. (See Transcript Day 032, 28 November 2018, pp 116-117.) Adv Muofhe's evidence thus takes the issue no further, one way or the other.

229 See Transcript Day 058 p 102.

meeting.²³⁰ The meeting was attended also by many other people, and none present has come forward to dispute his evidence in this regard. Mr Manuel's and General Nyanda's accounts of what transpired corroborate each other *in at least the crucial respects*.

406. Mr Manuel, however, insisted that Mr Mbalula said that he had been "*called to Saxonwold*" by the relevant Gupta brother in order to be told of his impending elevation.²³¹ Mr Mbalula insisted, on the contrary, that the congratulations were conveyed in a telephone call.²³² Mr Manuel may well be right. Mr Ajay Gupta does not corroborate Mr Mbalula's version that he was told this telephonically. In his affidavit Mr Gupta said that he and Mr Mbalula were at Sahara Computers when he congratulated Mr Mbalula. So, it seems that Mr Mbalula may well have said at the NEC meeting what Mr Manuel testified he said. However, it does not really matter whether Mr Ajay Gupta told Mr Mbalula over the phone or in person. General Nyanda did not mention Saxonwold in his account of what Mr Mbalula had said.

The version of Mr Ajay Gupta

407. Mr Ajay Gupta's version was that he had conveyed only jocular congratulations-in-advance to Mbalula, based on media reports that he was about to be made a full

230 Mr Rieaz 'Mo' Shaik (who was not at the meeting) testified that he had been told subsequently by Gen Nyanda what had transpired there concerning Mr Mbalula. Transcript Day 193 (26 November 2019) pp 2-3, to be read with Exhibit PP1 pp RS-05 to RS-06 paras 16-17 and RS-09 para 28. This shows only that it was not a belated invention by Gen Nyanda for purposes of the Commission. No independent detail was provided by Mr Shaik, he was unclear about dates, and Gen Nyanda's evidence cannot be strengthened in any event by self-corroboration: it stands on its own feet.

231 Transcript Day 058 p 41.

232 Transcript Day 071 p 64.

Minister. In his affidavit to the Commission dated 13 November 2018 ²³³ responding to Mr Manuel's affidavit of 11 October 2018 ²³⁴: Mr Ajay Gupta said:

4. It is indeed I, Ajay Gupta, that had a discussion with him [Mr Mbalula] about his potentially becoming a Minister. I refer to a few annexures hereto which are newspaper articles from the time in October 2010 when Mr. Fikile Mbalula in a Cabinet reshuffle by the then President Jacob Zuma was made the Minister for Sport and Recreation. I recall reading in the press articles leading up to President Jacob Zuma's cabinet reshuffle and picking up from the press the likelihood that Mr Mbalula would become a full minister. In this regard I refer for example to an article published on the 24th October 2010 in the publication Fin24 which date naturally occurs prior to the 31st October 2010 when President Zuma reshuffled his cabinet. I quote from the article annexed hereto marked "AG1". "The Weekend Argus reported that the deputy Police Minister Fikile Mbalula was set to take up a full cabinet post as a reward for leading the campaign that saw Zuma elected ANC President in 2007". I think I read of this in a Sunday newspaper but I am not entirely certain which newspaper carried the article.

5. I annex a further extract from IOL.co.za marked "AG2", in which that publication reports the weekend Argus newspaper having reported on possible key changes to the cabinet of President Zuma and where in that publication reports the weekend Argus having reported that "Deputy Police Minister Fikile Mbalula was set to take up a full cabinet post as a reward for the leading the campaign that saw Zuma elected ANC President in 2007."

6. I annex a further article marked "AG3" from the publication IOL, which in turn also quotes the weekend Argus newspaper as saying that there was several "possible key changes" to the cabinet and in which the newspaper is reported [as saying] that Deputy Minister Fikile Mbalula was set to take up a full cabinet post as a reward for leading the campaign that saw Zuma elected ANC President in 2007.

7. I did indeed meet with and have a conversation with Mr. Mbalula but it was not at my house in Saxonwold and it did not involve my brother Atul. In fact it took place at my office at Sahara Computers when Mr Mbalula paid me a visit. Having picked up from the newspapers that he was highly likely to be appointed a full Minister I jokingly congratulated him on his apparently imminent appointment as a full Minister. I did not know this as a fact. I also did not know which Ministry he might be appointed to.

²³³ Exhibit V3(a) pp FM-055 to FM-066.

²³⁴ Exhibit V3(a) pp FM-026 to FM-040 (also Exhibit V1 pp TAM-02 to TAM-16).

8. [...]

9. I do not know what Mr. Mbalula may have said at a National Executive Committee Meeting but it would have been wrong and inaccurate of him to have said that I had congratulated him on becoming or being about to become the Minister of Sport and Recreation. The newspapers did not report [this] at that time. The newspapers carried only a report of the possible elevation of Mr. Mbalula to a full ministerial post.

408. The first two media reports annexed to Mr Gupta's affidavit ("AG1" and "AG2") do contain the statements concerning Mr Mbalula to which he refers.²³⁵ They do not indicate to which portfolio he might be appointed as a full minister in a reshuffle by President Zuma. The third report concerned the rumours of an impending reshuffle, but contained no mention at all of Mr Mbalula. That much is clear from annexure "AG3" itself;²³⁶ Mr Gupta's para 6 quoted above is thus erroneous, and the annexure "AG3" is irrelevant to the point in issue.

409. Mr Ajay Gupta's evidence on oath to the Public Protector when interviewed on 04 October 2016 was essentially consistent with the version in his affidavit to the Commission:

Adv T Madonsela: Is it your evidence then Sir, that you didn't advise Mr Mbalula that he was going to be the Sports Minister?

Mr A Gupta: Not at all, not at all. I mean he is going to be the ... it is a report of media, which is I am sharing with him. It is nothing that I am informing him that "You are going to be a Minister".

Adv T Madonsela: Oh, so you reported what the Minister said?

Mr A Gupta: No, no, what the media say. That I say, "No, you and Paul [Mashatile] will be the Minister" and this is a matter of research. You please can research and

²³⁵ The *fin24* report of 24 October 2010 ("AG1") is still accessible at <https://www.news24.com/Fin24/Manuel-gets-new-role-20101024>. The *IOL* report of 24 October 2010 ("AG2") can be found at <https://www.iol.co.za/news/politics/cabinet-reshuffle-just-rumours-688387>.

²³⁶ See also <https://www.iol.co.za/news/south-africa/kwazulu-natal/reshuffle-rumours-rife-for-zumas-cabinet-688323>.

you will find that. He visited the office, I think it was Sahara office I was sitting on that time, it is a too old matter and on that time I say that to him, "No, I heard that now you will be a Minister", and that I ask him a few times, "What you are telling now to the public it is a very different view".²³⁷

410. Mr Ajay Gupta did not avail himself to give evidence before the Commission so that his version could have been challenged. Mr Ajay Gupta removed himself from South African jurisdiction and so cannot be questioned by the Commission under circumstances where he could be held to account for his actions or his answers in the event of false testimony. For the same reason his various applications to cross-examine witnesses actually or potentially implicating him have been refused. Mr Mbalula testified and subjected himself to questioning. Accordingly, where Mr Ajay Gupta's version is at odds with the evidence of a witness who availed himself, Mr Ajay Gupta's evidence will not have equal weight.

411. His statement in para 7 of his affidavit that he congratulated Mr Mbalula "*at my office at Sahara Computers when Mr. Mbalula paid me a visit*",²³⁸ is denied by Mr Mbalula who says that the congratulations were conveyed in a phone call. For present purposes it does not matter whether Mr Mbalula was told this information telephonically.

412. Mr Mbalula's evidence is that he paid a visit to Mr Ajay Gupta at his Sahara office some time *after the ANC NEC meeting of August 2011*, because Mr Ajay Gupta was "lamenting" a report of what he (Mr Mbalula) had said in that meeting which appeared in the *Sunday Times*.²³⁹ He also met Ajay Gupta at cricket (not a meeting as such²⁴⁰)

237 Interview transcript, Exhibit LL1 p 01-PREP-DZ-MHJ-413.

238 Exhibit V3 p FM-057 para 7.

239 Transcript Day 071 p 62.

240 Transcript Day 071 p 73.

"at the Wanderers where he was lamenting what I said and then I met him at his house in Saxonwold on a different subject".²⁴¹

413. Asked about Mr Ajay Gupta's "lamenting" the *Sunday Times* report, and how he had responded, Mr Mbalula also said about Mr Ajay Gupta having lamented some article which had appeared on the Sunday Times about what Mr Mbalula had told the NEC meeting.²⁴²

"He had a problem with me saying [at the NEC meeting] that I was informed by them [the Guptas] about becoming Minister of Sports and then things turned out to be exactly like that and then he was lamenting explaining himself to me no, no that is not exactly what, it is because of this and that. He said a lot of things [that] were not tying up, but trying to you know prove that, he did not deny anything. It is just to say but, probably he was trying to say to me you should not have said that, you know.

In this somewhat bumbled answer, Mr Mbalula may be obscuring an attempt on his own part to smooth things over with the Guptas as media proprietors and cricket sponsors, after he had become Minister of Sport – but one cannot be sure. "How did you know I would be appointed Minister of Sport?" would have been the obvious question for him to ask Mr Ajay Gupta during that exchange — and that might have led to President Zuma. However, he does not say that he asked any such question of Mr Gupta. His complaint concerning the latter's foreknowledge was evidently not pursued."

414. In any event, there was no doubt in Mr Mbalula's mind that Mr Ajay Gupta had understood correctly what he (Mr Mbalula) had said at the ANC NEC.²⁴³ He maintained firmly that, in the telephone call from Mr Gupta before his appointment, he had been congratulated specifically on the fact that he was going to be made Minister of Sports and Recreation.²⁴⁴ Mr Mbalula said that during the call Mr Gupta did not speak like

241 Transcript Day 071 p 62.

242 Transcript Day 071 p 65.

243 Transcript Day 071 pp 65-66.

244 Transcript Day 071 pp 71-73. He confirmed Mr Manuel's evidence in that regard, id p 74.

somebody who had read about it in the media.²⁴⁵ Mr Mbalula said that the specific portfolio had been mentioned by Mr Gupta during the call.²⁴⁶

Evidence of Mr Mbalula

415. Mr Mbalula provided an affidavit to the Commission dated 18 March 2019. He confirmed his statement when testifying orally under oath at the Commission's hearing. In his affidavit to the Commission Mr Mbalula said:

"At the NEC meeting of August 2011, I informed the members of NEC of an incident in which I had received a call from Ajay Gupta congratulating me for being appointed as the Minister of Sports before the appointment had taken place or at least before it had been communicated to me by the President.

Although, I had appreciated the subsequent appointment as Minister I felt angered and perturbed by the fact that such news of my appointment had been leaked to Ajay Gupta, or were otherwise known by him, in a way which seemed to suggest that there were persons who were improperly privy to knowing the appointment of other persons in cabinet posts, before such appointments had formally [been] announced even to those persons, themselves.

This occurred at a time that the country, its security services and the media were focused on rumours or allegations concerning the influence of the Gupta family on government generally and, specifically, on the President.

At that time, the same debate was ongoing within the structures of the NEC, which is the highest decision-making body of the ANC. In light of the above and the values I hold as a member of the ANC, I felt an obligation to inform the other members of the NEC about my undesirable experience, and I did so.

I was extremely troubled that Ajay Gupta had acted as he did, and I was emotionally distraught that my appointment to my position, which I considered a great honour, might be tainted by circumstances that were beyond my control. The reason for me doing the above was to express my anguish and distaste at the conduct of Ajay Gupta.

245 Transcript Day 071 p 67.

246 Transcript Day 071 p 74.

My purpose in doing the above was to alert the other members and promote consciousness about such issues. I also did this in the interests of transparency, and to seek a political intervention from the NEC, which seemed to me to be the appropriate body to address the issue.”

416. In his oral evidence to the Commission’s Mr Mbalula said:

“To the best of my recollection he [Ajay Gupta] gave me a call. I think it was in the evening. I was at a friend’s place and then he congratulated me and then he said congratulations Minister of Sports and Recreation and then after that call he then went to talk further and so on. I do not recall what he talked about and then I related to a friend I was with in his house that hey I got a call from the Guptas. They say I am going to be Minister of Sports and Recreation and then we talked about it. That this is what is wrong about these people and so on and that was it.”

417. At the time – October 2010 – Mr Mbalula had otherwise kept quiet about this specific incident as far as we know.

Did Mr Mbalula Lie before the Public Protector

418. Mr Mbalula was interviewed by the Public Protector, under oath, on 12 October 2016 for purposes of her investigation into ‘state capture’ on the part of the Guptas.²⁴⁷ At the time, he was Minister of Sport and Recreation in President Zuma’s Cabinet. The Public Protector’s *State of Capture* Report contains nothing adverse to Mr Mbalula.²⁴⁸ Nevertheless, at the time of his interview, he was very much on the defensive. This provides context when making sense of his answers – and when comparing them fairly with his later evidence to the Commission when he had nothing to gain or protect politically by holding back.

247 For the interview transcript, see Exhibit V3(c) pp FM-134 to FM-182.

248 *State of Capture* Report No 6 of 2016/17, Exhibit A1.

419. Having little to go on in the interview, Adv Madonsela informed him that it had been alleged –

that you stated that the first time you got to know that you were going to be the Minister of Sport, you were advised by the Gupta, or a member of the Gupta family about it and that you conveyed this message to a meeting of the ANC MEC [NEC], and said that you were concerned that this happened.²⁴⁹

420. In response Mr Mbalula said:²⁵⁰

“First and foremost I would like to clarify the fact that I was not appointed nor contacted by the Guptas about my appointment as a minister. I was told by President Jacob Zuma that I’m going to be minister, and we had a conversation prior to that with regard to the altercation we had in the Ministry of Police and then he said to me that I’m going to be moved.²⁵¹

And then that’s when I knew and then I was called by Lakela Kahuna [Kaunda] to the presidential house, and I found the president and [indistinct] there, and they informed me that I’m Minister of Sports and Recreation as per our earlier discussions, so, none of the people that you have talked about [i.e. the Guptas] ever informed [m]e about the position of Minister of Sports and Recreation.”

421. Obviously Mr Mbalula’s statement under oath to the Public Protector that he was not “*contacted*” by the Guptas about his appointment as a minister, and that none of the Guptas had ever informed him “*about the position of Minister of Sports and Recreation*” is in conflict with his evidence under oath before the Commission in this particular regard.²⁵²

²⁴⁹ Interview transcript p 4, Exhibit V3(c) p FM-139.

²⁵⁰ Interview transcript p 8, Exhibit V3(c) p FM-143.

²⁵¹ Later in the interview, Mr Mbalula explained that, as Deputy Minister of Police, he did not have a good relationship with the Minister of Police. He had approached President Zuma about the problem and had suggested that he leave government and go back to a deployment at Luthuli House. The President, however, had said he should not leave government, but would rather be moved to another portfolio when changes to the executive that were going to be made were made. The portfolio to which he would be moved was not indicated. See interview transcript pp 37-38, Exhibit V3(c) pp FM-172 to FM-173.

²⁵² During his oral evidence to the Commission on 22 March 2019, Mr Mbalula at first tried to maintain that he

422. If he lied to the Public Protector in this regard – as seems to be the case – the likely explanation is that he was protecting his own political position in the ANC and the government by shielding the then still powerful President Zuma from the Public Protector's investigation into his relationship with the Guptas. This, of course, would be no excuse. His answer to the Public Protector was no momentary lapse. When reading the interview transcript, one is struck by his politician's facility in walking like a trapeze artist along a line of artful prevarication – avoiding full disclosure as far as possible rather than falling into an outright lie. However, Adv Madonsela's persistent questioning led eventually to the latter result.
423. Asked whether he had ever discussed with Mr Ajay Gupta the fact that he was going to become the Minister of Sports and Recreation, Mr Mbalula again denied it.²⁵³ Here is how Mr Mbalula explained his answer given to the Public Protector when he was questioned about it subsequently in evidence before the Commission:²⁵⁴

MR FIKILE APRIL MBALULA: Yes I stand by that, we did not discuss – he did not offer me, he congratulated me for the position and that is what actually happened. Discussing it means, sitting down, offering a person a position and you either agree or not agree, so we did not discuss that.

424. Actually, "discussing" a position does not necessarily mean sitting down and being "offered" a position by the other person. Certainly, receiving a congratulatory call from Mr Ajay Gupta would not amount to "discussing" with Mr Gupta his imminent elevation to that portfolio. But dwelling on these terminological differences, important though they are, tends to obscure a *more important* point. Mr Mbalula was testifying to the Public

had not been "contacted" by the Guptas regarding the post of Minister of Sport and Recreation, but conceded when pressed by the Chairperson that the congratulatory call did amount to being "contacted by them". (Transcript Day 071 p 91.)

253 Interview transcript p 18, Exhibit V3(c) p FM-153.

254 Transcript Day 071 p 83.

Protector in a vital investigation, and he had sworn to tell the *whole* truth. This was his opportunity to come out with the version that he would later present to the Commission under oath, simply correcting any exaggerations or distortions in the version put to him by the Public Protector,²⁵⁵ but he did not do so.²⁵⁶ Instead he said *"I never had a conversation with Mr A J Gupta about the post of Minister of Sports and Recreation."*²⁵⁷ His attempt to justify this when he appeared before the Commission on the basis that a "conversation" about a position would also imply an "offer" of the position (which was not made to him by Mr Gupta) is plainly unsatisfactory and only serves to illustrate his evasiveness on this matter during the interview – evasiveness which (we shall see) then culminated in his lapsing into an outright lie.

425. The transcript of his evidence to the Public Protector as the interview proceeded includes the following passage:²⁵⁸

ADV MADONSELA: Didn't the media say, specifically said that you lamented the fact that the first time you heard that you're going to be Minister of Sport, you heard it from the Gupta family instead of hearing it from the president?

MR MBALULA: I've heard that too.

ADV MADONSELA: Yes?

MR MBALULA: Yes. In the media, but the first time I knew that I was going to be Minister of Sport, I heard it from the president.

ADV MADONSELA: That was what you said in your evidence. What I'm interested in now is, do you deny that? At the ANC [NEC] you complained about being approached by the ... , [intervenes]

255 In the course of the interview the Public Protector put to Mr Mbalula a seriously misleading version of what Mr Ajay Gupta had told her. She stated that, when she interviewed him, he "said he had a discussion with you about this post, but he denies that it was him who was offering it to you." (Interview transcript p 18, Exhibit V3(c) p FM-153.) The expression "this post" obviously means the post of Minister of Sport and Recreation. In fact Mr Ajay Gupta – as the transcript of his interview clearly shows – had firmly denied having any knowledge of the post to which Mr Mbalula was expected to be appointed. This is the fundamental point at issue now.

256 Cf Transcript Day 071 pp 90-91.

257 Interview transcript p 19, Exhibit V3(c) p FM-154.

258 Interview transcript pp 20-21, Exhibit V3(c) pp FM-155 to FM-156.

MR MBALULA: I raised the issue of the Guptas, complained about the Guptas and the fact that there is a perception that they appoint ministers. At no stage in that particular meeting did I ever refer to the fact that I was appointed by the Guptas.

ADV MADONSELA: So you deny that? You were unhappy that you got to hear it from them before the President approached you? Is that a firm denial sir?

MR MBALULA: I am saying Public Protector that I deny the fact that in the meeting of the ANC, I actually said that I was appointed by the Guptas.

ADV MADONSELA: It's not appointment sir, but that you heard from them that you are going to be Minister of Sport before you heard from the person who has appointed you.

MR MBALULA: I raised the issue of perceptions.

ADV MADONSELA: Okay sir. I want to get you to that perceptions because that is an interesting thought that we would like to follow through. Let us attempt to tie this, just for our record, I just want on this one issue that, do you deny that you complained that you were informed that the president was going to appoint you as the Minister of Sport?

MR MBALULA: I deny that vehemently.

ADV MADONSELA: So you deny that?

MR MBALULA: Emphatically.

426. When questioned about this during his oral evidence before the Commission,²⁵⁹ Mr Mbalula tried to explain the contradiction away by referring to his *"frame of mind"*²⁶⁰ which was *"confined in"* what Mr Mcebisi Jonas and Ms Vytjie Mentor had said about being contacted and offered positions by a Gupta.²⁶¹ This had not happened to him, and so "the issue with the Public Protector was not what I said necessarily in the meeting of the National Executive Committee".²⁶² After every allowance has been made for the general context, his answer remains unsatisfactory: he was asked directly about what he had said at the NEC meeting, and he denied *"vehemently"* and *"emphatically"*

259 Transcript Day 071 pp 84 ff.

260 Transcript Day 071 pp 86, 87, 89, 96, 105, 107, 118.

261 Transcript Day 071 p87.

262 Transcript Day 071 pp 77-78. For further elaboration see id pp 79-80.

having said there what he would later tell the Commission he had actually said. He told the Public Protector a blatant lie. The oath which he took was to tell the truth, the whole truth and nothing but the truth; in fact, he was attempting to avoid answering truthfully. The nimble politician got away with it before the Public Protector, but his lie caught up with him when he came before the Commission.

427. In re-examination at the end of Mr Mbalula's testimony to the Commission, his counsel took him back to the question of the "consistency" of his testimony with what he had earlier told the Public Protector.²⁶³ In this regard attention was drawn only to Mr Mbalula having been the first to raise the matter of the Guptas in an ANC NEC meeting, concerning "rumours that people got offered positions"²⁶⁴ but that is not where inconsistency and contradiction lay. He was invited by his counsel to elaborate on his own courage in raising the matter in the ANC NEC meeting in contrast to those who kept silent in the meeting but leaked the matter to the media.²⁶⁵ He had earlier said in defence of those who kept silent: *"It could have happened that they wanted to give their own colleague and their President a benefit of doubt."*²⁶⁶ Now he answered as follows:

"Yes. It was an act of cowardice that there is nobody who stood to raise the issue of the Guptas and its political ramifications for the ANC and the country in the meeting of the National Executive Committee. It was simply raised in corridors and so on and nobody raised it in the meeting of the National Executive Committee. So that is what I was referring to there that it helps nobody to raise a matter in the streets but not in the meeting of the National Executive Committee. So to me that constitutes an act of cowardice. For you to raise the issue and even to support what I said in the meeting. They found it in their wisdom to leak it to the press rather than us sitting discussing it and taking decisions about it which could have probably brought us earlier on to this point where we are at today in terms of this Commission."

263 Transcript Day 071 p 114: "the line of questioning I am referring to is in relation to whether your version with the Public Protector is in conflict with the statement that you have delivered to this enquiry".

264 Transcript Day 071 p 115.

265 Transcript Day 071 p 116, read with Exhibit V3(a) p FM-175.

266 Transcript Day 071 p 69.

These considerations, however, hardly justify his dishonest answers when interviewed by the Public Protector.

428. Mr Mbalula maintained that “*there is no conflict*” between his testimony to the Public Protector and his testimony to the Commission²⁶⁷ but, as shown in detail above, there is a clear conflict between the two versions. The effect of this is weighed up below.

Evaluation and conclusion

429. Despite Mr Mbalula having given a different version on oath to the Public Protector in 2016, it should be accepted on a balance of probabilities that his evidence to the Commission regarding what he said at the ANC NEC meeting in August 2011 is true. One may say this with confidence because two witnesses whose evidence should be accepted in this regard – Mr Manuel and Gen Nyanda – were present at that meeting and heard him speak. On this basis it is clear that he lied to the Public Protector and told the truth to the Commission in this particular respect.
430. Can the same be said about the *content* of Mr Mbalula’s revelation – in other words, had Mr Gupta indeed congratulated him in advance on his impending appointment to *the specific portfolio of Minister of Sport*? The following facts and circumstances point cumulatively to Mr Gupta having lied in his affidavit to the Commission in denying this, and conversely to Mr Mbalula’s evidence in this regard being true:

- 37.1 The fact that Mr Mbalula’s account at the August 2011 ANC NEC meeting was so emotional (described by Mr Manuel as “*tearful*”²⁶⁸ and an “*emotional*

267 Transcript Day 071 p 117.

268 Exhibit V1 p TAM-03 para 7. This was confirmed by Mr Mbalula in his opinion piece in the *Daily Maverick* on 11 June 2017: see Exhibit V3 p FM-020. Gen Nyanda said (Transcript Day 058 p 90) “I am not as sentimental as Mr Manuel and I have no recollection of tears there.” However, he added (p 91): “He was ... disturbed by it, that is why he perhaps cried although I don’t remember the actual crying.” “He was upset” (p 94). Mr Mbalula himself

breakdown"²⁶⁹) – something highly unlikely if all that Mr Ajay Gupta had done was jokingly congratulate him in advance in general terms on the basis of media speculation. Mr Mbalula's revelation to the NEC has the hallmarks of honesty; it does not appear to have been an opportunist invention or political ploy.

- 37.2 The fact that Mr Mbalula was the first to raise openly in the ANC NEC an objection to the influence on government (or at least the flaunting of such influence) on the part of the Guptas²⁷⁰ – something which, together with his raw emotion in the telling, made the truth of it more probable. He told the Public Protector that a Ministerial appointment is "*very important in upward mobility*"²⁷¹ – yet he was risking his Ministerial career. As Mr Mbalula put it:

"I was a Minister at that time when I raised the issue, Minister of Sports in President Zuma's Cabinet. So I could have thought about the future of my kids before I raised the issue that I am risking, but I just felt that look the ANC taught us to raise issues in meetings."²⁷²

And further:

"when you are a cabinet Minister you owe your plate and everything to a President, so you can't stand up in a meeting against the President because you can be reshuffled at night."²⁷³

told the Commission: "As to whether I cried or not I was emotional about it and the emotions just came because if you feel deep about something that is an injustice it just shakes you that you think that there is something wrong about it." (Transcript Day 071 p 21).

269 Transcript Day 058 p 51.

270 See the evidence of Mr Manuel, Transcript Day 058 p 56, confirming Mr Mbalula's evidence in that regard.

271 Interview transcript p 38, Exhibit V3(c) p FM-173.

272 Transcript Day 071 p 29.

273 Transcript Day 071 pp 31-32.

431. General Nyanda described the revelation by Mr Mbalula as “stunning”,²⁷⁴ adding:

“I remember what he said...., one of the reasons I remember is because I myself was affected by that cabinet reshuffle [in October 2010] and I had my own suspicions about what the reasons were for our dismissal from Cabinet and I had actually tried to engage or I had engaged the officials of the African National Congress to find out why it is that we were removed in the manner in which we were, and got no answers and also spoke to the President himself, why, but I didn't get any satisfactory answer, so when Mbalula said this in the midst of the undercurrents that were afoot then about the influence of this family in the affairs of government it was for me a confirmation that in fact this was the case, it was the first confirmation that people had been told before their appointment, and I believed that he was not the only one, and the general undercurrent then, was that people who had been called to the Guptas and told beforehand that they would become ministers, and we ourselves I had heard whispers about my possible removal from cabinet. So it was an important declaration that he made there.”

432. The assessment of Gen Nyanda at the time that *“it was a genuine disclosure”* by Mr Mbalula,²⁷⁵ and (implicitly at least²⁷⁶) *“a direct accusation to the President of the ANC”*,²⁷⁷ *“a direct allegation against a President of the African National Congress who was sitting in that meeting”*,²⁷⁸ *“something serious that is being alleged by a member of this National Executive Committee and it is directed specifically at the President”*.²⁷⁹

433. When he summed up at the end of the NEC meeting in August 2011, President Zuma did not address the matter raised by Mr Mbalula at all. Mr Manuel did not recall any reaction from the President.²⁸⁰ This non-response certainly troubled General Nyanda:

²⁷⁴ Transcript Day 058 p 91.

²⁷⁵ Transcript Day 058 p 93.

²⁷⁶ There is no evidence that Mr Mbalula explicitly accused the President of wrongdoing during the NEC meeting.

²⁷⁷ Transcript Day 058 p 95.

²⁷⁸ Transcript Day 058 p 96.

²⁷⁹ Transcript Day 058 p 96. This is not only Gen Nyanda's recollection. Mr Mbalula recalls that one member of the NEC got up in the meeting to say that *“you can't say things about the President, so that member was defending the President you know and not what I was raising.”* Transcript Day 071 p 33.

²⁸⁰ Transcript Day 058 p 46. When interviewed by the Public Protector, Mr Mbalula made no reference to any

he found it “shocking” that the President did not address what Mr Mbalula had said General Nyanda said:²⁸¹

“[At] these meetings of the NEC, the president of the ANC (then President Jacob Zuma) customarily made concluding remarks touching on salient points made in the contributions by members of the NEC during the discussions. Remarkably, President Zuma did not address this important input by Fikile Mbalula, which touched on the astounding claim made by the latter.”

This omission or avoidance to respond to this serious claim left me in no doubt as to the veracity of the claim that Mbalula had made.²⁸²

434. Former President Zuma did not testify about Mr Mbalula's evidence or Mr Trevor Manuel's or General Nyanda's evidence. He elected not to refute their evidence when having testified before the Commission for two or three days in July 2019, he later defied a summons to appear before the Commission and boycotted its proceedings.
435. Clearly there are strong grounds for suspicion that he had himself given Mr Ajay Gupta, or at least enabled Mr Gupta to be given, advance information of his intentions regarding the Cabinet reshuffle that was announced on 31 October 2010. We should note, however, that in the course of Mr Mbalula's polemical exchange with Mr Manuel in the *Daily Maverick* in 2017, and in what appears to have been an attempt at that time to deflect suspicion from President Zuma, Mr Mbalula said –

“the Gupta family got to know possibly from someone close to the president that I was to be nominated to be Sport Minister, we can all make guesses as to how this

response by President Zuma at or after the NEC meeting in question.

281 See Transcript Day 058 pp 110-112.

282 Exhibit V2 p SN-01, Exhibit V3(a) p FM-068. See also Transcript Day 058 pp 92-99. The wider question of the failure of top officials of the ANC at the time to take up the matter of Gupta influence on the President and government generally is not the focus of this digest.

information may have been leaked to them. Newspapers too usually get these sort of leaks and announce or speculate about them before the president does.”²⁸³

436. When one has regard to the totality of the evidence heard by the Commission on the relationship between President Zuma and the Guptas, including evidence about what he was prepared to do for the Guptas or at their instance, there can be no doubt that the Guptas had got the information from President Zuma. In this regard it must be remembered that Mr Ajay Gupta told Mr Themba Maseko that President could do anything they (i.e the Guptas) wanted and that Mr Tony Gupta told Mr Mcebisi Jonas the same thing on 23 October 2015 at the Gupta residence. Mr Themba Maseko’s evidence was that Mr Ajay Gupta told him in effect that, since he was not co-operating, he (i.e Mr Ajay Gupta) would speak to his (i.e Mr Maseko’s) seniors who would replace him with somebody else who would co-operate and that is what happened. Mr Tony Gupta told Mr Jonas that Minister Nene would be fired because he was not working with them (i.e the Guptas) and, indeed, six weeks later President Zuma fired Minister Nene and gave a false reason for firing him. President Zuma took part in a scheme for the suspension of certain Eskom Executives to make way for Gupta associates. The conclusion is that on the totality of the evidence heard by the Commission in so far as it relates to showing the depth of the relationship between Mr Jacob Zuma and the Guptas, there can be no doubt that the Guptas got the information from him. They would not have had any reason to get the information from someone else when the person with the power to appoint Ministers was their friend who was so loyal to them that he could fire his own comrades from Ministerial and other senior government positions who had done nothing wrong when they wanted him to fire those people. The Guptas would also not have wanted to rely on the second hand information because their aim in telling Mr Mbalula even before President Zuma could tell Mr Mbalula was to convey a message to Mr Mbalula either that they are so close to the President that he shares his decision

283 See also Transcript Day 071 p 55, where Mr Mbalula repeated essentially the same point.

with them before they are known by other people or because they wanted Mr Mbalula to think that they had a hand in his appointment or both and if they relied on second hand information and it proved false that would defeat the whole purpose of telling Mr Mbalula first.

437. Nonetheless, it is clear from the evidence that President Zuma was made aware by no later than August 2011 that his friends, the Guptas, were privy to and used important confidential information of the state for private purposes. If he was not himself guilty in this regard, then he had at least a constitutional duty to have the matter investigated and to ensure that appropriate action was taken against those responsible, as well as to prevent any similar occurrence. Far from having the matter investigated and remedial action taken, President Zuma studiously ignored what had occurred – even after the then head of the State Security Agency (now Ambassador) Mzuvukile Maqetuka, assisted in this regard by Mr Lizo Njenje (then Director of the domestic branch of the SSA), had raised the matter of Mr Mbalula's revelation with the President specifically in a meeting.²⁸⁴

438. The principles set out by the Constitutional Court in *Khumalo and Another v MEC for Education, KwaZulu-Natal*,²⁸⁵ apply *mutatis mutandis* in this case. Failing a satisfactory response from the former President, a finding that he was in dereliction of his constitutional duty in terms of s 195 of the Constitution in regard to the Mbalula matter would seem to be justified.

284 See Transcript Day 231 (10 July 2020) pp 176-7 and 197, read with Exhibit PP3 pp MM-013 paras 53-55 and MM-015 to 017 paras 64-71 (affidavit of Mzuvukile Maqetuka dated 09 July 2020).

285 2014 (5) SA 579 (CC) (2014 (3) BCLR 333; [2013] ZACC 49) paras 35 – 36.

SUMMARY OF EVIDENCE BRIAN CURRIN

439. Mr Brian Currin ("Mr Currin") spent the first 18 years of his professional career working as a human rights lawyer and activist. Since then he has been involved in conflict resolution in many parts of the world. He is now based in Berlin, researching the international trends in the private sector and public sector relationships and how those relationships reflect either political order or political decay.²⁸⁶ When he was head of Lawyers for Human Rights they ran a witness protection programme.²⁸⁷
440. Mr Currin is of the view that South Africa owes a huge debt of gratitude to the two whistleblowers, "Stan" and "John" (both pseudonyms). Both whistleblowers were living in a state of fear at the time Mr Currin gave his evidence.²⁸⁸ Mr Currin says in his statement that it is made on behalf of these two whistleblowers who did not feel sufficiently protected to present the evidence themselves as they both feared for their lives.²⁸⁹
441. Mr Currin was approached in February 2017 by a colleague and friend, who mentioned that a hard drive was in possession of someone he knew (Stan). The contents of the hard drive dealt with the affairs of the Gupta family and their alleged corrupt relationship with senior politicians and State Owned Entities ("SOEs").²⁹⁰

²⁸⁶ Testimony of Brian Currin, Day 17, 27 September 2018, pages 31-32.

²⁸⁷ Testimony of Brian Currin, Day 17, 27 September 2018, page 34.

²⁸⁸ Testimony of Brian Currin, Day 17, 27 September 2018, page 32.

²⁸⁹ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 3-4.

²⁹⁰ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 5-6.

442. The friend was approached by Stan because he was the only person Stan knew whom he thought would be able to assist him. The friend approached Mr Currin because he thought Mr Currin to be more appropriately placed to assist, given his experience.²⁹¹
443. Mr Currin and his friend met with Stan a few days later, in the week of 13 February 2017. By this stage Stan had been in possession of the hard drive for many months, not knowing what to do with it.²⁹²
444. Stan had read some of the 300 000 e-mails, which appeared to be from Mr Ashu Chawla, the then CEO of Sahara Computers. These e-mails showed what appeared to be a corrupt relationship involving the Gupta brothers, Mr Duduzane Zuma and certain cabinet ministers and CEOs of SOEs.²⁹³
445. Stan was visibly nervous at this meeting. He outlined to Mr Currin how he had come into possession of the hard drive. However, said Mr Currin, public disclosure of this information could lead to the true identity of Stan and the others becoming known.²⁹⁴
446. Stan advised that the original hard drive and its clone were in safekeeping with a trusted friend. Stan would reveal the location of the hard drives and their access codes once his departure from South Africa and safety abroad had been facilitated.²⁹⁵
447. Stan advised that he had two additional hard drives in his possession with content identical to the clone of the original, and two CDs containing a few hundred of the e-mails from the hard drive. He wanted Mr Currin's assistance in releasing the information

²⁹¹ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 7-8. Testimony of Brian Currin, Day 17, 27 September 2018, page 34.

²⁹² Brian Currin Statement dated 26 September 2018, Exhibit J2, para 9. Testimony of Brian Currin, Day 17, 27 September 2018, page 35.

²⁹³ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 10-11.

²⁹⁴ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 12-13. Testimony of Brian Currin, Day 17, 27 September 2018, page 36.

²⁹⁵ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 14-17.

to the appropriate people.²⁹⁶ He was prepared to share the CDs with Mr Currin to back up his story.²⁹⁷ The CDs were provided to Mr Currin the very next day.²⁹⁸

448. Stan had been assisted by John, but John was not ready to meet Mr Currin at this stage.²⁹⁹

449. Mr Currin and his friend studied the e-mails, and concluded that they warranted further investigation, and that, from their lay perspective, they appeared to be genuine.³⁰⁰

450. At a meeting with Stan on 23 February 2017, it was decided that law enforcement and politicians could not be trusted. The e-mails would therefore need to be published in the press. Stan and John and their wives would need to be safely abroad and needed funding for 2 years in order to relocate before publication. Mr Currin undertook to approach people he knew about funding for Stan and John to leave the country for 2 years.³⁰¹ In light of the political situation in 2017, there was also concern that authorities may seize the hard drive should they learn about it.³⁰²

451. Mr Currin received two hard drives from Stan at a meeting on 1 March 2017.³⁰³

452. It was agreed that these hard drives would be held in safe keeping by others (not Stan or Mr Currin because they could be identified).³⁰⁴ One copy was given to a friend of

²⁹⁶ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 18.1-18.2.

²⁹⁷ Testimony of Brian Currin, Day 17, 27 September 2018, page 38.

²⁹⁸ Testimony of Brian Currin, Day 17, 27 September 2018, page 39.

²⁹⁹ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 18.3.

³⁰⁰ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 20. Testimony of Brian Currin, Day 17, 27 September 2018, page 40.

³⁰¹ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 21. Testimony of Brian Currin, Day 17, 27 September 2018, pages 42-43.

³⁰² Brian Currin Statement dated 26 September 2018, Exhibit J2, para 22.

³⁰³ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 23. Testimony of Brian Currin, Day 17, 27 September 2018, pages 43-44.

³⁰⁴ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 24.

Mr Currin's in London.³⁰⁵ Mr Mark Heywood ("Mr Heywood") agreed to keep the other on Mr Currin's request.³⁰⁶

453. Mr Heywood also facilitated a meeting with Mr Branko Brkic ("Mr Brkic") of the Daily Maverick.³⁰⁷ Mr Currin met with Mr Brkic twice.³⁰⁸
454. At the second meeting with Mr Brkic, Mr Currin gave him the CD he had received from Stan. Mr Brkic then shared it with Mr Stefaans Brummer of AmaBhungane ("Mr Brummer"). Their *prima facie* view was that the authenticity of the emails was highly probable, given the consistency of the e-mails with their previous investigations into the Guptas.³⁰⁹
455. Stan and Mr Currin decided that the investigative journalists at AmaBhungane and the Daily Maverick would be best placed to review, analyse and report on the content of the copied hard drive that remained in South Africa.³¹⁰
456. However, Stan did not provide Mr Currin with the passwords for the hard drives until he knew funds were available to enable him to leave South Africa.³¹¹ Mr Currin met fairly regularly with Stan during this time.³¹² Funding was then secured through the Save South Africa Campaign, AmaBhungane and the Daily Maverick.³¹³

³⁰⁵ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 25.

³⁰⁶ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 26. Testimony of Brian Currin, Day 17, 27 September 2018, pages 44-45.

³⁰⁷ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 30. Testimony of Brian Currin, Day 17, 27 September 2018, page 45.

³⁰⁸ Testimony of Brian Currin, Day 17, 27 September 2018, page 46.

³⁰⁹ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 31. Testimony of Brian Currin, Day 17, 27 September 2018, page 46.

³¹⁰ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 36.

³¹¹ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 34.

³¹² Testimony of Brian Currin, Day 17, 27 September 2018, page 47.

³¹³ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 35.

457. Mr Heywood then returned the copied hard drive to Mr Currin on 18 April 2017. Mr Currin provided the content of the hard drive to Messrs Brkic and Brummer, and shortly thereafter Stan provided the passwords.³¹⁴
458. Messrs Brkic and Brummer indicated that they would locate a large team of experienced investigative journalists outside of the country to systematically work through all of the e-mails and write many in-depth articles. They anticipated publishing these articles in September 2017.³¹⁵ This would also give Stan and John and their wives time to move abroad.³¹⁶ The AmaBhungane and Scpio teams were preparing to leave for a safe house in Ireland by early June.³¹⁷
459. In April 2017, Mr Currin received legal advice that Stan's possession of the original hard drive was legal and that publication thereof would be in the public interest.³¹⁸ On 20 April 2017, Stan informed Mr Currin that John was ready to get involved, and Mr Currin met with him thereafter.³¹⁹
460. On 28 May 2017, the Sunday Times broke the "Gupta Leaks" story. Mr Currin does not know how the Sunday Times obtained their information.³²⁰ Mr Currin had not been working with the Sunday Times at all.³²¹ Stan and John's leaving the country had to be

³¹⁴ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 37. Testimony of Brian Currin, Day 17, 27 September 2018, page 48.

³¹⁵ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 38. Testimony of Brian Currin, Day 17, 27 September 2018, page 49.

³¹⁶ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 41. Testimony of Brian Currin, Day 17, 27 September 2018, pages 49-50.

³¹⁷ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 45-46.

³¹⁸ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 47-48. Testimony of Brian Currin, Day 17, 27 September 2018, page 51.

³¹⁹ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 49. Testimony of Brian Currin, Day 17, 27 September 2018, page 52.

³²⁰ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 50-51. Testimony of Brian Currin, Day 17, 27 September 2018, page 52.

³²¹ Testimony of Brian Currin, Day 17, 27 September 2018, pages 53-54.

fast-tracked as a result.³²² It also had implications for Stan and John's trust in the process.³²³

461. Mr Currin was informed that the original hard drive had collapsed completely in the process of making the clones. The clones were therefore more valuable than the original.³²⁴ (The Commission was later able to recover almost all of the data from the original hard drive with assistance from overseas experts).

462. On 29 May 2017 Stan gave Mr Currin the original hard drive and the clone he had collected from a "Mr T".³²⁵ Mr Currin immediately handed them over to Mr Greg Nott's ("Mr Nott") office at Norton Rose Fulbright for safe keeping, believing that there they would be safe from any attachment order.³²⁶

463. Mr Currin finalised affidavits with Stan and John on 15 June 2017. They were attested to on Friday 23 June.³²⁷ Mr Currin took 2 original affidavits from both Stan and John. These are in safe keeping.³²⁸ Disclosure of these affidavits would reveal their true identities. They were not comfortable with this at the time, but may be in due course.³²⁹ Mr Currin however confirms that the contents of those affidavits are consistent with his own testimony.³³⁰

³²² Brian Currin Statement dated 26 September 2018, Exhibit J2, para 52.

³²³ Testimony of Brian Currin, Day 17, 27 September 2018, page 54.

³²⁴ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 57-59.

³²⁵ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 60-61.

³²⁶ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 62-63. Testimony of Brian Currin, Day 17, 27 September 2018, page 56.

³²⁷ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 64.

³²⁸ Testimony of Brian Currin, Day 17, 27 September 2018, page 57.

³²⁹ Testimony of Brian Currin, Day 17, 27 September 2018, page 55.

³³⁰ Testimony of Brian Currin, Day 17, 27 September 2018, page 57.

464. Mr Currin later travelled abroad (to London)³³¹ and met with Stan on 15 January 2018 to discuss the next steps and get his agreement that he contact the Commission. The purpose of this meeting was to update Stan on the political changes in the country and raise the idea of making the original hard drive available to the authorities.³³²
465. While Mr Currin was abroad, American authorities visited his office in Johannesburg. On his return he contacted the person who left contact details. The American authorities said they were conducting their own investigations. They wanted to meet with Stan (whose identity they claimed not to know) and they wanted a copy of the original hard drive.³³³
466. Stan agreed to meet with the US authorities on condition that his identity would not be revealed and that the evidence would not be made available at the first meeting.³³⁴ They and Mr Currin met in a third country on 19 February 2018. There Stan agreed to make the first clone available to the American authorities at a later date.³³⁵
467. It was further agreed that the American authorities would conduct their own forensic imaging process on the cloned hard drive using high-quality data recovery equipment in Nairobi.³³⁶ It was agreed that the American authorities would not be given access to the original hard drive.³³⁷ This is because Stan and John were adamant that the investigation should be a South African process and not a foreign initiative.³³⁸

³³¹ Testimony of Brian Currin, Day 17, 27 September 2018, page 59.

³³² Brian Currin Statement dated 26 September 2018, Exhibit J2, para 68. Testimony of Brian Currin, Day 17, 27 September 2018, page 59.

³³³ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 69-70. Testimony of Brian Currin, Day 17, 27 September 2018, pages 59-60.

³³⁴ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 71.

³³⁵ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 72. Testimony of Brian Currin, Day 17, 27 September 2018, page 60.

³³⁶ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 74-75. Testimony of Brian Currin, Day 17, 27 September 2018, page 61.

³³⁷ Testimony of Brian Currin, Day 17, 27 September 2018, page 60.

³³⁸ Testimony of Brian Currin, Day 17, 27 September 2018, page 62.

468. John could unfortunately not get to the meeting on time. He arrived the following day.³³⁹
469. Stan and Mr Currin then agreed that the original hard drive and clone should be removed from South Africa.³⁴⁰ They decided this because the information about the presence of the original hard drive in South Africa could begin to spread more widely.³⁴¹
470. On 16 March 2018 Mr Currin uplifted the hard drive and clone from Norton Rose Fulbright.³⁴² He gave the original to Mr Nott (as his attorney) to carry through OR Tambo Airport, while he took the clone. They boarded flights to Nairobi on 18 March 2018. The hard drives were then given to an attorney in Nairobi the following morning.³⁴³
471. Mr Currin made contact with the Commission the day after he arrived back from Nairobi. He met with members of the Commission legal team the very next day.³⁴⁴
472. After meeting with the Commission, meetings were arranged in Nairobi from 10-12 April 2018 between three Commission representatives, three representatives from the American authorities and both whistleblowers.³⁴⁵
473. Mr Nott facilitated having the original and clone hard drives brought to the first meeting.³⁴⁶ No attempt was made to image the original hard drive in Nairobi. Rather, it was appropriately marked and sealed.³⁴⁷ However two clones were made of the cloned hard drive: one for the American authorities and one for the Commission.³⁴⁸

³³⁹ Testimony of Brian Currin, Day 17, 27 September 2018, page 61.

³⁴⁰ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 77.

³⁴¹ Testimony of Brian Currin, Day 17, 27 September 2018, page 62.

³⁴² Brian Currin Statement dated 26 September 2018, Exhibit J2, para 78.

³⁴³ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 79-81. Testimony of Brian Currin, Day 17, 27 September 2018, pages 62-63.

³⁴⁴ Testimony of Brian Currin, Day 17, 27 September 2018, page 63.

³⁴⁵ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 82-83.

³⁴⁶ Testimony of Brian Currin, Day 17, 27 September 2018, page 64.

³⁴⁷ Testimony of Brian Currin, Day 17, 27 September 2018, page 65.

³⁴⁸ Testimony of Brian Currin, Day 17, 27 September 2018, pages 65-66.

474. It was agreed at these meetings that the original hard drive would be handed over to the Commission for safe keeping on their return to South Africa, and so that the Commission could attempt to undertake a successful recovery and forensic imaging of the original hard drive. The hard drive was handed to Mr Terence Nombembe ("Mr Nombembe") at a secure venue on their return.³⁴⁹
475. Because the Commission had no jurisdiction in Nairobi, they would not accept delivery until they returned to South Africa. Mr Nott physically carried the hard drive back to South Africa. He and Mr Currin were present when the hard drive was handed to Mr Nombembe. Together they travelled to Pretoria where the hard drives were received, registered and locked up in a "very, very safe place".³⁵⁰
476. From there the Commission would be responsible for the safe keeping of the original and the clone. The Commission would investigate the possibility of making a clone of the original again, with the appropriate expert, without it collapsing completely.³⁵¹
477. It later transpired that the cloned hard drive taken to Nairobi was in fact a clone of the first clone.³⁵² At a later stage, Mr Currin handed over the first hard drive clone to the Commission as well. It was appropriately packaged and marked. Mr Currin did this so that the Commission could have the best evidence – the clone of the original – in its possession.³⁵³ Cloned copies were, in Mr Currin's view, the best evidence as based on expert advice he was given it was highly unlikely that the original would ever be sufficiently well-repaired to be able to access the data.³⁵⁴

³⁴⁹ Brian Currin Statement dated 26 September 2018, Exhibit J2, paras 85-87.

³⁵⁰ Testimony of Brian Currin, Day 17, 27 September 2018, page 66.

³⁵¹ Testimony of Brian Currin, Day 17, 27 September 2018, page 67.

³⁵² Testimony of Brian Currin, Day 17, 27 September 2018, page 68.

³⁵³ Testimony of Brian Currin, Day 17, 27 September 2018, page 71.

³⁵⁴ Testimony of Brian Currin, Day 17, 27 September 2018, page 56.

478. However, despite expectations, a successful forensic image of the original hard drive was made by the Commission. That imaged hard drive was then the subject of the application to have such evidence admitted on 27 September 2018.³⁵⁵
479. The ultimate use of the evidence on the hard drive was to make it available to a credible commission of inquiry in South Africa, that it would be able to use it in order to ascertain the veracity of the emails and all the other pieces of evidence to assist the Commission with its work, to enable it to make appropriate recommendations, so that the scourge of corruption in this country in both the public and private sector could be addressed.³⁵⁶ Mr Currin had absolute confidence in the independence and credibility of the Commission.³⁵⁷
480. Mr Currin confirmed his understanding that it had been agreed with Stan that the Commission should consult Stan, but that Stan would not have any ultimate veto on the fate of the hard drive.³⁵⁸

³⁵⁵ Testimony of Brian Currin, Day 17, 27 September 2018, pages 71-72.

³⁵⁶ Testimony of Brian Currin, Day 17, 27 September 2018, pages 68-69.

³⁵⁷ Brian Currin Statement dated 26 September 2018, Exhibit J2, para 67. Testimony of Brian Currin, Day 17, 27 September 2018, page 58.

³⁵⁸ Testimony of Brian Currin, Day 17, 27 September 2018, page 70.

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Water Purification Project: Intaka: Kwazulu-Natal Government

INTRODUCTION

481. This part of the Report relates to evidence that was heard by the Commission in respect of a Water Purification Project under the auspices of the Kwazulu-Natal Government. In particular it is a project in respect of which the Commission heard evidence where a company that was awarded a tender by a department of the Kwazulu-Natal Provincial Government paid more than a million Rand in to the trust account of a law firm for services allegedly rendered by that firm to that company but the law firm later paid that amount in various amounts to various creditors of entities belonging to the wife of the Head of the Department of the Department of Finance in the Kwazulu-Natal Provincial Government and sometime later the Head of Department of the Department of Finance gives to the Provincial Treasurer of the African National Congress (ANC) as a donation an amount exactly equal to the amount that the company to which the Water Purification Tender had been given paid to the law firm which in turn is exactly the same amount as the amount that the law firm paid in various amounts to the creditors of entities belonging to the wife of the Head of the Department of the Department of Finance.

482. Interestingly, the ANC Provincial Treasurer who admitted having received more than R1m from the Head of Department of the Department of Finance as a donation to the ANC never deposited the money in an ANC's bank account nor did he have it registered in any books of the ANC.

483. The terms of reference of the Commission were wide enough to investigate all irregularities or allegations of corruptions and fraud in national, provincial and local governments but it was not able to conduct investigations relating to the Provincial

Governments and municipalities except, in respect of provincial governments, this matter and, in respect of municipalities, in respect of the Johannesburg Municipality and EOH. This matter had been investigated by Price Waterhouse previously. The Commission heard certain evidence with regard to the roles played by the two members of the Executive Councils (MECs) in the Kwazulu-Natal Provincial Government namely, Mr Micheal Mabuyakhulu and Mr Reggy Nelisiwe Nkonyeni. Mr Sipho Shabalala was the Head of the Provincial Treasury of Finance who was involved. The Commission heard evidence implicating the two MECs and Mr Shabalala in wrongdoing and invited them to respond to the evidence and put their side of the story but only Mr Mabuyakhulu was prepared to do so. Mr Shabalala and Ms Nkonyeni's attitude was that, as they had been criminally charged, they did not wish to incriminate themselves and, therefore, refused to send affidavits or to come before the Commission and put their side of the story. Accordingly, the Commission proceeded to hear Mr Mabuyakhulu's side of the story. Mr Mabuyakhulu gave his evidence and subjected himself to questioning by the evidence leader and myself. He was represented by Senior Counsel, Mr Dichson SC.

484. The allegations which were probed by the Commission against the individuals involved here were about corruption in the awarding of contracts to Intaka Group of Companies (Intaka) by their respective departments and payments of large amounts of money to Intaka and in turn payments made by Intaka to certain individuals and the ANC. This part of the inquiry fell under paragraph 1.9 of the Commission's terms of reference.
485. In order to determine whether the allegations in question were established, it is necessary to have regard to both oral and documentary evidence that was placed before the Commission. What follows are the facts as gleaned from, in the main, the recorded oral evidence and some relevant documents.

Deal with the Department of Traditional Affairs and Local Government.

486. At the relevant time Intaka carried on business and was based in Cape Town. Its business relevant to this enquiry was the supply of water purification plants as well as oxygen generating plants. Intaka wished to supply the Provincial Government of KwaZulu-Natal with some of these plants. The plants were manufactured in Cape Town by another company from whom Intaka purchased the plants.
487. In pursuing its business wish to sell plants to the Provincial Government, Intaka approached Mr Sipho Shabalala who was then the Head of the Provincial Treasury in KwaZulu-Natal. The approach was made by Dr Gaston Savoi, one of Intaka's directors. Dr Savoi convinced Mr Shabalala to undertake a trip to Brazil in South America where similar plants were already in operation. Intaka paid costs for that trip. Apparently, Mr Shabalala was impressed and convinced that the Provincial Government should procure those plants.
488. After his return from South America, he initiated acquisition of the plants from Intaka. He wrote a number of memoranda to MECs and Heads of the Departments of Health and Traditional Affairs and Local Government, motivating that plants should be ordered from Intaka. In one memorandum that was addressed to the Head of the Department of Traditional Affairs and Local Government, Mr Shabalala stated:

“Proposal has been received from a company in Cape Town to supply equipment for onsite generation of gas as well as equipment that purifies water at source. The Department of Health is piloting the gas generating equipment at Murchison Hospital. Trade and Investment KZN has been involved in the water purification equipment for some time.”³⁵⁹

³⁵⁹ Record at page 95 of 161

489. In the memo Mr Shabalala proceeded to record that communities in KwaZulu-Natal were in desperate need of clean water and concluded:

“It is recommended that an amount of R22 million be allocated from the Poverty Alleviation Fund to provide the water generating equipment to all the municipal districts. It is also recommended that negotiations are commenced with the benefitting municipalities on the running cost of the equipment”.³⁶⁰

490. From the time that this memo was addressed to the Head of the Department of Traditional Affairs and Local Government in May 2005, it does not appear that any steps were taken to advance the process of procurement of the plants from Intaka. On 31 August 2005 Mr Shabalala addressed a letter to the same Head, pointing out the urgency of the matter. He said:

“As we are now approaching mid-year in the financial year, there is a considerable urgency to allocate and expend the funds in question lest we are left with unspent funds at the financial year end. As this project requires careful investigation and attentive consultation with the municipalities it would be appreciated if you would update this office as a matter of urgency on the progress to date if any”.³⁶¹

491. Meanwhile Intaka had submitted a quotation to Mr Shabalala on the price of 20 water purification plants to be sold to the Department of Traditional Affairs and Local Government. Intaka charged R2.2 million for each plant and the total amount for 20 came up to R44.5 million. However, Intaka paid R750 000 for each plant to the company that manufactured them.³⁶² This means that the price of each plant was increased almost three times what Intaka had paid.

³⁶⁰ Id at page 97 of 167

³⁶¹ Record at page 99 of 161

³⁶² Id at page 103 of 161

492. In October 2005 the Heads of the Department of Finance and Economic Affairs (Treasury), Health and Traditional Affairs and Local Government produced a memo that was addressed to their respective MECs. In it Mr Shabalala made two important commitments. First, he promised to expedite a transfer of R43 million from the Poverty Alleviation Fund to Traditional Affairs and Local Government. The second was to ensure that an exemption from compliance with the requirements for tendering was granted to that Department.
493. Legislation obliged the Government to acquire goods and services through a competitive tender process unless an exemption was granted. At the relevant time such exemptions in KwaZulu-Natal were issued by the Central Procurement Committee that was chaired by Mr Shabalala himself. This Committee was also responsible for awarding tenders throughout the Province.
494. However, an exemption was, under the relevant legislation, granted only in specified and narrow circumstances like urgency or an emergency or where there was only one supplier of goods in this country. The Head of the Department of Traditional Affairs and Local Government was required to apply for the exemption. Having described the acquisition of the plants as a pilot project with major growth potential, she motivated thus:

“The writer does not include relevant delegation application to the waiver but it is submitted that the waiver of tenders and the placing of an order upon Messrs Intaka Investments is the only avenue by which the equipment can be procured and payment effected within the time frame of this financial year”³⁶³.

³⁶³ Record at page 108

495. Needless to say that this statement was false. No attempt was made to determine that Intaka was the sole supplier of the plants. In fact, the plants themselves were manufactured by a third party which sold them to Intaka at a much lower price.
496. Nonetheless, the Central Procurement Committee entertained the application for an exemption. The members of the Committee did not meet in person to consider the application but the matter was determined "on a round robin basis"³⁶⁴. Some members approved the request without comment. These included Mr Shabalala. Others, while endorsing the exemption expressed reservations on how Intaka was selected and that the market was not tested for competitive prices.
497. In February 2006 the decision to issue an exemption was ratified in a formal meeting of the Committee. However, the minutes of that meeting were signed by Mr Shabalala in June 2006. In the intervening period, the Head of the Department of Traditional Affairs and Local Government had sought clarity from Mr Shabalala on whether, despite the approval, the market should be tested before placing an order with Intaka.
498. Mr Shabalala's office responded by pointing out that there was no need for testing the market. It was stated that the reference to testing the market was not made in relation to the relevant matter but referred to a normal process where no exemption was required.
499. Following this clarification, an order was placed with Intaka for the purchase of 20 water purification plants at a price of R44.5 million. Delivery of the plants was not made for some time because the parties to the deal could not agree on the charge for delivery. Intaka demanded R5.6 million for delivery alone whereas the Department argued that, on their understanding, that charge was included in the amount of R44.5 million.

³⁶⁴ Record at page 112 of 161

Eventually the Department capitulated and agreed to pay the additional R5.6 million. However, there was another reason that occasioned a further delay. The Department of Traditional Affairs and Local Government could not provide Intaka with locations where the plants had to be delivered.

500. 10 plants were delivered to a storage on a piece of land in Durban. Some were delivered at Amanzimtoti which is on the southern side of Durban. Payment of the sum of R44.5 million to Intaka was made on 5 March 2008. Seven days later, on 12 March 2008, Intaka paid an amount of R1 053 000 to the trust account of Kuboni and Shezi Attorneys. This payment was effected in response to a fraudulent invoice that was issued by that firm against Intaka at the instance of Mr Shabalala.
501. The circumstances around this payment were that during the initial discussions between the parties and even before Mr Shabalala and few colleagues of his undertook the trip to South America, Mr Shabalala had raised with Dr Savoi of Intaka, the issue of a donation by Intaka to the ANC. After payment of R44.5 million was made, Dr Savoi raised the issue of the donation with Mr Shabalala. The latter responded by telling him that an invoice would be sent to Intaka.³⁶⁵
502. Indeed, Intaka received an invoice dated 14 February 2007 for legal fees in the sum of R1 053 000 which was described as for legal services rendered to Intaka for the period 2003-2006³⁶⁶. However, Dr Savoi pointed out in his affidavit that no legal services were rendered by Kuboni and Shezi Attorneys to Intaka. He conceded that it was wrong to describe the payment as legal fees when in truth it was a donation. In an attempt to explain how the misrepresentation came about, he said he was not familiar with how donations to political parties were sourced in South Africa. Initially in the financial

³⁶⁵ Record annexure RR4-TSW-1339 at paras 14 and 32.

³⁶⁶ Id at pages 139-9

records of Intaka, the amount was described as legal fees but later it was reclassified as a donation.

503. Later, on the instructions of Mr Shabalala, Kuboni and Shezi made various payments to creditors of Mr Shabalala. The first payment was made within five days of receipt of the money by Kuboni and Shezi. A sum of R300 000 was paid to an entity called Serenity Investments which was owned by Mr Shabalala and his wife.
504. In May 2007 enquiries were made within the ANC about a donation from Intaka. This happened after the police had indicated that they were investigating a donation made to the ANC by Intaka.³⁶⁷ Mr Mabuyakhulu was approached by Mr Shabalala who told him that he had received a donation for the ANC. They agreed that Mr Shabalala would hand the donation to Mr Mabuyakhulu who was then the Provincial Treasurer of the ANC. However, two months lapsed before the donation was delivered to Mr Mabuyakhulu on 11 June 2008. It was an amount of R1 million in hard cash.

Deals with the Department of Health.

505. The Department of Health acquired two water purification plants from Intaka in one of the two contracts that were awarded to Intaka by the same department. The other contract was for purchasing oxygen generated on site with plants installed by Intaka at hospitals and clinics in the Province.
506. The first contract for the purchase of water purification plants was worth R9.9 million but was not awarded through a tender process, as required by legislation. Officials in the Department sought to deviate from the tender requirements.

³⁶⁷ Record – Annexure RR4-TSW-1584

507. Following an article in one newspaper to the effect that water at Appelsbosch and Rietvlei Hospitals was contaminated and not fit for human consumption, the Department dispatched qualified officials to investigate the matter. A report completed after the investigation stated that the water was not contaminated and was safe to be consumed.
508. However, the General Manager for Budget and Supply Chain Management was not convinced by that report. He addressed a memorandum to the Head of the Department requesting approval of an exemption from following the tender process in the purchase of the purification plants. He declared:

“A report received from integrated Health Services Cluster in an article from the Sowetan dated 22nd September 2006 attached hereto as reference. The contaminated water at the abovementioned institutions poses a health risk hazard to the health-hospital employees, patients and visitors at the hospitals. The drinking water at the hospitals has been a source of great concern. Three quotations were invited by the Supply Chain Management Unit with the intention to deal with this matter urgently as this is a health threatening situation. Approval to appoint the lowest bidder namely Messrs Intaka Investments at a total cost of R9 960 000 including VAT with no hidden costs is kindly sought in terms of Supply Chain Management in delegation 701.”³⁶⁸

509. It may be observed that what is said in that memo contradicts the memo submitted by the Department of Traditional Affairs and Local Government. It will be recalled that there it was said Intaka was the only “avenue” through which the purification plants could be purchased. In addition, in that instance two plants were purchased for R4.4 million as each was priced at R2.2 million which was three times more than the price at which Intaka acquired them from a third party.
510. Moreover, the record shows that the other companies that submitted quotations were associates of Intaka and that their names were submitted by Dr Savoi to the Head of

³⁶⁸ Record at para 11 of 217.

the Department of Health. Therefore, the process was being manipulated to favour Intaka. The Head of the Department approved the exemption within three days from the date she received the request. It would appear that by then the position had changed and these approvals were no longer the preserve of the Central Procurement Committee that was chaired by Mr Shabalala.

511. The approval was granted in October 2006 but the plants were not delivered because of challenges raised by officials at the hospitals. In January 2007, the Head of Department addressed a letter to Dr Savoi, to proceed with the installation of the plants which were eventually installed five months from the date of the request for the exemption.
512. With regard to the second contract, the matter was submitted to open tender. However, here, too, the process was manipulated to give Intaka an advantage. The tender specifications which were determined by officials in the Department of Health were given to Dr Savoi by the Head of Department. Dr Savoi was allowed to change those specifications in whatever way he wished. Consequently, he took out all specifications which his company could not meet and replaced them with the ones which his plants already satisfied. When he returned the specifications to the Department, he said in his email:

“Dear Amiga, checking the document with our technical staff it was detected that a lot of things were added that are not according to our specifications, neither the 150 10083 specifications with which we comply. Therefore I enclose the draft with the modifications and withdrawals highlighted in red”³⁶⁹

513. The amended specifications were finally endorsed by the Bid Specification Committee in the Department in November 2006. A tender was put out and a number of companies

³⁶⁹ Record at page 41 of 212

submitted their bids, including Intaka. The successful company was Intaka. Two of the losing companies were dissatisfied with the outcome and lodged an appeal. The appeal was submitted to the Provincial Treasury whose Head was Mr Shabalala. The appeal was dismissed but, whilst the decision was pending, Mr Shabalala sent an e-mail to Dr Savoi on these terms:

“Amigo, hearing went very well, expecting results early next week”³⁷⁰

514. However, a contract was not concluded for some time because of disputes in the main about the minimum quantity of litres of oxygen each hospital was to buy per month. Intaka insisted that regardless of the needs of a hospital, a minimum of 10 000 litres should be paid for. Officials in some hospitals pointed out that they used no more than 8 000 litres per month. Intaka wanted them to pay for the excess of 2 000 litres. The other bone of contention was who should be responsible for the maintenance of the plants. Despite the fact that the tender documents stated that Intaka would maintain the plants, the latter resisted the obligation. The contract was eventually signed in December 2007, following the intervention of Ms Nkonyeni, the MEC. Details of her involvement will be set out later.

515. Having outlined the background to the award of various contracts, it is now necessary to consider the role played by each MEC. I shall consider the involvement of Mr Mabuyakhulu first.

Mr Michael Mabuyakhulu's role

516. With regard to the award of the contract to Intaka by the Department of Traditional Affairs and Local Government, the evidence does not indicate that Mr Mabuyakhulu was involved in the unlawful award of that contract. Consequently, there is no factual

³⁷⁰ Id at page 48 of 212

basis for concluding that he committed an act of corruption in relation to the award of the contract. As mentioned, his involvement was limited to the donation in the amount of R1 million that was received from Mr Shabalala.

517. It is manifest from the record that Mr Mabuyakhulu wanted to distance himself from the donation from Dr Savoi at all costs. First, he even disputed that money was a donation from Dr Savoi. He contended that on the evidence placed before the Commission the money that was paid to Kuboni and Shezi Attorneys was used in full for the benefit of Mr Shabalala and his wife. From this premise, he concluded that the R1 million he received from Mr Shabalala could not constitute a donation from Dr Savoi. The argument is manifestly flawed. The fact that Mr Shabalala had misappropriated money that was intended for the ANC does not mean that he could not replace and deliver it to its right beneficiary.
518. The evidence clearly shows that Intaka made a single donation meant for the ANC and that was the amount of R1 053 000 paid to Kuboni and Shezi Attorneys. That Mr Shabalala had designed a plan to deprive the ANC of this money does not change its character. It will be recalled that Mr Shabalala paid the money a year after the donation was made and only after the police had commenced investigation in relation to the alleged donation and questions about it were raised within the ANC itself.
519. Moreover, on Mr Mabuyakhulu's own version, Mr Shabalala reported that he had a donation but did not hand it over to the ANC for about two months. When the money was delivered at the offices of the ANC, Mr Shabalala did not disclose who the donor was. As far as Mr Mabuyakhulu was concerned, Mr Shabalala himself could have been the donor. This apparent ignorance of the source of the donation cannot displace the evidence that shows that the source was Intaka.

520. Despite the professed ignorance, the probabilities are that Mr Mabuyakhulu knew that the amount he received from Mr Shabalala was a donation from Dr Savoi. No less than three persons associated with the ANC said Mr Mabuyakhulu informed them that the donation was from Dr Savoi. First, it was the ANC's Financial Manager but he later recanted that version despite the fact that he had sworn to the truth of it. Second, it was the attorney who interviewed Mr Mabuyakhulu at the instance of the ANC which was investigating whether a donation was made. Third, it was Dr Mkize who was Mr Mabuyakhulu's colleague and a fellow official in the ANC. He said he was informed that the donation was from Dr Savoi and Mr Mabuyakhulu conceded that he reported the issue of the donation to Dr Mkize but denied that he disclosed the identity of the donor.
521. There is no reason for not accepting the version of these witnesses as correct, especially Dr Mkize and the attorney. Moreover, the conduct of Mr Mabuyakhulu in dealing with the money after receiving it is not consistent with that of a person who did not know its source and that it was tainted by potential illegality. After receiving the donation Mr Mabuyakhulu went to great lengths to conceal it. In contravention with the ANC's procedures, he did not record the donation in its books.
522. The implausible reason he gave for his conduct, when asked at the hearing before the Commission, was that some donors of the ANC did not want their identity to be disclosed. But it was pointed out to him that the identity of the donor could be omitted in recording the donation. In fact, on his own version he did not know who the donor was. Therefore, he did not know whether the donor was averse to the disclosure of his or her identity.
523. To sum up on Mr Mabuyakhulu's version before the Commission he received a large donation of R1 053 000 from Mr Shabalala on behalf of the ANC in cash. He put that

cash in a safe in his office, at least on the first day. He did not get the money receipted in the books of the organisation nor did he deposit it or have it deposited or transferred into the ANC's bank account. He testified that he used that money to pay various items which needed to be paid for by the ANC in preparation for the provincial elective conference that was to be held in a week or two. He did not keep receipts of payments he had made from this money to pay for certain items of the ANC for the conference. This means that he received a million Rand donation for the ANC and he did not have it recorded in the ANC books, did not have it put into the ANC bank account and used it without keeping receipts so that, when he reported to the ANC that he had received this large donation on behalf of the ANC which he did not put into the ANC bank account and did not have registered in the books of the ANC, but said that he had used it to pay expenses, he would be able to prove that by way of receipts. He said he could not remember what procedures the ANC had in place at the time for donations but that cannot be true. He was the Provincial Treasurer. He was one person who, would have known those procedures very well. The problem is that it was not convenient to disclose to the Commission what those procedures were because that would probably have made it clear that he never had any intention to let the ANC know that he was keeping a donation of more than R1 million that belonged to it.

524. If Mr Mabuyakhulu wanted to hand the money over to the ANC, he would have done that very easily either on the same day he received the money did not want the ANC to know y or the following day. Mr Mabuyakhulu did not want the ANC to know about the Money. Even if he used part of it to pay for some items needed by the ANC for its conference, there is no way he would have used over R1 million to make such payments without keeping receipts as proof that he had used all the money for the ANC and had not stolen it or part of it. If he did not keep such receipts, how would he have hoped to convinced his colleagues in the ANC that he had used all the money for the ANC and had not helped himself to it. To the extent that Mr Mabuyakhulu's version is that he used

all the R1 053 000 or most of that amount for the benefit of the ANC, that version cannot be true.

525. As already indicated, Mr Mabuyakhulu testified that as Treasurer of the ANC, he authorised that the money be used in paying its creditors for services and goods received in preparation for the provincial conference. This may constitute money laundering which is a criminal offence. Consequently, the question whether Mr Mabuyakhulu, in dealing with the donation, has committed an offence may be determined in a criminal trial.

Ms Nkonyeni's role

526. While it does not appear from the evidence on record that MEC Nkonyeni influenced or was involved in the award of contracts by her Department to Intaka, there is proof of an arrangement that she and her romantic partner would benefit financially as a result of those contracts. Following a long delay in signing the contract for the supply of oxygen, Ms Nkonyeni sent the following message to Dr Savoi:

"Doc: A contract was signed yesterday although your guys were not happy with maintenance and a few other things. But they were crushed because of what was reflected in the bid document. Next time we will have to be more careful and perhaps you need to cancel the donation since you are losing on maintenance. What do you suggest? Peggy"³⁷¹

527. Evidently the MEC sided with Dr Savoi against her own department on the issue whether Intaka should bear the responsibility of maintaining the plants. Motivation for this appears to be that the promised donation could be cancelled. The relationship

³⁷¹ Record at page 81 of 212

between Ms Nkonyeni and Dr Savoi, as depicted in that message, is manifestly corrupt and was designed to benefit them at the expense of the Department of Health.

528. With regard to Ms Nkonyeni's romantic partner, he received two payments in the sum of R500 000 after the Department of Health had paid for the water purification plants. These payments were made to Rowmoor Investments, a company in which Ms Nkonyeni's partner was a sole director. That company was formed by Intaka's auditors and her partner was made a director in a meeting that was convened by Dr Savoi in Cape Town, two months after the company was formed. Ms Nkonyeni also attended the meeting. In fact, there were several meetings that were held between Dr Savoi and Ms Nkonyeni together with her partner. Sometimes Intaka paid for their accommodation when they attended such meetings in Cape Town.³⁷²

529. The evidence reveals no services were rendered to Intaka by Ms Nkonyeni's partner, for him to be paid R1 million. It is more probable than not that this payment was tainted by corruption and that Ms Nkonyeni knew or ought reasonably to have known of the corruption that was involved here.

530. Therefore, based on the evidence placed before the Commission, the decision to prefer criminal charges against both Mr Michael Mabuyakhulu and Ms Peggy Nkonyeni was correct. The subsequent withdrawal of those charges was wrong. Both of them must stand trial for their involvement in the respective matters.

³⁷² Record at page 95 of 212

DEPARTMENT OF PUBLIC ENTERPRISES GOVERNANCE OF STATE-OWNED ENTERPRISES

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DPE'S GOVERNANCE OF STATE-OWNED ENTERPRISES

THE APPOINTMENT OF MEMBERS OF BOARDS OF SOEs AND CEOs, CFOs AND CPOs OF SOEs

531. The evidence that has been heard by the Commission with regard to SOEs in the past ten years or so has revealed, as will have been seen from Part I, II, and IV of this Commission's Report that, to a very large extent, the SOEs which were captured by the Guptas were captured because some members of these Boards of those SOEs, particularly their Chairpersons, as well as the Group Chief Executive Officers and Chief Financial Officers were people who had no integrity and knowledge and experience required for their position or were people who had the right knowledge, skills and experience but simply lacked the integrity. Integrity is very important for people who get appointed to these position because if you appoint people who have no integrity and knowledge, skills and experience, you end up with what South Africa has ended up in terms of the capture of those SOEs and the aftermath thereof. I referred to Part I, II and IV of this Commission's Report because it is in those parts that this Commission has dealt with the evidence of capture of SOEs. In Part I we dealt with SAA and its subsidiary companies. In Part II we dealt with Transnet and Denel. In Part IV we dealt with Eskom.

532. It is not only in SOEs that the Commission heard evidence that revealed this. The Commission also heard such evidence in respect of the Department of Correctional Services where senior leaders in the Department of Correctional Services had effectively been captured by Bosasa to the extent that where there was a tender to be issued to the public, they would not only inform BOSASA ahead of the public notice but would actually ask BOSASA to prepare the specifications for the job and, of course BOSASA would draw the specifications in such a way that only it could win the tender. There was also the South African Revenue Service (SARS) that was led by Mr Tom

Moyane who got captured by Bain even before he set his foot at SARS and allowed Bain, after he had joined SARS, to basically run the show at SARS. The evidence has revealed that Mr Tom Moyane had no integrity nor did he have the right qualifications, skills and experience for the job. He was identified by President Zuma for appointment as SARS Commissioner long before time.

533. At Transnet the evidence heard by the Commission revealed how Mr Brian Molefe, once a promising manager and executive, lacked integrity despite the fact that he may have had the right qualifications, knowledge and experience. Similarly, the evidence revealed the absence of integrity on the part of Mr Siyabonga Gama, also a promising manager. The same happened with Mr Anoj Singh who served both at Transnet and at Eskom at different times.
534. At Denel a Group Chief Executive Officer who was seen by the Guptas and chair associates as not co-operating with them, namely, Mr Riaz Saloojee, was suspended for over a year without being subjected to a disciplinary hearing and ultimately pushed out and another one was appointed who was prepared to co-operate with the Guptas and their associates, namely Mr Ntshepe. It was not only Group CEOs and Group CFOs but also chairperson of Boards of SOEs.
535. In Part I of this Commission's Report evidence was dealt with which showed that the SAA Board was led for many years by someone who neither had the integrity nor the qualifications, knowledge and experience required to lead a Board of company such as SAA. That was Ms Dudu Myeni. Also, Ms Yakhe Kwinana who was a member of the SAA Board together with Ms Dudu Myeni was also the Chairperson of the Board of SAAT. Although she is an accountant, the evidence, including her own evidence when she testified before the Commission revealed that she had no integrity. If one goes to Part IV of the Report which deals, among others, with Eskom one finds that Dr Ben

Ngubane was appointed initially as Acting Chairperson of the Board of Eskom and later as Chairperson of that Board because he was an associate of the Guptas and he was prepared to advance their interests. He was a medical doctor and did not seem to have had the requisite knowledge, expertise and experience to lead the Board of an SOE such as Eskom. However, the most important thing is that he was an associate of the Guptas and was prepared to use his position initially as a member of the Board of Eskom and, later, as Chairperson of the Eskom Board to advance the business interests of the Guptas.

536. Then if we go to Denel, we find in Part II of the Report that the chairperson of the Board of Denel that was appointed in 2015 was someone who also had neither integrity nor experience and skills to lead the Board of a state owned entity such as Denel. I referred to Dr Ngubane earlier on in respect of his position as Chairperson of the Board of Eskom. Prior to his appointment as a member of the Board of Eskom, he had been chairperson of the Board of SABC. While at SABC one may also refer to the fact that the Board of SABC appointed Mr Hlaudi Motsoaneng as the COO even though he did not pass matric and most South Africans who keep themselves informed about what happens in the country will need no reminding as to who Mr Hlaudi Motsoaneng was. In respect of the Crime Intelligence Unit the Commission also heard evidence a lot of wrong doing by Mr Richard Mdluli who was appointed as the Head of that Unit of the South African Police Service against. He has sent a letter to President Zuma and told him how he would assist President Zuma if he was appointed as the Head of the Crime Intelligence Unit and he was appointed to that position. What happened in that Unit during his time as its Head is dealt with in this Report.

537. What is common about all the chairpersons of the Boards of SOEs referred to above as well as CEOs and CFOs thereof referred to above and the former Commissioner of SARS referred to earlier, Mr Tom Moyane is that they were all appointed by politicians

or politicians had a say in their appointments. This suggests that the politicians i.e. Ministers have not shown themselves to be able to pick people of integrity and people with the knowledge, expertise and experience necessary to lead these very important SOEs. We cannot continue doing things the same way they have been done over a long period with the consequences that the country has suffered in terms of SOEs. SAA was under business rescue for quite some time until recently Denel has been reported in the recent past not to be able to pay its employees. Eskom has its own challenges. SABC had its own serious problems for a long time. The South African Post Office is also reported to be in serious problems. PRASA has had its own problems. In all of these entities Ministers either appoint the Board that appoints the CEO or the Minister appoints the Board and the CEO or he or she has to approve the appointment of the CEO.

538. With all that has happened to these SOEs, going forward it cannot be business as usual. Something drastic must happen if the situation is to be turned around and the Executive must acknowledge that the period when the Ministers had to power to appoint people to fill these important positions has produced a very bad record of the people they have been appointing. The picture that emerges from that period is one that says to us: if something drastic does not happen not only will these SOEs be likely to be captured again in the future with the disastrous consequences that we have seen out of state capture but these SOEs will all go down. In my view what must happen that is drastic includes ensuring the quality of the leaders who lead these institutions both in terms of the members of the Boards (and their chairpersons) and in terms of the Group CEO, Group CFO and Chief Procurement Officers. It would be a contradiction in terms to say we seek to ensure quality leaders for these entities but allow the same people who have failed over many years to appoint quality leaders for these entities to continue to be the ones who make these appointments going forward.

539. This is not to say that the Executive must have no role to play in the appointment of the leaders of these entities. They can and should still have a role to play but it cannot and should not be business as usual. Business as usual has led these entities and the county to be where we are. What this approach means is that the role of the politicians must be seriously diluted so as to allow other people to really influence the kind of leaders that will lead these entities.
540. Apart from who makes the appointment, it is also necessary to make sure that the appointment processes are transparent and open to the public. This will engender public confidence when the public can see that the people who get appointed to these leadership positions are subjected to a fair and transparent selection process. Never again must we have a situation such as the one revealed in the evidence heard by this Commission about how Mr Mafika Mkwanazi was identified as the Chairperson of the Board of Transnet that was appointed in December 2010. That evidence is in Part II of this Commission's Report. Mr Mkwanazi testified that he had a meeting on 31 October 2010 with Mr Malusi Gigaba³⁷³ and at that meeting Mr Gigaba offered him the position of Chairperson of the Board of Transnet and then used that first meeting between them to ask him or him and the Board to review Mr Siyabonga Gama's dismissal. Of course, Mr Mkwanazi got appointed as the Chairperson of the Board of Transnet and wasted no time in doing all he could to get Mr Siyabonga Gama reinstated as CEO of the TER Division as Transnet. Mr Gama's role in the state capture at Transnet is given in Part II of this Commission's Report. That way of doing things should not happen again.

³⁷³ Mr Gigaba said the meeting must have been early in November, not on 31 October 2010 because as at 31 October 2010 – he had not yet been appointed as the Minister of Public Enterprise.

DEPARTMENT OF PUBLIC ENTERPRISES GOVERNANCE OF STATE OWNED ENTERPRISES

541. The Department of Public Enterprises has forwarded a file to the Commission dealing with its oversight framework in regard to the SOEs.

542. The file consists of 15 reports, policy statements, discussion documents, guides, handbooks and protocols concerning state-owned entities indexed and dated as follows:

- 542.1. President Cyril Ramaphosa State of the National Address – Announcement of HOLDCO – 10 February 2022
- 542.2. SOC Diagnostic Report (2021)
- 542.3. Draft Policy Statement (2022)
- 542.4. National State Enterprises Bill
- 542.5. Indicative Memorandum of Incorporation of National State Enterprises Holding SOC Limited
- 542.6. Discussion Document on Vision and Foundational Elements for a Centralised Shareholder Model and a State-Owned Holding Company of SOCs
- 542.7. DPE Logical Planning, Monitoring and Evaluation Process
- 542.8. DPME Monitoring Framework for State-Owned Entities (2022)
- 542.9. DPE Risk and Integrity Management Framework for State-Owned Companies (2020)

- 542.10. DPE State-Owned Company Board Evaluation Framework (2021)

- 542.11. DPE Draft Guide for State-Owned Companies: Remuneration and Incentives for Executive Directors, Prescribed Officers and Non-Executive Directors (2022)

- 542.12. Memorandum of Incorporation (2021 template)

- 542.13. DPSA Handbook for the appointment of persons to Boards of State and State-Controlled institutions (2008)

- 542.14. DPSA National Guide for the appointment of persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions (2018)

- 542.15. DPE Protocol on Corporate Governance in the Public Sector (2002)

- 542.16. DPE draft Protocol of Corporate governance in the Public Sector (2015).

- 543. The relevant File items are summarised below.

The Diagnostic Report 15 December 2021

- 544. The most innovative of these items is the Diagnostic Report dated 15 December 2021 which envisages the establishment of a holding company controlling the various SOEs as subsidiaries. This framework envisages the role of Government to be the owner, executive authority, policy maker, regulator and an operator of SOEs.³⁷⁴ The ownership function accorded to the State is intended to facilitate South Africa's developmental policy imperatives and it is envisaged, on the strength of a recent World Bank Report,

³⁷⁴ See Diagnostic Report, para 2.2.

that the State as outright owner of the SOEs, has the right to nominate or appoint members to the Board.³⁷⁵

545. The Diagnostic Report does refer to existing problems in the nomination of directors to the SOEs. It says:

“The NPC report stated that the State’s approach to board nomination could be more transparent and rigorous, less ad-hoc and politicised, more merit-based and better structured. In practice, the board nomination process in SA suffers from a number of shortcomings, as both the Government and external analysts have recognised: it is non-transparent and only partially structured, representing a mix of technocratic and political. Ultimately, political decisions have prevailed in the selection of top management and the board in SOEs. In principle, attention is supposed to be paid to the required skill-set for the board; in practice, it is hard to know whether boards reflect and especially avail of the expertise required in such a skill-set.”

The National State Enterprises Bill, 2022

546. The Bill confers upon a Minister to be identified by the President, the duty to develop a national strategy for State enterprises and to establish a holding company in which the State is the sole shareholder and the designated Minister is the sole representative of the shareholder.³⁷⁶ Section 8(2) provides:

- “(2) Notwithstanding the Companies Act, the Minister may only –
- (a) subject to subsection (3), elect the directors to the Board of the holding company in terms of section 68 of the Companies Act on the recommendations of the Board after a public and transparent appointment process conducted by it;
 - (b) remove directors in terms of sections 69 and 71 of the Companies Act if the director –
 - (i) is in breach of the director’s fiduciary duties; or

³⁷⁵ *Ibid.*, para 3.

³⁷⁶ See section 7.

- (ii) is unable to perform the functions of a director adequately or competently;
and
- (c) determine the remuneration of directors in accordance with the best market practice as independently advised."

547. Whilst the Bill in section 8(2)(a) applies to the holding company there is no indication in the Bill as to how, and by whom:

- 547.1. senior executive officials of the holding company; and
- 547.2. directors of the subsidiary companies; and
- 547.3. senior executive officials of the subsidiary companies,
- 547.4. are to be nominated or appointed.

Indicative Memorandum of Incorporation of National State Enterprises holding SOC Limited

548. The Indicative Memorandum repeats the procedure for the appointment of directors to the holding SOE but also provides special procedures for the appointment of the Chief Financial Officer. The latter process of appointment is instructive and reads as follows:

"11.4 Process of appointment of the Chief Financial Officer

11.4.1 The Board shall identify, nominate, evaluate and appoint a candidate for the position of Chief Financial Officer, provided that the Shareholder shall, in writing, approve such candidate prior to the appointment of the Board.

11.4.2 If the Shareholder does not approve the candidate nominated by the Board for the position of Chief Financial Officer, the Shareholder shall be required to provide a written substantive motivation to the Board as to why the Shareholder does not approve the candidate nominated by the Board.

11.4.3 If the Shareholder provides the written substantive motivation contemplated in clause 11.4.2, such candidate shall not be appointed as the Chief Financial Officer and the Board shall identify and nominate an alternative candidate for appointment as the Chief Financial Officer and the process contemplated in this clause 11.4 shall be repeated until such time as an appointment has been made.

11.4.4 The Chief Financial Officer shall only become an executive Director of the Company if appointed to the Board by the Shareholder in terms of clause 11.1.1 of this MOI."

549. In regard to the Chairperson of the Board the Indicative Memorandum provides simply that the Chairperson of the Board shall be appointed by the Shareholder.

Discussion document on vision and foundational elements for a centralised shareholder model and a State-owned holding company of SOCs 14 December 2021

550. This discussion document acknowledges the effect of State Capture as follows:

"2.3 State Capture and the repurposing of SOEs

The lack of impact by SOEs and dependence on the fiscus is in no small measure a consequence of the period of state capture, corruption and other criminality. The evidence which has emerged from testimony to the Judicial Commission of Inquiry into Allegations of State Capture (the Zondo Commission) tells the story of the extent to which SOEs were repurposed, made dysfunctional and hollowed-out of capacity and capability. This then enabled the looting of hundreds of billions of rands and led to a situation from the SOCs have yet to recover.

The process of state capture and criminal behavior occurred through the collusion of persons in positions of political power, together with private business. The latter were drawn from a wide range of sectors such as original engineering manufacturers (OEMs), IT developers, financial and strategic consultants, the auditing profession, lawyers and media houses. All manner of techniques were used to enable the looting – tenders and contracts were rigged and invoiced at inflated prices, goods and services were under-delivered, individuals who resisted were dismissed, while those involved suffered no consequences.

Meanwhile, it was not only the finances that were pillaged – entities haemorrhaged people experience, skills and knowhow. While serious attempts have been made

to stabilise in the SOEs and to turn this situation around, they remain in crisis and unable to perform optimally. Instead of contributing to the fiscus and to development in the country, they have become dependent on bailouts from it.”

551. Having identified the critical consequences of state capture, the discussion document has very little to say as to how, and why, its proposal for a state-owned holding company for SOC's will insulate the SOEs from state capture in the future. It is simply said, without explanation, that:

“The establishment of a Holdco can achieve the following:

- Insulate SOEs from unwarranted political interference. This is typically achieved through an ownership policy which addresses in greater detail the interface between the government, the holding company itself, and the entities under the holding company;”³⁷⁷

552. Insofar as the discussion document addresses the relationship between HoldCo and the subsidiary SOC's, the following is noted:

“Each subsidiary SOC will be controlled by its own board, the composition of which will initially be determined by the directors of Holdco. The composition of the subsidiary board shall be subject to the requirement that each board will have one or more directors with specialised knowledge of the operational enterprise of that subsidiary SOC. Subject to the governance controls exercised by Holdco, each subsidiary SOC will be empowered to determine its own operational strategy, so long as it comports with the developmental objectives as set out in the legislation and the regulations promulgated by the designated Executive.”

³⁷⁷ Discussion document, para 5, page 21.

The Memorandum of Incorporation for the subsidiary SOC

553. Although a HoldCo – SubCo framework is the basis of the intended framework for SOC the Memorandum of Incorporation for subsidiary SOC does not identify the HoldCo as the Shareholder of each subsidiary SOC but instead provides the following definition:

“1.2.56 ‘**shareholder**’ means the Government represented by the Minister. (The Minister, in turn, is defined as the Minister of Public Enterprises or any other Minister designated as the Government representative).”

554. Clause 14.1.1 of the MOI provides:

“The Shareholder shall, subject to clause 14.1.4 below, have the exclusive power to appoint Directors pursuant to the provisions of section 66(4)(a)(i) of the Companies Act and section 63(2) of the PFMA.”

555. Section 14(1)(4) provides that executive directors are *ex officio* directors as contemplated in section 66(4)(a)(ii) of the Companies Act and it is also provided that no director shall be entitled to appoint an alternative director.

556. The Chairperson of the Board is also appointed by the Minister and the Minister also fills in Board vacancies as they arise.

National Guide for the Appointment of Persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions, September 2018

557. Included in the file which has been made available to the Commission for its consideration is a document emanating from the Department of Public Service and Administration marked “SECRET”. The document envisages a Nominations Committee for the appointment of Board members and executive officials which Nomination Committee is itself appointed by the Minister and consists of the head of department

and deputy director's general. The Nomination Committee interviews candidates and recommends a short list of the most suitable candidates to the Selection Committee.

558. The Selection Committee which itself is appointed by the Minister (i.e. the executive authority) interviews the candidates and identifies a preferred candidate for selection by the Minister.

Evaluation of the File contents from the point of view of the Commission

559. Although the File documents envisage the formalisation of the appointment processes including a limited form of public involvement (the public may be invited to identify candidates) the Nomination and Selection of candidates remain firmly controlled by the relevant Government Minister. It is difficult to see why the proposed system will be any better placed to deal with state capture than it was before. There are no effective mechanisms which would prevent cronyism and cadre deployment from continuing to dominate appointment to the Boards and to senior executive officers.
560. The recommendations of the Commission, it is submitted, must insist on a truly independent and transparent process free from political manipulations so that the ultimate appointment made by a Minister is genuinely the result of a merit-based selection process.

AMENDED RECOMMENDATIONS REGARDING APPOINTMENTS TO THE BOARDS AND TO EXECUTIVE OFFICE OF STATE-OWNED ENTERPRISES

561. In the circumstances the Commission recommends the establishment of a Standing Appointment and Oversight Committee tasked to ensure, by way of a public hearing, that any person nominated for Board appointment or as the Chief Executive Officer, Chief Financial Officer, or Chief Procurement Officer of an SOE meets the professional,

reputational and eligibility requirements for such a position. The Committee will also investigate and act upon any complaints received concerning the misconduct of any Board member or senior executive in the discharge of his or her duties.

562. The relevant recommendation reads as follows:

Recommendation for appointments to the boards and to executive office of state-owned enterprises

563. It is hereby recommended that:

- 563.1. That in order to ensure a transparent process for the appointment of appropriately qualified and experienced persons of high integrity to the Boards of state-owned enterprises and to senior executive positions therein, the Government must introduce legislation:
- 563.2. to create a Standing Appointment and Oversight Committee having the powers and functions set out in 33.5 below:
- 563.3. to provide for the relevant shareholder Minister to make appointments to the Boards of SOEs and to senior executive office in accordance with 14 and 15.3 below;
- 563.4. to appoint an Adjudicator having the powers and functions set out in 15 and 16 below.
- 563.5. The powers and functions of the Standing Appointment and Oversight Committee are:

- 563.5.1. to invite, receive and assess by way of a transparent and public process nominations for appropriately qualified and experienced persons of high integrity willing to accept appointment to fill any vacancy on the Board of a State-Owned enterprise or in a senior executive post;
- 563.5.2. to recommend to the shareholder Minister concerned the names of at least one but not more than three of the best qualified candidates suitable for appointment for every vacancy on the Board or senior executive post;
- 563.5.3. to follow the procedures set out in 15 below;
- 563.5.4. to publish a Code of Conduct which will be binding on Board members and senior executives;
- 563.5.5. to receive and investigate complaints relating to any misconduct alleged against a Board member or person holding a senior executive post and to pronounce on the merit of the complaint and the steps which should be taken to deal with it.

564. The relevant shareholder Minister shall, upon receipt of any nominations from the Committee either:

- 564.1. proceed to appoint the nominee, where a single nomination has been made, or one of the nominees, where more than one nomination has been made, to the Board or senior executive post in the relevant state-owned enterprise; or
- 564.2. provide the Committee with a written explanation within thirty days from the receipt of the Committee's nomination/s setting out why, in the opinion of the Minister, the nominee/s is not or are not appropriately qualified or appropriately experienced or of high integrity;

564.3. if the shareholder Minister neither approves any candidate nominated by the Committee nor provides a written explanation for withholding such approval within the said thirty days the matter shall proceed in accordance with the process set out in 16 below.

565. Where the Minister:

565.1. responds in terms of 14.2 above in the case of a single nomination made by the Committee, the Committee must proceed to identify and nominate an alternative candidate for such appointment, and if that alternative nomination is not approved by the Minister, the matter shall proceed in accordance with the process set out in 5 below;

565.2. responds in terms of 14.2 above in the case of two or three nominations having been made by the Committee, and has provided the reasons for not so approving then the Committee shall, if it regards the Minister's reasons as valid, proceed to identify and nominate alternative candidates for the Minister to consider for appointment, and again rank such further nominations in accordance with its preference, and if the shareholder Minister also rejects the alternative nominations the matter shall proceed in accordance with the process set out in 16 below;

565.3. Where the Committee does not accept the written explanation of the Minister as constituting a valid objection to the lack of appropriate qualification or appropriate experience or to the integrity of the nomination/s, or if the Minister neither approves any candidate nominated by the Committee nor provides a written explanation for withholding such approval within the said thirty days the matter shall proceed in accordance with the process set out in 5 below.

566. Where the Minister has failed to make an appointment either from the original list of nominees or from any alternative list of nominees where such has been provided, then the person ranked first in the single list provided to the Minister, or the person ranked first in the alternative list provided to the Minister as the case may be shall be appointed by the Minister.
567. The Committee shall comprise the following persons who shall serve a term of three years:
- 567.1. a retired Judge, nominated by the Chief Justice, who will preside as Chairperson of the Committee;
 - 567.2. the Minister of Finance or his delegate;
 - 567.3. a senior legal practitioner appointed by the Chairperson of the Legal Practice Council;
 - 567.4. a senior representative from the business community appointed by The National Economic Development and Labour Council;
 - 567.5. a senior Trade Union representative appointed by The National Economic Development and Labour Council;
 - 567.6. a registered Auditor appointed by the Chairperson of the Independent Regulatory Board for Auditors;
 - 567.7. an industry expert appointed by the SOE concerned;

- 567.8. a senior representative of an established anti-corruption non-profit organisation operating in the private sector such organisation to be identified by the Chairperson of the Committee.