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

19 May 2022

Summary

Part 4 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. Part 4 is split into four volumes focusing on the attempted capture of the National Treasury, EOH holdings and the City of JHB, Alexkor, the Free State asbestos and R 1 billion housing project debacle, as well as the capture of Eskom.

Volume 1: The Attempted Capture of National Treasury, EOH holdings and the City of JHB, Alexkor

The Attempted Capture of National Treasury

1. The National Treasury, under, initially, **Minister Pravin Gordhan** as Minister of Finance from May 2009 to May 2014, under **Minister Nhlanhla Nene** as Minister of Finance from May 2014 to 9 December 2015 and, once again, under Minister Gordhan as Minister of Finance in his second term from 13 December 2015 to 31 March 2017 put up significant resistance to repeated attempts by **President Zuma, Ms Dudu Myeni** and others to get them to engage in wrongdoing concerning various transactions.
2. The numerous attempts to capture National Treasury were successfully foiled due to the stance taken by **Minister Gordhan** and **Minister Nene**. Both ministers were not prepared to approve wrong or unlawful projects or transactions that did not endear them to President Zuma and some of their colleagues in the Cabinet. They both testified that some of their colleagues in the Cabinet became hostile to them and the National Treasury.
3. During November and December 2015, the Presidency stated that he was unhappy with Treasury and the budget process and suggested that the budget process was not aligned with the National Development Plan. As a result of this dissatisfaction, the Presidency

attempted to move the Budget and budget processes to the Office of the Presidency and suggested that he would remove the Minister of finance and senior finance officials.

4. The critical features of the attempts to capture the National Treasury were:
 - a. The offer of the position of Minister of Finance and money by the Guptas to **Deputy Minister Mcebisi Jonas** in return for him working with them;
 - **Mr Mcebisi Jonas** was appointed as Deputy Minister of Finance by President Zuma on 26 May 2014; he occupied the position until 31 March 2017. Mr Jonas was approached numerous times by **Mr Duduzane Zuma** for a meeting until he agreed on 23 October 2015. The meeting took place at the Saxonworld residence of the Guptas. **Mr Rajesh (Tony) Gupta** was in attendance.
 - Mr Jonas testified that Mr Gupta then told him that he could immediately offer him R600 million if he agreed to cooperate with them. He would also become Minister of Finance and replace the soon-to-be-fired Minister Nene. Mr Gupta also noted that he had made Mr D Zuma a billionaire and had bought him a house in Dubai – Mr D Zuma did not dispute this in his testimony. Mr Gupta stated that the Gupta family earned about R6 billion from the fiscus through various entities and would like to increase the amount to R8 billion.
 - b. The *dismissal* of Minister Nene as Minister of Finance on 9 December 2015;
 - President Zuma stated that the reason for dismissing Mr Nene as finance minister was to deploy him in the position of Head of the Regional Centre of the BRICS Bank. This was a complete fabrication as President Zuma had no authority to make any appointments at the Bank. President Zuma could dismiss someone who did their job excellently if that person was not prepared to cooperate with the Guptas.
 - c. The appointment of **Mr Douglas van Rooyen** as Minister of Finance on 9 December 2015 to replace Mr Nene;
 - d. The appointment by Mr van Rooyen of advisors linked to the Guptas or their associates;
 - **Mr Lungisa Fuzile**, former Treasury DG, testified that **Mr Enoch Godongwana** called him on 9 December 2015, stating that “You are now going to get a Gupta Minister who will arrive with advisors”. Mr Godongwana noted that the advisors would control the new Minister.

- e. The transfer of Mr van Rooyen to the Ministry of Co-operative Governance and Traditional Affairs and the re-appointment of Minister Gordhan as Minister of Finance.
- Due to immense market volatility and the crashing of the rand experienced after the announcement of Mr van Rooyen as Finance Minister, President Zuma was pressured to reinstate Mr Gordhan as Finance Minister to calm the markets.
- f. The harassment of Minister Gordhan by the HAWKS during his second term as Minister of Finance;
- Mr Gordhan testified, under oath, that he dealt with several events which were aimed at forcing him to resign as Finance Minister so that another Finance Minister would be appointed who would allow the Treasury to be captured. Firstly, he noted the refusal of **Mr Tom Monyane** to account to him as Finance Minister on material issues at SARS. Secondly, Social Development Minister **Bathabile Dlamini** suggested that the President intervene in the National Treasury's scrutiny of the social grant payments. Thirdly, the Minister and other finance officials received ongoing threats for their amendment of the Financial Intelligence Centre Act¹. Finally, it was announced that Mr Gordhan would be charged with fraud relating to former deputy SARS Commissioner Mr Ivan Pillay's early retirement, which he approved in 2010. The charges were later withdrawn.
- g. The dismissal of Minister Gordhan and Deputy Minister Jonas on 31 March 2017 and Mr Gordhan's replacement by **Mr Malusi Gigaba**.
- Minister Gordhan and Deputy Minister Jonas were dismissed in 2017 based on a "rouge unit intelligence report" and replaced by Mr Gigaba, a more Gupta compliant Minister.
5. The transactions in respect of which Minister Gordhan and Minister Nene showed their resistance to wrongdoing were the Nuclear Deal, the PetroSA transaction, the Airbus transaction at SAA, and the Denel Asia Venture.

¹ The amendments related to the improvement and strengthening of the various aspects of South Africa's financial intelligence capabilities. These amendments would assist in identifying the proceeds of crime, combat money laundering, terrorist funding and tax evasion.

6. A National Nuclear Energy Executive Coordinating Committee was established in 2011. In December 2013, the Department of Energy submitted a draft feasibility report for the nuclear programme to the National Treasury for review. The review did not constitute a proper, fully-fledged feasibility study, which still needed to be undertaken, and the procurement strategy still had to be clarified. The **Nuclear Deal** was drafted in September 2014. It comprised an agreement between South Africa and Russia relating to nuclear cooperation, including the design, operation, construction and decommissioning of nuclear power plants in SA. In June 2015, the Department of Energy presented to Cabinet a proposal to procure nuclear energy without the consultation of the National Treasury regarding the fiscal considerations of the project. In September 2015 National Treasury presented a report to Cabinet regarding the affordability of the nuclear project. The report noted that SA could not afford to procure 9.6GW of nuclear energy without a cash injection or sovereign guarantees. Treasury stated that construction only begins once the sovereign debt is stabilised and that procurement be implemented in a phased approach (2.4GW) to reduce pressure on the fiscus.
7. Further, Treasury deemed the project as high-risk. On 7 December 2015, Minister Nene and other officials from Treasury were invited to brief President Zuma on national department allocations for the 2016 MTEF. During this meeting, the Department of Energy presented the Nuclear Deal that did not include any of the recommendations made by the Treasury in September and ignored further concerns raised by Minister Nene and finance officials. The meeting resolved to take the 9.6GW recommendation presented by the Department of Energy to the Cabinet the following day. Subsequently, the Cabinet adopted the nuclear programme on 8 December 2015 – the same day Minister Nene was fired.
8. From about 2012, the Department of Energy had been exploring the possibility of having **PetroSA** acquire a substantial share or 100 per cent of **Engen**. Engen was owned by a Malaysian company Petronas. During the first quarter of 2014, the National Treasury received an application for a guarantee amounting to R13.4 billion from the Department of Energy. The guarantee was meant to enable PetroSA to raise money to acquire 100 per cent of the shares in Engen. At the time, PetroSA had a relatively small balance sheet compared to Engen, and proper due diligence had not been completed. Also, there was no support for PetroSA's ambitions to become a National Oil Company within the NDP or

the Industrial Policy Action Plan. After various meetings, National Treasury advised Minister Gordhan that the deal was not in the best interest of SA and was too risky. Minister Gordhan was subject to immense pressure to approve funds for the PetroSA acquisition. This was peculiar so close to the national elections (7 May 2014), which would result in a new Cabinet. On 25 April 2014, approved the guarantee to the total amount of R 9.5 billion with several conditions intended to safeguard the national revenue fund and the interest of SA.

9. In July 2015, SAA applied to Minister Nene for approval to enter into operating leases of five A330 aircraft instead of purchasing 10 A320 aircraft. Treasury evaluated the deal and found it beneficial to the airline – the Minister duly approved the transaction pending additional information provided in September 2015. Later in the month, on 29 September 2015, Minister Nene received a letter from the chairperson of SAA, **Ms Dudu Myeni**, seeking approval to pull out of the original deal and enter a new contract. The new deal proposed the sale and leaseback of the aircraft through a local supplier. Treasury, repeatedly having requested SAA to provide additional information explaining why they believed it was in the airline’s best interest, with little having been forthcoming, Minister Nene decided not to approve the proposed amendment.
10. In October 2015, the National Treasury received correspondence from the Denel Board Chairman, **Mr Mantasha**, which was couched as a pre-notification of the intention of forming a partnership between Denel and VR Laser Asia to form Denel Asia. In December 2015, Mr van Rooyen and the Chairman of Denel submitted a formal application to approve the Denel Asia deal. Coincidentally, the letter was dated 10 December 2015, the first day of Mr van Rooyen’s term as Minister of Finance. Towards the end of January 2016, Treasury had learnt, through the media, that Denel had already gone ahead and formed Denel Asia without obtaining the requisite approval and without even reaching out to communicate with the Treasury.

EOH Holdings and the City of JHB

11. **EOH Holdings** (Pty) Ltd (EOH), a company that specialises in the provision of technology services to business and government, is a unique case in that it **proactively approached the Commission to disclose publicly what wrongdoing had taken place historically** within its ranks. The Board of EOH and its current CEO, Mr van Coller, have

appointed ENS Forensics to conduct independent investigations into EOH's historical involvement in irregular and corrupt procurement practices in an attempt to rectify past wrongdoing and prevent future wrongdoing at EOH.

12. Some broad features that allowed wrongdoing to thrive at EOH included opaque delegations of authority, artificial or inflated software licence sales, tender irregularities, inappropriate gifting and donations, and the use of politically connected middlemen and sub-contractors as conduits for kickbacks. Additionally, EOH's contracts involved commission payments to "introducers", substantial payments for sub-contractors who appeared to perform no material work on contracts, and "teaming agents" that were not linked to any particular work but served as the justification for multi-million rand payments out of proceeds of public sector contracts. EOH identified R865 million that it spent on such arrangements.
13. EOH acquired **Tactical Software Solutions Managed Services** (Pty) Ltd (TSS Managed Services) in 2011. Mr Jehan Mackay, together with his father, owned TSS Managed Services prior to the acquisition and retained his position as the Manager Director of TSS after the acquisition. Mr Makhubedu was employed by the TSS Group and became a Business Development Executive at EOH in 2014, working with Mr Mackay. Mr Makhubedu had a close personal relationship with Mr Makhubo, Treasurer of the Greater JHB Region of the ANC, who later became mayor of Johannesburg. They were partners in several private companies as well as with Mr Barry, a former financial manager at the TSS Group, in many cases. Mr Makhubedu assisted EOH in procuring several contracts worth hundreds of millions of rands from the City of Johannesburg (JHB).
14. Mr Makhubedu, Mr Makhubo and Mr Barry had an interest in three particular entities.
 - i) **Molelwane Consulting CC** (Molelwane) was an entity owned by Mr Makhubo. It received payments and loans from TSS Managed Services and loans from **Mfundu Mobile Networks** (Mfundu), an entity where Mr Barry was a director.
 - ii) Mfundu concluded a 'teaming agreement' with the SAP (systems applications and products) services business unit of EOH Mthombo. The teaming agreement appears to have been a cover for Mfundu to make payments for the benefit of Mr Makhubo and the ANC in return for the grant of contracts to EOH by JHB.
 - iii) **Prime Molecular Technologies**, an entity whose directors were Mr Makhubedu and Mr Barry, acted as a conduit for EOH by paying R70 000 to Molelwane.

15. Prior to the acquisition, **TSS Managed Services entered into a “teaming agreement” with Molelwane** in 2009. In 2012, EOH paid R1.35 million to Molelwane. Over the period of the “teaming agreement”, EOH concluded a number of agreements with the City of JHB. One such agreement was a contract awarded to TSS Managed Services for ICT services with a tender award value of R38.4 million and to EOH Mthombo for ICT Security with a tender valued at R26 million. The contract period was from 2010 to 2012 and thereafter irregularly extended. Another agreement was a contract awarded to EOH Mthombo for SAP support services from 2012 to 2016 and irregularly extended after that. A number of suspect payments were made by EOH to third parties who appear to have done no work on the contract.
16. In addition to the above contracts, the Commission heard evidence on two other contracts, detailed below.
17. The first contract is the **2014 Network and Security Infrastructure Upgrade Contract between the City of JHB and TSS Managed Services**. Mr Makhubedu, Mr Barry, and Mr Makhubo conspired to procure the improper acceptance by the City of JHB of an unsolicited proposal from TSS Managed Services for the provision of Network Infrastructure and Security Services to the value of over R100 million. The improper process involved repeated payments to Mr Makhubo’s entity, Molelwane, from EOH entities or indirectly through Mfundi or entities of Mr Makhubedu to whom Mfundi had paid R1.2 million. It also involved regular donations to the ANC from the same sources, both in the form of direct donations to the ANC and in the form of payment of expenses of the ANC.
18. The second contract is the **City of JHB SAP Upgrade Contract with EOH Mthombo** from 2016 to 2019. Evidence suggests that Mr Makhubedu, Mr Barry, Mr Makhubo, Mr Mackay, Mr Laher (EOH employee) and Mr Mutileni (EOH employee) conspired to procure the improper award to EOH Mthombo of this contract worth R404 million. The improper process involved repeated payments to Molelwane from EOH entities or indirectly through Mfundi out of amounts which Mfundi accounted for as sales income. It also involved regular donations to the ANC from the same sources, both in the form of direct donation of computer equipment to the ANC by EOH Mthombo and in the form of payment of election expenses of the ANC by Mfundi out of the R16 million paid to Mfundi by EOH Mthombo.

19. Mr Kodwa has been Deputy Minister in the Presidency responsible for State Security since August 2021. At the time of these events in the report, Mr Kodwa was not a public official but an employee of the ANC and its spokesperson. Around 2015, EOH-related entities and Mr Mackay made cash payments in the aggregate amount of R1.6 million to Mr Kodwa. This included R1 million for the purchase of a Jeep motor vehicle. EOH and Mr Mackay also provided luxury accommodation to Mr Kodwa, costing hundreds of thousands of rands. Mr Kodwa insists that the payments were not related to the procurement of government contracts by EOH. However, evidence shows that Mr Mackay engaged with Mr Kodwa concerning substantial donations to be made to the ANC by the EOH group and repeatedly attempted to engage him in relation to pending EOH Group tenders. It is clear that Mr Mackay attempted to buy influence by making the payments and providing luxury accommodation. The Commission saw no evidence of impropriety on part of Mr Kodwa (mostly due to time constraints) but nevertheless, he is beholden to Mr Mackay to whom he owes more than R1.7 million. It is, thus, recommended that the President consider Mr Kodwa's position in State Security.
20. The Commission notes that it did not engage in any investigations involving municipalities other than JHB and, even then, only two or so tenders. However, there may be many municipalities in which certain entities do exactly what EOH used to do in relation to JHB.

Alexkor

Background

1. In 2003 the Constitutional Court heard a matter between the **Richersveld Community**, on the one hand, and the State and Alexkor, on the other. The Richtersveld Community claimed restitution of land from which they had been unlawfully dispossessed by the state in the 1920s, when diamonds were discovered in the area. The Court found that the Community had been dispossessed due to racially discriminating laws prevailing at the time. Thus, the Community was entitled in terms of the Restitution of Land Act to “restitution of the right to exclusive beneficial occupation and use, akin to that held under common-law ownership, of the subject land (including its minerals and precious stones)”.² Since the late 1920s the State exploited the land for own benefit and later

² The State and Alexkor contended that when the land in question was annexed in 1847, British law became applicable which extinguished the Community's Indigenous land rights. However, the Constitutional Court found

transferred it to Alexkor – a public entity wholly owned by the state with the Minister of Public Enterprises as its shareholder representative.

2. A settlement agreement was concluded in 2007 between the Richtersveld Community, Alexkor and the state. A joint venture between Alexkor and the community was agreed upon, known as the Pooling and Sharing Joint Venture Agreement (**PSJV**).
3. The parties agreed that Alexkor would retain its marine mining rights, but that the land mining rights would be transferred to a company formed by the Richtersveld Community (RMC), and that these rights would be exploited jointly.³

State capture at Alexkor

4. Mr Craythorne alleged that there was state capture at Alexkor and the PSJV by the **Gupta racketeering enterprise** and persons associated with it.⁴ An investigation conducted by Mr Dekker into the business activities of Alexkor, the PSJV and a company **Scarlet Sky Investments 60 (Pty) (Ltd)** (referred to as SSI) - who was appointed by the PSJV to market and sell all of the diamonds it produced - revealed that SSI had links to the Guptas enterprise through its main shareholder, **Mr Moodley**.
5. Prior to being appointed, SSI was a formant dormant company with no license to trade in diamonds and had no records of dealings in the diamond industry.
6. The evidence indicates that the **tender process was manipulated**, and that SSI was favoured, when in fact it should have been disqualified. SSI's bid failed to meet the specified minimum requirements of the tender yet was awarded the contract in February 2015.
7. In particular, SSI had: “i) no track record in the diamond industry; ii) no experience in trading in diamonds or in cutting and polishing rough diamonds; iii) no cutting or polishing factory; iv) no licence to buy rough diamonds; v) no licence to sell rough diamonds; vi) no BEE certificate (which it only acquired after being awarded the tender)”.
8. The decision of the members of the tender committee – Mr Bagus, Dr Paul and Mr Korabie – to award the tender to SSI, **contrary to the interests of PSJV**, provides

that the Richtersveld Community's ownership rights were not extinguished by the time the Precious Stones Act of 1927 was enacted. The Precious Stones Act treated the land as belonging to the state and effectively dispossessed the Community of their ownership rights.

³In accordance with the PSJV, the joint venture was mandated to contract contracts on behalf of Alexkor and RMC for mining and marine activities.

⁴ The Commission in terms of its TORs is permitted to determine whether attempts were made, by inducement or for gain, to influence directors of the boards of SOEs and whether there were any irregularities, undue enrichment, corruption and undue influence in awarding contracts.

reasonable grounds to conclude that they were in breach of their fiduciary duties under section 76 of the Companies Act.

9. Prima facie evidence in the report establishes reasonable grounds to believe that **Mr Carstens** and **Ms Kellerman** may have made significant misrepresentations to the board and possibly committed the offence of fraud. There are also strong grounds to believe that SSI may have contravened the Diamond Act and further investigation is warranted here.
10. The **lack of due diligence** and verification exercise also brings to question whether the ARC members – Ms Lebhobye, Mr Haasbrook and Mr Bansi – conducted their investigation with the necessary due diligence and fidelity in line with their fiduciary duties.
11. The ARC failed to properly investigate the Public Protector’s complaint, which included the concern that SSI (a) was a shelf company without any track record, (b) provided no beneficiation of the diamonds for the benefit of the community, and (c) did not comply with BBBEE legislation.
12. In 2016, the contract with SSI was extended with irregularities and eventually terminated by the PSJV in 2020. The parties remain in contractual dispute.
13. According to the Commission’s report, there is **no evidence that SSI provided any meaningful beneficiation service**, which was a key objective of the contract intending to benefit the Richtersveld Community.
14. Although the Commission’s investigations are limited, the proposed diversification of coal mining, between 2013 and 2017, reveals to some extent that Alexkor aligned themselves with the Gupta enterprise and adds to the overall picture of state capture.

Volume 2: The Free State Asbestos and the R1 Billion housing Project Debacle

Free State Asbestos project

21. The project involved an irregular tender contract for the eradication of asbestos for 300000 houses. The Provincial Department of Human Settlements set aside R255 million for the project.
22. The Provincial Department approved an unsolicited proposal from a joint venture, namely, **Blackhead Consulting/Diamond Hill Joint Venture**, without following a competitive process.
23. Although roughly **R255 million** was paid to the joint venture, no asbestos was removed from the roofs of houses as planned as they had no prior experience and lacked the

necessary skill, experience, training or qualification to undertake the work they were contracted for.

24. In October 2014, Mr Mokhesi wrote to the Director and CEO of Blackhead Consulting/Diamond Hill Joint Venture, **Mr Sodi**, appointing them to undertake the “audit and assessment of asbestos, handling of hazardous material, removal and disposal of asbestos-contaminated rubble and replacement with SABS approved materials in the Free State Province”. It appears from the evidence that the role of Blackhead Consulting was to merely act as a middleman and that the actual work would be outsourced by the Blackhead/Diamond Hill joint venture to **subcontractors**, including Mastertrade 232 (Pty) Ltd, the Ori Group (Pty) Ltd and Zenawe Consulting (Pty) Ltd.
25. Based on the evidence, the Commission is of the view that the project was a **scam from its inception**, intended from the outset to unlawfully benefit a certain business consortium. Financial gains benefitted the Head of the Department of Human Settlements of the Free State province, **Mr Mokhesi**, and the Director-General of the National Department of Human Settlements, **Mr Zulu**, amongst others. Elias Sekgobelo “**Ace**” **Magashule**, **Tony Gupta** and Gupta associates were key players in the irregularities and corrupt activities that occurred within the Free State Asbestos saga.
26. A total sum of **R230 million** was paid by the Free State Department of Human Settlements to Blackhead/Diamond Hill joint venture. From their bank account, funds were transferred as follows: **R70 863 000** was paid to Blackhead Consulting’s bank account, **R112 955 500** was paid to 605 Consulting solutions (an entity owned by Mr Mpambani), and **R36 483 597** was paid to Mastertrade.
27. In respect of complaints lodged, the Public Protector found that the allegations of irregularities and improprieties in the award of tender for the eradication of asbestos roofs in the Free State to have been substantiated, amounting to a **breach of Treasury Regulation 16A6.6** and **improper conduct** by the Head of Department of Free State Human Settlements.
 - a. Furthermore, the failure to issue a Request for a Quotation (FRQ) in the market resulted in a breach of the Department’s Supply Chain Management Policy and contravened Treasury Regulation 16A.9.
 - b. The irregularities in the award of the tender amounted to “improper conduct” as envisaged in section 182(1) of the Constitution, “maladministration” as envisaged in section 6(4)(a)(i) of the Public Protector Act and overall abuse of the procurement system.
 - c. The Public Protector also found the services provided not to be cost-effective and that the Department did not receive value for money. It was further found that the omission of the Head of Department to act on the Auditor-General’s report (2015)

amounted to gross negligence in terms of section 86 of the PFMA and that he failed to execute his fiduciary duties.

28. The Commission's investigations revealed that payments were made from the joint venture to several **secret beneficiaries**, amounting to millions of rands. Some of the beneficiaries included Colin Pitso, former Chief of Staff of Gauteng MEC Housing (R6.5 million), Bongani More, Deputy Director General of Human Settlements Gauteng (R7.5 million) and Zweli Mkhize, former Minister of Health and Treasurer-General of the ANC (R6.5 million). Kickbacks from the projected included a R650 000 payment from **Mr Sodi's** company towards the purchase of a house in which **Mokhesi** lived at the time.
29. The Commission's report finds that no asbestos was removed and that the firm contracted to undertake the work, headed by Mr Sodi, was not qualified to do so. Furthermore, there was no enquiry made by the Department into whether Blackhead Consulting or Diamond Hill had the necessary qualifications and expertise in the scope of the work to be carried out by the joint venture. No due diligence was performed by the Head of the Department or any of the officials in the Free State department when it came to appointing the service provider, amounting to a complete disregard for essential processes evaluating and scrutinising the viability of the project. Overall, what is clear from the evidence is that the Premier at the time, **Mr Ace Magashula**, did not intervene to prevent this debacle from occurring. Nor did the majority party of the province, the ANC, take any steps to hold the Premier to account for the dismal failures surrounding the asbestos project.

Free State R1 Billion Housing project

30. In **March 2010**, the Free State's Department of Cooperative Governance, Traditional Affairs and Human Settlements decided to allocate **R1.3 billion** for the construction of low-cost housing units.⁵ A scheme was devised to spend the money, resulting in over R500 million being paid to over 100 contractors in the form of advance payments prior to any work being done.
31. None of the contractors appointed to build the RDP houses in 2010/2011 were appointed through a **competitive bidding process and no procurement processes were followed**

⁵ The funds for this project were allocated from the Division of Revenue Act (known as 'DORA' funding). National Treasury had allocated approximately R1.42 billions of DORA funding to the Free State Department of Human Settlements for the specific purpose of constructing low-cost housing in the province during the 2010/2011 financial year. Due to the collapsed tender process, halfway through the financial year no houses had been built. By October 2010, only 10% of its funding allocation had been spent. Thus, the Minister of Human Settlements (Mr Sexwale at the time) gave notice to the provincial department requiring them to submit a recovery plan showing how it intended to improve its expenditure and delivery of low-cost housing.

in securing these tenders. Payments to contractors were made in the absence of written agreements and without proof of any houses being built.

32. The Commission found that **R531 552 897** was paid by the Department to suppliers, oftentimes without certified invoices that were patently false and without materials were supplied, despite payments being made in advanced. Only 64.8% of this amount could be converted into certified progress.
33. In response to the concerns raised by both the Minister and the National department of Human Settlements in respect of poor progress and gross underspending of the project, the provincial department formulated the Expenditure Recovery Plan (ERP). In terms of the ERP, the Free State Department of Human Settlements would spend R1 billion before the end of the 2010/11 financial year and complete 12800 houses – a highly ambitious and likely unattainable goal.
34. The ERP devised by the provincial department was unlawful because it made misrepresentations and by virtue of the way the ERP would be executed, i.e., through an Advanced Payment System (APS) – which was illegal both in terms of DORA and the PFMA.
35. As part of the **Forensic Reports**, the Auditor-General found that the Department had made advance payments to contractors amounting to R481 466 806. Furthermore, money spent on houses resulted in fruitless and wasteful expenditure: R597 364 paid for housing developments could not be physically verified, while an amount of R217 399 was paid for housing not yet completed.
36. The **Special Investigating Unit (SIU)** conducted an investigation into the advance payments made by the Free State Department of Human Settlements and found that an amount of R831 836 048 was made in advance payments to suppliers during the 2010/11 and 2011/12 financial years. The report found that this amount constituted unauthorised expenditure and was in contravention to the law.
37. The SIU report found that the Accounting Officer acceded to the cancellation of Tender LGHB01/10/11 and entered into agreements with service providers in contravention of section 217 of the Constitution and section 38(1)(a)(iii) of the PFMA.
38. The SIU report also found that **Mr Mokoena**, as the Accounting Officer, committed a criminal offence in terms of section 86(1) of the PFMA.
39. In summary, a number of key factors contributed significantly to the complete failure of the housing project: In February 2010, the Premier, **Mr Ace Magashule**, announced that bigger RDP houses would be built apparently in the absence of proper consultation with the Department of Human Settlements in the Free State, resulting in difficulties for contractors who were required to build bigger houses at the same initial price they were initially contracted for. As a result, a tender process was initiated in April 2010. However,

this was abandoned in July 2010 because the officials “incomprehensively...thought it was a good idea to have no competitive process and simply to have a list of contractors – irrespective of whether or not they were qualified and irrespective of whether or not they had ever built just a single house before – from which contractors who would build the houses would be appointed”. Finally, the officials, including the MEC, **Mr Zwane**, then decided that an advance payment scheme be implemented, which went forth despite having been advised that it was illegal.

40. Under such circumstances of **failed leadership** by Mr Zwane, the Commission is of the view that the Premier, Mr Ace Magashule, should not have allowed him to continue as MEC in another department. Indeed, as MEC for Agriculture and Rural Development Mr Zwane’s performance was again dismal, resulting in the Estina/Vrede Dairy Farm debacle (dealt with in later parts of the Commission’s report).
41. There was **no consequence management** from the Premier, who must have been aware of what was happening within the Provincial Department of Human Settlements in 2010 and 2011. The Commission is of the view that it is “totally unacceptable that the Premier made no effective intervention”.
42. On the other hand, if the Premier was unaware of the events leading up to the debacle, it would mean a **serious dereliction of duty** as it implies that he was not monitoring and supervising his MEC, Mr Zwane.
43. Thus, the Commission is of the view that the Premier should also have been held accountable for failing to take appropriate and effective measures to ensure Mr Zwane and his Department performed their work properly and taxpayer’s money not wasted. Neither Mr Magashule nor Mr Zwane have been held accountable.

Volume 3: The Capture of Eskom

44. Eskom is South Africa’s main power utility and the largest electricity producer in Africa. At some stage, it was among the top utilities in the world in terms of generation capacity and sales but has since slipped in both categories. Given that it is a public company, the government, through the Minister of Public Enterprises (MoPE), has the exclusive power to appoint the directors of Eskom.
45. A largely new Board was constituted in 2018. Some of the numerous challenges the 2018 Board has had to face include: a liquidity crisis with no access to funding; unsatisfactory sales revenue; low investor confidence; increasing municipal and Soweto debt; high debt service costs, costs of maintenance and operating expenditure; allegations of mismanagement and corruption against senior officials; breaches of the PFMA and lapses

of governance systems and controls; and low staff morale, among others. Many of the problems at Eskom appear to have stemmed from corruption perpetrated by its own executives and managers in the field of procurement.

The Appointment of the 2014 Eskom Board

46. **Ms Brown** was appointed MoPE in 2014, replacing Minister Gigaba. Ms Gigaba testified that, according to Mr Gigaba, Mr Ajay Gupta had noticed that Mr Gigaba had become more distant and threatened to remove him from his position (in which the Guptas initially placed him) and return him to the Department of Home Affairs. This threat materialized, making it appear that the Guptas had a hand in his removal and in the appointment of Ms Brown as MoPE.
47. The 2014 Eskom Board consisted predominantly of individuals with direct or indirect business or personal relations with Mr Duduzane Zuma, **the Gupta family**, and their related associates, including **Mr Essa**. Minister Brown appointed the board members, despite some of them never serving on an SOE board, or any other board, and many of them lacking the relevant skills to address Eskom's challenges.
48. **Mr Tsotsi**, who had been reappointed as Chairperson in 2014, was responsible for the composition of the Board sub-committees. Evidence shows that Mr Essa emailed him with a list of names and compositions of the sub-committees, asking him send that list to Minister Brown. Mr Tsotsi helped facilitate the implementation of Mr Essa's interference in the affairs of the Eskom Board.
49. Mr Essa used an e-mail address under the name of "Business Man" to attempt to conceal his identity in his dealings when exchanging confidential information in relation to various state capture activities at SOEs. The scheme by the Guptas to capture Eskom frequently entailed communication between the Minister and her personal assistant and the "Business man" email address.

The Suspension of Four Eskom Executives

50. On the 11th and 12th March 2015, the Eskom Board unexpectedly suspended 4 executives. These were **Mr Matona** (Group CEO for the last 5 months), **Ms Molefe** (Financial Director), **Mr Koko** (Group Executive: Technology and Commercial) and **Mr Marokane** (Group Executive: Group Capital). Evidence reveals that the Guptas and associates and President Zuma were behind the suspension. The aim was to suspend executives who

occupied strategic positions at Eskom who would not cooperate with the Guptas and their agenda. The events that led to the suspension are described below.

51. **President Zuma** called both Ms Makholo, Acting DG of the Department of Public Enterprises while Minister Brown was away, and Mr Tsotsi to postpone the Eskom Board meeting the next day, the 26th February, until the Minister had returned. President Zuma thus interfered in the running of the affairs of the Eskom Board. This is unlawful as he has no power to decide when a Board should hold its meetings or dictate what they discuss. It appears that he wanted to advance the Guptas agenda in securing the postponement of the meeting.
52. On the 6th March, **Ms Myeni** met with **Mr Linnell**, a lawyer who provided her consulting services, and explained to him that President Zuma was concerned about Eskom and wanted an investigation into its affairs. She recommended Mr Linnell to do the investigation.
53. Mr Linnell and Mr Tsotsi attended a meeting with Ms Myeni, her son, and President Zuma at his residence in Durban on the 8th March. Ms Myeni explained the need for an investigation and that certain executives were to be suspended. Mr Tsotsi was a reluctant participant, but President Zuma told him “to go and do it”.
54. Mr Tsotsi held a special board meeting on the 9th March and informed the Board members of the proposal for an inquiry to be conducted into Eskom’s state of affairs. However, this was met with scepticism and the Board members requested they hear from Minister Brown first.
55. On the 10th March, Mr Koko and Mr Essa held separate meetings with **Ms Daniels** and **Mr Masango**, Eskom employees, informing them about the four executives who were to be suspended (including Mr Koko himself, who did not appear to be perturbed by his suspension in the meeting). Mr Essa and Mr Koko also wanted to discuss which Eskom employees should act in the positions of the suspended employees and inquired about suspension procedures. It was suggested that Mr Masango take over Mr Matona’s position. The same night, Mr Koko met with **Ms Dlamini**, informing her of the executives to be suspended and asking for her CV so that she may become the acting Financial Director.
56. The findings revealed that **Mr Koko was working with the Guptas** or their associates to facilitate the capture of Eskom. The purpose of Mr Koko’s suspension was to cause confusion and to ensure that there would be no suspicion of his association with the Guptas.

57. On the 11th March, Minister Brown agreed to address the Board, which then made a hasty decision to suspend the four executives. Once the Board had heard confirmation from the Minister, the Board were happy to go along with what the Guptas and their associates wanted. The supposed reason for the suspension was so that the suspended executives would not interfere with the investigation to be conducted. Ms Dlamini and Mr Masango became acting officials, as Mr Koko had discussed with them. Mr Khoza, one of the Board members, was appointed acting GCEO. E-mail trails suggested that he also had prior knowledge of the suspensions.
58. The suspensions were effected until the Board reached settlement agreements with 3 of the 4 executives in terms of which they resigned and were paid millions of rands. Mr Koko, however, was allowed to return to work - it was clear that it was never the Gupta's intention to get Mr Koko out of Eskom. He was an integral part of their strategy to capture Eskom.
59. As part of the settlement, Mr Marokane and Mr Matona each received 12-months' salary, while Ms Molefe received 18-months' salary after threatening to pursue the matter legally. Mr Matona met with President Zuma, who assured him that the happenings at Eskom had nothing to do with him and offered him a job in the National Planning Commission, an advisory body to the President.
60. In February 2015, after receiving complaints about work performance from Minister Brown, Mr Tony Gupta accused Mr Tsotsi of not being supportive of the Gupta business endeavours. After the suspensions, on the 19th March, **the Board informed Mr Tsotsi that they had unanimously lost confidence in him and recommended his removal.** One of their reasons was that he appointed Mr Linnell for the investigations without following a procurement process – which is ironic as all the board members welcomed Mr Linnell and utilised his services in the suspension of the executives. E-mails were found between Mr Essa and Mr Howa, another Gupta associate, in which they drafted media statements surrounding Mr Tsotsi's removal prior to the Board's decision to remove him. Mr Essa and Mr Howa, being external third parties, acted in cahoots with certain Eskom board members to manipulate and control the affairs of Eskom. Dr Ngubane, who then became the new chairperson of the Board, allowed this to happen.
61. **Mr Bayoli** was removed from the Board in April 2015 by Minister Brown. He was the only board member to oppose the suspension of the four executives and dispute the board's

charges against Mr Tsotsi. Mr Koko framed Mr Bayoli for working against the board, which ultimately led to his removal. In reality, he was removed because he was questioning decisions that the Board was taking that sought to facilitate the capture of Eskom.

62. A month after the suspension of the executives, Minister Brown announced that **Mr Molefe was seconded to Eskom as Acting CEO**. He then told the Board that he wanted **Mr Singh seconded as the CFO or Financial Director**. Mr Molefe was later appointed GCEO despite there being no competitive process. It is noteworthy that Mr Essa told Mr Bester, managing director of rail at Hatch, in 2014 that the Gupta's wanted Mr Molefe to be CEO of Eskom.
63. The primary purpose of the scheme was to install Mr Molefe and Mr Singh as Eskom executives because they would favour the Gupta's and their agenda. The scheme was to procure the suspension of the executives under the guise of an enquiry into the affairs of Eskom, install the Gupta's selected officials in positions of influence in place of the suspended executives, and then divert Eskom's assets to the Gupta's financial advantage. Minister Brown used her powers to remove and appoint executives and board members to advance the Gupta's agenda.
64. The Guptas were in complete control of Eskom at this point, with the Minister, President, Chairperson, Acting CEO and CFO all cooperating with them. The report goes on to critique members of Parliament, Cabinet, and the ANC in general at the time for allowing Eskom to be captured under their watch. If the ANC does have a right to deploy people, then surely it must be their duty to ensure that those appointed are qualified and have integrity and to monitor their performance.

The Acquisition of Optimum Coal Mine by Tetega

65. In 2015, **Mr Zwane** was appointed **Minister of Mineral Resources**. President Zuma identified him as suitable for the role despite having performed badly in his previous positions. For example, he initiated and oversaw what is now the Estina or Vrede Dairy Farm debacle as MEC for Agriculture, and he was responsible for the disgraceful Free State R1 billion Housing Project when he was MEC for Human Settlements, as described earlier. The previous minister, Mr Ramathlodi, consistently refused to have anything to do with the Guptas, and this was probably why he was removed. Evidence revealed a strong

connection between Mr Zwane and the Guptas. It must be remembered that the Guptas business interests were intertwined with the Zuma family business interests.

66. Eskom had a **Coal Supply Agreement (CSA)**, for the period 1993 to 2018, in which coal from the **Optimum coal mine supplied the Hendrina power station**. Optimum Coal Holdings (OCH) acquired Optimum Coal Mines (OCM) in 2006 before Glencore acquired OCH and thus OCM in 2011. Differences continuously arose between Eskom, who would take issue with the size and quality of the coal, and Glencore, as OCM sold coal to Eskom below cost price due to the CSA, causing OCM to lose over R829 million per annum. After many months of negotiations, Glencore and Eskom appeared to arrive at a recommended position around March 2015, which included an increase in the price of coal per tonne intended to cover costs with no profit margin for OCM.
67. The executive procurement committee at Eskom supported this settlement; however, the Board and Board Tender Committee (BTC) referred the matter to Mr Molefe, who had been in his AGCEO position for less than a week and had no background in the coal industry.
68. **Mr Molefe** decided that there would be no renegotiation of the CSA terms with OCM and **proceeded to terminate the new agreements**. He instead insisted that a penalty claim of R2.17 billion (for coal not meeting requirements) be put to Glencore for immediate payment, despite Eskom lawyer's raising concerns about the merit of this claim.
69. In July 2015, the Gupta's, through their company **Oakbay Investments** (Oakbay), started negotiating with Glencore to buy OCM. OCH and OCM went into business rescue in August 2015. Eskom continued to place pressure on OCM and withdrew payments for no justifiable reason.
70. Glencore received other offers for OCM other than Oakbay, but Eskom held the competitors to different standards. For example, it told Phembani Group that it would not consent to the transaction unless they paid the R2.17 billion penalties. For Gupta's company, this was not a necessary condition, and the penalty was later reduced to R255 million.
71. Later, Eskom and the Department of Mineral Resources (DMR) said they would not consent to the transaction between Glencore and Oakbay unless it included all assets of OCH.

72. When Mr Gupta's offer of R1 billion for OCH was declined since it could not cover the significant debt of R2.5 billion OCM owed to the consortium of banks, the **DMR issued section 54 notices to suspend mining operations in Glencore's mines**. It appears Minister Zwane was behind these notices, and they were a warning to Glencore that there would be consequences if it did not support the Gupta offer and if they allowed OCM to go into liquidation (which Glencore was considering at the time).
73. Glencore then chose to continue funding the OCM, which resulted in the end of its business rescue, and to fulfil the CSA until 2018. Ultimately, Glencore conceded on everything Eskom wanted.
74. Minister Zwane travelled to Switzerland to meet Mr Glasenberg (CEO of Glencore) in December 2015, where he urged Glencore to sell the Optimum coal mine to the Guptas. **Mr Glasenberg and Mr Tony Gupta then reached an agreed sale price of R2.15 billion for the mine** and other assets of OCH, with Glencore agreeing to put in R400 million to settle the bank debts. Minister Zwane then travelled with the Guptas on their private jet to India and to the Middle East, with the Guptas covering the expenses. Mr Zwane was most likely taken on the trip to Switzerland to show people that the Guptas were connected with political leaders of the country.
75. Eskom officials, including Dr Ngubane, Ms Daniels and Mr Koko, fed Mr Essa with confidential information that gave him and the Guptas an advantage over others in relation to Glencore's situation. Mr Pamensky, being a Board director at Eskom and Oakbay, emailed advice to Mr Atul Gupta on negotiating the sale.
76. On 10 December 2015, the sales agreement was concluded for the Oakbay Investments' subsidiary, **Tetega**, to purchase OCH and all its assets, including OCM. However, it was required that Tetega had to prove that it had sufficient funds available, and KPMG's financial assessment was that it was not financially strong enough.
77. The day before the sale agreement, the Eskom Board approved a **prepayment of R1.68 billion for coal from OCM** to Hendrina, although it was switched for a guarantee the next day.
78. Mr Singh and Mr Koko played integral roles in preparing the prepayment submission, which reasoned that it was an emergency to secure coal supply. However, there was no actual threat of OCM not supplying coal as Glencore had agreed to fulfil the CSA and fund the mine. The prepayment submission had nothing to do with addressing the risk of

- coal supply to Eskom, but everything to do with providing the appearance that Tetega had the requisite financial capacity to acquire OCH. The board members gave their approval.
79. Despite the assertion that the prepayment was urgently needed, the payment did not take place, as Mr Singh decided a few days later to arrange to give Tetega a guarantee of R1.68 billion of coal instead. The terms of the guarantee originated externally from Mr Essa. The terms included suspensive conditions to be fulfilled by March 2016, which meant that Eskom as willing to wait for coal delivery until then. This negates the suggestion that coal was urgently required. Mr Singh signed the guarantee without the necessary Board and Ministerial approval. After gaining the guarantee, the sale to Tetega was approved. The payment and handover of the shares were to take place in April 2016.
 80. Between January and April 2016, Tetega benefitted from several short-term supply contracts offered to it by Eskom. In early April, **Tetega requested for a prepayment of R659 million** under the guise that it wished to increase production of the mine (which it did not even own yet) and to address the shortage of coal supply at the Arnot power station, which is untrue. In reality, Tetega needed to pay the purchase price in April but was R600 million short despite the Bank of Baroda providing a letter a month earlier that it had sufficient funds.
 81. Mr Nath of Tetega made unsolicited approaches to Eskoms' Dr Nteta with a verbal offer to supply coal from OCM to Eskom (when Tetega was not yet owner of the mine). The Eskom executives then put together a misleading submission to the BTC.
 82. An urgent Board meeting was held to consider the prepayment submission, and there is evidence that the Board members fabricated the minutes of the meeting to make it seem as if the BTC had applied its mind. Even when Mr Singh admitted to the Board that the real reason for the prepayment was that Tetega faced going concern issues and that no-one else was prepared to give them credit, the Board still approved the prepayment. Very little regard was given to the financial impact and risk that the prepayment exposes to Eskom.
 83. Tetega transferred R2.084 billion from the Bank of Baroda to purchase OCH. Tetega received R2 billion in the two days before the purchase – of which R1.8 billion was derived from criminal sources and theft of state funds. These sources included loans originating from contract work that Regiments had undertaken at Transnet, payments from Eskom,

and funds from Gupta companies that were fronts for money laundering. The amount was then settled in full, and the shares were handed over.

84. Tetega negotiated the R2.17 billion penalty claim down to R255 million and only ever paid R122 million.
85. Tetega went into business rescue in 2018, and the mine subsequently went out of operation. As Hendrina was 100% reliant on Optimum for coal when this happened, the power station was immediately 400 000 tonnes short of coal.
86. Messrs Zwane, Molefe, Koko and Singh knowingly assisted the Guptas in acquiring the Optimum coal mine and ultimately all of Glencore's coal interests in South Africa. Additionally, the Guptas paid for several of Mr Singh's private trips to Dubai.

Volume 4: The Capture of Eskom

Brakfontein Colliery

87. On 10 March 2015, Eskom concluded a Coal Supply Agreement with Tegeta to supply 13.95 billion tons of coal from Tegeta's Brakfontein Colliery. The agreed contract price was R3.7 billion for ten years, from 1 April 2015 to 30 September 2025. Initially, Brakfontein did not comply with water licence requirements, resulting in Eskom not being able to continue negotiations with them. However, on 22 December 2014, a water use licence was signed off for Brakfontein.
88. The procurement of the coal supply from Brakfontein Colliery was secured through an unsolicited offer and received outside of a competitive tender process. After much negotiations and assistance by Eskom officials in the tendering process, Eskom accepted the offer at R13.50 p/GJ for 65 000 tons of blended coal per month for five years, despite the chemical test results showing that the product was not compliant and not suitable for the Majuba Power Station. Tegeta later amended the contract to supply 100 000 tons of blended coal per month for ten years. The Coal Supply Agreement was concluded despite the contract not being financially sound, the mining rights of Brakfontein expired in 2020, and the coal failed suitability tests. Tegeta continually requested to supply more coal to Eskom, although the coal failed tests and was unsuitable for energy generation.
89. On 31 August 2015, Acting CEO **Mr Matshela Koko** sent a letter suspending coal supply from Tegeta's Brakfontein mine due to quality issues. Further, Mr Koko suspended Eskom's Coal Special Scientist, **Dr van der Riet** and his team, which were conducting a

separate investigation regarding the quality of coal delivered by Tegeta. The Zondo Commission believes that Mr Koko was acting in concert with Tegeta. Following Mr Koko's lifting of the Brakfontein Coal Supply Agreement suspension, a further sample of the Brakfontein coal was taken and tested on 6 September 2015 at an Eskom laboratory. The sample passed quality assessments, although it was later found not from the Brakfontein Colliery. Thereafter, the suspension of Dr van der Riet and his team was lifted on 8 September 2015.

90. A letter was sent on 19 August 2016 to National Treasury requesting permission to approve amendments. Eskom was seeking to increase the contract by R2.9 billion, 77% of the original contract value (of R3.79 billion). National Treasury rejected the request because there was a question about the coal quality.
91. Eskom paid R1.26 billion to Tegeta for the coal supply to the Majuba Power Station, according to the Brakfontein Coal Supply Agreement.

Huarong Energy Africa (Pty) Ltd (HEA)

92. In 2015, Eskom entered into an agreement with **China Huarong Asset Management Co. Ltd (China Huarong)**. China Huarong is a majority state-owned financial asset management company domiciled in China. China Huarong approached Eskom with an unsolicited proposal to grant USD1.5 billion (approximately R25 billion) so that Eskom could build or refurbish power stations (capital projects).
93. Negotiations progressed. A company was incorporated in South Africa to do this business with Eskom and was called **Huarong Africa (Pty) Ltd (HEA)**. A group of officials within Eskom and a group in and around HEA tried to engineer a situation by which Eskom paid an enormous raising fee upfront and then would have recourse only against HEA for payment of the loan. Fortunately for South Africa, this scheme was thwarted by an official in Eskom and officials in the National Treasury.
94. At the time, Eskom had a funding plan. This included raising finance through domestic and international bonds, commercial paper loans and development finance institutions. Some multilateral institutions also provided funding, as did export credit agencies. In addition, there were structured products, which were innovative funding sources. HEA was among the 12 responses received for Eskom's funding request.
95. As part of their responses, several firms provided non-binding term sheets, which were the frameworks of the terms on which they were prepared to do business. The term sheet

submitted by HEA offered to provide approximately USD1.5 billion (and for a facility fee of 1.6% of the program value, an annual fee of 0.8% of the funds made available and a cancellation fee of 2%).

96. In December 2016, **Mr Anoj Singh** contacted **Mr Andre Pillay**, the General Manager and Head of Eskom Treasury, who reported to him. Mr Singh told Mr Pillay that **Mr Rajeev Thomas** (a money broker on behalf of HEA) had asked that Eskom sign a non-binding term sheet to demonstrate to his partners that he had a good working relationship with Eskom. The binding term sheet was signed, although the usual authorisation process within Eskom was not followed, and Eskom's legal department was not consulted.
97. From 8 to 13 January 2017, Mr Singh, together with Mr Pillay, **Mr Prish Govender** and **Mr Poobie Govender**, met in Beijing, China, with representatives of HEA, namely Mr Thomas, **Mr Rex Madida** and **Mr Wim Terblanche**. Following that meeting, Mr Anoj Singh asked for an Investment and Finance Committee submission to inform the board of the HEA proposal and approve a mandate to negotiate and conclude a financing agreement with HEA for loan transactions of R1.5 billion and R6 billion.
98. This was not simply a financing proposal, which fell within the jurisdiction of the board's Investment and Finance Committee. It was also linked to a capital program and therefore needed the approval of the Board Tender Committee. The Investment and Finance Committee resolved on 3 February 2017 that a team, including Mr Pillay, could negotiate but not conclude the financing agreement with HEA.
99. These contemplated transactions would have had to fall within the Eskom 5-year corporate plan, which was still being developed. Eskom was assisted in preparing its corporate plan by teams from McKinsey and, ostensibly, Trillian. However, a board member, **Mr Zethembe Khoza**, who chaired the Board Tender Committee, told Mr Pillay that if the HEA proposal were brought before the Board Tender Committee, that body would approve the proposal.
100. On 14 August 2017, Mr Pillay received a copy of a memorandum of that date addressed by **Ms Palacios**, the Eskom Legal Corporate Specialist, to **Ms Suzanne Daniels**. The memo recommended against proceeding with the HEA project without favourable legal advice and queried why Eskom officials had signed the latest term sheet against legal advice and without following proper process. On 15 August 2017, Mr Pillay, as head of Eskom Treasury, submitted a memorandum to the Board Investment and Finance

Committee seeking a mandate to conclude the financing arrangement with HEA. Considerable interactions at a technical level within Eskom, the Investment and Finance Committee resolved on 26 October 2017 to approve the HEA transaction subject to numerous conditions.

101. Eskom was considering these proposals, which were long term proposals, to operate primarily over fifteen years. HEA suggested that Eskom enter into a short term transaction with HEA to operate for three to five years. Eskom then proposed short term financing to HEA. HEA responded that the proposal was not achievable because its implementation would require a government guarantee. Nevertheless, at its meeting on 27 October 2017, the Investment and Finance Committee resolved that Eskom Treasury negotiate a short term facility up to a maximum of R2 billion for six to twelve months with HEA. At the same time, the RFP process continued.
102. On his return, Acting CEO **Mr Sean Maritz** demanded to know why the HEA long term facility was not to be signed. Mr Pillay sent Mr Maritz all relevant documents and explained that, as the due process had not been followed, the long-term facility contract could not be signed. Mr Maritz responded that he was, nevertheless, going to sign. Mr Maritz then proceeded to go against the board's decision or advice and signed the documents for the HEA long term facility. Nothing further was then done about the HEA short term facility. Although the RFP process continued, HEA continued to be treated preferentially by Eskom.
103. HEA then submitted an invoice dated 2 November 2017 to Eskom for the development fee amounting to USD21 888 000 (twenty-one million, eight hundred and eighty thousand Dollars), inclusive of VAT. Mr Pillay gave instructions that the invoice was not to be paid as the agreement underlying the invoice was not valid. Towards the end of December 2017, the HEA representatives submitted an updated ALFA to Mr Maritz for him to sign. Mr Maritz signed the updated ALFA. Shortly thereafter, HEA submitted an invoice for payment.
104. It seems clear on the evidence before the Commission that certain Eskom officials conspired with Mr Thomas and specific individuals outside Eskom to bind Eskom to a transaction according to which Eskom would pay out a very substantial sum of USD21 888 000 (twenty-one million, eight hundred and eighty thousand dollars) as a raising fee before any money had been raised and paid to Eskom. Suppose the final agreement

provides in this regard as the original term sheet does. In that case, the liability to pay the loan amount was imposed on HEA, a South African company incorporated for the specific purpose of doing business with Eskom. The strong probability is that HEA could not advance billions of US dollars to Eskom.

Eskom and McKinsey-Regiments-Trillian

105. The **Regiments Capital** and **Trillian Management Consulting** were implicated in allegations of corruption and state capture in several state entities. Both were very small local companies doing advisory work mainly of a financial and management consultancy nature. **Mr Eric Wood** (Mr Wood) featured prominently as a director and appeared to have a strong working relationship with **Mr Salim Essa**, referred to as a ‘rain-maker’, as he was said to secure contracts with government entities. Mr Wood led a division of Regiments that had been a partner of **McKinsey and Company Africa (Pty) Ltd** (McKinsey). As partners, that Division of Regiments and McKinsey had been getting work from certain state-owned entities. That Division or Unit of Regiments became Trillian Capital Partners (Pty) Ltd (which was the holding company of Trillian Management Consulting (Pty) Ltd) on 1 March 2016, whose principal shareholder was Mr Salim Essa.
106. McKinsey was paid just under R1.9 billion in connection with contracts shared with Regiments or Trillian at Eskom, Transnet and SAA. In 2014, before Mr Anoj Singh and Mr Brian Molefe were seconded from Transnet to Eskom, Regiments tried with only limited success to get consulting work at Eskom.
107. Regiments Capital and its off-shoot company, Trillian, would find it much easier to get work at Eskom from 2015 and on a far grander scale. As they did at Transnet, Regiments Capital partnered with McKinsey again on the same basis for contracts at Eskom. It was utilising the services of Mr Salim Essa as a “Business Development Partner” to land contracts in return for a large share of the fees earned. Namely, Regiments would earn 30% of all revenue from the project, but it would have to pay 30% of this to Mr Salim Essa.
108. A submission dated 13 May 2015 was prepared by Mr Mabelane, the Acting Group Executive of Technology and Commercial and Chief Procurement Officer, requesting that the Eskom Board authorise negotiations to take place for the appointment of McKinsey as a sole partner for the development of the new Internal Consulting Unit on a sole source or ‘at risk’ basis for consulting services aimed at achieving cost savings for Eskom under

a Master Service Agreement. On 21 October 2015, the Board Tender Committee approved a submission authorising the Eskom team to conclude the negotiations with the MSA.

109. The submission stated that if the contract value exceeded R1.2 billion, it would need to be reported to the Minister of Public Enterprises. This was never done. The MSA was described as having an “R0.0” costed Budget. This reflected that it was supposed to be ‘self-funding’ from savings that were to be made and never attempted to provide any valuation or place any cap on the payments that could be made under the contract, which was against National Treasury regulations. The submission sought approval for a R475 million down-payment to be made upfront to McKinsey, despite the lack of Budget and the fact that the risk-based approach was supposed to mean that payment would only be made if Eskom realised actual savings.
110. Further, this meant that Eskom would be making payment without having received any service yet from McKinsey. No approval was ever sought nor obtained from the National Treasury for the MSA. The MSA contract was later terminated in 2016.
111. Whilst the MSA was finalised, a second contract (for the Corporate Plan) that was also mired in irregularities was concluded. With the negotiations for the MSA dragging on in 2015, Eskom sought to put a second, short-term contract in place with McKinsey “for urgent finance work”. This was also done via sole-sourcing, but this time for a fixed price that was not to exceed R98,977,024.08. One of the irregularities includes the gap analysis required by Treasury to justify the Corporate Plan contract, which was not done. The Corporate Plan was meant to be undertaken by Regiments, the partner of McKinsey.
112. Trillian Management Consultancy (Pty) Ltd (TMC), which is a subsidiary of Trillian (a division of Regiments), invoiced for the work on the Corporate Plan on 3 February 2016. They were paid R 30.6 million, although TMC only had two employees at the time, and neither of them had done billable work in respect of Eskom during this time (January to February 2016). Regiments were not paid for the work under the Corporate Plan – payment went to Trillian, although Eskom had not reached a contractual agreement with Trillian.
113. Eskom compensated not only McKinsey but also Trillian for the time spent on the MSA and compensation for the early cancellation. Between August 2016 and February 2017, Eskom made payments totalling just under R1.6 billion to McKinsey and Trillian for a purported MSA contract backdated after termination.

114. In total, R14.7 billion of Eskom's contracts are calculated to have been afflicted by State Capture according to the Flow of Funds' investigation and, of this, McKinsey's MSA and Corporate Plan contracts account for R1.1 billion, and related payments to Trillian account for R595.2 million from these two contracts.

Analysis and Recommendations

- i. The FFC supports the recommendation by the Zondo Commission to investigate further and possibly prosecute all individuals and firms involved with fraudulent, corrupt, racketeering and the looting of public funds at state-owned enterprises, municipalities and governmental departments such as the National Treasury. The FFC encourages authorities to deal with the matter swiftly to ensure perpetrators are brought to justice as soon as possible.

Compiled by: Gianni Delle Donne, Hannah MacGinty and Lauren Stevens



Mr C Tseng

Acting Chief Executive Officer

Date: 23 May 2022

FINANCIAL
AND FISCAL
COMMISSION