
FINANCIAL AND FISCAL COMMISSION'S READING OF THE ZONDO COMMISSION OF INQUIRY INTO STATE CAPTURE REPORT - PART V

July 2022

Summary

Part 5 of the Judicial Commission of Inquiry into State Capture (also known as the Zondo Commission) Report is summarised below. The purpose of the Commission is to investigate allegations of state capture, corruption and fraud in the public sector. The report is split into two volumes. Volume 1 focuses on the State Security Agency and Crime Intelligence and Volume 2 focuses on the SABC, Waterkloof Landing, and PRASA.

Volume 1: State Security Agency and Crime Intelligence

State Security Agency

1. The South African **State Security Agency (SSA)** is the government department that bears the overall responsibility for civilian intelligence operations. It is mandated to provide the government with intelligence on domestic and foreign threats or potential threats to national stability, the constitutional order, and the safety and well-being of South Africans. The secret nature of intelligence operations carries a heightened risk of corruption as operational funds are not subject to the same level of scrutiny as other public budgets.
2. The evidence highlighted the critical role of oversight bodies including the Inspector-General of Intelligence (IGI), Joint Standing Committee on Intelligence (JSCI), and Auditor General of South Africa (AG). The Zondo Commission may have not been necessary if the SSA had detected, investigated, and countered state capture as a threat to the constitutional order when symptoms first appeared.
3. President Zuma, through **Proclamation 59 of 2009**, brought about the amalgamation and restructuring of the National Intelligence Agency (NIA), whose mandate was domestic intelligence, and the South African Secret Service (SASS), whose mandate was foreign intelligence, into the SSA. The 2009 regime introduced the concept of “State Security” as opposed to “National Security”, where the emphasis fell on the security of the State as opposed to the security of the people. This resulted in the use of the SSA to serve the power

and interests of the incumbents, especially President Zuma. One of the consequences of the amalgamation was that powers that were previously enjoyed separately by the DG of the NIA and the SASS were put into the hands of one person, the DG of SSA. Most of the problems that beset the SSA were consequences of the amalgamation.

4. SSA conducted an internal investigation into irregularities and criminality arising from contraventions of the SSA's governance, operational and financial prescripts during the 2011-2018 period, called **Project Veza**. The team found that most of the projects undertaken by the Chief Directorate Special Operations (CDSO) were in breach of the SSA's policy. There have subsequently been attempts to discredit the investigation, including safety threats to the team members and Advocate Mouffe labelling the team as a "rogue unit" and denying them access to their workspace and documents.
5. The Commission highlighted vulnerabilities in SSA's regulatory framework, including the susceptibility of intelligence agencies to politicization, given that they are valuable tools to cement political power. A High-Level Review Panel (HLRP), appointed by President Ramaphosa, found serious politicization and factionalization of the intelligence communities, based on factions in the ANC, resulting in a disregard for the Constitution and intelligence legislation and policies. Additionally, there were extensive ministerial powers and executive overreach; weaknesses in financial controls and accountability; and abuse of the secrecy principle.
6. These vulnerabilities were exploited for political and personal gain by various methods, including the centralization of authority and restructuring of the SSA; abuse of processes and resources; and weakening of oversight. There is a discernable pattern that investigations into wrongdoing are interfered with and eventually stopped.
7. Certain findings of the Commission are detailed below.
8. Under the leadership of Ambassador Maqetuka (Director-General (DG)), Ambassador Shaik (Head: Foreign Branch) and Mr Njenje (Head: Domestic Branch), the **SSA wanted to investigate the Guptas** around 2011. This followed information that the Guptas had informed Minister Mabula of his forthcoming appointment as Minister of Sport and Recreation before he had heard from President Zuma, which would constitute a serious threat to national security. However, the investigations were stopped by then Minister of State Security, **Ambassador Cwele**, who involved himself in the operations of SSA. The Commission also found that President Zuma did not want the Guptas to be investigated and defended his friendship with them. Timely investigations could have prevented at least some of the Gupta's activities that led to State Capture and the loss of billions of Rands.

9. An internal team of the SSA investigated a project known as the **Principal Agency Network (PAN)**, which had been launched by **Mr Fraser**. The investigation revealed possible criminal conduct and was handed over to the Hawks and NPA for prosecution. The crimes included fraud and corruption, involving the abuse of funds, irregular acquisition of properties and vehicles, and employment of people without security clearance as part of the PAN programme. In all, approximately R600 million was spent in this regard. These problems occurred as there was the centralization of power in Mr Fraser regarding the project and no control by the DG. However, Minister Cwele, apparently on instruction from **President Zuma, stopped the prosecution against Mr Fraser**. Thereafter, in 2016, President Zuma appointed Mr Fraser as DG of the SSA.
10. Years later, Mr Fraser, being Commissioner for Correctional Services, granted Mr Zuma medical parole, during his 15-month imprisonment, under questionable circumstances and against the recommendations of the Parole Board. In other words, Mr Zuma put a stop to an investigation that could have led to the arrest of Mr Fraser and Mr Fraser put a stop to Mr Zuma's incarceration. It is recommended that law enforcement agencies resume investigations that were stopped by Mr Zuma with a view to possibly prosecute those implicated, including Mr Fraser.
11. President Ramaphosa admitted that he deployed Mr Fraser to Correctional Services in 2018, despite being aware of some allegations against him in relation to the SSA.
12. There is overwhelming evidence that **Minister Cwele** and subsequently **Minister Mahlobo involved themselves in operations**. Minister Cwele interfered in the investigations against the Guptas, and he acted against the Hawks' investigations into Mr Fraser. Minister Mahlobo also directed operations. Under the umbrella project Mayibuye, he was actively involved in Operation Justice (involving alleged attempts to bribe judges), Operation Commitment (involving cash withdrawn from the SSA and handed to President Zuma via Minister Mahlobo), and Operation Wave (an attempt to influence South African media), among others. It is recommended that a Minister should not be involved in the operations of the country's intelligence services.
13. **Large sums of money were withdrawn** at any one time, running into millions of Rands. There was a case where R145 million was stolen within the SSA offices. Minister Mahlobo was involved in the withdrawals, handling and distribution of large sums of money. Money was allegedly drawn for President Zuma by Minister Mahlobo at R2.5 million per month in 2015/16 which was raised to R4.5 million per month in 2016/17. One of the witnesses testified that Dr Langa, then Director of the Domestic Branch of the SSA, authorized the

withdrawal of R12 million cash from the Special Operations budget. The money was packed into paper bags for Minister Mahlobo, who removed R4 million for payments to judges who were his operatives to influence the judiciary and kept the rest for Special Operations run by Minister Mahlobo himself.

14. **Ambassador Dlomo**, head of the Special Operations Unit (SOU), handled lots of cash and in many respects, the use and destination of the money were obscure. This related largely to certain projects under Project Mayibuye. Mr Fraser, as DG of the SSA, also handled and withdrew large amounts of cash. After his appointment, budgetary allocations increased from R42 million in 2016/17 to R303 million in 2017/18, R225 million of which was used for covert operations in his office.
15. Over the period 2012-2018, it was estimated that R1.5 billion was unaccounted for, resulting from poor financial controls and lack of accountability.
16. **Firearms and ammunition were taken out of SSA's armoury** at Musanda. On one occasion, this was done at the insistence of Ambassador Dlomo. The person who collected the firearms, an assortment of rifles and sub-machine guns, was not competent to handle them. Only some of the firearms were brought back after instruction for their return by Mr Fraser and thus some are still missing. The distribution of weapons from SSA was lax as they did not properly record what the firearms were required for, who required them, or if they were to be handled by competent people. The process for the issuance of firearms out of the SSA armoury needs to be tightened up. Wanton distribution of weapons undermines its core function to ensure security of citizens.
17. Ambassador Dlomo created the **Presidential Security Support Services** under the SOU to protect former President Zuma, a task that belonged to the SAPS. These VIP protection services usurped the function of the SAPS and improperly made use of the SSA budget. He did the same with the health services of President Zuma which were the responsibility of the SANDF. He also offered protection services to some private individuals which should not have been given without a threat assessment by the SAPS. Investigations by the Project Veza team established that some of the operations under Mr Dlomo fell outside of the lawful mandate of the SSA.
18. Apart from the normal vetting system of the SSA, Ambassador Dlomo established an **unlawful parallel vetting system**. He recruited somebody from outside SSA to do the vetting, which created a potential danger to national security as it meant unqualified people were given security clearance. There was also glaring abuse of the vetting system by Mr Fraser. For example, after the IGI, Dr Dintwe, told Mr Fraser that he was being investigated

due to complaints against him, Mr Fraser, in his capacity as DG, revoked Dr Dintwe's security clearance.

19. The SSA made use of **questionable intelligence reports** to advance state capture schemes. Dr Dintwe criticized two reports issued by Crime Intelligence during the time of General Mdluli. The first alleged a plot by General Sibiya, Mr McBride and Mr O'Sullivan and other to overthrow the government. The second related to the alleged unlawful rendition of foreign nationals involving Generals Sibiya and Dramat. Both reports turned out to be untrue and the criminal charges against the Generals were withdrawn. At the time these reports were compiled, General Sibiya was involved in investigations against General Mdluli.
20. Additionally, Dr Dintwe referred to the well-known report alleging that the then Minister of Finance, Mr Gordhan, and his deputy, Mr Jonas, travelled overseas to meet with foreign agents calling for regime change in South Africa. The Commission doubts the existence of the report based on which President Zuma removed Mr Gordhan and Mr Jonas from their positions. The peddling of false and unsubstantiated intelligence reports can destabilise the country. Sound and effective mechanisms need to be in place to sift out false reports.
21. The **JSCI failed to properly perform its oversight duty** in respect of the SSA and, as a result, contributed towards the problems at SSA and allowed acts of corruption to spread. The Proclamation of 2009 was approved in 2010 but the legislation was only enacted in 2013. The JSCI did nothing about this illegal functioning of the SSA during 2010-2013 and only noted the unlawfulness of the Proclamation in 2021. There was also a time when there was no IGI appointed for 22 months, and Parliament failed to fill this position.
22. **Obstacles were put in place to inhibit the IGI in the execution of his oversight duties**, including its limited budget that falls within the SSA's budget, restricted access to information by the DGs and other heads of intelligence, ignored reports and recommendations, and lack of personnel. The IGI should enjoy adequate independence from the SSA.
23. Various instances of the **abuse of secrecy** were mentioned. Criminal investigations were removed from law enforcement agencies allegedly on the basis of national security when it was actually to disguise criminality and prevent accountability. As a result of the secrecy principle, no verification could be made that intended beneficiaries received their money, and some service providers were found to be non-existent.
24. The **AG is not able to adequately fulfil its role** because some information is withheld due to it being classified. Large sums of money that were not accounted for were at least in part

because the office of the AG could not execute its duties, with the result that implicated people acted with impunity as they were aware of weaknesses in the system. Some arrangement needs to be made to enable auditing of the SSA by the AG.

25. There were **irregular appointments** to both the SSA and Crime Intelligence which created instability and potential for state capture. Recruitment was not always done in the interest of the SSA and national security but for bipartisan purposes and nepotism. Ministers, including Minister Mahlobo, were involved in the recruitment of relatives or people they knew to the SSA.
26. There were **numerous illegal operations by the SSA, often to further political interests**. The SSA and its resources were used for political ends, involving the ANC's factional battles and improving political fortunes. The use of resources and services of national intelligence agencies to destabilise opposition parties, benefit a ruling party, and fan intra-party factions to influence political or electoral outcomes, amounts to a serious threat to democracy.
27. Overall, it is recommended that law enforcement agencies conduct further investigations to establish whether any of the persons implicated in the wrong did commit one or other crimes, with a view for the NPA to bring criminal charges against such people including Mr Fraser in relation to the PAN programme and other matters, and Mr Mahlobo and Mr Dlomo regarding SSA cash received and/or illegitimately handled by each of them.

Crime Intelligence

28. This section relates to the **Crime Intelligence (CI)** unit within the SAPS, and the **Secret Services Account (SSA)**, a financial account administered from within the CI. The allegations of corruption and theft related to a period when **Major-General Richard Mdluli** was the Head of the Unit.
29. The mandate of CI is to manage crime intelligence, analyze crime information, and provide technical support for investigations and crime prevention operations. All funding for CI is through the SSA, which contains government money made available through National Treasury.
30. Between 2009-2011, Gen Mdluli was the Divisional Commissioner of the CI, **Gen Lazarus** was the CFO of SSA, and **Col Barnard** was the Section Commander: Supply Chain Management of CI. During the same period, **Company X**, a trading entity that formed part of a clandestine operation, was set up and funded through the SSA and operated by CI members.

31. There is no doubt that corruption, nepotism, theft, and fraud was conducted on such a scale it can be described as looting and that these three officers controlled the looting under cover of their positions within CI. The orders of Gens Lazarus and Mdluli were carried out by many subordinates including **Col Naidoo**, who was prominent in the execution of the criminal schemes.
32. The evidence focuses on the conduct of General Lazarus, until his arrest in 2011, and Gen Mdluli. Evidence shows that the malfeasance at CI was in progress from, at the latest, in 2003.
33. It seems probable that when Gen Mdluli was appointed Divisional Commissioner in 2009, he was or became aware of the wide-ranging corrupt activities of Gen Lazarus. Initially, Gen Mdluli wanted to investigate and charge all corrupt members, including Gen Lazarus. However, Gen Mdluli had a personal problem relating to criminal charges of abduction, assault, and murder, among others. It appears that Gen Mdluli was a victim of Gen Lazarus who set in motion certain events to compromise Gen Mdluli, who succumbed to these pressures and stopped investigations into Gen Lazarus to protect himself. Gen Mdluli then decided to participate in the looting as an ally of Gen Lazarus.
34. In 2011, **Col Roelofse**, Section Commander: Major Case Operations in the Directorate for Priority Crime Investigations (DPCI), was assigned to a team to investigate a criminal case against Gen Mdluli and three others.
35. Gen Mdluli was arrested in 2011 for 18 criminal charges and then suspended from office. He subsequently wrote a letter to President Zuma, appealing for help, stating that if he returns to work, he will assist President Zuma in succeeding the following year at the presidential elections of the ANC in Manguang in 2012. Additionally, Gen Mdluli's legal representative approached Adv Mrwebi seeking the withdrawal of the fraud and corruption charges, who did so despite opinions from other advocates that it should not be withdrawn. In 2012, the Acting National Commissioner of Police withdrew the disciplinary proceedings and reinstated him as head of the CI. He was eventually convicted in 2020 of kidnapping and assault.
36. After the arrest of Gen Mdluli in 2011, the suspicion against him and the efforts made to prevent his prosecution led to some members of the CI approaching Col Roelofse and his team with information, leading to the investigation of matters related to the SSA. From the outset, his efforts to investigate were hampered by senior officers within SAPS.
37. Some of the findings of the Commission are discussed below.

38. **Mr Appalsami** was a friend of Gen Lazarus and controlled **Daez Trading**, through which he facilitated various transactions approved by Gen Lazarus and benefited from an account with Atlantis Motors called the **BARUT account**. The funds from the account were used to give Gen Lazarus and other CI member's discounts on private vehicles. The account was funded from portions of Atlantis' profits from the sale of vehicles to CI.
39. The SSA and the BARUT account paid for **trips overseas for Gen Mdluli and his family**. The flights were organized on instruction by Gen Lazarus.
40. **Mr Marimuthu** was recruited as a contact person or informant of the CI and allegedly paid large sums of money to influence Mr Bheki Cele as Co. of Police to support Gen Lazarus. Several of his family and friends were appointed as CI agents but did no intelligence-gathering work. He also owned four properties that were rented by CI as safe houses for which he received inflated rentals of up to R25 000 per month.
41. **Gen Bheki Cele** was rumored to be instrumental in the award of large tenders to Mr Marimuthu. Gen Lazarus was aware of the connection between Mr Marimuthu and Mr Cele and contacted Mr Marimuthu to secure the intervention of Mr Cele to ensure that he was not transferred away from his position by Gen Mdluli. Gen Lazarus arranged a meeting with Mr Cele and made a call to a CI member to organize cash, presumably for Mr Cele and allegedly R40000. As a result, Gen Lazarus was not transferred.
42. There were **numerous irregular appointments and promotions** within CI. Col Naidoo was, through his association with Gen Lazarus, promoted from warrant officer to lieutenant colonel through a covert advertisement process. In 2010, 250 posts were made available within CI, most of which were filled by friends and family of Gen Mdluli, Gen Lazarus, and those close to them. Various persons appointed to these posts had criminal convictions and no prior experience. Col Naidoo referred to **Col FM41**, who had been convicted of vehicle fraud and was appointed to the agent program by Gen Lazarus. Allegedly, Col FM41 was paying **Gen Lalla** (divisional commander at CI) and **Gen Mphego** (assistant commissioner at CI) R100 000 per month from the money he made from the submission of false informer claims. Col Naidoo believes FM41 was placed there out of fear that he would expose Gens Lalla and Mphego.
43. Col Naidoo testified that the **safe house acquisition process was subject to significant abuse**. Often, premises were leased by CI as safe houses through Daez and Mr Appalsami would inflate the rental. Many of these properties were owned by CI members or those close to them. The profit from the inflated amount less the actual rental and Mr Appalsami's commission would be given to Gen Lazarus, Gen Mdluli, or Col Naidoo. Mr Marimuthu,

Gen Lalla, and other SAPS officers were also prominent in the alleged abuse. In addition, Gen Lazarus and Col Naidoo used a covert facility for holidays disguised as operations, claiming expenses from the SSA and using state vehicles.

44. Many **properties of CI members or relatives were upgraded with SSA funds.**
45. **Vehicles were purchased or leased with SSA funds** and then improperly made available to persons for private use.
46. Company X maintained a secret register (SR) to be used by operatives in covert operations. Gen Lazarus operated a scheme with **Mr Marques of New World Motors (NWM)**, who would buy SR vehicles from Company X which were due for replacements and sell vehicles to Company X at inflated prices. These vehicles were supposed to be sold by a closed tender to preserve security, but Gen Lazarus would inform Mr Marques of competing bids beforehand. Favored CI members were allowed to buy vehicles through NWM at cost price.
47. **Col Naidoo** testified that he **was complicit in fraud and corruption** committed by senior officers in CI. Col Naidoo was responsible for paying salaries and operational expenses to members and informants. He suggested that specific corrupt claims that he administered and paid out exceeded R5 million. He admitted that he, himself, benefitted from false claims that he submitted, probably exceeding R100 000 in all. Col Naidoo was closely involved with Gens Mdluli and Lazarus in both their legitimate and illegitimate activities within the CI, describing himself as their lackey.
48. There were numerous instances of **obstructions to criminal proceedings against CI members.** In 2011, Gen Mdluli made strenuous efforts within the SAPS to frustrate the investigations and accused Col Roelofse of improper conduct. Adv Mrwebi interfered by trying to stop the prosecution of Gen Mdluli, a decision which Adv Jiba knew of and approved.
49. There were **alleged efforts to suborn the media.** Col Naidoo overheard CI members strategizing to use a journalist to write a story casting suspicion on Gen Dramat, who was head of the Hawks and was active in efforts to uncover corruption, in the Sunday Times. In addition, Col Naidoo drew R25 000 for Gen Mdluli who needed the money to pay a journalist not to print information he had about CI. He also claims that R40 000 was paid to repair the silver BMW of a journalist Ms Munusamy, who was the confidant of Gen Mphego.
50. This topic concerns alleged and, in some instances, established criminal conduct by high-ranking officers in SAPS. The main obstacle to the law in taking its proper course has been the tendency of SAPS to obstruct investigations and abuse the system of classification of

documents. Those identified were placed in positions of the highest trust in an institution critical to the functioning and the protection of society. They abused that trust over a long period of time for personal gain and corrupted their subordinates.

51. It appears that Gen Lazarus or Gen Mdluli conducted their criminal depredations of the secret funds entrusted to their custody for their own personal enrichment and that their friends and family and provided largesse to those they feared might be able to uncover their wrongdoing. It is recommended that all investigations into corrupt conduct within CI continue without obstruction and receive appropriate support from all units within SAPS.

Volume 2: SABC, Waterkloof Landing, and PRASA

SABC

52. The matters that the Commission investigated in respect of SABC are the following:

52.1. The contract between the SABC and TNA Media (Pty)Ltd on the TNA Breakfast Briefings

52.1.1. **Ms Lulama Mokhobo** testified that upon joining the SABC as group CEO on 16 February 2012, TNA had already started broadcasting jointly with the SABC regarding events. She was concerned that the SABC and TNA were operating without a contract. A 36-month contract between the SABC and TNA regarding broadcasting events, such as the TNA Breakfast Briefings, was drafted. Ms Mokhobo testified that the SABC spent approximately R 20 326 980 facilitating these events. Further, the Commission notes that TNA derived more benefits in respect of the outcomes of the contract than the SABC. The contract was extended well beyond the 24 months agreed to in writing and continues until 2017 without any addendum to the original contract.

52.1.2. **Mr Rajesh Sundaram** stated that TNA refused to let any credible external agency audit its circulation. He testified that the TNA breakfast briefings earned R 1.8 million per show as the departments of the national and provincial ministers booked for the show fitted the bill for their expenses.

52.1.3. In conclusion, and based on the evidence, the contract in question was irregular and was created for the benefit of TNA Media and or the members of the Gupta family to the detriment of the mandate that the SABC has towards the public.

52.2. The Sale of the SABC Archival contact to the Guptas ANN7 TV Station

52.2.1. **Mr Hlaudi Motsoeneng** (former SABC Acting CEO) informed former Senior Sales Representative, **Mr Josias Scott**, that someone will reach out to him for assistance in obtaining archival footage from the SABC. Subsequently, **Mr Howa**

contacted Mr Scott requesting *2000 minutes* of archival footage for the media company **ANN7/Infinity Media**. SABC agreed to sell the footage to ANN7 at a discounted price of R70 per minute. Mr Scott stated that 1982 minutes were copied from the SABC's archival footage. Contrastingly, Mr Sundaram – Editor at ANN7 – stated that *100 hours* of archival content was in the possession of ANN7. The footage was sold well-below market value to benefit ANN7 and or members of the Gupta family.

52.3. The agreement between the SABC and TNA Media on The New Age newspaper

52.3.1. **Ms Mokhobo** testified that the distribution of the newspapers by TNA Media originated prior to her appointment. She said that the Board never requested that the relationship with TNA Media regarding the newspapers be reconsidered. In fact, she testified that she believed that the papers were being delivered to the SABC without an expectation of remuneration and purely by virtue of the fact that was a relationship between the parties pertaining to the breakfast shows. Ms Mokhobo testified that at no stage was she aware of any authorisation relating to the newspapers or payment associated therewith. With the aid of investigators, Ms Mokhobo determined that the SABC spent approximately R 930 873.61 for TNA newspapers.

52.4. Broadcast Digital Migration (BDM)

52.4.1. Analogue television is the means by which video and audio are sent to the viewer over the airways using a terrestrial transmitter, where a normal TV can receive it without an external device. Digital television is the means by which video and audio are sent to the receiver over the airwaves using a digital terrestrial transmitter, where a normal TV can receive it using an external device called a decoder/ set-top-box (STB).

52.4.2. The objective of the Broadcast Digital Migration (BDM) programme is to release radio frequency spectrum divided through the migration of television broadcast from analogue to digital platforms without people losing television broadcast signal in order to expand access to mobile communications and broadband access. The country-wide digital migration program has been stalled since its approval by Cabinet on 8 September 2008. The BDM policy had been amended twice, seemingly to protect the interests of **MultiChoice** – the only Pay TV provider in the SA who was opposed to opening the sector to competitors through the implementation of STB. Free-to-air (FTA) providers, such as **eTV/eMedia**, do

not encrypt their programming compared to **MultiChoice** which encrypts programming ensuring it is only accessible to subscriber-paying customers. STB policies often do not allow for encryption but may allow for control, therefore, the vicious struggle between MultiChoice and eTV over the STB policy¹.

52.5. The contract between the SABC and Multichoice

52.5.1. On 15 May 2013, **MultiChoice** (MCA) wrote a set of proposed provisions to Mr Motsoeneng that would form the basis of the MCA/SABC Multi-Channel Agreement. MCA has seen an opportunity to cause a major policy shift in the digital terrestrial TV transformation project. The SABC and MCA entered into a commercial agreement spanning five years allowing MCA to broadcast SABC licenced channels and programming for just over R 500million. Subsequent to this agreement, the SABC were “forced” to support MCA’s quest by arbitrarily taking the far-reaching decision to declare the set-top-box encryption mechanism as wholly unjustifiable.

52.5.2. The Competition Commission noted in an investigation into the matter “Being able to influence a policy on encryption materially impacted the structure of the market in that it protected MultiChoice’s dominance in the PayTV market in that the STB Control would have significantly challenged the dominance of MultiChoice particularly in lower LSM segments of the market.

52.5.3. The Zondo Commission concludes that there is no evidence on which a finding can be made that MultiChoice’s lobbying against STB decryption capability included acts of fraud and/or corruption.

52.6. The irregular processing of VISA applications for the Gupta’s Indian national employees

52.6.1. **Mr Sundaram** was offered the position of Editor whilst in India. He considered the employment contract presented to him by **Mr Goel** (Mr Laxmi Goel, owner of Essel Media in India) and he subsequently recruited other colleagues in India to join him at ANN7 in South Africa. Upon the negotiations of his contract of employment, he was informed by Mr Goel that he would receive an ‘intra-company’ visa and that he would be awarded permanent residency in SA,

¹ A key aspect of the debate between FTA and Pay-TV broadcasters was that Pay-TV takes the FTA programmes for free and re-broadcasts them and uses the programmes to build market share. In doing so, they acquired two revenue streams and subscriptions, which is unfair. STB control would allow FTA broadcasters to protect their content against unauthorised use.

although his presence in SA would be dictated by a two-year employment contract. He was informed that the Intra Company Transfer Permit would be issued in no time as they had an arrangement with the High Commissioner in SA.

52.6.2. Mr Sundaram testified that he did not go for any interviews or followed any other processes other than obtaining a yellow fever certificate and a police clearance certificate which he submitted for the purposes of his visa application form. Mr Sundaram was issued with an intra-company visa, even though Infinity Media had no roots in India and Essel Media had no relation or business association to Infinity Media.

52.7. Mr Sundaram's evidence on the nature and depth of the Gupta-Zuma friendship

52.7.1. The members of the Gupta family had used their close relationship with President Zuma to facilitate and extend their business interests from India to SA. The extension of Infinity Media and the birth of the ANN7 demonstrates the broadening of such interests. President Zuma had enabled the extension of such business interests for the benefit of his son, Duduzane Zuma. The Gupta family and Mr Duduzane Zuma benefitted from the relationship that the Gupta family had with the President in that they entered into contracts with various State organs and the SABC, to the detriment of other potential competitors who operated within the same media space.

52.7.2. The Gupta family abused their relationship with President Zuma in that they used on of the President's employees to access the Presidential residence as pleased to liaise directly with the President and arrange and secure meetings for members of the Gupta family contrary to the applicable security measures within State protocol. President Zuma enabled the members of the Gupta family as business people to occupy a place of prominence over other businessmen, to the detriment of the empowerment legislative imperatives of the Republic of SA. President Zuma enabled members of the Gupta family to abused their relationship to the extent of flouting visas and labour laws of the country.

Waterkloof Landing

53. The Waterkloof Air Force Base is an airbase of the South African Air Force (SAAF). The role of Waterkloof Air Base is to provide military air transport and other services to the SAAF. Waterkloof Air Force Base only receives flights classified as military flights and VVIP/VIP flights. Its standing operating procedures indicate that "no commercial or

chartered flights would receive permission to land at Waterkloof Airbase except in an emergency situation”.

54. One of the matters that the Commission investigated is the incident of the landing of a commercial aircraft carrying 200 guests of the Gupta family at the Waterkloof Air Force Base on 30 April 2013 in Pretoria. The passengers were from India and coming to attend a Gupta wedding at the Sun City Hotel, North West Province.

54.1. Former ambassador to the Netherlands **Bruce Kolane**, then Chief of State Protocol, is noted as a key figure in facilitating the unauthorised flight carrying Gupta wedding guests along with **Lieutenant-Colonel Anderson** who had aided in misrepresenting the facts to facilitate the landing. The commercial flight received clearance to land at Waterkloof as those who facilitated the landing noted it as having “foreign dignitaries” onboard. It subsequently transpired that the Gauteng police had deployed 31 cars and 62 of its members to provide security *en route* to Sun City from the airbase. Additional deployments by the SAPS in Gauteng cost to province about R47 000. President Zuma testified to having no prior knowledge of the landing.

54.2. Ambassador Koloane was guilty of abuse of diplomatic channels. His promotion to ambassador to the Netherlands came only about a year or so after the Waterkloof Landing. Ambassador Koloane had gone to undue lengths to facilitate the landing of a plane carrying passengers who had no official status or office at a military base and to accord a special status to the Gupta family and their wedding guests does not appear to have negatively affected his prospects of being appointed, as it should have.

54.3. The Zondo Commission finds it difficult to accept that President Zuma did not know about the Waterkloof Landing before it happened. The Commission notes that it is highly probable that President Zuma was aware of the plans to land at Waterkloof before it happened due to his friendship with the Guptas and that plans were more than likely facilitated based on his instructions.

PRASA

55. There are two general themes that emerge from the evidence heard by the Commission concerning PRASA.

55.1. First, a pattern developed at PRASA that allowed influential individuals and/or entities in which they or their family members had an interest to benefit unduly, especially in respect of the procurement of goods and services. It is known that at some institutions employees or officials who resisted acts of state capture or corruption were victimised and often hounded out. That also happened at PRASA. However, what is most

worrisome is that it was also the fate of the Board under the chairmanship of **Mr Popo Molefe** from 2014 to 2017 when it sought to put PRASA right and instil a new and “cleaner culture”.

55.2. Second, those who were pursuing acts of maladministration and corruption at PRASA were so determined not to be disturbed in their agenda that when a few men and women tried to resist this and insist on compliance with the law or on doing the right things, they were suspended or dismissed or their lives were made difficult. These people were unable to stop the rot and weed out the wrongdoers because people who wielded public power, whether as leaders of the ruling party, Cabinet Ministers, Members of Parliament or members of law enforcement agencies were obstructive, refused to assist or simply stood by when there was a duty, whether constitutional, legal or moral, to actively assist the Board.

56. Highlights of the Report concerning PRASA:

56.1. The irregularities that plagued the award of the locomotives contract to **Swifambo**

56.1.1. On 23 March 2013, PRASA and Swifambo Rail Leasing (Pty) Ltd concluded a contract in term of which PRASA would purchase 70 locomotives from Swifambo for R3.5 billion. On 27 November 2015, some 16 months after the Molefe Board had taken office, PRASA approached the High Court’s Gauteng Local Division, Johannesburg, to have its contract with Swifambo and other decisions made in respect of the locomotives tender reviewed and set aside. PRASA alleged that the procurement process was highly irregular and possibly corrupt. On 3 July 2017, the High Court concluded that the procurement process was deeply flawed and corruption was involved. The evidence suggests that the procurement processes were designed to achieve a predetermined outcome, namely, to award the tender to a company which had little or no experience in the rail industry and was, for all practical purposes, a front for a foreign company. PRASA had paid Swifambo R2.65 billion for delivering 20 of the 70 locomotives that were not fit for purpose and unsafe to operate on the South African rail network as it was designed for the European rail network.

56.2. The irregularities that plagued the award of the locomotives contract to **Siyangena**

56.2.1. Siyangena, in 2011, won a contract to install an integrated security system at the passenger rail agency's stations, including providing security cameras and access gates. The initial budget for the contract was R517 million but it later ballooned to R4.5 billion after being extended in July and September 2014. The contract,

which was signed off by the rail agency's former **CEO Lucky Montana**, has been marred by claims of irregularities, which led PRASA to begin litigation in 2018 to have it set aside. The rail agency said the security systems installed by Siyangena were outdated, ineffective and overpriced. The contract was set aside by a high court ruling in October of 2020.

56.2.2. Around the time of the signing of the contracts in 2014, **Mr Montana** was involved in arrangements for the purchase of three or more properties for a total of more than R36 mil. The Commission investigated four properties Mr Montana was involved in. One of them was a property he sold to **Precise Trade and Invest 02 (Pty) Ltd**, one was a property that was transferred to him and the other two were properties in which he had shown an interest in purchasing, but were eventually sold to and transferred into the name of **Precise Trade**. The purchases were funded through arrangements made by **Mr Adrian van der Walt**, an attorney acknowledged for acting on behalf of **Siyangena**. Mr van der Walt, who now resides in Texas (USA), was the sole director of Precise Trade and bought a house from Mr Montana for R6.8 mil – although the house was valued at R3.3 mil. Mr Montana expressed interest in a house in Waterkloof which was purchased by Precise Trade for R11 mil, although the previous owner noted the keys being given to Mr Montana upon her moving out. Further, Mr Montana's Trust made an offer to purchase a house in Sandhurst but it was purchase by Precise Trade for R13.9 mil and Mr Montana bought a house in Hurlingham for R11.5 mil.

56.3. The Zondo Commission determines that the persons who should be held liable for the ills at PRASA are those who had perpetrated the wrong doings and those who had occupied positions of oversight to ensure that the perpetrators were held accountable and ensure that appropriate steps were taken. These include the ANC leadership, then President Zuma, then Deputy President Ramaphosa, the other members of the ANC Top 6, public representatives and other public bodies that done nothing to support the anti-corruption strategies of Molefe's Board at PRASA.

56.4. The Zondo Commission also believes that the instability of PRASA has been exacerbated by the unacceptable delays having a permanent Board and permanent Group CEO appointed for more than three years.

Analysis and Recommendations

Volume 1:

- i. It appears that state security and crime intelligence are particularly susceptible to corruption. These agencies had the potential to counter state capture and prevent the loss of billions of rands when symptoms first appeared; however, investigations into wrongdoing were consistently interfered with and stopped. Investigations must be pursued as recommended by the Commission, especially in order to restore confidence in security and investigatory bodies.

Volume 2:

- ii. Concerning the SABC and Waterkloof investigations, it is clear that officials of the South African government and its state-owned enterprises were captured by the Gupta family. Decisions and agreements were made to benefit the Guptas, although the outcomes harmed the people of South Africa. The FFC supports all investigations and future prosecutions against those implicated in the looting of the country and those who broke the law to accommodate the well-being of the Gupta family.
- iii. The Commission concluded that PRASA officials implicated in fraudulent and corrupt activities were indirectly facilitated by those who occupied oversight positions but did not fulfil their duties. This holds true for many of the SOEs implicated in the Commission's investigations. The FFC recommends that officials in roles with oversight responsibilities are continuously assessed by their respective parliamentary committees and held accountable for lapses in judgement made under their term in office.

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Mr C Tseng

Acting Chief Executive Officer

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