

## COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Pretoria

CASE NO: **2025-066038**

In the matter between:

**Open Secrets NPC**

Plaintiff / Applicant / Appellant

and

**National Head: Directorate for Priority  
Crimes Investigation, National Director  
of Public Prosecutions, Passenger Rail  
Agency of South Africa**

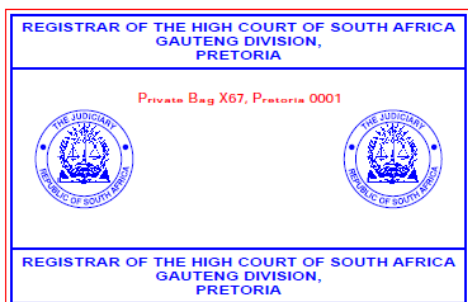
Defendant / Respondent

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### Notice of Motion (Long Form)

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ELECTRONICALLY SIGNED BY:

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**Registrar of High Court of South  
Africa , Gauteng Local  
Division,Pretoria**

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO:**

In the matter between:

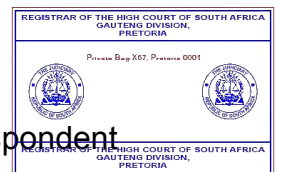
**OPEN SECRETS NPC**

Applicant

and

**NATIONAL HEAD: DIRECTORATE FOR PRIORITY  
CRIMES INVESTIGATION**

First Respondent



**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

Second Respondent

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

Third Respondent

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**NOTICE OF MOTION**

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**KINDLY TAKE NOTICE** that the Applicant intends to apply to this Honourable Court for an order in the following terms:

1 Declaring invalid, reviewing and setting aside the following conduct of the Directorate of Priority Crimes Investigation (**Hawks**) of the South African Police Service (**SAPS**), represented by the First Respondent:

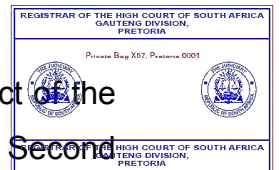
1.1 the Hawks' failure, within a reasonable time, to complete the investigations into the complaints of corruption and fraud at the Passenger Rail Agency of South Africa (**PRASA**), under SAPS case numbers CAS405/07/2015 and CAS278/09/2015, respectively concerning—

2

1.1.1 PRASA's award and conclusion of the contract with Siyangena Technologies (Pty) Ltd (**Siyangena**) under tender number HO/SCM/223/11/2011, as well as the implementation of that contract; and

1.1.2 PRASA's award and conclusion of a contract with Swifambo Rails Leasing (Pty) Ltd (**Swifambo**) under tender number HO/FM-CRES/142/09/2013, as well as the implementation of that contract.

2 Declaring invalid, reviewing and setting aside the following conduct of the National Prosecuting Authority (**NPA**), represented by the Second Respondent:



2.1 having assumed a guiding role in the Hawks' investigations referred to in prayer 1 above, the NPA's failure, within a reasonable time, to see to the completion of those investigations; and

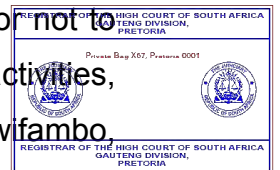
2.2 the NPA's failure to take a decision, either to prosecute or not to prosecute, persons implicated or involved in criminal activities, related to the award, conclusion and implementation of PRASA's contracts with Siyangena and Swifambo, referred to in prayer 1.1.

3 Granting the Applicant just and equitable relief against the Hawks, represented by the First Respondent, including:

3.1 directing the Hawks to complete their investigations, referred to in prayer 1.1, without further delay; and

3.2 directing the Hawks to take such further steps or file such further reports as the Court deems just and equitable.

- 3.3 directing the Hawks to pay the Applicant's costs, including the costs of two counsel.
- 4 Granting the Applicant just and equitable relief against the NPA, represented by the Second Respondent, including:
- 4.1 directing the NPA to see to the completion of the investigations, referred to in prayer 1.1, without further delay;
- 4.2 directing the NPA to take a decision, either to prosecute or not to prosecute, persons implicated or involved in criminal activities, related to PRASA's contracts with Siyangena and Swifambo, referred to in prayer 1.1., without further delay; and
- 4.3 directing the NPA to take such further steps or file such further reports as the Court deems just and equitable.
- 4.4 directing the NPA to pay the Applicant's costs, including the costs of two counsel.



**KINDLY TAKE NOTICE FURTHER** that the Applicant will rely on the accompanying affidavit of **HENNIE VAN VUUREN** in support of this application.

**KINDLY TAKE NOTICE FURTHER** that the Respondents are called upon in terms of Uniform Rule of Court 53(1)(a) of the Uniform Rules of Court to show cause as to why their ongoing failure to complete the investigations into alleged criminal activity, in connection with the Swifambo contract and Siyangena contract, should not be reviewed and declared unlawful and set aside.

**TAKE FURTHER NOTICE** that in terms of Rule 53(1)(b) of the Uniform Rules the First and Second Respondents are required within fifteen (15) days after receipt hereof to dispatch to the Registrar and to the Applicant the record of their ongoing failure to complete the investigations, together with such reasons as they are by

law required or desire to give, relating to the decisions referred to in prayers 1 and 2.

**TAKE FURTHER NOTICE** that the Applicant may, within ten (10) days of receipt of the record from the Registrar, by delivery of notice and accompanying affidavit, amend, add to or vary the terms of its Notice of Motion and supplement its Founding Affidavit, in terms of Rule 53(4) of the Uniform Rules of this Court.

**KINDLY TAKE NOTICE FURTHER** that the Applicant will accept notice and service of all documents in these proceedings at the address of its attorneys of record mentioned below. The Applicant will also accept electronic service at the following e-mail address: slindile.khumalo@powerlaw.africa, claire.dehousse@powerlaw.africa and legal@powerlaw.africa.

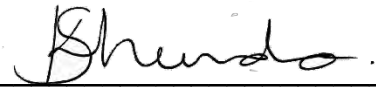


**KINDLY TAKE NOTICE FURTHER** that, if the First and/or Second Respondents intend to oppose this application, they must—

1. within fifteen days of receipt of this application or any amendment or supplement, give the Applicant notice of their intention to oppose;
2. to appoint an address within twenty five (25) kilometres of the office of the Registrar, at which they will accept notice and service of all documents in these proceedings; and
3. within thirty (30) days after expiry of the period referred to in Rule 53(4), file your answering affidavits, if any.

**KINDLY TAKE NOTICE FURTHER** that if you do not oppose this application, it will be heard on a date determined by the Registrar.

**DATED AT JOHANNESBURG ON THIS THE 8<sup>TH</sup> DAY OF MAY 2025.**



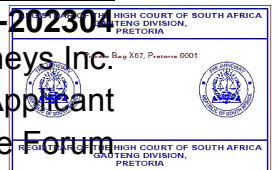
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**Ref: PLOS-202304**

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**TO: THE REGISTRAR OF THE COURT  
PRETORIA**

**AND TO: NATIONAL HEAD: DIRECTORATE OF PRIORITY  
CRIMES INVESTIGATION**  
A5 Promat Building  
1 Cresswell Road  
Silverton  
PRETORIA

**AND TO: NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**  
VGM Building, Cnr Westlake and Hartley  
123 Westlake Avenue  
Weavind Park  
Silverton  
PRETORIA

**AND TO: PASSENGER RAIL AGENCY OF SOUTH AFRICA**  
Umjantshi House,  
30 Wolmarans Street,  
Braamfontein,  
JOHANNESBURG

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

**OPEN SECRETS NPC**

Applicant

and

**NATIONAL HEAD: DIRECTORATE FOR PRIORITY  
CRIMES INVESTIGATION**

First Respondent

**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

Second Respondent

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

Third Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**HENNIE VAN VUUREN**

state under oath:

- 1 I am a Director of the Applicant (**Open Secrets**), employed as such by the Applicant at its offices situated at the Second Floor, Community House, 41 Salt River Road, Salt River, Cape Town.
- 2 I am duly authorised to depose to this affidavit on behalf of Open Secrets, in accordance with the resolution authorising me to do so, attached hereto, marked annexure "FA1".
- 3 The facts in this affidavit are true and correct. They are within my personal knowledge and belief unless otherwise stated or where the context indicates.
- 4 Where I rely on information obtained from others, I state the source(s) and believe that information to be true and correct. Where I make legal submissions, I do so on the advice of Open Secrets' legal representatives, whose advice I accept and believe to be correct.

**A. NATURE OF THE APPLICATION**

- 5 Open Secrets seeks judicial review of the failure by the Directorate of Priority Crimes Investigation (**the Hawks**) and the National Prosecuting Authority (**the NPA**), diligently and without delay, to investigate crimes linked to the award of contracts by the Passenger Rail Agency of South Africa (**PRASA**) to—

*H. V. Vuuren*

- 5.1 Siyangena Technologies (Pty) Ltd (**Siyangena and Siyangena contract**); and
  - 5.2 Swifambo Rails Leasing (Pty) Ltd (**Swifambo and Swifambo contract**).
- 6 These contracts, worth billions, were meant to modernise South Africa's rail system. Instead, they became conduits for fraud, stripping PRASA bare and abandoning millions of poor commuters to a crumbling transport lifeline. The Supreme Court of Appeal (**SCA**) reviewed the decisions to award these contracts to Siyangena and Swifambo, respectively, and set aside both contracts as irregular, tainted by corruption.
- 7 Due to the delay in the finalisation of the investigations into the alleged corrupt conduct of those who were involved in the award of these contracts, the NPA has consequently not decided whether to prosecute anyone linked to the unlawful Siyangena and Swifambo contracts. The result is that, an excess of nine years has passed since the criminal complaints were laid in 2015/2016, yet no one has been held accountable, contrary to the recommendations of the Judicial Commission of Inquiry into Allegations of State Capture (**the Zondo Commission**).
- 8 The NPA claims that it awaits the Hawks' investigations; the Hawks point to the need for NPA guidance. This buck-passing has birthed an apparent paralysis that flouts the rule of law.
- 9 The Constitutional Court, I am advised, stated that the review of a decision by the Hawks not to investigate a crime within its jurisdiction amounts to an administrative action. Open Secrets thus seeks the following orders under the Promotion of Administrative Justice Act, 3 of 2000 (**PAJA**) or, alternatively, the principle of legality —

- 9.1 declaring invalid and reviewing the failure by the Hawks and the NPA to conclude investigations into the conclusion and implementation of the Siyangena and Swifambo contracts diligently and without delay; and
  - 9.2 directing the Hawks and the NPA to conclude their investigations into the Siyangena and Swifambo contracts diligently and without further delay.
- 10 Open Secrets further seeks orders under section 172(1)(a) and (b) of the Constitution, based on the principle of legality—
- 10.1 declaring invalid the NPA's failure to decide whether to prosecute persons, whom—
    - 10.1.1 the SCA found to have acted in a corrupt manner in connection with the award and implementation of the Siyangena and Swifambo contracts, under cases *Swifambo Rail Leasing (Pty) Limited v Passenger Rail Agency of South Africa* 2020 (1) SA 76 (SCA) and *Siyangena Technologies (Pty) Ltd v PRASA and Others* 2023 (2) SA 51 (SCA), respectively; and
    - 10.1.2 the Zondo Commission recommended that the NPA considers prosecuting; and
  - 10.2 directing the NPA to decide, within a reasonable time, whether to institute prosecutions of persons recommended for prosecution in the Zondo Commission report and based on findings of the SCA.
- 11 In this affidavit, I address the following topics in turn:



- 11.1 the parties to the litigation;
- 11.2 the relevant constitutional and legislative framework;
- 11.3 the unlawful contracts and criminal complaints;
- 11.4 the evidence that the investigations have stagnated;
- 11.5 the Presidency's status update on the implementation of the Zondo Commission report;
- 11.6 Open Secrets' research;
- 11.7 Open Secrets' attempts to engage the Hawks, NPA and PRASA;
- 11.8 individuals implicated in corruption, who remain unaccountable;
- 11.9 grounds of review; and
- 11.10 the disclosure of the Rule 53 record.

## **B. PARTIES TO THE LITIGATION**

- 12 The Applicant, Open Secrets, is a civil society organisation, incorporated as a non-profit company in terms of the company laws of South Africa. Its registered offices are situated at the Second Floor, Community House, 41 Salt River Road, Salt River, Cape Town.
- 13 Open Secrets is committed to work for social justice. It undertakes investigative research that informs activism and legal measures towards accountability for economic crimes and other key social issues, one of which is combatting State capture. Clause 3 of its memorandum of incorporation



(attached hereto, marked annexure "FA2") provides that Open Secrets' objective is—

*"[t]o promote human rights and democracy by pursuing accountability for economic crime and related human rights violations in Southern Africa, through advocacy, public interest litigation and research."*

- 14 Open Secrets has standing to bring this application in its own name, in terms of section 38(a) of the Constitution, and in the public interest, in terms of section 38(d) of the Constitution. It is on these bases that it institutes this application.
- 15 The First Respondent is the National Head of the Hawks. The Hawks are the independent anti-corruption agency, established within the South African Police Service (**SAPS**) under Chapter 6A of the South African Police Service Act, 68 of 1995 (**SAPS Act**). The Hawks' head office is situated at A5 Promat Building, 1 Cresswell Road, Silverton, Pretoria.
- 16 The Second Respondent is the National Director of Public Prosecutions (the **NDPP**), being the head of the NPA. The NPA is the single prosecuting authority, established under section 179 of the Constitution. The National Prosecuting Authority Act, 32 of 1998 (the **NPA Act**) governs its structure and functions. The NPA's head office is situated at VGM Building, 124 Westlake Avenue, Weavind Park, Silverton, Pretoria.
- 17 The Third Respondent is the Passenger Rail Agency of South Africa (**PRASA**). PRASA is the national entity tasked with the provision of rail commuter services across South Africa, established under section 22 of the Legal Succession to the South African Transport Services Act, 1989. Open Secrets does not seek any relief against PRASA, but cites PRASA in light of the interest that it may have in the application. PRASA's head office is

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situated at Umjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg.

## C. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

### (a) Hawks' Constitutional and Statutory Mandate

- 18 Section 205 of the Constitution governs the national police service, which includes the Hawks. Subsection (2) requires national legislation to establish the powers of the police service and to enable the police service to discharge its responsibilities effectively. Subsection (3) outlines the SAPS' constitutional duties:

*"The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."*

- 19 Importantly, the SAPS bears the constitutional duty, among others, to investigate crime.
- 20 Section 17C(1) of the SAPS Act establishes the Hawks as a specialised unit within the SAPS.
- 21 The Hawks, as part of the SAPS, are also obliged to discharge a constitutional duty to investigate crime diligently and without delay under section 237 of the Constitution. This obligation, along with the principle of accountability, constitutes the constitutional lens through which section 39(2) of the Constitution requires the SAPS Act to be interpreted.
- 22 Section 17D(1)(a) stipulates the functions of the Hawks: to prevent, combat and *investigate inter alia* national priority offences, which in the opinion of the National Head of the Hawks need to be addressed by the Hawks.

Section 17A defines 'national priority offences' as "*organised crime, crime that requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof, as referred to in section 16(1)*". (Emphasis added).

- 23 The Hawks ought to tackle high-profile cases, including corruption in State-owned enterprises, organised crime syndicates and other significant economic crimes. The Hawks are meant to be South Africa's dedicated anti-corruption agency.
- 24 As an independent entity, insulated from political and executive influence, the Hawks are designed to combat corruption within government departments, public entities and private institutions, especially where the impact undermines public confidence in the state.
- 25 The Hawks play a crucial role in enforcing the Prevention and Combatting of Corrupt Activities Act 12 of 2004 (**PreCCA**). PreCCA is the principal statute for addressing corruption, which depends on the diligent and timeous investigation of complex and serious cases.
- 26 The SAPS Act empowers the Hawks to adopt a multi-disciplinary approach to help with the effective performance of its functions as follows:
  - 26.1 Section 17D(3) permits the Head of the Hawks to seek the NPA's assistance in the investigation of a national priority offence.
  - 26.2 Section 17F facilitates assistance and cooperation between the Hawks and other government departments or institutions, including those with specialised crime intelligence, auditing and financial skills.

- 26.3 An Operational Committee reviews, monitors, and facilitates the support and assistance from other government departments and institutions to the Hawks.
- 27 The SAPS Act recognises the vital interrelationship between the Hawks and the NPA, going so far as to guarantee the NDPP membership of the Operational Committee under section 17J(1)(a)(iii). This Committee also consists of the Deputy National Commissioner of the South African Police Service authorised by the National Commissioner, the Directors General of Finance, Justice and Constitutional Development, the National Intelligence Agency and Home Affairs, the Commissioner of the South African Revenue Service; the Head of the Financial Intelligence Centre; and any other persons as the Operational Committee may require from time to time.
- 28 The Hawks and its committees are accountable to Parliament under section 17K. Parliament's duty to oversee the functioning of the Hawks promotes the Hawks' independence.

**(b) The NPA's Constitutional and Statutory Mandate**

- 29 Section 179 of the Constitution establishes the NPA as the primary body responsible for instituting criminal proceedings on behalf of the state. The NPA may also carry out any necessary functions incidental to instituting criminal proceedings and, where necessary, discounting them. In terms of section 179(4) of the Constitution, the NPA has a duty to exercise its functions without fear, favour or prejudice, as prescribed in terms of the NPA Act.
- 30 Unlike the Hawks, the NPA has discretionary prosecutorial powers, which must be exercised in accordance with the law.

*id.*  
*e*

- 31 As far as the NPA also has investigative powers, which it must exercise without fear, favour or prejudice —
- 31.1 as a necessary incident of, and precondition for, exercising its discretion to prosecute, it bears the constitutional duty to do so diligently and without delay under section 237 of the Constitution; and
- 31.2 in collaboration with the Hawks, it also assumes the underlying constitutional duty to investigate crime, which it too must undertake diligently and without delay under section 237 of the Constitution.
- 32 The constitutional requirement for the NPA to operate without fear, favour or prejudice to protect its independence is crucial for the NPA to handle high-profile cases of corruption, fraud, and other priority crimes without undue pressure. The Constitution thus calls for national legislation to provide for the structure and impartiality of the NPA, which Parliament has done through the NPA Act.
- 33 Section 39(2) of the Constitution also requires the NPA Act to be interpreted in a manner that promotes the spirit, purport and objects of the Bill of Rights. This includes, among other things, the principle of accountability.
- 34 The NPA works alongside law enforcement agencies, such as the Hawks, to investigate and prosecute crimes under PreCCA and the Prevention of Organized Crime Act 121 of 1998 (**POCA**).
- 35 Section 7 of the NPA Act empowers the NPA to direct investigations, if it considers it necessary to fulfil its prosecutorial duties. This power is significant when specialised knowledge or resources are required, such as in connection with complex financial crimes.

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- 36 President Ramaphosa first established the Investigating Directorate under section 7 in April 2019 as a specialised, multi-disciplinary unit within the NPA. In an extract from the NPA's website (which is attached hereto, marked annexure "FA3") it was described as:

*"[t]he anti-corruption entity [which] is premised on cooperation and collaboration with other law enforcement agencies to ensure integration, accountability, and alignment of priorities for the realisation of government's objective to effectively address corruption, in accordance with the relevant policy direction and legislation. Through a project approach and prosecution-led investigation, the ID houses under one umbrella specialist professionals, including prosecutors, financial and criminal investigators, data analysts, cyber forensics specialists, project managers, and the entire corporate services. Of these officials, include secondments from other law enforcement agencies, such as South African Police Services (SAPS), State Security Agency (SSA), Directorate for Priority Crime Investigations (DPCI), also known as the Hawks, South African Revenue Services (SARS), and Independent Police Investigative Directorate (IPID) all pulling together to clean up the country from the systematic rot of white-collar crimes."*

- 37 The Investigating Directorate was intended to prosecute crimes arising from the Zondo Commission, including fraud, corruption and complex financial crimes. It has powers to direct investigations, gather evidence, issue subpoenas and prosecute high-profile cases involving government officials and State-owned enterprises.
- 38 Since then, the National Prosecuting Authority Amendment Act 10 of 2024, which came into effect in August 2024, established the Investigating Directorate against Corruption (IDAC) as a permanent unit within the NPA. The IDAC's existence does not depend on the President's will. The powers of the IDAC are contained in section 7(1A) of the NPA Act.
- 39 Just as section 17F of the SAPS Act does for the Hawks, section 7(4)(a) of the NPA Act permits officials from other state bodies to assist the IDAC.

Members of the Hawks can assist the IDAC on secondment and *vice versa*. The IDAC can also be assisted by officials from other law enforcement agencies, such as the SAPS, the State Security Agency (SSA), SARS, and the Independent Police Investigative Directorate (IPID).<sup>1</sup>

- 40 Echoing section 179(2) of the Constitution, sections 20(1) and (2) of the NPA Act empower a Director of Public Prosecutions, a Deputy Director of Public Prosecutions and a prosecutor, to exercise, among other things, the powers (a) to institute and conduct criminal proceedings on behalf of the State and (b) to carry out any necessary functions incidental to instituting and conducting criminal proceedings on behalf of the State.
- 41 Section 21 of the NPA Act requires a prosecution policy to be observed when members of the NPA exercise their prosecutorial powers. The NDPP must determine that policy with the concurrence of the Minister of Justice and Correctional Services.
- 42 The latest publicly accessible version of the Prosecution Policy is from June 2013 (attached hereto, marked as annexure "FA4"). Part A of Chapter 3 requires reasonable and probable cause to institute a prosecution:

*"In deciding whether or not to institute criminal proceedings against an accused person, prosecutors must assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution. There must indeed be a reasonable prospect of a conviction, otherwise the prosecution should not be commenced or continued."*

- 43 The NPA is thus duty-bound to prosecute if there is sufficient evidence to sustain a reasonable prospect of conviction. This duty is subject to one exception in item 3(C) of the Prosecution Policy: the NPA may decline to

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<sup>1</sup> See <https://www.npa.gov.za/investigating-directorate>.

prosecute an otherwise viable case, if the public interest so demands, given—

43.1 the nature and seriousness of the offence;

43.2 the interests of the victim and the broader community; and

43.3 the circumstances of the offender.

44 Section 28(2)(a) of the NPA Act, read with section 17D(3) of the SAPS Act, empowers the Investigating Directorate to designate a person to investigate a national priority crime. Such an investigator has all the investigative powers under sections 28 and 29 of the NPA Act, including the power of *subpoena*.

45 As I explain later, Open Secrets is not aware of the NPA having used its own powers of subpoena, despite complaints by the Hawks that employees of PRASA have not cooperated in their protracted investigation.

**(c) Function of the Hawks and NPA Collectively in Relation to State Capture**

46 The SAPS, the Hawks, the NPA, and the IDAC are required to address crimes linked to State Capture. They are statutorily empowered to cooperate in that endeavour.

47 Open Secrets faced challenges in identifying which body is in charge of the investigations into the Siyangena and Swifambo contracts. This is also because the Hawks and the NPA have co-operated with each other in relation to acts of wrongdoing that were identified at the Zondo Commission, which is perfectly permissible in terms of the statutes that are mentioned above. However, in the present case, this appears to have been used by

the two entities to try and avoid liability, which flies in the face of both entities' empowering statutory provisions. The Hawks and NPA were not forthcoming with information, as I explain in Part G of this affidavit below. Ultimately, it appears that they have assumed joint responsibility for investigating the Siyangena and Swifambo contracts.

#### **D. UNLAWFUL CONTRACTS AND CRIMINAL COMPLAINTS AT PRASA**

##### **(a) Molefe Board tries to sweep clean**

48 In 2015, when Popo Molefe (**Mr Molefe**) assumed the chairmanship of PRASA, he inherited an organisation riddled with corruption.<sup>2</sup> Determined to root out the rot, the Molefe Board launched internal investigations, discovering how deeply entrenched the corruption was.

49 Before Mr Molefe, PRASA had operated under the leadership of the then Group Chief Executive Officer, Lucky Montana (**Mr Montana**), and a Board chaired by Sifiso Buthelezi (**Mr Buthelezi**). After leaving PRASA, Mr Montana segued into an advisory role to high political office-bearers and Mr Buthelezi became a deputy minister in the national government. Both now represent Mkhonto weSizwe as Members of Parliament.

50 The Siyangena and Swifambo contracts were peddled as measures to modernise South Africa's rail infrastructure. Instead, they have become synonymous with corruption and maladministration on a staggering scale.

51 Acting on the remedial action of the Public Protector regarding tender irregularities at PRASA under the previous leadership, an adverse report by the Auditor-General and its own investigations, Mr Molefe's Board did right

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<sup>2</sup> Open Secrets prefers gender neutrality, including not using gendered titles, in all its written work. We nevertheless employ gendered titles herein as this is how the persons concerned have themselves publicly identified. Open Secrets does not intend to make assumptions about anyone's identity.

by approaching the courts to nullify the Siyangena and Swifambo contracts. These self-reviews succeeded resoundingly.

52 Extracts of the Public Protector's report titled "DERAILED: A Report on investigation into allegations of maladministration relating to financial mismanagement, tender irregularities and appointment irregularities against the Passenger Rail Agency of South Africa (PRASA)" are attached hereto, marked annexure "FA5". I have not located the Auditor-General's report, but Mr Molefe explained in his affidavit in PRASA's application to this Court in May 2017, that both reports motivated in favour of the self-review applications (this is evident from paragraphs 9 to 10 of Mr Molefe's affidavit attached hereto, marked annexure "FA6").<sup>3</sup> I discuss PRASA's 2017 court application in Part E of this affidavit below.

53 The High Courts and SCA found that the Siyangena and Swifambo contracts were procured through fraudulent means, with key individuals such as Mr Montana playing a central role in orchestrating the corruption within PRASA. The Courts thus ordered that both contracts be set aside.

54 The judgments, the adverse findings in which I discuss next, are reported as—

54.1 *Siyangena Technologies (Pty) Ltd v PRASA and Others 2023 (2) SA 51 (SCA);*

54.2 *Passenger Rail Agency of South Africa v Siyangena Technologies (Pty) Ltd and Others [2020] ZAGPPHC 738 (unreported);*

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<sup>3</sup> In order to avoid overburdening the Court, Mr Molefe's complete affidavit and its voluminous annexures are omitted. I am advised that, all the respondents in the current proceedings were parties to that litigation. There is therefore no prejudice to them in omitting Mr Molefe's full affidavit as an annexure. My legal representatives are able to provide the full affidavit, together with its corresponding annexures, should this be required.

54.3 *Swifambo Rail Leasing (Pty) Ltd v PRASA* 2020 (1) SA 76 (SCA);  
and

54.4 *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd* 2017 (6) SA 223 (GJ).

**(b) Siyangena contract**

55 PRASA procured the Siyangena contract in 2010. The reason given for the procurement was to improve station access control and security systems in preparation for the 2010 FIFA World Cup.

56 The Siyangena contract was meant to enhance passenger safety and reduce fare evasion by installing integrated security systems, including access gates, closed-circuit television (**CCTV**) cameras and public address systems at train stations. The urgency of completing these installations before the World Cup was cited as a reason to expedite the procurement process.

57 The procurement process was, however, severely flawed and riddled with corruption, as the SCA found. PRASA officials, particularly Mr Montana, bypassed standard procurement procedures and manipulated internal processes to favour Siyangena. PRASA awarded the contract without a competitive bidding process, a proper needs analysis assessment, or the necessary approvals being obtained from the Department of Transport and the National Treasury, respectively.

58 The initial contract of R61.8 million quickly escalated in cost due to extensions, ultimately reaching over R4 billion. These extensions were granted without competitive tender processes being followed, and the contract's scope was repeatedly expanded without proper authorisation or budget allocations in place. The equipment installed was later criticised for

being outdated and unfit for purpose. This caused severe harm to PRASA and to the public purse which funded the procurement of the equipment.

59 The SCA relied on these findings of the High Court, among others, to support its conclusion that the procurement process followed by PRASA in terms of this contract was corrupt and that key individuals at PRASA were complicit in this conduct:

59.1 Mr Montana was vital to driving the appointment of Siyangena as a winning bidder, overlooking concerns raised internally by key managers including the Senior Manager: Projects about funding and ownership and the Supply Chain Management department. Mr Montana had held private meetings with Swifambo's CEO Auswell Mashaba (**Mr Mashaba**), to the exclusion of PRASA's general manager.

59.2 The motivation to the Board for approval of the Siyangena contract deleted reference to Mr Montana, masking his involvement but nevertheless purporting to lay responsibility at the door of the same general manager who had been excluded from the private meeting.

59.3 Siyangena's earlier contract with PRASA was used to justify awarding it (Siyangena) the new contract, which by-passed any vetting process. Mr Montana circumvented the PRASA committees that had been established to ensure efficiency and transparency in procurement processes.

59.4 No contract was signed; only a letter of appointment of Siyangena from Mr Montana could be located.

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- 59.5 Costs under the pilot project ballooned more than twelve-fold. It seemed that Siyangena was given a blank cheque to specify its own bill of quantities.
- 59.6 The budget for the Siyangena contract was omitted from the Medium-Term Expenditure Framework, contrary to the National Treasury Guidelines for '*mega projects*', and the Minister of Transport had not approved the deal.
- 59.7 PRASA's national budget for the installation of speed gates was R317 million, yet the Board approved the Siyangena contract for almost R1.3 billion. Though the members of the Board, who gave the approval for the appointment of Siyangena as a winning bidder, lacked the necessary experience to evaluate the bid, they nonetheless found that Siyangena met the technical requirements. They also approved Siyangena's bid for R900 million *more* than the bid price.
- 59.8 PRASA made an upfront payment to Siyangena, allegedly as a deposit to buy equipment, without knowing what the equipment was going to be. There were also several irregularities under the Joint Buildings Contract Committee (**JBCC**) agreement: the works and quantities were unspecified, and the principal agent had none of the skills needed for the position.
- 59.9 The goalposts for the Siyangena contract constantly shifted without an open and fair procurement process, supposedly because goods and services were needed urgently.
- 59.10 Mr Montana, against advice from concerned employees at PRASA, issued a letter of appointment for the first extension to the value of R2.5 billion. He did so again, but with the buy-in of the Group Chief



Procurement Officer, issuing another letter of appointment to Siyangena for upgrading equipment already installed for a price of R794 million.

- 60 The SCA also endorsed the High Court's finding that Mr Montana had tried to cover up the corruption by obstructing the flow of information to the newly appointed Board, after Mr Buthelezi had left as chairperson of PRASA.

**(c) Swifambo contract**

- 61 PRASA procured the Swifambo contract in March 2013. It did so after identifying a significant shortfall of locomotives needed for its operations. The procurement process was initiated to modernise and expand its aging fleet, which was affecting the reliability of the rail service.

- 62 However, the procurement was plagued with irregularities and corruption. The tender was awarded to Swifambo, a newly established black-owned entity, which was acting as a front for Vossloh, a Spanish locomotive manufacturer that lacked the necessary Black Economic Empowerment (BEE) credentials required for State contracts.

- 63 The Swifambo contract stipulated that Vossloh would supply the locomotives through Swifambo, but the arrangement circumvented local content and BEE requirements, thereby violating procurement laws.

- 64 The SCA relied on these findings of the High Court, among others, to support its conclusion that the procurement process was corrupt and key individuals at PRASA were complicit:

- 64.1 Daniel Mthimkhulu (**Mr Mthimkhulu**) was the Executive Manager: Engineering Services at PRASA and played an influential role in the



procurement of the Swifambo contract. (He has since been convicted of fraud, having faked his qualifications.)

- 64.2 Mr Mthimkhulu, who had been appointed to his position by Mr Montana, motivated Mr Montana that PRASA needed new locomotives. PRASA published a request for proposals and held a compulsory meeting with bidders—one which Swifambo did not attend.
- 64.3 Despite lacking the expertise, Mr Mthimkhulu supplied the specifications for the locomotives. These specifications were tailored to fit the locomotives that a Spanish company, Vossloh, intended to supply. Mr Montana had been party to Mr Mthimkhulu's conduct.
- 64.4 Mr Montana had tried to cover up the tender irregularities when the Molefe Board took over governance at PRASA.
- 64.5 Mr Montana also misled the Board of PRASA by trying to minimise the complaint laid with the Public Protector as trivial. But after the Molefe Board pressed him for a response, Mr Montana left PRASA.
- 64.6 The Molefe Board then uncovered evidence of Mr Montana's abuse of power. He had fired senior employees who had attempted to redress the tender irregularities and, to frustrate the investigation, he had instructed employees to delete electronic documents.

**(d) Criminal complaints to the SAPS**

- 65 When the Molefe Board discovered the abovementioned irregularities, PRASA employees laid two criminal complaints with the SAPS as follows:



65.1 Mr Joe Mamabolo, Senior Manager: Human Resources, made a general complaint, based on the 37 complaints that had been addressed to the Public Protector, in July 2015 under case number CAS405/07/2015. His complaint related to the Swifambo contract. PRASA supplemented this with a more detailed complaint that it submitted to the SAPS in September 2015.

65.2 PRASA then made a second detailed complaint in March 2016 under case number CAS278/09/2015. That complaint related to the Siyangena contract. PRASA's complaint was used to supplement a pre-existing case opened by Paul O'Sullivan also in relation to the award of the Siyangena contract by PRASA.

66 The SAPS would have referred these criminal complaints to the Hawks, as they related to 'priority crimes.' However, despite whistleblowers having raised alarm as to Mr Montana's stronghold at PRASA, the resultant Public Protector report, the Auditor-General's reports and the laying of the criminal complaints, investigations appear to have ground to a halt or are, at best, proceeding at a glacial pace, and no one has been prosecuted for corruption at PRASA. The failure of justice lies with the Hawks—the nation's dedicated anti-corruption agency—and the NPA. Their ostensible inaction is inexplicable, particularly given the commitment by the Molefe Board to cooperate in the investigations, promising to provide '*substantial assistance*'. The extract of paragraph 16 of Mr Molefe's affidavit under case number 36337/2017, is attached hereto, marked annexure "FA7".

## **E. STAGNANT INVESTIGATIONS INTO THE SIYANGENA AND SWIFAMBO CONTRACTS**

### **(a) PRASA turns to the courts for help**

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- 67 Frustrated by the lack of progress in the investigations, PRASA turned to this Court for help in May 2017. It sought an order, essentially, compelling the Hawks to progress and complete their investigation into the awards and implementation of the Siyangena and Swifambo contracts (**Siyangena and Swifambo investigations**), and to do so with the help of the NPA (**PRASA's 2017 application**).
- 68 The Hawks opposed the application, and the relief sought.
- 69 Interlocutory skirmishes followed, with the Hawks mounting a spurious challenge to the authority of Mr Molefe to institute the proceedings on behalf of PRASA. Both the High Court (per N Davis J) and the Zondo Commission criticised the Hawks' obstructive approach, dismissing their objection. This Court ruled in PRASA's favour in May 2018. The unreported judgment of N Davis J is attached hereto, marked annexure "**FA8**".
- 70 For reasons unknown to Open Secrets, PRASA's 2017 application stalled and never proceeded to judgment. But after their interlocutory point failed, the Hawks delivered an answering affidavit in the main proceedings, purporting to justify the delay in completing their investigation.
- 71 I turn to that affidavit of Lieutenant General Khana next.

**(b) Evidence of Lt Gen Khana in PRASA's 2017 Court Application**

- 72 Lt Gen Khana — then the head of the Serious Commercial Crimes Investigations unit within the Hawks — delivered his affidavit in the main proceedings of PRASA's 2017 application (attached hereto, marked annexure "**FA9**").<sup>4</sup> This is a summary of his evidence:

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<sup>4</sup> To avoid overburdening the Court, I attach only the relevant portion of the Lt. Gen. Khana's affidavit. My legal representatives are able to provide the complete affidavit, together with its corresponding annexures, should this be required.

- 72.1 Lt. Gen. Khana was responsible for the Siyangena and Swifambo investigations. The criminal complaints allegedly lacked detail and substantiation, thus the need for an in-depth investigation.
- 72.2 He complained that PRASA's lack of cooperation was a significant impediment. PRASA allegedly refused to provide the requested documents. The Hawks needed to use section 205 of the Criminal Procedure Act 51 of 1977 in order to obtain the documents—this provision allows a judicial officer to take a witness' evidence as to an alleged offence.
- 72.3 In his view, PRASA was obstructing the Hawks from interviewing key witnesses, insisting on in-house lawyers being present during interviews and acting as the conduit for all communications. This further delayed the Hawks' investigative process into PRASA.
- 72.4 Lt. Gen. Khana cited undue interference, claiming that PRASA's management attempted to control the investigation by dictating which employees could be interviewed and under what conditions. This included demands that certain officials be treated as witnesses rather than suspects.
- 72.5 The Hawks initially used forensic support from Horwath Forensics (now Crowe Forensics) but later terminated their services after concerns that were raised regarding unauthorized access to bank Statements. Lt. Gen. Khana did not want any unlawfully obtained evidence to undermine the integrity of the investigation.
- 72.6 He stated that since he took over the investigation, there were significant improvements in the investigation: an investigation plan was in place, guided by experienced prosecutors from the NPA, and



high-level meetings between the Hawks and the NPA were ongoing to monitor progress and resolve any issues.

72.7 He tried to assure the Court that the investigations were nearing completion, but he advised against rushing the process at the expense of thoroughness. He affirmed his commitment to finalising the investigations and submitting a docket to the NPA for a decision on prosecution.

73 As I mentioned above, Open Secrets does not know why this matter did not proceed to hearing and thereafter to judgment. Therefore, the veracity of Lt. Gen. Khana's allegations has not been pronounced on by a court.

**(c) Evidence of Lt. Gen. Lebeya before the Zondo Commission**

74 Lt. Gen. Lebeya became the Head of the Hawks in July 2018. In August 2021, he submitted an affidavit to the Zondo Commission regarding the Siyangena and Swifambo investigations (attached hereto, marked annexure "FA10").<sup>5</sup> This is a summary of his evidence:

74.1 As of 2021, the Hawks were investigating 20 cases related to PRASA. These cases arose from the two criminal complaints laid with the Hawks against PRASA in 2015 and 2016, respectively.

74.2 By August 2021, the Swifambo investigation was reportedly 90% complete with 383 Statements collected, while the Siyangena investigation was 75% complete with 185 Statements taken.

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<sup>5</sup> To avoid overburdening the Court, I attach only the relevant portion of the Lt. Gen. Lebeya's affidavit. My legal representatives are able to provide the complete affidavit, together with its corresponding annexures, should this be required.



- 74.3 Lt. Gen. Lebeya cited these reasons for the delays in concluding these investigations:
- 74.3.1 ***Lack of cooperation from PRASA:*** He claimed that PRASA did not provide the necessary documents and statements despite multiple requests. Meetings were held with PRASA's legal officials, including Ms Martha Ngoye and a Mr Dingiswayo, but the information required was not forthcoming.
- 74.3.2 ***Obstruction by PRASA Officials:*** He claimed that PRASA officials, particularly in the legal department, insisted on being present during interviews with other PRASA employees, which hampered the Hawks' ability to conduct their investigations independently.
- 74.4 The Hawks responded by having *one* subpoena served (contrary to Lt. Gen. Khana's suggestion in his affidavit at para 24), but Lt. Gen. Lebeya gave no details about the identity of the recipient or the result.
- 74.5 He described the relationship between PRASA and the Hawks from 2015 to 2018 as '*unsound*', but he countered that he himself had met with the "*previous Board, the Administrator and the current Board on nine occasions, with the last being a virtual meeting on 7 April 2021*"—more than five months before making his affidavit. He did not explain what happened at any of those meetings or how the discussions progressed the investigations.
- 74.6 Lt. Gen. Lebeya then pointed to systemic challenges within the Hawks, such as the difficulty in securing forensic support:



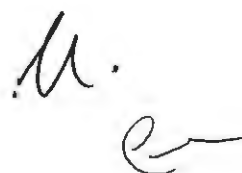
- 74.6.1 He explained that the Hawks initially engaged Crowe Forensics (previously Horwath Forensics) led by Mr Ryan Sacks to conduct a forensic analysis and report on the Swifambo contract (**Sacks' report**). The Sacks' report was meant to be followed by a second report, to be prepared also by Mr Sacks.
- 74.6.2 But the Hawks stopped using Mr Sacks' firm as the prosecutors had concerns about the objectivity of the report. They did not raise their concerns directly with Mr Sacks, and Open Secrets is not privy to them.
- 74.6.3 Open Secrets is not aware of any further forensic reports which were procured by the Hawks for this investigation.

**(d) The Zondo Commission's Findings and Recommendations**

- 75 In the official report of the Zondo Commission (**the Zondo Commission report**), Deputy Chief Justice Zondo (as he then was) lamented the stagnation in the investigation of corruption at PRASA. I do not attach the Zondo Commission report's chapter on PRASA, but a copy will be made available to the Honourable Court if requested. I summarise the findings in the Zondo report on PRASA next.
- 76 Despite the Public Protector's and the Auditor General's adverse findings against PRASA regarding the Siyangena and Swifambo contracts, the breadth of evidence that led courts (including the SCA) to find that corruption and fraud existed, and the Sacks' report, the Zondo Commission found that the Hawks and the NPA had ostensibly done little to investigate the malfeasance at PRASA.

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- 77 The Zondo Commission was unpersuaded by Lt. Gen. Lebeya's reasons for the delay in finalising the Siyangena and Swifambo investigations. It found that the evidence presented to it did not support a conclusion that much had happened in relation to the PRASA investigation, at that stage three years since Lt. Gen. Lebeya had taken over the investigation in June 2018.
- 78 The Commission found that the concerns that the Hawks supposedly harboured about the impartiality of the Sacks report did not bear scrutiny. And, worse still, it appeared that there was no sense of urgency in obtaining another 'objective' report about the flows of money to Swifambo.
- 79 The Zondo Commission, therefore, could not rule out the possibility that the Hawks were reluctant to investigate swiftly, and that this may have been due to fears that the investigations would implicate high-profile figures within the ANC—the then majority party.
- 80 The Hawks failed diligently to investigate the cases even after Lt. Gen. Lebeya took over as head. This lack of progress raised concerns regarding whether the Hawks were truly committed to holding accountable those involved in corruption at PRASA.
- 81 The Commission also criticised the Hawks for opposing PRASA's court application, rather than focusing on the merits of the case or on doing their job.
- 82 The Commission recommended that—
- 82.1 the President takes steps to ensure that the Hawks finalise the Siyangena and Swifambo investigations as soon as possible;



82.2 the NDPP appoints a team to oversee the investigations and prosecutions; and

82.3 the extent to which public funds were plundered may elicit a separate commission to truly uncover the extent of corruption at PRASA.

83 The Commission went further to recommend the prosecution or further investigation of entities and individuals connected to PRASA.

84 I have summarised the recommendations in tabular format, based on paragraphs 2910 to 2914 of the Zondo Commission's report on PRASA:

<i><b>Individuals/ Entities</b></i>	<i><b>Conduct for Investigation/Prosecution</b></i>	<i><b>Agency Responsible</b></i>	<i><b>Paragraph Reference</b></i>
<b>Lucky Montana</b>	Seriously consider prosecution for the role played in procuring the Swifambo and Siyangena contracts.  Finalise the investigation into the sale of his Parkwood property and into the assistance he received from Mr Van der Walt for purchasing a Hurlingham property and any other properties acquired or sought to be acquired.  NDPP to appoint a team to oversee the investigation into and prosecution for possible contraventions of sections 12 or 13 of PreCCA.	Hawks / NPA	21&1.4(a) 2192.4 458.1 458.2
<b>Daniel Mthimkhulu</b>	Consider prosecution for the role played in procuring the Swifambo contract.  Falsifying qualifications and engineering specifications for contracts.	Hawks / NPA	21&1.4(a)

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<b>Chris Mbatha</b>	Consider prosecution for the role played in procuring the Swifambo contract.	Hawks / NPA	2191 4(a)
<b>Members of PRASA's bid evaluation committee: Messrs Shezi, Khumalo, Mahlobongwane, Nkosi and Magoro</b>	Examine their roles and consider prosecution for recommending Swifambo in the tender for locomotives.	Hawks / NPA	2191.4(b)
<b>Members of PRASA's Corporate Tender and Procurement Committee: Messrs Holele, Mbatha, Mathobela, Bopapa and Khuzwayo and Motsholongane, Ngoye and Shezi</b>	Consider prosecution for their role in recommending Swifambo in the tender for locomotives.	Hawks / NPA	2191.4(c)
<b>Auswell Mashaba (director at Swifambo)</b>	Expedite his prosecution.	NPA	2191.4(d)
<b>Mabundla</b>	Expedite his prosecution.	NPA	2191.4(d)
<b>Persons mentioned in the Sacks' report and liquidators' report</b>	Investigate for receiving undue benefits from the Swifambo contract.	Hawks / NPA	2191.4(e)
<b>PRASA Board Members: Messrs Buthelezi, Gasa, Khena, Nkoenyane, Salanje, Montana and Moore</b>	Consider prosecution under section 86(2) of the Public Finance Management Act, 1999 for recommending the award of the tender to Swifambo.	Hawks / NPA	2191.5

<b>Gantsho</b>	<p>Seriously consider prosecution for the role played in procuring the Siyangena contract.</p> <p>Finalise the investigation into the assistance received from Mr Van Der Walt to buy property.</p> <p>NDPP to appoint a team to oversee the investigation into and prosecution for possible contraventions of sections 12 or 13 of PreCCA.</p>	Hawks / NPA	2192.4 458.1
<b>Ngubane</b>	Seriously consider prosecution for the role played in procuring the Siyangena contract.	NPA	2192.4
<b>PRASA Board Members, not limited to those mentioned above</b>	Consider prosecution under section 86(2) of the PFMA for approving the award of the Siyangena contract.	NPA	2192.5
<b>Van der Walt, former attorney for Siyangena</b>	<p>Finalise the investigation into the assistance given to Messrs Montana and Gantsho to buy property.</p> <p>NDPP to appoint a team to oversee the investigation into and prosecution for possible contraventions of sections 12 or 13 of PreCCA.</p>	Hawks / NPA	458.1 458.2
<b>Siyangena or its associated companies</b>	NDPP to appoint a team to oversee the investigation into and prosecution for possible contraventions of sections 12 or 13 of PreCCA.	Hawks / NPA	458.2

85 To the best of Open Secrets' knowledge, up to date, none of these persons or entities recommended for further investigation, prosecution, or both, or anyone else, has been charged or prosecuted in connection with the Siyangena or Swifambo contracts.

- 86 Mr Mthimkhulu's conviction for fraud for falsifying his qualifications is unrelated to the Siyangena and Swifambo contracts. Despite having the opportunity to lay additional charges related to the contracts in his prosecution, the NPA failed to do so for reasons unknown to Open Secrets. These reasons remain a mystery to this day.
- 87 The situation is even more concerning given the SCA's findings, albeit on the civil standard of proof, that individuals—later recommended in the Zondo report for prosecution—were involved in corrupt activities. They are:
- 87.1 Mr Gantsho, Mr Montana, Mr Van Der Walt, Mr Mbatha, Mr Phungula in relation to the Siyangena contract; and
- 87.2 Mr Mthimkhulu and Mr Montana, in relation to the Swifambo contract.
- 88 I submit that the overlap in adverse findings between the Zondo Commission and the SCA heightens the duty on the Hawks and the NPA to have concluded the investigations and taken a decision on whether to prosecute, at least these parties, without delay.

**(e) Relevant Representations to Parliament by the Respondents**

***(i) Hawks' Statement to Parliament—November 2022***

- 89 On 16 November 2022, Lt. Gen. Lebeya made a presentation to the National Assembly's Standing Committee on Public Accounts (**SCOPA**) on the status of the investigations into PRASA and other state-owned entities (**SOEs**). I attach Lt. Gen. Lebeya's presentation, marked annexure "FA11".



- 90 The presentation demonstrated that three cases relating to PRASA were on the court roll; 17 cases were under investigation; and only one case had been '*finalised*' (at slide 4). But none of them related to the Siyangena or Swifambo contracts:
- 90.1 two cases concerned tampering with, damaging or destroying essential infrastructure (slides 73 and 74);
  - 90.2 one case concerned Mr Mthimkhulu's fraudulent falsification of his qualifications (slide 75); and
  - 90.3 the single '*finalised*' matter related to theft of copper cables (slide 76).
- 91 Of the 17 cases still under investigation, none was particularised. Even on the assumption that all these cases related to the Siyangena and Swifambo contracts, this represents a *reduction* from the 20 cases that Lt. Gen. Lebeya assured the Zondo Commission were under investigation in that regard. No further explanation was provided in this regard.

***(ii) NPA's Statement to Parliament—November 2022***

- 92 The NPA also made a presentation to SCOPA on 16 November 2022 on the status of all its investigations into SOEs. A copy of the presentation is attached hereto, marked annexure "**FA12**".
- 93 The NPA noted (slide 6) that while the Zondo Commission's report was a critical point of reference for the NPA's work, its recommendations do not necessarily meet criminal standards for prosecution, and therefore that it was still required to undertake the relevant criminal investigations.

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- 94 Based on slide 10, it appears that by November 2022, the Investigating Directorate had not '*declared*' any matter related to PRASA under sections 28(1) or (13) of the NPA Act.
- 95 I am advised that this means that the Investigating Directorate was not exercising its powers under those sections to investigate a specific offence in relation to the Siyangena and Swifambo contracts. No explanation was provided for this, despite the NPA's acknowledgment of the need for '*criminal investigations*' that delve deeper than the analysis of the Zondo Commission.
- 96 On slide 15, the NPA explained that three matters concerning PRASA had been referred to it, all of which were still under investigation (one was a recent case, opened at Hillbrow in 2022 under case number CAS504/01/2022).
- 97 The rest of the presentation focused on the challenges posed to the investigation into corruption at PRASA. Slide 16 states:
- "> Documents presented to the entities investigating PRASA must be obtained, and these include authenticity and chain evidence.*
- > Time lapses since offences were committed (10 years+) complicate investigations in locating relevant witnesses, refreshing memories and ensuring policies and directives at a specific time are kept in mind.*
- > Several potential witnesses were initially reluctant to provide assistance, apparently as they themselves were complicit in illegal activities within PRASA.*
- > Both Hillbrow CAS 405/08/2015 and CAS 278/09/2015 are on the ACTT Priority list, the Top Ten Priority List, and monitored by the Task Force as part of the cases in the Zondo Commission recommendations.*
- > DPCI, NPA and other entities are closely collaborating in investigation efforts".*
- 98 From the presentation, I draw the following conclusions:



- 98.1 by November 2022, the Hawks were still gathering documents relating to the Siyangena and Swifambo contracts, the authenticity of which had not yet been verified; and
- 98.2 the forensic value of evidence had begun to degrade, given the lapse of time between the acts and the investigation (something I believe is only worsening as the delay persists).

**(iii) Special Investigating Unit's Statement to Parliament–November 2022**

99 While the conduct of the Special Investigating Unit (SIU) is not the subject of this review, it is useful to consider its interactions with SCOPA at the same meeting on 16 November 2022. For it was the SIU that appeared to assume the lead role in answering Members' questions about implementing the Zondo Commission's recommendations on PRASA.

100 I could not obtain the official minutes from the Committee Secretary. The best evidence available to me is the unofficial minutes of the SCOPA meeting, taken from the website of the Parliamentary Monitoring Group (PMG), and attached hereto, marked annexure "FA13":

*"The implementation plan of the Zondo Commission that the President presented, had focused on PRASA among other entities, and there was various work being done by the investigative agencies to implement that plan. To move the Zondo recommendations forward, the SIU would consider an amended proclamation to ensure that they investigated the collapse of PRASA.*

*The Zondo recommendations said there was a need to delve deeply into the causes of the ruin at PRASA and who should be held responsible for it. The Commission did not have enough time to probe into that, and the SIU would process a proclamation to that effect. The integrated approach in the model that they agreed upon in the MOU would assist them in ensuring that they produced the results timeously and that evidence was gathered in a manner that would enable them to take action."*

101 I agree with the sentiment expressed by SCOPA that asset forfeiture is an easier gain for the State than securing a conviction, but it should not be used as a substitute.

***(iv) Hawks' presentation to Parliament—June 2023***

102 The Hawks made a presentation to the National Assembly's Portfolio Committee on Police on 14 June 2023, entitled "Presentation to the Portfolio Committee on Police on the progress made on investigations resulting from the Judicial Commission of Inquiry into Allegations of State Capture". A copy of the presentation is attached hereto, marked annexure "FA14".

103 I have watched the Portfolio Committee hearing on YouTube, which is publicly available online at <https://www.youtube.com/watch?v=jLepadW7pXo&t=2s>, and I refer to the video's time stamps in parentheses. (If the Court requires the video to be shared via a flash drive or uploaded onto an accessible shared drive, my legal representatives can arrange for this.)

104 The relevant parts of the presentation can be summarised as follows:

104.1 Two cases related to PRASA were on the court roll. One of the cases was a prosecution of an individual who failed to appear before the Zondo Commission when subpoenaed (at 59:01). No particulars were given about the other matter on the court roll.

104.2 Two cases related to PRASA were under investigation (at 1:00:02). These cases allegedly addressed 16 of the Zondo Commission's recommendations.



- 104.3 The Hawks had obtained 797 witness Statements (at 1:00:26).  
(This represents an increase from the 568 Statements that the Hawks had obtained by August 2021, according to Lt. Gen. Lebeya.)
- 104.4 The Hawks had been collaborating with the NPA through the assignment of investigating officers to the Investigating Directorate; and via collaboration on the Task Force established to address the Zondo's Commission's recommendations (at 1:10:58).
- 104.5 The Investigating Directorate had taken over 140 investigations which the Hawks had been investigating (at 1:09:27 and 2:11:42).
- 104.6 The presenter assured the Portfolio Committee that the investigations were 'on course' (at 1:13:06).

**(v) Hawks' Presentation to Parliament—22 November 2023**

- 105 The Hawks made a follow-up presentation to the SCOPA on 22 November 2023 on the "*status of investigations relating to referrals by the Special Investigating Unit, State Capture and National Skills Fund*" (presentation attached as "**FA15**"). In relation to PRASA, the presentation shed light on the following:
- 105.1 Slide 48 explained that the prosecution of the individual who had failed to heed a summons by the Zondo Commission concerned Mashaba, the director of Swifambo. He was charged in March 2021 on that basis, not in connection with the Swifambo investigation.
- 105.2 Slide 47 explained that the other matter on the court roll was the prosecution of Mr Mthimkhulu for fraud, theft, forgery and uttering.

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This too was not in connection with the Siyangena or Swifambo investigations.

106 Slide 57 explains that the Hawks were trying to develop internal capacity to handle forensic auditing itself. The delay in investigating the corruption at PRASA was as a result of the Hawks' dependence on external auditors. The Hawks had appointed a new forensic firm, which was to provide a report (presumably on PRASA) by the end of February 2024. Open Secrets is not aware whether that forensic report was furnished to PRASA on that date or anytime afterwards.

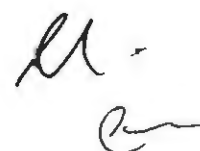
***(vi) NPA's presentation to the Select Committee on Justice and Correctional Services–11 October 2024***

107 The NDPP and various senior prosecutors from the NPA made representations to Parliament on the progress made by the NPA in the last reporting period. The NDPP also reported on the progress towards the objectives of the 'NPA Strategic Plan 2020 – 2025'. A copy of the presentation is attached hereto, marked annexure "FA16".

108 The presentation did not mention any prosecution related to the Siyangena or Swifambo investigations. Members of the Portfolio Committee noted that, as at that date, the NPA had failed successfully to prosecute any State Capture-related case.

***(vii) Hawks and NPA's presentation to the Standing Committee on Public Accounts–20 November 2024***

109 The NDPP and the Hawks made a presentation to the SCOPA on 20 November 2024. I do not have the official minutes of the meeting, however, the recording of the meeting is publicly available on the Parliament of the Republic of South Africa's YouTube page at:



<https://www.youtube.com/watch?v=Umvcx0M0h2I>. Next, I refer to relevant timestamps in parenthesis.

- 110 At the meeting, Lt. General Lebeya acknowledged that the Hawks were losing skilled investigators (at 4:44:30), trained in serious commercial crimes, to other opportunities and due to salary disparities amongst law enforcement personnel (at 3:50:11). The effect was to overburden employees.
- 111 The insufficient number of personnel had led to "*major obstacles to more effective investigation*". With specific reference to the state capture cases, Lebeya noted that PreCCA does not provide a definition of 'organised crime', and so the Hawks had developed internal guidelines which "now provide clarity on how crimes are categorised, with cases over R500 000 being prioritised" (at 4:49:25; 8:08:38).<sup>6</sup>
- 112 As of April 2025, this is the last relevant Parliamentary presentation that Open Secrets is aware of.

***(viii) Apparent regression based on the Hawks' and NPA's reporting***

- 113 The Hawks' and NPA's recent reports contradict Lt. Gen. Lebeya's 2021 affidavit before the Zondo Commission, where he claimed that the Siyangena investigation was 75% complete and that the Swifambo investigation was 90% complete at that stage.
- 114 If those percentages were accurate, the latest parliamentary presentations indicate a regression in both investigations—one neither the Hawks nor the NPA have explained. This is deeply concerning and demonstrates that the

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<sup>6</sup> See <https://pmg.org.za/committee-meeting/39908/> and <https://www.youtube.com/watch?v=Umvcx0M0h2I>.



earlier stated figures or percentages were incorrect. This is supported by the fact that to date the investigations into both Siyangena and Swifambo have not been completed.

**(f) Presidency's Progress Report**

115 The Zondo Commission recommended that the President appoints a special commission of inquiry to examine "*why PRASA was allowed to slide into almost total ruin, who should be held responsible for that and who could have benefitted from those (sic) that unacceptable State of affairs.*" An extract of paragraph 2194 of the Zondo Commission report on PRASA to this effect is attached hereto marked annexure "**FA17**".

116 In its *Progress Report on Implementation of President Ramaphosa's Response to the Judicial State Capture Commission (Progress Report)*, dated November 2023, the President, however, elected not to do so until the Hawks and the NPA complete their investigations related to PRASA. The Progress Report notes that those investigations were ongoing at that stage. The extract is attached hereto, marked annexure "**FA18**".

117 This is an extract from the Progress Report (cover and p26 attached as **FA19**):

NO	COLUMN 1	FOCUS OF ACTION	ACTION AS DESCRIBED IN PRESIDENT'S RESPONSE	RESPONSIBLE TO IMPLEMENT / REPORT PROGRESS	PREVIOUS	CURRENT

*Handwritten signature*

9	4.6.8	Establishment of a Special Commission of Inquiry into PRASA	A decision on the establishment of a commission of inquiry into PRASA will be held in abeyance until the completion of the investigations currently underway by the DPCI and SIU.	DPCI [Hawks] SIU	Investigations by the DPCI and the SIU are ongoing.	In progress	In progress
10	4.6.8	Establishment of a Special Commission of Inquiry into PRASA	A determination will be made on whether these processes have sufficiently addressed the matters raised by the Commission and whether a Commission of Inquiry would serve that purpose.	Presidency	The decision on the SCC recommendation regarding the establishment of a Special Commission of Inquiry into PRASA will require an executive decision once the current investigations have been concluded.	In progress	In progress

118 The completion of the Siyangena and Swifambo investigations by the Hawks and NPA, and a decision on whether to prosecute by the NPA, thus do not depend on the establishment of a dedicated commission of inquiry. The prospect of a dedicated commission of inquiry is no excuse for the Hawks' and NPA's prolonged delay, which remains unexplained to date.

**(g) Presidential Proclamation 153 of 2024**

119 This Proclamation was published in Government Gazette 50129 of 16 February 2024 under the Special Investigating Units and Special Tribunals Act 74 of 1996. The Proclamation refers to the SIU "*allegations... in respect of the affairs of... PRASA' from 1 January 2010 for investigation.*" The Proclamation accordingly covers the Swifambo and Siyangena contracts. A copy of the Proclamation is attached hereto, marked annexure "FA20".

120 While Open Secrets welcomes the Proclamation, I note that the SIU's mandate is asset forfeiture for *civil* purposes. The Proclamation, therefore, does not address Open Secrets' concern about the inertia in the Siyangena and Swifambo investigations for *criminal* purposes by the Hawks and the NPA and of potential prosecutions.

**(h) Aftermath of the Zondo Commission—three years on**

121 Now, more than three years subsequent to the Zondo Commission report, the perception is that the Hawks and the NPA have done little or nothing to implement the Zondo Commission's recommendations in relation to the Siyangena and Swifambo contracts, based, among other things, on findings of corruption by the SCA.

122 And almost a decade after the criminal complaints were laid, not one former PRASA Board member or executive has been prosecuted in connection with the Siyangena and Swifambo contracts.

123 This fosters a loss of public confidence in the Hawks and the NPA.

124 As the NPA itself acknowledged in Parliament, the passage of time erodes the forensic value of witnesses' evidence. Therefore, the prospects of a successful prosecution dwindle as the months and years go by without the



investigation into these two contracts being completed by the Hawks and the NPA.

- 125 Open Secrets is not oblivious to the fact that these state institutions operate under budgetary, human capital and skills constraints. It is aware of and appreciates the following:

- 125.1 The National Assembly's Portfolio Committee on Police reported on budget vote 28 concerning the police in 2023. An extract of the report is attached hereto, marked annexure "FA21". It states, at internal page 14—

*"The DPCI remains severely under capacitated. During the 2022/23 financial year, 564 critical vacant posts were advertised within the DPCI. The appointment of the Deputy National Head, the Divisional Commissioner: National Priority Offences Operations and three Provincial Heads, has strengthened management of the Directorate. Filling of vacant posts on production level shall be aggressively pursued in the 2023/2024 financial year. To implement the Financial Action Task Force standards and enhance the DPCI's capacity in strategic competencies, an additional 2 647 posts are expected to be filled in 2023/24 and 2024/25."*

- 125.2 And budget vote 25 for the 2023/2024 for Justice and Constitutional Development (an extract is attached hereto as annexure "FA22") noted (at internal page 485):

*"To ensure a systematic and strategic response to the recommendations of the State capture commission, an integrated task force has been established to coordinate investigations, prosecutions and the seizure of assets. The task force is led by the National Prosecuting Authority and includes the Directorate for Priority Crime Investigation, the Financial Intelligence Centre and the Special Investigating Unit. A detailed action plan has been developed and is being implemented. The National*

*Prosecuting Authority's Investigating Directorate has made significant progress in addressing State capture, having declared 99 investigations and enrolled 34 cases (involving 205 accused people), while the Asset Forfeiture Unit has secured freezing/preservation orders to the value of R14 billion. The number of prosecutions of State capture, fraud or corruption and related matters enrolled in the courts is expected to increase from 12 in 2023/24 to 45 in 2026/27. These activities are funded over the medium term within the National Prosecuting Authority programme's Asset Forfeiture Unit subprogramme, which has a budget of R823.8 million, and Investigating Directorate subprogramme, which has a budget of R939 million."*

126 However, as I address in Parts J and K of this affidavit below, these facts may have a bearing on the kind of just and equitable remedy the Court may grant, but not on whether the Hawks and NPA are in dereliction of their duties.

#### **F. OPEN SECRETS' RESEARCH AND ADVOCACY**

127 In June 2022 Open Secrets released a report on the systematic corruption at PRASA. This report demonstrated that Mr Montana and his associates at PRASA had looted public resources under the guise of modernization. That report is entitled '*Wanted: The State Capture Conspirators*'. The relevant extract of the report is attached hereto, marked annexure "FA23".

128 Open Secrets shared this report with the Hawks and NPA on 25 July 2022 to assist their investigations and to expedite accountability. The relevant correspondence is attached as "FA24".

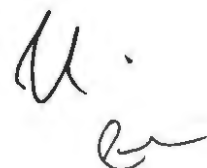
129 In addition, Open Secrets has—

129.1 convened a webinar on 29 June 2022 in collaboration with Rob Rose (then of *The Financial Mail*) on the '*Wanted*' Report;

- 129.2 published a report on 22 August 2022 which details the failures of law enforcement agencies and entities in investigating State capture crimes (including at PRASA), entitled '*Bad Cops, Bad Lawyers*';
- 129.3 published a report in February 2020 in collaboration with Shadow World Investigations, which details extensive evidence of the role of the private sector "enablers" in State capture, entitled '*The Enablers*';
- 129.4 published a 3-part series in GroundUp in March 2024, which exposes those who profited from corruption at PRASA (both companies and individuals); and
- 129.5 launched a Zondo Recommendations Tracker on 5 November 2024, which identifies key government departments and ministries responsible for implementing key recommendations emanating from the Zondo Commission. The Tracker was designed by the Civil Society Working Group on State Capture, of which Open Secrets is a founding member.
- 130 Despite Open Secrets' advocacy, repeated attempts at dialogue, and a formal request for reasons, the NPA (including the National Prosecution Service) has failed to explain why it has not decided whether to prosecute implicated individuals. Likewise, the Hawks have not accounted for their failure to complete the investigation. Our efforts have been ignored, leaving the public in the dark. I give details of these engagements in Part G of this affidavit.
- 131 This case is driven by pressing public interest concerns.

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- 132 Corruption and mismanagement at PRASA have deprived millions of South Africans—particularly the poor—of affordable rail transport. As PRASA's infrastructure crumbles, those who rely on it most—historically disadvantaged workers, students, and the elderly—are forced into costlier alternatives, deepening poverty and inequality.
- 133 The impact of corruption and mismanagement at PRASA has been devastating, and many of the effects thereof are detailed in Open Secrets' *Wanted* Report at pages 18-53.
- 134 The burden on poor and historically disadvantaged communities cannot be overstated. The effects of the historical mismanagement have set the stage for the prevailing disfunction of the rail service in Cape Town, possibly exacerbated by subsequent mismanagement or an inability to contain and reverse legacy corruption. It is evident from the statements of PRASA's own officials, as reported in the news, that the interruption and termination of passenger rail services has hit poor communities. Promises of restoration of services have gone unfulfilled. And costs of reinstating services years later are exorbitant. In this regard:
- 134.1 Cape Town's Central Line, the busiest line serving impoverished communities like Khayelitsha, Mitchells Plain, Nyanga, and Bonteheuwel, was completely shut down in October 2019.
- 134.2 *GroundUp*, a South African human rights-focused publication, reported that "Newly-appointed administrator of the Passenger Rail Agency of South Africa's (PRASA), Bongisizwe Mpondo, says he plans to reopen the Central Line in Cape Town — which has been closed since October 2019 due to vandalism — within six months." A copy of the article is attached hereto as annexure "FA25".



- 134.3 However, by September 2020, the Cape Town Central Line remained non-operational. The *Citizen* confirmed this, On 10 September 2020, also reporting that there had been extensive vandalism of offices and stations (article attached as annexure “**FA26**”).
- 134.4 While the impact of Covid-19 might have explained the apparent inertia at the time, by May 2022, the Cape Town Central Line remained non-functional.
- 134.5 On 16 May 2022, the *Daily Maverick* expressed its opinion on the persistent and disproportionate impact of disfunction at PRASA on local communities: “The Central Line, which is the busiest line serving the poorest communities, including Khayelitsha, Mitchells Plain, Nyanga and Bonteheuwel has been suspended, except for a brief interval, since 2018.” In fact, the dormancy of the Central Line had led to the tracks in Langa, Philippi and Khayelitsha becoming unlawfully occupied. A copy of the article is attached hereto as annexure “**FA27**”.
- 134.6 PRASA has cited vandalism and cable theft as reasons for the aforementioned challenges, but only managed partially to restore service by February 2021. This is reflected in annexure “**FA28**”, an article in the *Daily Maverick* entitled “PRASA’s Leonard Ramatlakane joins commuters on the first train in 461 days to leave Langa station” and dated 15 February 2021. This corresponds with a ministerial briefing session on the challenges to the timely delivery of viable public infrastructure projects to communities by the Minister of Transport. The briefing session took place in September 2024 and the relevant extracts of the presentation are attached hereto as annexure “**FA29**”.



134.7 As PRASA is in severe debt, the costs of restoring services and repairing the damage is exceedingly high. In June 2023, the Standing Committee on Appropriations issued its report on its oversight visit to Transnet SOC Limited and PRASA in March 2023. In terms of the report, extracts of which are attached hereto as annexure "FA30":

*"...PRASA owed its operational creditors (Transnet and other creditors) a total of R3.921 billion, while the entity only had R163 million in operational cash available, thus having a shortfall of R3.758 billion at the time of the oversight visit. The Committee further notes the historical debt owed to Transnet amounting to R2.114 billion."*

134.8 By October 2024, the prognosis had worsened, according to SCOPA: SCOPA's meeting with the Department of Transport revealed that a R120 billion capital injection into PRASA is needed to restore its functionality following the COVID-19 pandemic. A copy of a media statement by SCOPA is attached hereto as annexure "FA31".

## **G. ATTEMPTS AT ENGAGEMENT WITH HAWKS AND NPA**

135 Open Secrets sent four letters to the Hawks and the NPA to gain insight into the status of the Siyangena and Swifambo investigations and the prospect of prosecutions. These exchanges were unedifying. I summarise the relevant parts of the parties' exchanges next.

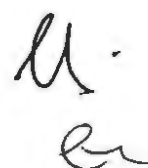
### **(a) Open Secrets' First Letter**

136 On 21 September 2023, Open Secrets wrote jointly to Lt. Gen. Lebeya of the Hawks and Adv Shamila Batohi of the NDPP. A copy of the letter is attached hereto, marked annexure "FA32". The key concerns raised in the letter include: (i) the lack of movement in the investigations, despite the

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overwhelming evidence of corruption and fraud at PRASA; (ii) the consequent impact on accountability; and Lt. Gen. Lebeya's evidence before the Zondo Commission regarding the state of completeness of the investigations.

- 137 Open Secrets invited the Hawks and the NPA to explain: (i) the reasons for the delays; (ii) the extent to which the two institutions were cooperating; (iii) the identities of the lead investigators and prosecutors; (iv) the projected timelines for conclusion of the investigations; and (v) the status of PRASA's 2017 court application.
- 138 Adv Rodney De Kock (**Adv De Kock**) of the National Prosecution Service (**NPS**) responded on behalf of the NPA on 5 October 2023. A copy of his response is attached hereto marked annexure "FA33". He said, in relevant part:
- 138.1 That the NDPP has delegated the authority to decide on matters such as this to the Head of the NPS of the NPA. This explained why the response came from his office.
- 138.2 That the PRASA matter is still under investigation by the DPCI, and that the NPA will defer to the DPCI to respond thereto. He stated that the Head of the DPCI has been duly informed.
- 138.3 That the NPA has decided not to disclose the details of the prosecutor dealing with the matter since the matter is still under investigation, and thus resorts under the DPCI.
- 139 The response suggested that the Siyangena and Swifambo investigations fell under the Hawks' exclusive purview. If so, it contradicted the Hawks' statement to Parliament, only three months prior.



140 Lt. Gen. Lebeza responded on behalf of the Hawks on 7 November 2023.

A copy of the letter is attached hereto, marked annexure "FA34". He said, in relevant part:

*"Due to the complexity of the matter, the DPCI may not be able to provide timeframes for when the investigation will be completed, however, the matter is being prioritised. The investigating team is continuously engaging with the team of prosecutors from the National Prosecuting Authority (NPA) that are guiding the investigations, and there is cooperation between the two organisations.*

*This office advise that the status of the litigation instituted by PRASA, as Stated in your letter, against the NPA and the DPCI, may be requested from PRASA."*

141 This letter gave Open Secrets cause to question who was actually leading the investigations as it appears that neither the Hawks nor the NPA can answer this question, or at least they have a different understanding of which of these two entities is leading the investigation into the two aforementioned PRASA contracts. This is deeply concerning.

#### **(b) Open Secrets' Second Letter**

142 Open Secrets instructed its attorneys to write to the Hawks and the NPA on its behalf. On 14 December 2023, Power and Associates Incorporated (**Power and Associates**) addressed a joint letter to the NPA, NPS and the Hawks. A copy of the letter is attached hereto, marked annexure "FA35".

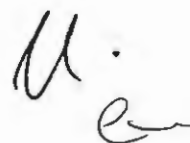
143 The letter highlighted the eight-year delay since the criminal complaints were laid, the vague responses on expected timelines for completion, and the apparent contradiction between the Hawks' and the NPA's advice as to whether prosecutors were involved in the Siyangena and Swifambo investigations.

144 The letter also made a formal request for reasons from—

- 144.1 the Hawks for their failure to conclude their investigations, despite claims of prioritisation and guidance by NPA prosecutors; and
- 144.2 the NPA for its failure to decide whether to prosecute the individuals implicated in the criminal charges.
- 145 The letter invited the Hawks and NPA to respond within 60 days (not the customary 90 days), but also stated that Open Secrets would consider a request for a longer period.
- 146 Open Secrets did not seek to elicit information that would compromise the Siyangena and Swifambo investigations or prejudice the prosecution. It simply sought adequate and informative reasons about the progress of the investigations, to enable it to ascertain whether judicial review was indicated. The letter said so.
- 147 The letter ended with an invitation to the Hawks, the NPA, and the NPS to respond to a list of questions for those purposes.
- 148 Adv du Plessis replied on behalf of the NPS and NPA on 19 December 2023. A copy of the response is attached hereto, marked annexure "FA36". He advised that the request for reasons was receiving attention and that a substantive reply would follow. It never did.
- 149 The Hawks did not reply to the request for reasons.

**(c) Open Secrets' Third Letter**

- 150 On 14 February 2024, Open Secrets instructed its attorneys to send a follow-up letter to the Hawks and the NPA, reminding them of the deadline



for their responses to its request for reasons, being 7 March 2023. A copy of the letter is attached hereto, marked annexure "FA37".

151 Neither the Hawks nor the NPA responded.

**(d) Open Secrets' Fourth Letter**

152 In a final attempt to get any information from the Hawks and the NPA in connection with the Siyangena and Swifambo contracts, Open Secrets instructed its attorneys to write to the Hawks and NPA separately (as per annexures "FA38" and "FA39") on 11 October 2024.

153 It was, and remains, Open Secrets' intention to ensure that both those who are accused of having committed serious economic crimes and those who are meant to stand guard against serious economic crimes are held accountable for their actions.

154 The letter to Lt. Gen. Lebeya of the Hawks—copied to the NPA—thus addressed the following:

154.1 It referenced Lt. Gen. Lebeya's testimony of August 2021 to the Zondo Commission, where he stated that investigations into the Swifambo contract were 90% complete, and those into the Siyangena contract were 75% complete. At that time, out of 18 investigations, four were finalised, and 14 were still in progress. This appears to contradict Lt. Gen. Lebeya's testimony to the Zondo Commission in this respect.

154.2 The Hawks' fourth quarterly report for the 2023/2024 financial year reported that—

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- 154.2.1 The State Capture National Investigation Task Team was conducting comprehensive investigations, converting inquiries into formal case dockets.
- 154.2.2 2,241 statements had been collected across 53 cases related to the Zondo Commission's recommendations.
- 154.2.3 27 suspects (including individuals and entities) had been arrested by the Hawks, with six more arrests related to the Bosasa cases.
- 154.2.4 Over R400 million had been recovered and deposited into the Criminal Asset Recovery Account (**CARA**).
- 154.3 Open Secrets reiterated its request for updates, particularly to understand the progress made on the investigations since the last affidavit from Lt. Gen. Lebeya in 2021. Again, the letter posed specific questions on the status of the impugned investigations.
- 154.4 The letter requested a response by 25 October 2024. Open Secrets explained that if the response was unsatisfactory, it would proceed with litigation in the public interest.
- 155 Likewise, Open Secrets' letter to Adv Shamila Batohi, the NDPP, and Adv De Kock was copied to the Hawks. It addressed the following:
  - 155.1 The NPA had not responded to Open Secrets' requests for reasons for the failure to complete the investigations, which the NPA was guiding, and to decide whether to prosecute.

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- 155.2 The Hawks' statements from their fourth quarterly report (2023/2024), noted some progress: 2,241 Statements collected across 53 cases; 27 suspects arrested; and R400 million recovered.
- 155.3 Open Secrets again sought clarity on the status and progress of the Siyangena and Swifambo investigations.
- 155.4 Similarly, the letter requested a response by 25 October 2024. Open Secrets also explained that if the response was unsatisfactory, it would proceed with litigation in the public interest.
- 156 The Hawks responded to Open Secrets' attorneys on 4 December 2024. A copy of the letter is attached hereto marked annexure "FA40", confirming receipt of the letter and advising that –

*"The two matters are investigated by a team of investigators in the Directorate for Priority Crime Investigation (DPCI).*

*Due to the complexity of the matter, the DPCI may not be able to provide timeframes for when the investigation will be completed, however, the matter is being prioritised. The investigating team is continuously engaging with the team of prosecutors that are guiding the investigations."*

- 157 This response does not substantively and meaningfully engage with or reply to Open Secrets' request for reasons. It placed Open Secrets in no better position to consider possible litigation and the grounds of judicial review.
- 158 The NPA did not respond to Open Secrets' letter altogether.

#### **H. OPEN SECRETS' ATTEMPT TO ENGAGE PRASA**

- 159 Given the lack of meaningful response from the Hawks and the NPA, and in the course of preparing to publish further articles around the malaise at



PRASA, Open Secrets approached PRASA for information about *inter alia* the status of the Siyangena and Swifambo investigations.

- 160 Open Secrets wrote to PRASA's then-spokesperson via email on 6 April 2023, attaching a list of questions for PRASA's attention. The relevant correspondences and annexures are attached hereto marked annexure "FA41". PRASA's spokesperson responded on 19 April 2023, sending Open Secrets written responses from the PRASA board, advising that PRASA believes that the Hawks were prioritising the case and that PRASA was 'cooperating with law enforcement agencies involved in the investigations'. The relevant correspondences and annexures are attached hereto marked annexure "FA42". There is however no objective evidence to support PRASA's opinion that the investigations have been progressing satisfactorily.
- 161 GroundUp published an article by Open Secrets on 14 March 2024, which recorded PRASA's response, attached hereto marked annexure "FA43".
- 162 Open Secrets wrote to PRASA on 14 October 2024, in a letter attached hereto marked annexure "FA44" and addressed to Ms N Nokwe-Macamo (Chairperson of the PRASA Board) and Mr Emeran (CEO of PRASA) wherein:
- 162.1 Open Secrets expressed concern at the lack of progress in the Siyangena and Swifambo investigations. This is because the continued delays obstruct accountability, foster corruption, and erode public confidence in PRASA. The Hawks have blamed PRASA for the delays, citing a lack of cooperation—claims that contradict PRASA's own efforts to push the investigations forward through its 2017 court application. Open Secrets indicated that the Hawks' and NPA's refusal to disclose reasons for these delays is deeply concerning.

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162.2 Open Secrets sought to assist PRASA in ensuring that the Hawks and NPA complete investigations and, if warranted, initiate prosecutions based on their findings and the Zondo Commission's recommendations.

162.3 Open Secrets referred to PRASA's 2022/2023 Annual Report (an extract is attached hereto marked annexure "**FA45**"), which states:

*"The Directorate for Priority Crime Investigation (DPCI) is currently investigating cases reported by PRASA in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (Precca). The investigation has been ongoing since 2016 and has not been finalised."*

162.4 Given these concerns, Open Secrets sought clarity on several key points including the nature, extent and method of investigation/s that has been undertaken by the Hawks and/or the NPA into PRASA in order to assess the need for litigation or, if possible, avoid unnecessary legal action.

163 Open Secrets invited PRASA to collaborate in promoting accountability, ensuring transparency, and restoring public trust in the state-owned entity.

164 PRASA's Acting Group Executive: Legal, Compliance, and Risk, NP Phasha, responded on 25 November 2024 (correspondence attached hereto, marked annexure "**FA46**"), confirming that:

164.1 PRASA successfully pursued civil claims against Siyangena and Swifambo, leading to both contracts being set aside.

164.2 It disciplined and dismissed employees implicated in the unlawful procurement of these contracts.

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- 164.3 It assumes the investigations remain active, as law enforcement agencies (the Hawks, SAPS, and NPA) continue to request information and supporting documents and regularly interview PRASA officials.
- 164.4 PRASA employees are not legally required to inform the entity when subpoenaed by the Hawks or the NPA, meaning PRASA has no access to such records.
- 165 In follow-up correspondence, Open Secrets requested that PRASA provide updates on any new developments that come to its attention. On 27 November 2024, PRASA responded to confirm that:

*"PRASA will certainly update you on any developments regarding the two matters."*

- 166 A copy of that correspondence is attached marked annexure "FA47".

## I. SUSPECTED PERSONS STILL UNACCOUNTABLE

- 167 In 2022 Open Secrets published a book entitled "*The Unaccountables*" (a copy will be made available to the Court and parties upon request). It contains profiles of individuals and entities, implicated in economic crimes but still untouched by the long arm of the law. These include:

- 167.1 "*Unaccountable 23: How PRASA was looted and left for scrap*" which details broadly the players involved in the looting of State funds in the Swifambo and Siyangena contracts, including: members of the PRASA Board at the time, the Minister of Transport who failed to properly oversee the SOE's functions, and various individuals;



167.2 Some of *those* individuals also have their own Unaccountable profiles in the book:

167.2.1 "*Unaccountable 24: Auswell 'tall trains' Mashaba: The middleman who derailed PRASA*";

167.2.2 "*Unaccountable 00026: Vossloh – The German railway giant that derailed PRASA*";

167.2.3 "*Unaccountable 29: Roy Moodley- Mr PRASA?*" (Moodley is a businessman whose company, Royal Security, was reportedly PRASA's preferred security adviser); and

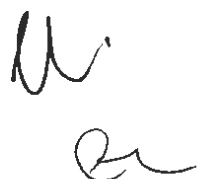
167.2.4 "*Unaccountable 30: Sfiso Buthelezi- The MP who derailed PRASA*".

## **J. GROUNDS OF REVIEW**

168 Under this heading, I discuss the grounds of review on which Open Secrets relies for the relief outlined in Part A of this affidavit and in the Notice of Motion. I rely on the Hawks' and NPA's duties to investigate priority crimes, in terms of the constitutional and statutory framework discussed in Part C of this affidavit.

### **(a) Failure To Take a 'Decision' To Conduct and Complete the Investigations**

169 I am advised that in *National Commissioner of SAPS v South African Human Rights Litigation Centre and Another* 2015 (1) SA 315 (CC), the Constitutional Court held that the SAPS' decision not to investigate criminal complaints of torture was reviewable under PAJA. This was on the basis that the SAPS do not merely have a power but also a duty to investigate



allegations of torture. This duty was said to arise from the Constitution as well the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002. The precise provision of the Constitution that the Constitutional Court found this duty to be premised on was section 205(3) of the Constitution.

170 As stated above, the Hawks, as part of the SAPS, is also obliged to discharge its constitutional duty to investigate crime diligently and without delay under section 237 of the Constitution. This obligation, along with the principle of accountability, constitutes the constitutional lens through which section 39(2) of the Constitution requires the SAPS Act to be interpreted.

171 I refer to what I have stated above regarding the Hawks' crucial role in enforcing PreCCA, which is the principal statute for addressing corruption, which depends on the diligent and timeous investigation of complex and serious cases.

172 The investigation of alleged priority crimes must thus be administrative action.

173 I am advised that section 179(2) of the Constitution affords the NPA a 'power' and thus a discretion to institute criminal proceedings. It must exercise this power within the confines of the law. In terms of section 179(4) of the Constitution, the NPA has a duty to exercise its functions without fear, favour or prejudice, as prescribed in terms of the NPA Act.

174 The SAPS (and the NPA) have failed to furnish Open Secrets with the reason(s) for not completing the investigations to date or to explain coherently who among them is leading the investigations in light of the contradictory versions that these two institutions have given to different Parliamentary sub-committees and functionaries. I am advised that under section 5(3) of PAJA, in light of the Hawks' (and the NPA's) failure to furnish



adequate reasons for an administrative action, it must, subject to subsection (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.

175 The SAPS Act empowers the Hawks to adopt a multi-disciplinary approach to help with the effective performance of its functions, including the following:

175.1 the Head of the Hawks being empowered to seek the NPA's assistance in the investigation of a national priority offence (Section 17D(3));

175.2 the facilitation of assistance and cooperation between the Hawks and other government departments or institutions, including those with specialised crime intelligence, auditing and financial skills (section 17F); and

175.3 the vital interrelationship between the Hawks and the NPA, going so far as to guarantee the NDPP membership of the Operational Committee under section 17J(1)(a)(iii) (which also consists of heads of other institutions of government) and which reviews, monitors and facilitates the support and assistance from other government departments and institutions to the Hawks.

176 Furthermore, the establishment of IDAC as a permanent unit within the NPA with effect from August 2024, in terms of the National Prosecuting Authority Amendment Act, means that there is greater capacity within the NPA to perform its functions. This is particularly because section 7(4)(a) of the NPA Act permits officials from other state bodies to assist the IDAC. In particular, members of the Hawks can assist the IDAC on secondment and *vice versa*.

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The IDAC can also be assisted by officials from other law enforcement agencies, such as the SAPS, the SSA, SARS, and the IPID.<sup>7</sup>

177 The above demonstrates that the Hawks, as part of the SAPS, is much better capacitated to perform its functions under the SAPS Act. Furthermore, the IDAC, as a permanent institution within the NPA, has reinforced the NPA's capacity to conduct prosecutions and to give guidance to the SAPS, on a co-operative basis. Furthermore, under the SAPS Act, the two institutions (i.e. the SAPS and the NPA) are required to co-operate with each other as follows:

177.1 Section 17D(3) of the SAPS Act permits the Head of the Hawks to seek the NPA's assistance in the investigation of a national priority offence.

177.2 Section 17F facilitates assistance and cooperation between the Hawks and other government departments or institutions, including those with specialised crime intelligence, auditing and financial skills.

178 All the above investigative functions have to be performed diligently, timeously, without delay and without fear, favour or prejudice. Accordingly, the Hawks' failure to complete the Siyangena and Swifambo investigations—

178.1 within a reasonable time or at all, is reviewable and invalid under section 6(2)(g) and (3)(a) of PAJA;

178.2 diligently and without delay in discharge of their constitutional duties as part of the SAPS breaches section 237 of the Constitution, read

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<sup>7</sup> See <https://www.npa.gov.za/investigating-directorate>.



with section 205(3), which is reviewable under section 6(2)(i) of PAJA;

178.3 without giving a proper reason for the failure to complete the investigations timeously is not rationally connected to the reasons given for it by the each of the Hawks and the NPA, as detailed above. It is therefore reviewable under section 6(2)(f)(ii)(dd) of PAJA; and

178.4 to the extent that it amounts to a failure to take a decision to complete the investigations it is reviewable under section 6(2)(g) of PAJA.

179 Having assumed a guiding role over the Siyangena and Swifambo investigations, the NPA's failure to see to the completion of those investigations—

179.1 within a reasonable time or at all, is reviewable and invalid under section 6(2)(g) and (3)(a) of PAJA;

179.2 diligently and without delay in the discharge of its implied constitutional duty to "*carry out any necessary functions incidental to instituting criminal proceedings*" breaches section 237 of the Constitution, read with section 179(2), which is reviewable under section 6(2)(i) of PAJA; and

179.3 to the extent that it amounts to a failure to take a decision to complete the investigations, is reviewable under section 6(2)(g) of PAJA.

180 Should the Constitutional Court overturn its decision in *National Commissioner of SAPS v South African Human Rights Litigation Centre and*

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*Another* (referred to above) and find that the investigative powers of the Hawks (and the NPA assisting the Hawks) do not amount to administrative action, then Open Secrets seeks to review their failure to conduct, progress and complete the Siyangena and Swifambo investigations without undue delay under the principle of legality on these grounds:

180.1 In respect of the Hawks: section 205(3) of the Constitution gives the SAPS the power and duty to investigate crime. Failure to discharge that duty diligently and without delay breaches section 237; a declaration of invalidity is thus indicated under section 172(1)(a).

180.2 In respect of the NPA, overseeing the Hawks: section 179(2) gives the NPA the power to carry out any necessary functions incidental to instituting criminal proceedings, which includes guiding investigations of high priority crimes; failure to discharge that duty diligently and without delay breaches section 237; a declaration of invalidity is thus indicated under section 172(1)(a).

**(b) No good reason for the delay**

181 More than 90 days have passed since Open Secrets made its formal request for reasons on 4 December 2023, and neither the Hawks nor the NPA informed Open Secrets that they were departing from the duty to give adequate reasons, under section 5(4)(a) of PAJA.

182 Section 5(3) thus creates a presumption that they have failed to conduct and complete the Siyangena and Swifambo investigations "*without good reason*".

183 On this basis, their conduct is invalid administrative action under section 6(2)(i) of PAJA. If the Constitutional Court eventually holds that the principle of legality governs the review of the Hawks' and NPA's conduct, Open



Secrets was still entitled to reasons for their failure to conduct, progress or complete their investigations without unreasonable delay.

184 I am advised that breach of that duty by the Hawks and the NPA should similarly give rise to an inference that there is no good reason for the delay. This amounts to a reviewable act as it amounts to irrational conduct.

**(c) Decelerating investigations while close to completion irrational or unreasonable**

185 Lt. Gen. Lebeya's evidence was that, by August 2021, the investigations into the Swifambo contract was 90% complete and into the Siyangena contract was 75% complete.

186 Yet, more than three years after Lt. Gen. Lebeya's affidavit, neither of the investigations has been completed. It, therefore, appears that the Hawks and NPA either decelerated the pace of the Siyangena and Swifambo investigations or stopped them altogether (it is hard to know which without the Rule 53 record).

187 In either event, having already committed time and resources to the Siyangena and Swifambo investigations, advancing them to a nearly ripe stage, if what Lt. Gen. Lebeya Stated under oath is anything to go by, it is irrational or unreasonable for the Hawks and NPA to have decelerated the pace of their investigations or altogether stopped them. Should that be the case, then this would be particularly concerning for the following reasons:

187.1 There has been pressure from the conclusion of the Zondo Commission to see investigations being completed and prosecution of the individuals implicated in the Zondo Commission report.

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- 187.2 Both institutions, i.e. the Hawks and the NPA, have been giving updates to the SCOPA on the progress of the investigations. At no stage did they indicate that they have decelerated them or halted them altogether for any reason.
- 187.3 Open Secrets have been addressing correspondence to both institutions seeking updates and the reasons for the delay. At no point has either institution indicated that the investigations have either been decelerated or halted.
- 188 Should that be the case, then it would amount to irrational and unreasonable conduct. The irrationality and unreasonableness of such conduct is further underscored by the availability and degradation of the forensic value of evidence with the passage of time (like the potential loss of documents, the potential fading of the memory of witnesses and their recollection of events). This may damage the prospects of successfully prosecuting someone suspected of a priority crime.
- 189 The Hawks' and NPA's delay in finalising the Siyangena and Swifambo investigations, therefore, is not rationally related to the purpose of the power to investigate and gather evidence, which is set out in the Constitution and the relevant statutes discussed above. Nor is it a reasonable exercise of the investigative power.
- 190 In those circumstances, the Hawks' and NPA's conduct is reviewable under section 6(2)(f)(ii) of PAJA or, as far as it concerns rationality review, the principle of legality.

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**(d) Failure to exercise subpoena powers under section 28(6) of the NPA Act**

191 The failure to obtain evidence from uncooperative witnesses has allegedly delayed the Siyangena and Swifambo investigations, as noted in affidavits by Lt. Gen. Khana and Lt. Gen. Lebeya. The Hawks and the NPA under section 205 of the Criminal Procedure Act can have uncooperative witnesses directed by a judicial officer to give evidence.

192 However, section 205 of the Criminal Procedure Act is not the Hawks' and NPA's only available remedy. The IDAC has the power under section 28(6) of the NPA Act to summon anyone, whom it believes can give information about an investigation, including the power to compel that person to produce documents, to question that person under oath or affirmation, and to examine and retain documents in safe custody.

193 Unlike section 205 of the Criminal Procedure Act, which requires judicial approval, section 26(6) of the NPA Act allows the NPA to act independently — reducing procedural delays and minimising the burden on the judicial system.

194 If the Siyangena and Swifambo investigations have stalled because the section 205 process is cumbersome, then the NPA's failure to invoke section 28(6) of the NPA Act is irrational and unreasonable, and it would indicate a failure to appreciate the empowering law and its purpose. This would render the NPA's conduct invalid under—

194.1 section 6(2)(f)(ii)(aa) to (cc) and section 6(h) of PAJA;

194.2 section 6(2)(d) of PAJA; or

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194.3 the principle of legality, as far as it relates to rationality and error of law.

**(e) NPA's failure 'to declare' investigations into PRASA**

195 There has been no declaration of the Siyangena and Swifambo investigations under section 28(1) or (13) of the NPA Act. I refer in this regard to slide 10 of the NDPP's presentation to SCOPA, discussed in paragraph 92 above.

196 I note that neither section 28(1) or (13), requires any declaration; and it appears that 'declaration' was used in the sense of commencing an investigation.

197 If this is the position (the Rule 53 record should clarify it), then the failure of the IDAC to collaborate with the Hawks in the Siyangena and Swifambo investigations is irrational and unreasonable, reviewable under section 6(2)(f)(ii) or 6(2)(h) of PAJA or the principle of legality, as far as it concerns rationality.

**(f) Legality review—failure to decide whether to prosecute**

198 Given the NDPP's statement to the effect that the Investigating Directorate has not 'declared' an investigation into PRASA under section 28(1) and (13) of the NPA Act, it is unclear whether the NPA has in fact considered prosecution of persons whom—

198.1 the SCA found, on the civil standard, to have acted corruptly; and

198.2 the Zondo Commission recommended be considered for prosecution.

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199 If the NPA has not considered prosecuting the persons contemplated in the Zondo Commission report and in the SCA's decisions referred to above, then the NPA has failed to discharge its duty under section 207(2) of the Constitution diligently and without delay. This is reviewable conduct and attracts a declaration of invalidity to that effect, in terms of section 172(1)(a).

#### **K. JUST AND EQUITABLE RELIEF**

200 Open Secrets seeks just and equitable relief under section 8 of PAJA and section 172(1)(b) of the Constitution, as far as it applies.

201 Despite extensive evidence and clear recommendations, the Hawks and the NPA have failed to finalise their investigations and prosecutions. The public relies on these agencies to prioritise such cases, yet delays and a lack of transparency persist.

202 Given the widespread, public impact of the corruption that took place at PRASA in respect of the Siyangena and Swifambo contracts, respectively, these failures erode trust in South Africa's criminal justice system. This is untenable in a democracy, compelling Open Secrets to seek judicial intervention.

203 Having exhausted all other avenues and having received no proper or adequate response from the Hawks or the NPA when it addressed the correspondence referred to above, Open Secrets turns to this honourable Court for effective relief—to uphold the principle of accountability and rule of law, protecting the rights of ordinary South Africans who depend on a functioning public transport system.

204 Flowing from the declarations of invalidity under section 6 of PAJA and section 172(1)(a) of the Constitution on any of the grounds pleaded in this affidavit, Open Secrets seeks the following consequential relief:



- 204.1 an order directing the Hawks and NPA to finalise the Siyangena and Swifambo investigations within a reasonable time and without further delay;
- 204.2 an order directing the NPA to consider prosecuting any persons or entities implicated in the award and implementation of the Siyangena and Swifambo contracts, including the persons listed in the table in paragraph 84 above, where consideration for prosecution is indicated in the second column.


#### **L. THE RULE 53 RECORD AND CONFIDENTIALITY**

- 205 Rule 53 entitles an applicant in judicial review proceedings to access all documents, reports, and evidence that informed the decision in question. While full disclosure is required, Open Secrets acknowledges that the Hawks and NPA may have sensitive, confidential information about their investigation and/or prosecution plan/s.
- 206 Open Secrets does not seek to compromise the Siyangena and Swifambo investigations but aims to hold the Hawks and NPA accountable as key institutions in South Africa's criminal justice system.
- 207 Open Secrets is advised that a court-managed confidentiality regime is the appropriate mechanism—ensuring controlled access to relevant documents while preventing uncontrolled dissemination of sensitive information. Open Secrets invites the Hawks and NPA to propose such a regime, for the purpose of making the Rule 53 record available within the timelines set by the Rules.




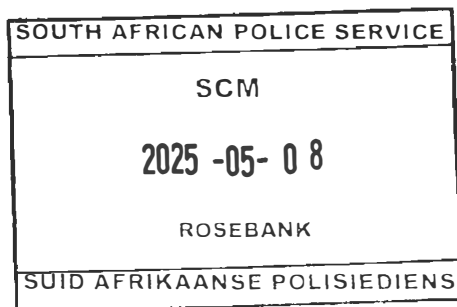
**M. CONCLUSION**

208 In light of the above, the Applicant has made out the case for the relief sought in this application, and I respectfully pray for an order in terms of the Notice of Motion.

  
\_\_\_\_\_  
**DEPONENT**

I certify that this affidavit was signed and sworn to before me at Rosebank on this the 08<sup>th</sup> day of May 2025, the deponent having acknowledged that they know and understand the content of this affidavit the Regulations contained in Government Notice No 1258 of 21 July 1972 and R1648 of 19 August 1977, having been complied with.

  
\_\_\_\_\_  
**COMMISSIONER OF OATHS**  
15 Stubbie Avenue  
Rosebank JHB  
Constable



"FA1"

# open secrets

power & profit | truth & justice

## RESOLUTION BY THE BOARD OF DIRECTORS OF OPEN SECRETS NON-PROFIT COMPANY ("OPEN SECRETS")

We, the persons named and signed hereunder, confirm that:

1. We are the duly elected Board of Directors of Open Secrets, a registered non-profit company with registration number 2017/078276/08 (NPC) and 262-566 (NPO).
2. We confirm that we are duly authorised to mandate and give instructions on behalf of Open Secrets.
3. We hereby appoint **Power and Associates** to act as our attorneys of record, in order to obtain information or documents from any party (government or otherwise) and negotiate or settle any matter with such party.
4. Specifically, we authorise Power and Associates as the attorneys of record to institute and prosecute an application against the Directorate for Priority Crimes Investigation ("**the Hawks**") and the National Prosecuting Authority ("**NPA**") to review:
  - 4.1. the Hawks' failure, within a reasonable time, to complete the investigations into the complaints of corruption and fraud at the Passenger Rail Agency of South Africa (**PRASA**), under SAPS case numbers CAS405/07/2015 and CAS278/09/2015, respectively concerning—
    - 4.1.1. PRASA's award and conclusion of the contract with Siyangena Technologies (Pty) Ltd (**Siyangena**) under tender number HO/SCM/223/11/2011, as well as the implementation of that contract; and
    - 4.1.2. PRASA's award and conclusion of a contract with Swifambo Rails Leasing (Pty) Ltd (**Swifambo**) under tender number HO/FM-CRES/142/09/2013, as well as the implementation of that contract; and
  - 4.2. the NPA's failure –
    - 4.2.1. having assumed a guiding role in the Hawks' investigations referred to in prayer 1 above, the NPA's failure, within a reasonable time, to see to the completion of those investigations; and
    - 4.2.2. to take a decision, either to prosecute or not to prosecute, persons implicated or involved in criminal activities, related to the award,

NPO: 195-990-NPO | NPC 2017/078276/08 | PBO: 930059106

Community House, 41 Salt River Road, Salt River 7925, Cape Town, South Africa  
 researcher@opensecrets.org.za | +27 21 447 2701 [office] | +27 72 565 0173 [Signal and WhatsApp]

conclusion and implementation of PRASA's contracts with Siyangena and Swifambo, referred to above.

5. We authorise **HENNIE VAN VUUREN**, and in the alternative **ARIELLA SCHER**, to depose to the Founding Affidavit and all other documents necessary in that application on behalf of Open Secrets.
6. Both Hennie van Vuuren and Ariella Scher remain authorised to represent Open Secrets in the application and to do all things necessary in the application, including taking all steps necessary to bring this matter to conclusion including taking the matter on appeal.

DATED AT Cape Town ON THIS 4<sup>th</sup> DAY OF April 2025

Signed:

Name and Surname	Signature
Nurina Ally	
Mukelani Dimba	
Thandeka Gqubele-Mbeki	
Thando Ntoi	
Yasmin Sooka	
Hennie van Vuuren	

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Companies and Intellectual  
Property Commission  
a member of the dti group

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION  
REPUBLIC OF SOUTH AFRICA

Form CoR 14.3 - Registration Certificate

Issue date: 17/02/2017  
Print date: 28/02/2017  
Customer code: MACROC  
Tracking number: 111500643

Concerning:

OPEN SECRETS (RF) NPC 2017/078276/08

The above company has been registered in terms of section 14 of the Companies Act, 2008.

In accordance with the Notice of Incorporation, the registration of the company takes effect on 17/02/2017.

In conjunction with this certificate, the Commission has not issued another notice contemplated in section 12 (3).

Commissioner: CIPC

MKB MKB

About this Notice

This Notice is issued in terms of section 14 of the Companies Act, 2008, and Regulation 14 of the Companies Regulations, 2011. If the Commission has altered the name of the company, in terms of section 14 (2) (b), the company may file an amended Notice of Incorporation to change the name. If the Commission has issued a Notice of a Potentially Contested Name in conjunction with the Certificate, the company must serve that Notice on each person identified in the Notice, and any such person has the right to challenge the use of the name, by the company.

The Companies and Intellectual Property Commission of South Africa  
P.O. Box 429, Pretoria, 0001, Republic of South Africa  
Docex 256, Pretoria  
Contact centre 086 100 2472  
www.cipc.co.za



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Certificate issued by the Companies and Intellectual Property Commission  
on Tuesday, February 28, 2017 10:14  
Registration Certificate



Companies and Intellectual  
Property Commission  
a member of the dti group

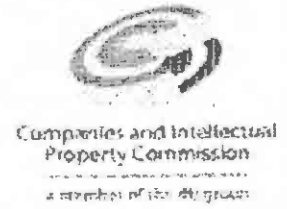
Registration number	2017 / 078276 / 08
Enterprise name	OPEN SECRETS (RF) NPC
Enterprise shortened name	NOT APPLICABLE
Enterprise translated name	NOT APPLICABLE
Registration date	17/02/2017
Business start date	17/02/2017
Enterprise type	NON PROFIT COMPANY
Enterprise status	IN BUSINESS
Financial year end	FEBRUARY
Type of MOI	NON-STANDARD (COR15.1D)
Main business/main object	NO RESTRICTION ON BUSINESS ACTIVITIES
Postal address	COMMUNITY HOUSE 41 SALT RIVER ROAD SALT RIVER CAPE TOWN 7925
Address of registered office	COMMUNITY HOUSE 41 SALT RIVER ROAD SALT RIVER CAPE TOWN 7925

The Companies and Intellectual Property Commission of South Africa  
P.O. Box 429, Pretoria, 0001, Republic of South Africa  
Docex 256, Pretoria  
Contact centre 086 100 2472  
[www.cipc.co.za](http://www.cipc.co.za)



*Handwritten signature*

Certificate issued by the Companies and Intellectual Property Commission  
on Tuesday, February 28, 2017  
Registration Certificate



Registration number 2017/078276/08  
Enterprise name OPEN SECRETS (RF) NPC

Auditors

Name RSM SOUTH AFRICA  
Postal address P O BOX 578  
RONDEBOSCH  
7701

Directors

Surname and first names	Status	ID number or date of birth	Director type	Appointment date	Addresses
VAN VUUREN, HENDRIK	ACTIVE	7402205018089	DIRECTOR	17/02/2017	Postal COMMUNITY HOUSE, 41 SALT ROAD, SALT RIVER, CAPE TOWN, 8001 Residential 43 FAIRVIEW AVENUE, WOODSTOCK, CAPE TOWN, 7925
MEYERSFELD, BONITA CECILE	ACTIVE	7511190165083	DIRECTOR	17/02/2017	Postal PRIVATE BAG 3, WITS UNIVERSITY, 2050 Residential 6 DONEGAL AVENUE, PARKVIEW, JOHANNESBURG, 2193
CASSEM, SHAAMELA	ACTIVE	7005270257084	DIRECTOR	17/02/2017	Postal 88 THE RIDGE, CLIFTON, CAPE TOWN, 8005 Residential 88 THE RIDGE, CLIFTON, CAPE TOWN, 8005
MOLEBATSÍ, TEBHOHO BASETSANA	ACTIVE	7601110404082	DIRECTOR	17/02/2017	Postal P O BOX 2131, HOUGHTON, 2041 Residential 19 UMGENI ROAD, RIVER CLUB EXT 1, SANDTON, 2191

The Companies and Intellectual Property Commission of South Africa  
P.O. Box 429, Pretoria, 0001, Republic of South Africa  
Docex 256, Pretoria  
Contact centre 086 100 2472  
www.cipc.co.za



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**COMPANIES AND INTELLECTUAL PROPERTY COMMISSION  
REPUBLIC OF SOUTH AFRICA**

The Companies Act, No. 71 of 2008, as amended

**MEMORANDUM OF INCORPORATION**

of a

**NON PROFIT COMPANY WITHOUT MEMBERS**

to be known as the

**OPEN SECRETS (RF) NPC**

**Registration Number :**

**Date of Registration:**

***RICHARD ROSENTHAL ATTORNEYS***

**Telephone :**  
(+27) 021-423 2975

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(+27) 021-424 0377

**E-mail :** partners@iafrica.com

**DoceX 5, Cape Town**

Penthouse Office Suite  
4th Floor Tamatave  
49 Bellevue Street  
Higgovale 8001, South Africa

P.O. Box 3800  
Cape Town 8000, South Africa

*[Handwritten signatures and initials]*

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION  
REPUBLIC OF SOUTH AFRICA  
The Companies Act, No. 71 of 2008, as amended

**MEMORANDUM OF INCORPORATION**  
of  
**OPEN SECRETS (RF) NPC**

**STATUTORY COVER PAGE**

**NATURE OF COMPANY**

The Company is a NON PROFIT COMPANY Without Members as stated in Clause 1.

**OBJECTS AND PURPOSE**

The Sole or Principal Object of the Company shall be that which is stated in Clause 3.

**DIRECTORS**

There shall be a minimum of THREE (3) Directors, who are to be appointed in terms of Clause 8.  
There shall be no maximum number of Directors.

**ALTERNATE DIRECTORS**

Each Director shall be entitled to appoint an Alternate in the manner, and subject to the conditions stipulated in Clause 12.

**SPECIAL CONDITIONS (Ring-Fencing)**

The objects and powers of the Company are limited to the extent necessary to ensure compliance with the Prescribed Statutory Conditions referred to in the Attachments to this Memorandum, viz:

**Attachment "A"** - The conditions applicable to Non Profit Companies prescribed in terms of Schedule 1 to the Companies Act, No. 71 of 2008, as amended. ("The NPC Conditions")

**Attachment "B"** - The conditions applicable to Public Benefit Organisations prescribed in terms of Section 30 to the Income Tax Act, No 58 of 1962, as amended. ("The PBO Conditions")

**Attachment "C"** - The conditions applicable to registered Non-Profit Organisations prescribed in terms of the Non-Profit Organisations Act, No. 71 of 1997, as amended. ("The NPC Conditions")

**ADOPTION OF MEMORANDUM OF INCORPORATION**

This Memorandum of Incorporation, including Attachments "A", "B", and "C" thereto, is adopted by the subscribers indicated hereunder, in their capacity as the Incorporators, as evidenced by their respective signatures, which have been affixed by them, in accordance with the requirements of Section 13 (1) of the Companies Act, No. 71 of 2008, as amended.

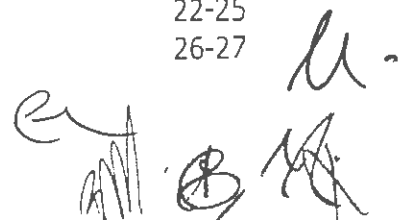
Name of Incorporator	Identity No.	Signature	Date
TEBOHO BASETSANA MOLEBATSI	7601110404082		25-01-2017
SHAAMELA CASSIEM	7005270257084		20.01.2017
BONITA MEYERSFELD	7511190165083		23/1/17
HENNIE VAN VUUREN	7402205018089		20/01/2017

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## ATTACHMENTS :

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## A. DEFINITIONS AND INTERPRETATION

Unless the context clearly otherwise indicates, words and expressions defined in the Companies Act, No. 71 of 2008, as amended, shall bear the same meanings when used in this Memorandum of Incorporation, save that the following words and phrases shall bear the meanings specifically denoted hereunder, as follows, viz:

- A.1 **"The Act"** means the Companies Act, No 71 of 2008, as amended; and this term shall include all Schedules, Regulations, and Notices that may be prescribed from time to time, including any amendment, substitution, or re-enactment thereof.
- A.2 **"The Board"** means the persons holding office as Directors of the Company from time to time, when acting collectively in that capacity.
- A.3 **"The Commission"** means The Companies and Intellectual Property Commission ("CIPC") which has been established in terms of The Act.
- A.4 **"The Company"** means this Company, which is to be known as the **"Open Secrets (RF) NPC"**.
- A.5 **"Company Secretary"** means any person appointed from time to time to the office of Secretary of the Company, as contemplated by the Act.
- A.6 **"Co-opted Director/s"** means any person appointed from time to time by The Board to serve as a Director to fill a temporary vacancy as contemplated by Clause X.
- A.7 **"Duly Certified"**, in relation to copies, means a copy certified by an appropriate Public Officer, or by a Notary Public, or in such other manner as may be considered acceptable in the circumstances.
- A.8 **"Deliver"** in relation to a notice or other document includes the hand-delivery thereof or its despatch by ordinary registered mail to an address furnished to the Company for this purpose by the addressee; or the transmission thereof by email, internet, intranet, or by such other means of electronic communication as may be permitted in terms of Clause 23 of this Memorandum.

- A.9 **"Directors"** means, initially upon adoption of this Memorandum, the Incorporators; and thereafter, from time to time, the persons appointed to this office in accordance with Clause 8; and including any person duly nominated and acting as an Alternate Director in terms of Clause 12.
- A.10 **"File" or "Filing"**, in relation to a document to be lodged with the Commission, means the delivery thereof to the Commission in the manner and form prescribed by the Act.
- A.11 **"Income Tax Act"** means the Income Tax Act No. 58 of 1962, as amended, including the Schedules and Regulations prescribed thereunder.
- A.12 **"Memorandum of Incorporation" or "Memorandum"** means this Memorandum of Incorporation, including Attachments "A", "B" and "C" thereto.
- A.13 **"Month"** means a calendar month.
- A.14 **"Non Profit Organisations Act"** means the Non Profit Organisations Act No. 71 of 1997, as amended.
- A.15 **"Office"** means the Registered Office of the Company.
- A.16 **"Prescribed Companies Act Provisions"** means the special provisions concerning Non Profit Companies, prescribed in terms of Schedule 1 to the Act, as referred to in Attachment "A" to this Memorandum.
- A.17 **"Prescribed Fiscal Provisions"** means both the special provisions applicable to Public Benefit Organisations approved in terms of Section 30 of the Income Tax Act; and the special provisions which are applicable in terms of Section 18A of that Act, as referred to in Attachment "B" to this Memorandum.
- A.18 **"Prescribed NPO Provisions"** means the provisions concerning Registered Non-Profit Organisations as prescribed in terms of Section 12(2) of the Non Profit Organisations Act, as set forth in Attachment "C" to this MOI.

- A.19 **"Prescribed Statutory Provisions"** means the Prescribed Companies Act Provisions; the Prescribed Fiscal Provisions; and the Prescribed NPO Provisions, all of which are binding upon the Company from time to time as referred to in Clause 4.2.
- A.20 **"Prime Interest Rate"** means the prime overdraft rate of interest ordinarily charged from time to time by The Standard Bank of South Africa Limited, in respect of unsecured overdraft facilities, calculated and compounded monthly in arrear, as certified by the manager of any branch of that bank.
- A.21 **"Public Benefit Organisations"** means organisations which are approved by the Commissioner as such in accordance with the provisions of Section 30 of the Income Tax Act; and **"Public Benefit Activities"** shall have the equivalent meaning assigned thereto by the Ninth Schedule to that Act.
- A.22 **"Republic"** means the Republic of South Africa.
- A.23 **"Rules"** means any such Rules in respect of the governance of the Company as may be made and adopted by the Board at any time, in accordance with the provisions of The Act, and subject to Clause 5.3 of this Memorandum.
- A.24 **"Secretary"** means any person appointed from time to time to perform the duties of Secretary to the Company.

## **B. INTERPRETATION**

In the interpretation of this Memorandum, it is further provided that:

- B.1 Expressions with reference to writing shall be deemed to include reference to printing, lithography, photographs, electronic images, and other modes of representing or reproducing words in visible form.
- B.2 References to the Companies Act; the Income Tax Act; the Nonprofit Organisations Act; and any other legislation, or the regulations prescribed thereunder, shall be deemed to denote such legislation and regulations, as they may be amended from time to time, including legislation constituting a re-enactment or substitution therefor.

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- B.3 Words importing the singular shall include the plural; words importing the masculine, feminine, or neuter, shall include the others of such genders; and words importing persons shall include juristic persons, and vice versa in each instance.
- B.4 In the event of any conflict between the terms of this Memorandum and the provisions of The Act, the terms of this Memorandum shall prevail, except insofar as The Act may impose an unalterable provision.

### **1. INCORPORATION**

A NON PROFIT COMPANY WITHOUT MEMBERS is hereby established and incorporated in terms of this Memorandum of Incorporation, which shall be known as

#### **OPEN SECRETS (RF) NPC**

### **2. GOVERNANCE PROVISIONS**

In accordance with the provisions of The Act:-

- 2.1 The Unalterable Provisions of The Act which are applicable to Non-Profit Companies without Members, including the special provisions concerning Non-Profit Companies set forth in Schedule 1 to the Act, are binding upon the Company, and deemed to have been incorporated in this Memorandum, and are set forth accordingly in Attachment "A" thereto.
- 2.2 The Alterable Provisions of the Act which are applicable to Non-Profit Companies without Members are binding upon the Company only to the extent and insofar as this Memorandum may not otherwise provide, whether by limitation, extension, variation, or in some other permitted manner.

### **3. SOLE OR PRINCIPAL OBJECT**

The Sole or Principal Object of the Company shall be to promote human rights and democracy by pursuing accountability for economic crime and related human rights violations in Southern Africa, through advocacy, public interest litigation and research.

#### 4. POWERS AND STATUS

- 4.1 As a Non-Profit Company incorporated in terms of The Act, the Company shall be a juristic person, having all the legal powers and capacities of an individual, except to the extent that a juristic person may be incapable of exercising any of such powers or having any such capacity; but subject to the terms of this Memorandum, and to the relevant provisions of The Act.
- 4.2 The exercise of the Company's aforesaid powers and capacities shall be restricted in the manner contemplated by Section 19(1)(b)(ii) of The Act by reason of the fact that the Company is required to comply with the Prescribed Statutory Provisions, namely:-
- 4.2.1 The Prescribed Companies Act Provisions which are applicable to Non-Profit Companies (NPC's), as contemplated by Attachment "A"; and
- 4.2.2 The Prescribed Fiscal Provisions, which are applicable to Approved Public Benefit Organisations, as contemplated by Attachment "B".
- 4.2.3 The Prescribed NPO Provisions, insofar as they may be or become applicable to the Company by reason of its registration in terms of the Non-Profit Organisations Act No. 71 of 1997, as amended, as contemplated by Attachment "C" hereto.
- 4.3 The income and property of the Company whencesoever derived shall be applied solely towards the promotion of its Sole or Principal Object, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to any Members/Directors, or any controlling or controlled Company; Provided that nothing herein contained shall prevent the payment in good faith by the Company of reasonable remuneration (commensurate with services actually rendered) to any officer or servant of the Company, including a Member (if any) or a Director, subject to due compliance with the constraints envisaged by the Prescribed Fiscal Provisions.

4.4 Upon its winding-up, deregistration or dissolution, any assets of the Company remaining after the satisfaction of its liabilities shall be given or transferred to one or more other Public Benefit Organisations having the same or similar objects as those of the Company, or to such other tax-exempt Institution, as may be approved for this purpose by the Commissioner for the South African Revenue Service (SARS).

4.5 Any amendment to this Memorandum shall be promptly notified to the Commissioner for the SA Revenue Service, immediately upon its adoption, as required by law.

**5. ALTERATIONS TO THIS MEMORANDUM; AND THE MAKING OF COMPANY RULES**

The Board shall have the following powers and discretions, viz:-

5.1 This Memorandum may at any time be altered or amended by the Board in the manner prescribed by The Act, provided that no such alteration or amendment shall be competent if it would be inconsistent with the restrictions and limitations on the powers of the Company referred to in Clause 4 above. Upon adoption of any such alteration, or amendment, written Notice thereof shall be given to each Director of the Company, and to the Commission, in the manner required by The Act.

5.2 In addition to its power of amendment referred to in Clause 5.1 above, the Board or any person authorised by the Board shall have the further power to cause this Memorandum to be altered in any manner that may be necessary to correct patent errors of spelling, punctuation, reference, grammar, or any similar textual defect, by delivering a Notice effecting such amendment to each of the Directors of the Company, and filing the prescribed written Notice thereof with the Commission, in the manner required by The Act.

5.3 Should the Directors at any time deem it necessary or desirable in the best interests of the Company, the Board shall be empowered to make Rules for the Company; but such power to make Rules shall also be limited and restricted to the extent that the powers of the Company are themselves limited and restricted as aforesaid in terms of this Memorandum. A copy of any such Rules shall be published, by delivering a copy thereof to each Director of the Company, and by filing a copy thereof with the Commission, in the manner required by The Act.

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## 6. ENHANCED ACCOUNTABILITY AND TRANSPARENCY

- 6.1 The Company hereby elects not to assume the voluntary obligation of compliance with the Enhanced Accountability and Transparency Provisions set forth in Chapter 3 to The Act, save and except for the mandatory appointment of an Auditor, and the production of annual audited financial statements.
- 6.2 Notwithstanding the foregoing, the Company may at any time extend or rescind its voluntary submission of compliance with the Enhanced Accountability and Transparency Provisions, subject to the passing of a Special Resolution to this effect in the manner required by The Act.

## 7. COMPANY TO HAVE NO MEMBERS

The Company is incorporated Without Members, and accordingly the responsibility for governance, and the proper exercise of its powers and mandate in pursuance of the Sole or Principal Object, shall vest in and be assumed by the persons who are appointed as Directors from time to time.

## 8. APPOINTMENT OF DIRECTORS

- 8.1 In accordance with the Prescribed Companies Act Provisions, there shall be at no time less than THREE (3) Directors of the Company. However, there shall be no stipulated maximum number of Directors.
- 8.2 The persons acting as Incorporators in terms of this Memorandum shall be deemed to have been appointed as the initial Directors, subject to the succeeding provisions of this Memorandum, and The Act.
- 8.3 It shall be the responsibility of the Directors, by majority decision, to effect the appointment, or reappointment from time to time of such number of Directors as may be required and deemed appropriate, provided that the number of Directors so appointed shall at no time be less than the minimum number of Directors stipulated in Clause 8.1.
- 8.4 If the number of Directors should at any time fall below the stipulated minimum, the remaining Director(s) shall be both entitled and required to continue to exercise their powers and responsibilities as Directors, notwithstanding the existence of such temporary vacancy; but such

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continuing authority shall be limited to a period not exceeding EIGHT (8) weeks, within which period the remaining Director(s) shall be obliged to ensure the necessary appointment, in order that the number of Directors once again satisfies the numerical requirement aforesaid.

- 8.5 For the avoidance of doubt, no third party shall have power to appoint Directors; and no person shall be deemed to have been appointed as an *ex officio* Director as contemplated by Section 66(4) of The Act.
- 8.6 Notwithstanding anything to the contrary hereinbefore contained, it is further stipulated that the Directors shall have the power, at any time should they deem this appropriate and in the best interests of the Company to suspend or remove a Director from office prior to the expiration of a term of appointment; provided that any such resolution effecting the removal of a Director shall only be of force and effect if it is supported by no less than 75% of the Directors then serving (other than the Director to be removed). For the avoidance of doubt, it is further stipulated that no reasons or motivation need be provided for any such resolution to suspend or remove a Director.

## 9. MINUTES AND MINUTE BOOK

The Directors shall cause Minutes to be kept:-

- 9.1 of all appointments of Officers;
- 9.2 of Directors present, or represented by an Alternate, at every Meeting of the Board; and
- 9.3 of all proceedings of the Board.

The Minutes shall be signed by the Chairperson of the relevant Meeting, or in his/her absence by the Chairperson of the next succeeding Meeting.

## 10. INSPECTION OF MINUTES

The Minutes of each Meeting of the Board may be inspected and copied on request by any Director.

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## 11. TERM OF APPOINTMENT

- 11.1 Each Director (with the exception of *ex officio* Directors) shall be deemed to have been appointed to serve for a term of THREE (3) years, but shall be eligible, if so nominated and appointed, to serve for one or more further terms of THREE (3) years each, unless otherwise removed from office in terms of The Act, or otherwise in terms of this Memorandum.
- 11.2 Accordingly, at each Annual General Meeting One-Third (1/3) of the Directors then serving shall be required to retire, but those retiring shall be eligible for re-appointment. The Directors retiring at each Annual General Meeting shall be those who have completed their current THREE (3) year terms of office; provided that if more than one third (1/3) of the Directors then serving shall be due for retirement at such Annual General Meeting, no more than one-third (1/3) of their number shall be required to retire, being such as may be mutually agreed between the Directors then due for retirement; but in the absence of agreement, those to retire shall be such as may be determined by the drawing of lots between them.

## 12. ALTERNATE DIRECTORS

- 12.1 Each Director shall have the power to nominate; and the Board shall have the power to appoint; any other person as such Director's Alternate to act in the event of absence or inability to act as such.
- 12.2 Any Alternate Director acting in the stead of a Director appointed by the Board shall exercise and discharge all the powers, duties and functions of the Director s/he represents. The appointment of an Alternate Director shall be revoked, and the Alternate Director shall cease to hold office, whenever the Director ceases to be a Director; or should such Director or the Alternate Director give notice to the Company Secretary that such Alternate Director has ceased to represent the Director concerned; with due notification to the Commission as required in terms of The Act.
- 12.3 A person may be nominated as Alternate Director to more than one Director, and in such event such Alternative Director shall have the voting rights contemplated by Clause 14.5 hereunder.

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### 13. DISQUALIFICATION AND REMOVAL OF DIRECTORS

Notwithstanding anything to the contrary hereinbefore contained, the appointment of a Director shall be terminated in any of the following circumstances, viz:-

- 13.1 If the Director concerned completes the term of office for which such Director was appointed, and is not then re-appointed; or
- 13.2 If the Director concerned dies, or becomes of unsound mind, or otherwise unfit and incapable of performing the duties of a Director; or
- 13.3 If the Director concerned ceases to satisfy the qualifications and eligibility requirements set out in Section 69 of The Act, or for any other reason becomes disqualified or precluded from serving as a Director by virtue of any other provision of The Act; or
- 13.4 If the Director concerned resigns office by notice to this effect duly given in writing to the Company in the manner required by The Act; or ceases to hold any office by virtue of which that person may have been appointed *ex-officio* as a Director; or
- 13.5 If the Director concerned is directly or indirectly interested in any contract or proposed contract with the Company, and fails to declare a conflict of interest in the manner required by The Act; or
- 13.6 If the Director concerned was appointed *ex officio* and ceases to hold any qualifying office or nomination; or
- 13.7 If the Director concerned is removed from office by the Board in terms of a Resolution duly passed with the required majority in accordance with Clause 8.6 above.

### 14. PROCEEDINGS OF THE BOARD

- 14.1 The Directors shall meet together for the despatch of business, adjourn and otherwise regulate their Meetings from time to time as they may deem fit.

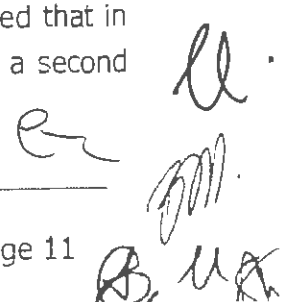
14.2 At all Meetings of the Board, the quorum necessary for the transaction of business shall be at least THREE (3) of the Directors either personally present, or represented by a duly appointed Alternate, subject however to the continuity provisions contemplated by clause 8.4; and provided further that *ex officio* Directors shall not be counted for purposes of determining the presence of a quorum.

14.3 The Directors shall appoint one of their number to serve from time to time as Chairperson, and should they deem this appropriate, they may appoint another of their number to serve as Deputy Chairperson. Each of such appointees shall hold office for such period as the Directors may deem appropriate at their sole and absolute discretion. If no Chairperson or Deputy Chairperson is appointed as aforesaid, or if at any Meeting neither of them is present or available to act within Fifteen (15) minutes of the time appointed for the commencement of the meeting, the Directors then present shall choose another of their number to act as Chairperson of that Meeting.

14.4 The Chairperson, or in her/his absence, the Deputy Chairperson, shall preside at all Meetings of the Board. The Chairperson may convene a meeting of the Board at any time, but shall be obliged to convene such meeting if so requested by any TWO (2) or more of the Directors. Each Director or Alternate Director shall be entitled to at least SEVEN (7) Business Days' prior written notice of a meeting, which shall include an Agenda and such other meeting papers as may be considered applicable; provided that, in a situation of urgency, such formalities may be dispensed with and the notice convening a meeting may be given on less notice and in any such other manner as the Chairperson may deem practicable in the circumstances.

14.5 Each Director present or represented at a Meeting shall be entitled to exercise ONE (1) vote. Where a person is an Alternate Director to more than one Director, or where an Alternate Director is also a Director in a personal capacity, the person concerned shall, in addition to that person's own vote, have a separate vote on behalf of each Director so represented.

Save as otherwise stipulated in this Memorandum, questions arising at Meetings of Directors shall be decided by a majority of votes, provided that in the case of an equality of votes the Chairperson shall be entitled to a second and casting vote.

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14.6 A "round robin" resolution shall be as valid as if passed at a duly convened meeting of the Board provided such resolution is supported in writing by not less than 75% of all the Directors then serving, who must number not less than the minimum number of Directors stated in Clause 8.1. Unless stated to the contrary in the resolution itself, a "round robin" resolution shall be deemed to have been passed as at the date of the last signature thereto. A round robin resolution may be recorded in a single document or in several documents, as may be found more convenient. The vote of a Director may be recorded not merely by signature but also by other secure means of communication, including the intranet, internet, email, whatsapp, fax, e-mail, or in such other manner as the Chairperson may regard as acceptable.

14.7 The Board may delegate any of its powers to an Executive Committee and/or one or more special purpose committees, subject to the following provisions:

14.7.1 Such Committees shall consist of Directors, but may also include other persons, as the Board may deem appropriate.

14.7.2 Such Committees shall, in the exercise of their powers and responsibilities, determine their own procedural formalities, but shall conform to any such Terms of Reference, rules, restrictions, or procedures that may be imposed upon them by the Board.

14.8 All acts performed in good faith by the Board, or by a Committee of the Board, or by a person acting in the capacity of a Director or as member of a Committee, shall be deemed to be effective and valid, notwithstanding that it may afterwards be discovered that there existed some formal defect in the appointment of the person acting as aforesaid, or that any of them were disqualified or had vacated office.

**15. AUTHORITY OF THE BOARD**

The Directors shall have unrestricted power and authority to manage the affairs and direct the business of the Company in furtherance of its Sole or Principal Object, subject only to the exclusions, qualifications and conditions stipulated in terms of this Memorandum, and The Act.

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**16. DIRECTORS REMUNERATION AND REIMBURSEMENT**

16.1 Directors shall receive no remuneration in respect of their services as Directors; provided that an Executive Director shall be entitled to such remuneration as may be considered reasonable and commensurate with his/her duties and responsibilities.

16.2 Notwithstanding the foregoing, all Directors shall be entitled to claim reimbursement of reasonable travelling, subsistence, and other expenses as may be incurred from time to time in the execution of their duties as Directors, and with the approval and authority of the Board.

**17. POWERS AND DUTIES OF DIRECTORS**

17.1 The business of the Company shall be managed by the Board, which may pay on behalf of the Company all expenses incurred in promoting and incorporating the Company, and may exercise all such powers of the Company as are not required by The Act, or by this Memorandum, to be exercised by the Members in General Meeting.

17.2 The Company's financial transactions must be conducted through one or more banking accounts, to be operated under such mandates and authorisations as the Board may determine from time to time.

**18. BORROWING POWERS**

Subject to the unanimous resolution of the Board, the Directors shall be entitled to borrow money and to mortgage or bind the undertaking of the property of the Company or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability, or obligation of the Company or of any third party.

**19. CONFLICTS OF INTEREST**

No transaction involving the Company shall be void or voidable merely by reason of the existence of a conflict of interest between the Company and one or more of its Directors, provided that:

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- 19.1 Any Director having a conflict of interest must promptly declare such interest;
- 19.2 Such Director must make full, timely, disclosure in good faith of all relevant facts and circumstances affecting such interest;
- 19.3 Following such disclosure, the Director concerned must be recused from any further part in the discussion or consideration of the affected transaction;
- 19.4 Approval of the transaction shall require a Resolution to be passed unanimously by all the other Directors then serving, being not less than the minimum number stipulated in Clause 8.1 above.
- 19.5 All material details of the transaction, and of the discussions leading up to the vote of the Directors, must be minuted and recorded.

**20. AUDITOR - FINANCIAL YEAR — ANNUAL GENERAL MEETINGS**

- 20.1 The Financial Year of the Company shall commence on the 1 March each year and terminate on the last day of February in the succeeding year; subject to the right of the Board to determine a change to the Financial Year, with the consent of the Commissioner for SA Revenue Services.
- 20.2 An independent Auditor shall be appointed, and may be removed, and replaced from time to time, at the discretion of the Board in accordance with the provisions of this Memorandum, and The Act.
- 20.3 The Directors shall from time to time in accordance with the provisions of The Act, cause to be prepared and laid before the Board, such Annual Financial Statements as are referred to therein.
- 20.4 A meeting of the Board, to be styled the Annual General Meeting, shall be held by the Directors within 6 months of the end of each financial year.
- 20.5 The business of the Annual General Meeting shall include:
- 20.5.1 Presentation of an Annual Report.
  - 20.5.2 Consideration of Annual Financial Statements.
  - 20.5.3 Appointment of Auditors, if applicable.

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- 20.5.4 A review of the composition of the Board.  
 20.5.5 Such other matters as may be deemed appropriate by the Directors

## **21. MEETINGS BY ELECTRONIC COMMUNICATIONS**

- 21.1 Meetings of the Board may be held wholly or partially by Electronic Communication, and provide for the participation in such Meeting by Electronic Communication, as contemplated by Section 63 of The Act; and the power to do so is not limited or restricted by this Memorandum. Accordingly, any such Meeting of the Board may be conducted entirely by Electronic Communication; or one or more persons, (including their proxies or Alternate Directors, if applicable) may participate by Electronic Communication in all or part of the relevant Meeting, provided all such persons participating in the Meeting are able to communicate concurrently with each other, without reliance upon an intermediary, and to participate in a manner that is effective.
- 21.2 The Notice of a Meeting of the Board, at which it will be possible for persons to participate by way of Electronic Communication shall inform such persons of the ability to so; and shall provide any necessary information to enable them to access the available medium or means of Electronic Communication.

## **22. LIMITATION OF LIABILITY AND INDEMNITY**

- 22.1 A Director shall incur no personal liability for the debts or obligations of the Company, by reason only of such person having served in that capacity as a Director.
- 22.2 Subject to the relevant provisions of The Act, each Director and other officer of the Company shall be indemnified by the Company against all costs, expenses, and liabilities reasonably incurred on behalf and in the interests of the Company with the authority of the Board.
- 22.3 No Director or other officer or employee of the Company shall be liable for the acts, receipts, neglects or defaults of any other Director, officer or employee; or for joining in any receipt or other act for conformity; or for loss or expense happening to the Company through the insufficiency or deficiency of any security in or upon which any of the funds of the Company may be invested; or

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for any loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom any moneys, securities or effects shall be deposited; or for any loss or damage occasioned by any error of judgment or oversight; or for any other loss, damage or misfortune whatever which shall happen in the execution of duties performed on behalf of the Company, or in relation thereto, unless the same be attributable to that person's own wrongful act, gross negligence, breach of duty or trust.

**23. NOTICES**

23.1 Notices may be given by the Company by actual delivery to the person concerned; or by sending the same by prepaid registered post addressed to such person's address (if any) within the Republic as provided by such person for the giving of notices; or alternatively, notices may be given by facsimile (fax) or by electronic mail (e-mail, internet or intranet), directed to such address as the person may have stipulated for this purpose.

23.2 If receipt of notice by post is disputed, such notice shall be deemed not to have been duly given, unless the Company shall be able to produce a registered slip, or electronic confirmation verifying that the notice was duly despatched as aforesaid. Any notice by registered post shall be deemed to have been served Seven (7) days after the letter containing the same was duly posted as aforesaid.

23.3 In the event of the death, disability or insolvency of a person, the Company shall be entitled to give any notice required by this Memorandum or The Act, in any manner in which the same may have been given if the disability, death or insolvency had not occurred; provided that as soon as proof of the appointment of any person as may be authorised to act *nomine officii* shall have been given to the Company, such notices shall thereafter be given by the Company to such person at the address (if any) in the Republic supplied for the purpose by such person, or (until such address has been so supplied) by giving the notice as aforesaid, at the person's address recorded in the Registers of the Company.

23.4 The accidental omission to give notice of a Meeting of Directors to, or the non-receipt of any such notice by, any Director, shall not invalidate a Resolution passed at the ensuing Meeting.

## ATTACHMENT "A"

**PRESCRIBED COMPANIES ACT PROVISIONS  
CONCERNING NON-PROFIT COMPANIES  
WITHOUT MEMBERS**

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*The Special Provisions Concerning Non-Profit Companies contemplated by The Act, insofar as they relate to Non-Profit Companies without Members – as set forth in Schedule 1 to the Act - are applicable, to this Company, and such provisions are incorporated in this Memorandum, and are repeated hereunder, for ease of reference, as follows, viz:-*

**1. Objects and Policies**

- (1) The Memorandum of Incorporation of a Non-Profit Company must –
- (a) set out at least one object of the Company, and each such object must be either:-
    - (i) a public benefit object; or
    - (ii) an object relating to one or more cultural or social activities, or communal or group interests; and
  - (b) be consistent with the principles set out in sub-items (2) to (5) hereunder.
- (2) A Non-Profit Company -
- (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in its Memorandum of Incorporation; and
  - (b) subject to paragraph (a), may:-
    - (i) acquire and hold securities issued by a profit Company; or
    - (ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- (3) A Non-Profit Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether the income or asset was derived, to any person who is or was an Incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:-
- (a) as reasonable:-
    - (i) remuneration for goods delivered or services rendered to, or at the direction of, the Company; or

- (ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
  - (b) as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;
  - (c) as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
  - (d) in respect of any legal obligation binding on the Company.
- (4) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of this Company:-
- (a) no past or present Member or Director of the Company, or person appointing a Director of this Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
  - (b) the entire net value of the Company must be distributed to one or more other Non-Profit companies, external Non-Profit companies carrying on activities within the Republic, Voluntary Associations, or Non-Profit Trusts—
    - (i) having objects similar to the Main Object of this Company; and
    - (ii) as determined:-
      - (aa) in terms of the Company’s Memorandum of Incorporation;
      - (bb) by its Members, if any, or its Directors, at or immediately before the time of its dissolution; or
      - (cc) by the court, if the Memorandum of Incorporation, or the Members or Directors fail to make such a determination.
- (5) The Commission may apply to the court, on behalf of a Non-Profit Company, for a determination contemplated in sub-item (4)(b)(ii)(cc) if the Company has—
- (a) no remaining Members or Directors; and
  - (b) failed to:-
    - (i) make a determination contemplated in sub-item (4)(b)(ii)(bb); or
    - (ii) apply to the court for such a determination.
- (6) Incorporation as a Non-Profit Company, or registration as an External Non-Profit Company in terms of the Companies Act, and compliance by either with the provisions of that Act, does not necessarily qualify a Non-Profit Company, or External Non-Profit Company, for any particular status, category, classification

or treatment in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other legislation, except to the extent that any such legislation provides otherwise.

- (7) Each voting member (if any) of a Non-Profit Company with Members has at least one vote.
- (8) The vote of each Member of a Non-Profit Company with Members is of equal value to the vote of each other Voting Member on any matter to be determined by vote of the Members, except to the extent that the Company's Memorandum of Incorporation provides otherwise.
- (9) If a Non-Profit Company has Members, the requirements in Section 24(4) to maintain a securities register must be read as requiring the Company to maintain a membership register.

## 2. Fundamental Transactions

- (1) A Non-Profit Company may not—
  - (a) amalgamate or merge with, or convert to, a profit Company; or
  - (b) dispose of any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Non-Profit Company.
- (2) If a Non-Profit Company has Voting Members, any proposal to:—
  - (a) dispose of all or the greater part of its assets or undertaking; or
  - (b) amalgamate or merge with another Non-Profit Company,
 

must be submitted to the Voting Members for approval, in a manner comparable to that required of profit companies in accordance with Sections 112 and 113, respectively.
- (3) Sections 115 and 116, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in sub-item (2).

## 3. Incorporators of Non-Profit Company

The Incorporators of a Non-Profit Company are its—

- (a) first Directors; and

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(b) its first Members, if its Memorandum of Incorporation provides for it to have Members.

**4. Members**

- (1) A Non-Profit Company is not required to have Members, but its Memorandum of Incorporation may provide for it to do so.
- (2) If the Memorandum of Incorporation provides for the Company to have Members, it:-
  - (a) must not restrict or regulate, or provide for any restriction or regulation of, that membership in any manner that amounts to unfair discrimination in terms of Section 9 of the Constitution;
  - (b) must not presume the membership of any person, regard a person to be a Member, or provide for the automatic or *ex officio* membership of any person, on any basis other than life-time membership awarded to a person:-
    - (i) for service to the Company or to the Public Benefit Objects set out in the Company's Memorandum of Incorporation; and
    - (ii) with that person's consent;
  - (c) may allow for membership to be held by juristic persons, including profit companies;
  - (d) may provide for no more than two classes of Members, that is voting and non-voting Members, respectively; and
  - (e) must set out:-
    - (i) the qualifications for membership;
    - (ii) the process for applying for membership;
    - (iii) any initial or periodic cost of membership in any class;
    - (iv) the rights and obligations, if any, of membership in any class; and
    - (v) the grounds on which membership may, or will, be suspended or lost.

**5. Directors**

- (1) If a Non-Profit Company has Members, the Memorandum of Incorporation must:
  - (a) set out the basis on which the Members choose the Directors of the Company; and
  - (b) if any Directors are to be elected by the voting Members, provide for the election each year of at least one-third of those elected Directors.

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- (2) If a Non-Profit Company has no Members, the Memorandum of Incorporation must set out the basis on which Directors are to be appointed by its Board, or other persons.
- (3) A Non-Profit Company must not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company, or of a related or inter-related Company, or to a person related to any such Director.
- (4) Sub-item (3) does not prohibit a transaction if it:-
  - (a) is in the ordinary course of the Company's business, and for fair value;
  - (b) constitutes an accountable advance to meet:-
    - (i) legal expenses in relation to a matter concerning the Company; or
    - (ii) anticipated expenses to be incurred by the person on behalf of the Company;
  - (c) is to defray the person's expenses for removal at the Company's request; or
  - (d) is in terms of an Employee Benefit Scheme generally available to all employees or a specific class of employees.

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## ATTACHMENT "B"

**PRESCRIBED FISCAL PROVISIONS  
CONCERNING PUBLIC BENEFIT ORGANISATIONS (PBO'S)**

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**Upon approval of the Company by the Commissioner for the South African Revenue Service (SARS) as a "Public Benefit Organisation" in terms of Section 30 and also for purposes of Section 18A of the Income Tax Act, No. 58 of 1962, as amended, this Memorandum of Incorporation shall be deemed to include the relevant provisions prescribed in terms of the Income Tax Act, which upon adoption of this Memorandum are as follows:-**

[The Company being hereinafter referred to in this Schedule, and in the relevant legislation, as "The Organisation"]

- 1 As a Public Benefit Organisation approved by the Commissioner for purposes of section 18(A)(1) of the Income Tax Act, the Company shall :**
  - 1.2 Ensure that any eligible donations actually paid or transferred to the Company, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiary organisations, institutions, boards or bodies to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term "Eligible Beneficiaries" shall include the Government itself, and any provincial administration or local authority contemplated in section 10(1)(a) or (b) of the Income Tax Act.
  - 1.3 Ensure that during each year of assessment preceding the year of assessment of the Company during which a qualifying donation is received, it distributes or incurs the obligation to distribute at least Fifty Percent (50%) of the funds so received by or accrued to it by way of donations which qualify for a deduction in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(1)(b)(ii) of the Act, and in that event, subject to any such conditions as the Commissioner may determine.

1.4 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act, including any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.

1.5 Ensure that an audit certificate is provided upon submission by the Company to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Company in that year, in respect of which section 18A receipts were issued by the Company, were utilised in the manner contemplated by that section.

**2 As a Public Benefit Organisation approved by the Commissioner for purposes of section 30 of the Income Tax Act, the Company shall :**

2.1 Carry on the public benefit activities of the Company in a non-profit manner, and with an altruistic or philanthropic intent.

2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary, or employee, of the Company, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.

2.3 Take reasonable steps to ensure that each such activity as is carried on by it is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups)

2.4 Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in the furtherance of its objects.

2.5 Submit to the Commissioner a copy of the Constitution, Will or other written instrument under which it has been established.

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- 2.6 Be required in terms of such Constitution, to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company, and that no single person directly or indirectly controls the decision making powers of the Company.
- 2.7 Be prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and be required to utilise its funds solely for the objects for which it has been established.
- 2.8 Be required on dissolution to transfer its assets to :
- 2.8.1 any Public Benefit Organisation which has been approved in terms of section 30(3) of the Income Tax Act;
- 2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity; or
- 2.8.3 any government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of that Act.
- 2.9 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 2.10 Be required to submit to the Commissioner a copy of any amendment to the Constitution, Will or other written instrument under which it was established.

- 2.11 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
- 2.12 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 2.13 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.14 Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph (b)(iii) of the definition of "Public Benefit Activities" in section 30 of the Act, are utilised for the purpose for which they are provided.
- 2.15 Shall not use its resources directly or indirectly to support, advance or oppose any political party.
- 2.16 Ensure that any books of account, records or other documents relating to its affairs are:
- 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the Company, for a period of at least four years after the date of the last entry in any such book; or
- 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the Company, for a period of four years after the completion of the transaction, act or operation to which they relate.

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ATTACHMENT "C"

**PRESCRIBED NPO PROVISIONS  
CONCERNING REGISTERED NON-PROFIT ORGANISATIONS (NPO'S)  
REGISTERED IN TERMS OF THE NON-PROFIT ORGANISATIONS ACT,  
NO. 71 OF 1997, AS AMENDED.**

*In order to facilitate Registration of the Company in terms of the Nonprofit Organisations Act, No 71 of 1997, as amended, this Memorandum of Incorporation includes due provision for the eligibility requirements prescribed in terms of Section 12(2) of that Act, as follows:-*

1. The Company's name is stated on the Cover Page and in clause 1 of this Memorandum.
2. The Company's main and ancillary objectives are stated in clause 3 of this Memorandum.
3. The Company's income and property shall not be distributable to its members (if any), or to its Directors or other office-bearers, except as reasonable compensation for services rendered, as stated in clause 4.3 of the Memorandum; and clause 1(3) of Attachment "A", and clause 2.7 of Attachment "B".
4. The Company is a body corporate, and shall have an identity and existence distinct from its Members (if any), Directors, and other office-bearers, in accordance with the terms of the Companies Act.
5. The Company shall continue to exist notwithstanding changes that may occur in the composition of its membership (if any), or of its Directors or other office-bearers, pursuant to the provisions of the Companies Act, and as envisaged by clause 8 *et seq* of the Memorandum.
6. The members (if any) of the Company, its Directors and other office-bearers shall have no rights in the property or other assets of the Company solely by virtue of their being members, Directors, or other office-bearers, as contemplated by clause 4.3 of this Memorandum; clause 1(3) and (4) of Attachment "A"; and clause 2.7 of Attachment "B" to this Memorandum.

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- 7. The powers of the Company are referred to in clauses 4 and 18 of this Memorandum, and are to be construed in conjunction with the provisions of the Companies Act.
- 8. The organisational structures and mechanisms for its governance are set forth in clauses 8 and 15 of this Memorandum.
- 9. The rules convening and conducting meetings, including quorums required for, and the minutes to be kept of those meetings, shall be as stated in clauses 14 and 21 of this Memorandum.
- 10. The manner in which decisions are to be made shall be as stated in clause 14 of this Memorandum.
- 11. The Company's financial transactions must be conducted by means of a banking account, as stated in clause 17.2 of this Memorandum.
- 12. The date for the end of the Company's financial year shall be as stated in clause 20.1 of this Memorandum.
- 13. The procedure for changing the provisions of this Memorandum shall be as stated in clause 5 of this Memorandum, and shall be as prescribed by the Companies Act.
- 14. The procedure by which the Company may be wound up or dissolved shall be as stated in the Companies Act, including the provisions of clause 4.4 of this Memorandum; clause 1(4) of Attachment "A"; and clause 2.8 of Attachment "B".
- 15. When the Company is wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another eligible Nonprofit Organisation, as stated in clause 4.4 of this Memorandum; in clause 1(4) of Attachment "A"; and Clause 2.8 of Attachment "B".

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**National  
Prosecuting  
Authority**  
of South Africa

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## Investigating Directorate

### Purpose

### Background

The Investigating Directorate (ID) is a specialised and multidisciplinary unit within the NPA, established by Proclamation 20 of 2019 of the President in accordance with section 7 of the NPA Act published on 4 April 2019. The anti-corruption entity is premised on cooperation and collaboration with other law enforcement agencies to ensure integration, accountability, and alignment of priorities for the realisation of government's objective to effectively address corruption, in accordance with the relevant policy direction and legislation.

Through a project approach and prosecution-led investigation, the ID houses under one umbrella specialist professionals, including prosecutors, financial and criminal investigators, data analysts, cyber forensics specialists, project managers, and the entire corporate services. Of these officials, include secondments from other law enforcement agencies, such as South African Police Services (SAPS), State Security Agency (SSA), Directorate for Priority Crime Investigations (DPCI), also known as the Hawks, South African Revenue Services (SARS), and Independent Police Investigative Directorate (IPID) all pulling together to clean up the country from the systematic rot of white-collar crimes.

### Powers and Functions of the ID

### Referrals to the ID

**Any person may report a matter to the head of the ID by means of an affidavit (s27) and the Director, in the absence of a Case Assessment Report (CAR), may authorise an investigation into the matter if there are reasonable grounds to suspect that an offence has been committed (s 28(2)); and whether if the offence is a specified crime, which is defined in the NPA Act as, any matter which in the opinion of the head of ID falls within the range of matters set out in the proclamation.**

**Serious and high-level corruption matters can be directed at IDreferrals@npa.gov.za.**

to be addressed to Henry HMA. Mamothame : hmamothame@npa.gov.za  
(mailto:hmamothame@npa.gov.za)

**The team**

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**Adv. Andrea Johnson**  
Special Director of Public Prosecutions

---

**Adv. Annemarie Friedman**  
Deputy Director of Public Prosecutions in the office of the Special Director

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<p><b>Adv. Peter Serunye</b> Deputy Director</p>	<p><b>Adv. Paul Louw</b> Senior Deputy Director</p>
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**PROSECUTION POLICY**

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## PREFACE

Crime cannot be allowed to undermine the constitutional democracy in South Africa. Therefore, at the highest level, the objectives of the National Prosecuting Authority are to contribute to a better life for all by ensuring justice in our society so that people can live in freedom and security.

In order to contribute to the freedom and security of the community, the National Prosecuting Authority needs to contribute to the reduction in crime and to a culture of civic morality and thereby enhancing public confidence in the criminal justice system.

Furthermore, the National Prosecuting Authority must treat its customers, which include victims, witnesses and complainants, in accordance with the Bill of Rights and ensure access to the prosecuting service.

The National Prosecuting Authority is part of the bigger criminal justice system and therefore needs to enhance cooperation within such broader system.

This Prosecution Policy is aimed at promoting the considered exercise of authority by prosecutors and contributing to the fair and even-handed administration of the criminal laws.

This Policy is the end result of a process of intense consultation amongst all prosecutors in the country. It was also circulated to a number of criminal justice organisations, government departments, academic institutions and community organisations. The wealth of their combined knowledge and experience has helped significantly to shape the contents of this document.

This Prosecution Policy was revised in 2006 after a country-wide consultation process. It was reviewed again in 2010 and amended in June 2013.

## 1. INTRODUCTION

Section 179 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as "the Constitution"), read with sections 2 and 4 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (hereinafter referred to as "the NPA Act"), provides for a single National Prosecuting Authority ("the NPA"), consisting of—

- the National Director of Public Prosecutions ("the National Director"), who is the head of the NPA;
- Deputy National Directors of Public Prosecutions;
- Directors of Public Prosecutions;
- Deputy Directors of Public Prosecutions; and
- Prosecutors.

As an organ of state the NPA must give effect to the laws of the country; as an instrument of

justice it must, in accordance with its constitutional obligation, exercise its prosecutorial functions independently without fear, favour or prejudice.

The NPA has the power and responsibility to institute and conduct criminal proceedings on behalf of the State and to carry out any necessary functions incidental thereto.

The Constitution requires the National Director to determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, a "*prosecution policy which must be observed in the prosecution process*". The Policy is binding on the NPA.

The NPA Act also requires that the *United Nations Guidelines on the Role of Prosecutors* should be observed.

The NPA Act required that the first Prosecution Policy be tabled in Parliament. Amendments to the Policy must be included in the National Director's annual report to the Minister, which report must be tabled in Parliament.

The NPA is accountable to Parliament and ultimately to the people it serves. Every prosecutor is accountable to the National Director who, in turn, is responsible for the performance of the NPA.

The law gives a discretion to the NPA and individual prosecutors with regard to how they perform their functions, exercise their powers and carry out their duties. This discretion must, however, be exercised according to the law and within the spirit of the Constitution.

## 2. PURPOSE OF POLICY PROVISIONS

The aim of this Prosecution Policy is to set out, with due regard to the law, the way in which the NPA and individual prosecutors should exercise their discretion.

The purpose of this Prosecution Policy is, therefore, to guide prosecutors in the way they should exercise their powers, carry out their duties and perform their functions. This will serve to make the prosecution process more fair, transparent, consistent and predictable.

By promoting greater consistency in prosecutorial practices nationally, these policy provisions will contribute to better training of prosecutors and better coordination of investigative and prosecutorial processes between departments.

Since the Prosecution Policy is a public document, it will also inform the public about the principles governing the prosecution process and so enhance public confidence.

These principles have been written in general terms to give direction rather than to prescribe. They are meant to ensure consistency by preventing unnecessary disparity, without sacrificing the flexibility that is often required to respond fairly and effectively to local

conditions.

### 3. ROLE OF PROSECUTOR

Prosecutors must at all times act in the interest of the community and not necessarily in accordance with the wishes of the community.

The prosecutor's primary function is to assist the court in arriving at a just verdict and, in the event of a conviction, a fair sentence based upon the evidence presented. At the same time, prosecutors represent the community in criminal trials. In this capacity, they should ensure that the interests of victims and witnesses are promoted, without negating their obligation to act in a balanced and honest manner.

The prosecutor has a discretion to make decisions which affect the criminal process. This discretion can be exercised at specific stages of the process, for example—

- the decision whether or not to institute criminal proceedings against an accused person;
- the decision whether or not to withdraw charges or stop the prosecution;
- the decision whether or not to oppose an application for bail or release by an accused person who is in custody following arrest;
- the decision about which crimes to charge an accused person with and in which court the prosecution should be instituted;
- the decision whether or not to enter into a plea or sentence agreement;
- the decision whether or not the case should be diverted;
- the decision whether or not to accept a plea of guilty tendered by an accused person;
- the decision about which evidence to present during the trial;
- the decision about which evidence to present during sentence proceedings, in the event of a conviction; and
- the decision whether or not to appeal to a higher court in connection with a question of law, an inappropriate sentence or the improper granting of bail, or to seek review of proceedings.

A member of the NPA must serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the Constitution and the law. They should not allow their judgment to be influenced by factors such as their personal views regarding the nature of the offence or the race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth of the victim, witnesses or the offender.

Prosecutors must be courteous and professional when dealing with members of the public or other people working in the criminal justice system.

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**A. General**

The process of establishing whether or not to prosecute usually starts when the police present a docket to the prosecutor. This often happens after the suspect has been arrested. The case needs to be studied to make sure that it is properly investigated.

The prosecutor must consider whether to—

- request the police to investigate the case further;
- institute a prosecution;
- enter into a plea or sentence agreement;
- decline to prosecute and to opt for pre-trial diversion or other non-criminal resolution;
- or
- decline to prosecute without taking any other action.

The decision whether or not to prosecute must be taken with care, because it may have profound consequences for victims, witnesses, accused persons and their families. A wrong decision may also undermine the community’s confidence in the prosecution system and the criminal justice system as a whole.

Resources should not be wasted pursuing inappropriate cases, but must be used to act vigorously in those cases worthy of prosecution.

In deciding whether or not to institute criminal proceedings against an accused person, prosecutors must assess whether there is sufficient and admissible evidence to provide a **reasonable prospect of a successful prosecution**. There must indeed be a reasonable prospect of a conviction, otherwise the prosecution should not be commenced or continued.

This assessment may be difficult, because it is never certain whether or not a prosecution will succeed. In borderline cases, prosecutors should probe deeper than the surface of written statements.

Where the prospects of success are difficult to assess, prosecutors must consult with prospective witnesses in order to evaluate their reliability. The version or the defence of an accused person must also be considered, before a decision is made.

This test of a reasonable prospect must be applied objectively after careful deliberation, to avoid an unjustified prosecution. However, prosecutors should not make unfounded assumptions about the potential credibility of witnesses.

The review of a case is a continuing process. Prosecutors must take into account changing circumstances and fresh facts, which may come to light after an initial decision to prosecute or not to prosecute has been made.

This may occur after having heard and considered the version of the accused person and representations made on his or her behalf. Prosecutors may therefore withdraw charges before the accused person has pleaded in spite of an initial decision to institute a prosecution.

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## B. Factors to be considered when evaluating evidence

When evaluating the evidence, prosecutors must take into account all relevant factors, including—

### *How strong is the case for the State?*

- Is the evidence strong enough to prove all the elements of an offence?
- Is the evidential material sufficient to meet other issues in dispute?

### *Will the evidence be admissible?*

- Will the evidence be excluded, because of the way in which it was acquired or because it is irrelevant or because of some other reason?

### *Will the state witnesses be credible?*

- What sort of impression is the witness likely to make?
- Are there any matters, which might properly be put by the defence to attack the credibility of the witness?
- If there are contradictions in the accounts of witnesses, do they go beyond the ordinary and expected, thus materially weakening the prosecution case?

### *Will the evidence be reliable?*

- If, for example, the identity of the alleged offender is likely to be an issue, will the evidence of those who purport to identify him or her be regarded as honest and reliable?

### *Is the evidence available?*

- Are the necessary witnesses available, competent, willing and, if necessary, compellable to testify, including those who are out of the country?

### *How strong is the case for the defence?*

- Is the probable defence of the accused person likely to lead to his or her acquittal in the light of the facts of the case?

## C. Prosecution in the public interest

Once a prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of a conviction, a prosecution should normally follow, unless public interest demands otherwise.

There is no rule in law stating that all the provable cases brought to the attention of the NPA must be prosecuted. On the contrary, any such rule would be too harsh and impose an impossible burden on the prosecutor and on a society interested in the fair administration of justice.

When considering whether or not it will be in the public interest to prosecute, prosecutors must consider all relevant factors, including:

***The nature and seriousness of the offence:***

- The seriousness of the offence, taking into account the effect of the crime on the victim, the manner in which it was committed, the motivation for the act and the relationship between the accused person and the victim.
- The nature of the offence, its prevalence and recurrence, and its effect on public order and morale.
- The impact of the offence on the community, its threat to people or damage to public property, and its effect on the peace of mind and sense of security of the public.
- The likely outcome, in the event of a conviction, having regard to sentencing options available to the court.

***The interests of the victim and the broader community:***

- The attitude of the victim of the offence towards a prosecution and the potential effects of discontinuing it. Care must be taken when considering this factor, since public interest may demand that certain crimes should be prosecuted - regardless of whether or not a complainant wishes to proceed.
- The need for individual and general deterrence, and the necessity of maintaining public confidence in the criminal justice system.
- Prosecution priorities as determined from time to time, the likely length and expense of a trial and whether or not a prosecution would be deemed counter-productive.

***The circumstances of the offender:***

- The previous convictions of the accused person, his or her criminal history, background, culpability and personal circumstances, as well as other mitigating or aggravating factors.
- Whether or not the accused person has admitted guilt, shown repentance, made restitution or expressed a willingness to co-operate with the authorities in the investigation or prosecution of others. (*In this regard the degree of culpability of the accused person and the extent to which reliable evidence from the said accused person is considered necessary to secure a conviction against others will be crucial*).
- Whether the objectives of criminal justice would be better served by implementing non-criminal alternatives to prosecution.
- Whether there has been an unreasonably long delay between the date when the crime was committed, the date on which the prosecution was instituted and the trial date taking into account the complexity of the offence and the role of the accused person in

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the delay.

The relevance of these factors and the weight to be attached to them will depend upon the particular circumstances of each case.

**D. Prosecution of corruption of foreign public officials**

The prosecution of offences in respect of corrupt activities relating to foreign public officials shall be subject to the abovementioned principles and considerations: Provided that the decision-making process shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

It is important that the prosecution process is seen to be transparent and that justice is seen to be done.

**4. CASE REVIEW**

**A. Stopping of proceedings**

Criminal proceedings may sometimes be stopped after a plea has already been entered. This would normally only occur when it becomes clear during the course of the trial that it would be impossible for the State to prove its case or where other exceptional circumstances have arisen making the continuation of the prosecution undesirable.

If a prosecution is stopped, an accused person will be acquitted and may not be charged again on the same set of facts. A prosecutor may therefore not stop a prosecution, unless the Director of Public Prosecutions concerned, or his or her delegate, has consented thereto. Such decisions should therefore be made with circumspection.

**B. Restarting a prosecution**

People should be able to rely on and accept decisions made by members of the NPA. Normally, when a suspect or an accused person is informed that there will not be a prosecution or that charges have been withdrawn, that should be the end of the matter.

There may, however, be special reasons why a prosecutor will review a particular case and restart the prosecution. These include—

- an indication that the initial decision was clearly wrong and should not be allowed to stand;
- an instance where a case has not been proceeded with in order to allow the police to gather and collate further evidence, in which case the prosecutor should normally have

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- informed the accused person that the prosecution might well start again; and
- a situation where a prosecution has not been proceeded with due to the lack of evidence, but where sufficient incriminating evidence has since come to light.

**C. Consent to prosecution**

A number of statutes require that a prosecution for an offence under a particular law may not be commenced or proceeded with unless the consent of a Director of Public Prosecutions or the National Director has been obtained.

The inclusion of such requirements in legislation is intended to ensure that prosecutions are not brought in inappropriate circumstances.

Other reasons for these requirements may involve the use of the criminal law in sensitive or controversial areas where important considerations of public policy should be taken into account.

Similarly, rules of practice require that certain matters be referred to a Director of Public Prosecutions or the National Director before a prosecution is proceeded with.

As a matter of policy, it is important that certain decisions are made at the appropriate level of responsibility to ensure consistency and accountability in decision-making.

**5. FORUM OF TRIAL, DETERMINATION OF CHARGES AND ACCEPTANCE OF PLEAS**

**A. Forum of trial**

The law directs and policy considerations suggest that certain types or categories of prosecutions sometimes be conducted at specified jurisdictional levels.

In practice this results in certain types of cases being heard in the District Court, some in the Regional Court and others in the High Court.

In terms of certain legislation and rules of practice, the instruction of a Director of Public Prosecutions is required to determine the forum in which the trial should proceed.

In determining whether or not a case is appropriate for hearing in the High Court, the following factors, *inter alia*, must be taken into account:

- The nature and complexity of the case and its seriousness in the circumstances.
- The adequacy of sentencing provisions in the lower courts and whether a conviction in the High Court carries a greater deterrent effect.
- Any specific legal provision providing for or any implied legislative preference for a

particular forum of trial.

- Any delay, cost or adverse effect that witnesses may have to incur if the case is heard in a particular Court.
- The desirability of a speedy resolution and disposal of some prosecutions in available lower courts, aimed at reducing widespread criminal activity.

The decision regarding the court in which to prosecute an accused person is determined by the complexity and seriousness of an offence, and the need for the NPA to guard against making decisions that will bring the criminal justice system into disrepute.

Where the probable sentence may be one of life imprisonment, the matter should be referred to the Director of Public Prosecutions concerned for a decision whether or not to institute the prosecution in the High Court.

**B. Determination of charges**

The process by which charges are selected must be compatible with the interests of justice.

Prosecutors must decide upon, and draw up charges based on, available evidence, which evidence—

- adequately reflects the nature, extent and seriousness of the criminal conduct and which can reasonably be expected to result in a conviction;
- provides the court with an appropriate basis for sentence; and
- enables the case to be presented in a clear and simple way.

This means that prosecutors may not necessarily proceed with the most serious charge possible.

Additional or alternative charges may be justified by the available evidence and where such charges will significantly enhance the likelihood of a conviction of an accused person or co-accused.

However, the bringing of unnecessary charges should, in principle, be avoided, because it may not only complicate or prolong trials, but also amount to an excessive and potentially unfair exercise of power.

Prosecutors should therefore not formulate more charges than are necessary just to encourage an accused person to plead guilty to some of the charges. Similarly, a more serious charge should not be proceeded with as part of a strategy to obtain a guilty plea on a less serious one.

**C. Acceptance of pleas**

An offer by the defence of a plea of guilty on fewer charges or on a lesser charge may be acceptable, provided that—

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- the charges to be proceeded with readily reflect the seriousness and extent of the criminal conduct of an accused person;
- the plea to be accepted is compatible with the evidential strength of the prosecution case;
- those charges provide an adequate basis for a suitable sentence, taking into account all the circumstances of the case; and
- where appropriate, the views of the complainant and the police, as well as the interests of justice, including the need to avoid a protracted trial, have been taken into account.

## 6. TRIAL PROCESS AND RELATED MATTERS

Prosecutors work in an adversarial context and seek to have the prosecution sustained. Cases must therefore be presented fearlessly, vigorously and skilfully.

At the same time, prosecutors must present the facts of a case to a court fairly. They must disclose information favourable to the defence (*even though it may be adverse to the prosecution case*) and, where necessary, assist in putting the version of an unrepresented accused person before court.

This notion also applies to bail proceedings. On the one hand, prosecutors should aim to ensure that persons accused of serious crimes are kept in custody in order to protect the community and to uphold the interests of justice. On the other hand, prosecutors should not oppose the release from custody of an accused person if the interests of justice permit.

Prosecutors must show sensitivity and understanding to victims and witnesses and assist in providing them with protection where necessary. In suitable cases the prosecutor must advise the victim of the possibility of being compensated for the harm suffered as a result of the crime.

As far as it is practicable and necessary, prosecutors must consult with victims and witnesses before the trial begins. They must assist them by giving them appropriate and useful information on the trial process and reasons for postponements and findings of the court, where necessary.

Prosecutors are not allowed to participate in public discussion of cases pending before the court, because this may infringe the rule against comment on pending cases and may violate the privacy of those involved.

During the sentencing phase of a criminal case, prosecutors must assist the court by ensuring that the relevant facts are fully and accurately brought to its attention.

Prosecutors must also make appropriate recommendations with a view to realizing the general purposes of sentence. These include the need for retribution, the deterrence of further criminal conduct, the protection of the public from dangerous criminals and the rehabilitator

of offenders.

The NPA must give special attention to the effective and speedy disposal of cases identified as priority matters.

Prosecutors should specialize in the prosecution of certain offences where desirable and practicable.

The NPA should, as far as possible, make its senior trial prosecutors available to conduct the most difficult cases.

## **7. CO-OPERATION AND INTERACTION WITH POLICE AND OTHER CONSTITUENT AGENCIES**

Effective co-operation with the police and other investigating agencies from the outset is essential to the efficacy of the prosecution process. If a case is not efficiently prepared initially, it is less likely to lead to a successful prosecution or result in a conviction.

The decision to start an investigation into possible or alleged criminal conduct ordinarily rests with the police. The NPA is usually not involved in such decisions although it may be called upon to provide legal advice and policy guidance.

In major or very complex investigations, such an involvement may occur at an early stage and be of a fairly continuous nature. If necessary, specific instructions should be issued to the police with which they must comply.

In practice, prosecutors sometimes refer complaints of criminal conduct to the police for investigation. In such instances, they will supervise, direct and co-ordinate criminal investigations.

Prosecutors have the responsibility under the NPA Act to determine whether a prosecution, once started, should proceed.

Such decisions are made independently, but prosecutors must consult with the police and other interest groups where required.

It is therefore desirable, wherever practicable, that the police refer matters to prosecutors before a prosecution is instituted. In most cases suspected offenders are arrested and charged before the police can consult with prosecutors.

However, in cases where difficult questions of fact or law are likely to arise, it is desirable that the police consult the prosecutors before arresting suspected persons.

With regard to the investigation and prosecution of crime, the relationship between prosecutors and police officials should be one of efficient and close cooperation, with mutual

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respect for the distinct functions and operational independence of each profession.

Prosecutors should cooperate with other departments and agencies such as Correctional Services, Welfare, lawyers' organisations, non-governmental organisations and other public institutions, to streamline procedures and to enhance the quality of service provided to the criminal justice system.

## **8. PROSECUTORIAL POLICY AND DIRECTIVES RELATING TO SPECIFIED MATTERS**

The National Director may supplement or amend this Policy to determine prosecutorial policy and directives in respect of specific matters, for example, in respect of new legislation and matters of national interest.

## **9. CONCLUSION**

The NPA is a public, representative service, which should be effective and respected. Prosecutors must adhere to the highest ethical and professional standards in prosecuting crime and must conduct themselves in a manner, which will maintain, promote and defend the interests of justice.

This Prosecution Policy is designed to make sure that everyone knows the principles that prosecutors apply when they do their work.

Applying these principles consistently will help those involved in the criminal justice system to treat victims fairly and prosecute offenders effectively.

This Prosecution Policy is not an end in itself.

The challenge, which faces the NPA, is to implement this Policy in a manner that will increase the sense of security of all people in South Africa.



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# DERAILED

*A report on an investigation into allegations of maladministration relating to financial mismanagement, tender irregularities and appointment irregularities against the Passenger Rail Agency of South Africa (PRASA)*

*Report No: 3 of 2015/16*



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## Executive Summary

*"It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner."*

Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)

- ( ) "Derailed" is my report as Public Protector issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act 23 of 1994.
- (i) The report communicates my findings and the appropriate remedial action I am taking in terms of the remedial power given by section 182 (1) (c) of the Constitution, following the investigation of 37 complaints initially lodged by the South African Transport and Allied Workers Union (SATAWU) in 2012 and later pursued by the National Transport Movement (NTM), alleging maladministration and related improper conduct involving procurement irregularities, conflict of interest, nepotism and human resources mismanagement, including victimization of whistle-blowers, by the Group Chief Executive Officer (Mr Montana) and other functionaries at the Passenger Rail Agency of South Africa (PRASA). PRASA is an important and, I believe, strategic organ of state. Its handling of public finances and procurement of goods and services has implications for efficient and effective public transport delivery in compliance with section 195 of the Constitution. Section 195 of the Constitution provides, among others, a requirement that:

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- (iii) *"Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*
- a. *A high standard of professional ethics must be promoted and maintained.*
  - b. *Efficient, economic and effective use of resources must be promoted...."*
- (iv) As a public infrastructure provider, PRASA also has implications for the economy. A state owned enterprise with an estimated total net value of assets over **R19 billion** as at 2010/2011, PRASA is an organ of state listed as a National Government Business Enterprise in terms of Schedule 3B of the Public Finance Management Act 1 of 1999 (PFMA). PRASA has four subsidiaries, namely: **Metrorail**, operating commuter rail services in urban areas; **Shosholoza Meyl** operating regional and intercity rail services; **Autopax**, operating regional and intercity coach services; and **Intersite**, managing the corporate property portfolio. PRASA reported an accumulated loss of **R4.4 billion** for 2010/12.
- (v) PRASA reported an accumulated loss of **R1 billion** for 2014/2015 financial year. The budget allocation from Government for PRASA for the MTEF period 2015/2016 to 2017/2018 is **R17.2 billion**. The 37 cases reported by the Complainant mostly deal with alleged procurement irregularities with the amount involved being more than **R2.8 billion**. As the report was being finalized further allegations of procurement irregularities at PRASA were reported.
- (vi) I must indicate upfront that SATAWU's attempt to withdraw its complaint is discomfoting particularly because PRASA management was initially reluctant to cooperate, using the withdrawal as a basis for questioning this office's continuation with the investigation. Allegations of victimisation of whistle-blowers, though not yet adjudicated, do add to the concern. There is an indication, for example, that Mr Craig Nte may have suffered an occupational detriment after whistle-blowing, while a

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member of the Executive of SATAWU which was later deposed followed by SATAWU's inexplicable attempt to withdraw the matter. His matter is dealt with in the part of this report dealing with Human Resources (HR) complaints relating to arbitrary suspensions and dismissals.

- rvii) During the course of the investigations various allegations regarding victimisation of current and former employees of PRASA were raised by the Complainant and some Executives. I have however decided to defer this issue to be adjudicated upon in volume 2 of this report.
- rviii) PRASA is controlled by a PRASA Board of Control (PRASA Board), chaired by a Non-Executive Chairman, and which in terms of section 49(2) (b) of the PFMA is its Accounting Authority. The Group Chief Executive Officer (GCEO) has delegated authority in terms of *PRASA Powers and Authority of the Board and Delegation of Authority*.
- (ix) The essence of the complaints was that Mr. Montana, then Group Chief Executive Officer (GCEO) of PRASA, and/ or PRASA, improperly awarded tenders; appointed service providers without following proper tender processes and allowed maladministration, corruption, conflict of interest and financial mismanagement, in the procurement of goods and services and managed human resources irregularly, including nepotism and the improper handling of whistle-blowers. NTM (the Complainant) specifically alleged that:

1. PRASA improperly cancelled all contracts for cleaning services on 15 March 2012, and subsequently improperly appointed Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services on a contract valued above

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- the R500 000 threshold without advertising and in contravention of the Treasury Regulations and Supply Chain Management (SCM) Policies of PRASA;
2. Reakgona Commercial and Industry Hygiene was awarded a contract due to its association with the GCEO's close business associate, Mr. Isaac Modiselle;
  3. PRASA appointed Sidas Security Company improperly at a higher rate on tender 525/2010/GAU/PS to replace National Force Security on the instructions of the GCEO but improperly terminated the contract 9 months after its appointment;
  4. Proper procurement processes were not followed in the appointment of Vimtsire Security Services Company which allegedly failed to meet the minimum requirements for appointment. Royal Security was also allegedly appointed on the same tender in 2009 and allegedly billed PRASA R2. 8 million instead of the agreed amount of R2. 5 million per month;
  5. The appointment of Royal Security on the tender concerned was irregular, as its original contract WM/FIN/CA/7/24/06 was terminated by PRASA due to its underperformance;
  6. An amount of R600 000, alleged to have been improperly authorised by PRASA's Head: Corporate Services, was improperly paid in advance to Enlightened Security for a contract for the Tshwane Region prior to its appointment on tender TSH/RISK/436/10/2008;

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7. A Dark Fibre and Integrated Communication Systems tender amounting to R800 million was improperly awarded to Siemens nationally during the financial year 2009/2010 whereas the advertisement was for a narrower reach;
  8. A tender for the installation of high speed passenger gates worth R800 million was awarded to a certain contractor in 2009/2010 for the Doornfontein station but it was later improperly extended to other stations nationally without following proper tender processes;
  9. PRASA improperly incurred an upfront payment, to a developer of the City Mall for the construction of an underground train station (Bridge City Project), without going on a bidding process and without proper authorisation during the periods 2008 to 2010;
  10. PRASA improperly appointed a media company to produce *Hambanathi* during 2008/2009;
  11. A PRASA Board member, Mr Vusi Twala, was improperly awarded a tender by Intersite, a subsidiary of PRASA, to provide CCTV cameras;
  12. A Change Management Consultant, Mr Ezra Ndwandwe, was appointed at a cost of R2 million without following proper procurement processes during 2008/2009;
  13. The GCEO improperly awarded a tender amounting to an estimated R10 million to the erstwhile CEO of the South African Rail Commuters Corporation (SARCC), Mr Edwin Lekota, for the development of a contingency emergency

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preparedness programme for Metrorail without following proper procurement processes;

- 14. Umjanji Consortium, a company formed and incorporated after the closing date for submission of tenders on tender HO/CA/739/02/2010, was improperly awarded a tender on Media Advertising and Broadcasting Concession Agreement in March 2011 without following proper procurement processes in contravention of the PRASA Supply Chain Management Policies;
- 15. The GCEO improperly awarded a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB, who did not possess the necessary skills and experience and without following proper procurement processes;
- 16. A tender amounting to R22 million for the Park Station Development Framework was allegedly not advertised but recommended for approval to be awarded to a contractor named ARUP, which was associated with Dr Gasa, a member of the PRASA Board, during November 2009;
- 17. Between the years 2008 and 2010, PRASA engaged construction companies in the 2010 Soccer World Cup Station Building Project, the Capex Project and renovation of existing stations without following proper procurement processes and an overspending of R2 billion amounting to fruitless and wasteful expenditure was incurred in addition to the budgeted amount of R3 billion;
- 18. During January 2010, Autopax, a subsidiary of PRASA, lost buses during theft and PRASA failed to pursue an investigation into the matter but instead replaced the buses at a cost of R2.8 million;

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19. In April 2010, Autopax concluded an irregular security contract with Futuris Guarding (PTY) amounting to R54 337.20 per month;
  20. PRASA was delaying to pay Rasakanya Builders, the service provider to PRASA Corporate Real Estate Solutions (PRASA Cres), and has improperly served a notice of termination of the contract, thereby leaving 36 employees of Rasakanya Builders without pay for services rendered;
  21. The GCEO/PRASA incurred irregular and/or fruitless and wasteful expenditure relating to the following transactions: upfront payment of an amount of R80 million for the FIFA World Cup sponsorship without proper approval; budget and/or allocated funds which resulted in fruitless and wasteful expenditure; and to this end, the GCEO invested funds with FIFA based on the agreement that PRASA would recoup the expenditure through the sales of tickets to commuters/soccer fans and it is asserted that the money was never recovered;
  22. Brand Leadership was awarded the new PRASA branding contract to the value of R9 million. However, the contract amount was improperly inflated to R19 million, thereby resulting in irregular/fruitless and wasteful expenditure of R10 million;
  23. During the period 2009/2010, the GCEO allegedly requested R1 billion funding from the National Treasury on the pretext that it would be used during the taking over of operations of Shosholozza Meyl. It is alleged that National Treasury paid R500 million, and nevertheless, the funds were never used for their intended purpose;

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24. PRASA Operational Expenditure(OPEX) budget was improperly overspent by R2.2 billion without the approval of the PRASA Board during the period 2009/2010;
25. PRASA Head Office staff vacated its Offices at Jorissen Building 14 months before the expiry of the lease agreement but PRASA continued to pay rental, which constituted fruitless and wasteful expenditure;
26. After vacating Jorissen Building, PRASA acquired Umjantshi House Building to accommodate its Head Office staff without following proper procurement processes and without a proper budget approval;
27. The GCEO instructed PRASA Management at the Intersite Building in Woodmead to vacate the premises 20 months prior to the expiry of the lease agreement, but continued to pay for the lease, thereby constituting fruitless and wasteful expenditure;
28. The GCEO dismissed five Senior Executives unlawfully during the years 2008 and 2011 and the CCMA ordered their reinstatement, which he rejected and instead compensated them with an estimated R5 million, which constituted fruitless and wasteful expenditure. The Group Executive HR was replaced improperly by the GCEO's uncle, Mr Mphefo Ramutloa, without proper recruitment processes being followed;
29. During February 2010, an unlawful electronic funds transfer (EFT) was uncovered in a forensic report by Deloitte, in which R8.1 million was fraudulently transferred in the Durban and Tshwane Regions but no action was taken against those implicated in the transactions;

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30. During the period 24 to 27 September 2009, Mr Montana undertook a leisure trip in a Blue Train to Cape Town together with 10 female companions and returned in a South African Airways (SAA) flight costing PRASA R17 000.00. The total cost of the trip was allegedly an estimated R170 000.00 which constituted fruitless and wasteful expenditure;
31. During 2008/2009, the Executive Corporate Affairs Manager, Mr P Mabe, allegedly received salaries from PRASA despite having left its service and Mr Montana allegedly misled the Exco and the PRASA Board that the employee was not on PRASA's payroll.
32. PRASA disregards the labour relations processes and conditions of employment when dealing with labour issues thereby costing the entity enormous amounts of money that resulted in fruitless and wasteful expenditure. To this end it is alleged that:
- a) Mr Stephen Ngobeni, Mr Montana's cousin in the employment of PRASA, was improperly appointed as a Training Contractor to provide training services on the handling of People with Disability. He was later allegedly improperly transferred without a disciplinary process being instituted against him; and
  - b) Mr Montana unlawfully engages yearly in a series of suspending employees perpetually with payment of salaries costing PRASA an estimated R3.35 million in fruitless and wasteful expenditure.



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33. The Complainant further raised allegations of conflict of interests relating to the following members of the PRASA Board:
- a) A member of the PRASA Board, Dr Bridgette Gasa, who is also a Director of ARUP, a company alleged to be contracted to provide advisory services to PRASA, and a Director in another company that is also providing consultancy services to PRASA, is benefiting improperly as her involvement in these companies while serving as a member of the PRASA Board constitutes a conflict of interest;
  - b) The Chairman of the PRASA Board, Mr Sfiso Buthelezi is alleged to be the Chief Executive Officer of Makana, a subsidiary of Cadiz, a company allegedly providing advisory service to PRASA on the Rolling Stock Recapitalisation Project. His alleged involvement is asserted to constitute a conflict of interest; and
  - c) The wife of Mr Bushy Boshielo was appointed as a General Manager of Autopax without following proper recruitment processes during Mr Boshielo's tenure as a member of PRASA Board.
34. During 2008/2009, Mr Montana improperly appointed Mr Chimanda as a Special Advisor at PRASA at a cost of R2 million, without following proper recruitment processes and in contravention of the PRASA Recruitment Policy.
35. About 17 tenders/contracts collectively exceeding R2.8 billion were specifically identified by the Complainant for investigation of supply chain irregularities, including non-competitive processes, cronyism, scope creep, cost overruns, overpayment and fruitless and wasteful expenditure.

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- (x) Despite each complaints being a distinct matter worthy of a separate investigation, the 37 complaints were investigated collectively thus forming one systemic investigation. The following issues were identified in respect of each complaint with a view to focusing the investigation:
1. Did PRASA improperly extend, to other stations nationally, a tender for the installation of high speed passenger gates worth R800 million to Siyangena Technologies in 2009/2010 for the Doornfontein station which was later extended to other stations nationally?
  2. Did PRASA improperly extend the appointment of Siemens tender for the Dark Fibre and Integrated Communication Systems amounting to R800 million to other stations nationally, during the financial year 2009/2010 when it was only advertised for Gauteng?
  3. Did PRASA improperly terminate all contracts for cleaning services and was the subsequent appointment of Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services improper?
  4. Did PRASA improperly appoint Sidas Security on a security tender in replacement of National Force Security on the GCEO's instruction?
  5. Did PRASA improperly appoint of Vimtsire Security Services, which failed to meet the minimum requirements for appointment on tender number 525/2010/GAU/PS?

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6. Did PRASA improperly appoint and pay Royal Security R2.8 million instead of R2.5 million for security services?
  7. Did PRASA improperly advance a payment of R600.000.00 to Enlightened Security?
  8. Did PRASA improperly appoint a media company to produce *Hambanathi Magazine* during 2008/2009?
  9. Did PRASA improperly appoint Mr Ezra Ndwandwe, on a Change Management Consultancy at a cost of R2 million in 2008/2009?
  10. Did PRASA improperly increase the scope and value of marketing and communications tender number HO/M&C/305/07/2009 awarded to Brand Leadership for R29 million?
  11. Did the GCEO improperly appoint Mr Edwin Lekota on a tender amounting to R10 million for the development of a Contingency Emergency Preparedness Programme for Metrorail?
  12. Did PRASA improperly award a tender to Umjanji Consortium, for the media, advertising and broadcasting concession agreement?
  13. Did the GCEO improperly award a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB, who did not possess the necessary skills and experience and without following proper procurement processes?

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14. Did PRASA improperly award a tender in the amount of R22 million for Park Station Development Framework to ARUP, a company associated with its board member?
  15. Did PRASA improperly fail to investigate the theft of the buses of its subsidiary, Autopax?
  16. Did PRASA improperly award a security services contract to Futuris Guarding in April 2010 at Autopax City to City for a total amount of R231 204.00?
  17. Did PRASA improperly terminate the Rasakanya Builders contract on 1 November 2012?
  18. Did the GCEO/PRASA improperly implement an upfront payment in the amount of R 80 million for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds thus constituting to fruitless and wasteful expenditure?
  19. Did PRASA improperly incur an over expenditure of R2.2 billion on PRASA's operations budget in 2009/2010 financial year?
  20. Did PRASA fail to spend a subsidy of R500 million received for Shosholozza Meyl for the 2009/2010 period and not use it for its intended purpose?
  21. Did PRASA incur rental expenditure for Jorissen Building after vacating it 20 months before the expiry of its lease resulting in fruitless and wasteful expenditure?

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22. Did PRASA improperly incur rental expenditure on Intersite Building after vacating the building 10 months before the expiry of its lease resulting in fruitless and wasteful expenditure?
  23. Did the GCEO improperly terminate contracts of Executives resulting in fruitless and wasteful expenditure amounting to an estimated R5 million?
  24. Did the GCEO improperly suspend employees resulting in labour dispute settlements amounting to R3.35 million thus constituting fruitless and wasteful expenditure?
  25. Did PRASA Board Chairman, Mr Sfiso Buthelezi, improperly fail to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company allegedly providing advisory services to PRASA on the Rolling Stock Programme?
  26. Did Dr Bridgette Gasa, a PRASA Board member improperly fail to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company providing consultancy services to PRASA?
  27. Did the GCEO improperly appoint Mr Joel Chimanda at a cost of R2 million as a Special Advisor?
  28. Did PRASA improperly replace the Group Executive HR with the GCEO's uncle, Mr Mphefo Ramutloa without following proper recruitment process?

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29. Did PRASA improperly fail to take disciplinary action against staff members allegedly involved in fraudulent Electronic Funds Transfers amounting to R8.1 million?
  30. Did Mr. Montana improperly transfer Mr Stephen Ngobeni without disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability thereby amounting to maladministration?
  31. Did PRASA improperly implement an upfront payment to a developer of the City Mall for the construction of an underground train station on the Bridge City Project without proper authorisation during the period 2008 to 2010?
  32. Did PRASA improperly award a CCTV cameras tender to Mr Vusi Twala?
  33. Did PRASA improperly engage various construction companies in respect of 2010 Soccer World Cup Projects?
  34. Did PRASA improperly procure Umjantshi House from Transnet in September 2009 by flouting supply chain management prescripts?
  35. Did PRASA improperly appoint Ms Shiela Boshielo, the wife of Mr. Bushy Boshielo, the former member of the PRASA Board as General Manager of Autopax?
  36. Did Mr Montana improperly take a Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and



return by SAA flight at an estimated cost of R170 000.00 and did such amount to fruitless and wasteful expenditure?

37. Did PRASA improperly pay a salary to Mr Mabe, former Executive Corporate Affairs Manager during 2008/2009, after his resignation from PRASA amounting to fruitless and wasteful expenditure?
38. Although the investigation covered all abovementioned issues, the findings on seven (7) issues will be made in a follow up report due to failure by PRASA to provide certain requested documents and information.
- (xi) The investigation included the sourcing and analysis of corporate documents pertaining to the impugned transactions, interviews and meetings with selected witnesses and research into the regulatory framework, which includes the Constitution, laws, Treasury Regulations and corporate policies.
- (xii) In arriving at the **findings**, I have been guided by the standard approach adopted by the Public Protector South Africa as an institution, which simply involves asking: What happened? What should have happened? Is there a discrepancy between what happened and what should have happened? If there is a discrepancy, does the conduct amount to improper conduct or maladministration? If there was indeed improper conduct or maladministration, what would be the appropriate remedial action?
- (xiii) As is customary, the "what happened" enquiry is a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. To arrive at a finding on what happened, the investigation, like all others, relied on oral and documentary submissions by the Complainant and PRASA management,

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principally represented by the GCEO, Mr Montana. Interviews/meeting held primarily to clarify evidence already gathered, were also held with the Complainant, Mr Montana assisted by his lawyers and the PRASA Board. The question regarding what should have happened on the other hand, relates to the standard that the conduct in question should have complied with.

- (xiv) In determining the standard that the GCEO and other functionaries at PRASA should have complied with, to avoid improper conduct or maladministration, I was guided, as is customary, by the Constitution, national legislation and applicable policies and guidelines, including corporate policies and related regulatory instruments. Key among corporate policies, that informed the investigation was the *PRASA Procurement and Supply Chain Management Policy (SCM Policy)* and the *Delegation of Authority* document. The SCM Policy approved in 2009 thus preceding the matters investigated, is very comprehensive. It commences with defining supply chain management and its purposes.
- (xv) The SCM Policy affirms and commits to uphold section 217 of the Constitution setting the vision behind it and standards to be upheld in state procurement or Supply Chain Management (SCM) processes, which vision includes ensuring a fair, equitable, transparent, competitive and cost-effective public procurement system. The SCM Policy also roots itself in Treasury Regulations regulating SCM. It further outlines the steps to be taken in pursuit of the procurement of goods and services within PRASA covering Demand Management, Contract Administration, Material Management, Disposal Management, Procurement Strategy and Acquisition Management. Also regulated are permissible deviations, which include urgency and single source providers. The policy also deals with management of conflict of interest. The investigation was also guided by Human Resources policies, to the extent that some allegations involved the appointment, promotion and termination of employees,

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including executives. In this regard section 195 of the Constitution setting a standard for all conduct in state affairs was relied on to a great extent. To the extent that there was an allusion to whistle-blower victimization, I took into account the provisions of the Protected Disclosures Act 26 of 2000.

- (xvi) At the commencement of the investigation, the allegations were brought to the attention of PRASA management through the GCEO, Mr Montana, the Chairman of the PRASA Board and then former Board. Towards the final stages, the new Board was engaged, including sharing of provisional findings with it and enlisting its support with regard to missing or conflicting information in the management submissions.
- (xvii) All information and evidence gathered during interactions with PRASA management and complainants were taken into account in an effort to reconstruct what happened and if what happened was in line with the rules. Parties implicated by the evidence gathered by the time a Provisional Report had been prepared, were sent notices under section 7(9) of the Public Protector Act alerting them of evidence implicating them and the possibility of adverse findings. A discretionary notice was also sent to the Complainant alerting them to allegations not supported by evidence. In all cases, responses were solicited and affected parties given an opportunity to provide further information and to engage via meetings.
- (xviii) I must record that the investigation team and I had immense difficulty piecing together the truth as information had to be clawed out of PRASA management. When information was eventually provided, it came in drips and drabs and was incomplete. Despite the fact that the means used to obtain information and documents from PRASA included a subpoena issued in terms of section 7(4) of the Public Protector Act, many of the documents and information requested are still outstanding. Until about three weeks before issuing the report, PRASA was still being asked for

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outstanding documents and information on contracts awarded and some staff appointments.

- (ix) I must also indicate that the authenticity of many of the documents submitted by PRASA management as evidence, principally relating to procurement, is doubtful. Many of the memoranda for approval of tenders and related documents submitted by PRASA management, were undated, unsigned and, at least in one case, incomplete. Examples in this regard include documents relating to the contracting of Vimtsire Security, ARUP and Enlightened Security Services. In some of the cases, had this been an audit, only a disclaimer would be a legitimate audit outcome.
- (xx) After unsuccessfully asking the new PRASA Board and its Chairman to assist, I decided it would be in the public interest to proceed with the report and defer unanswered questions to second report. The second report has also been necessitated by further allegations of financial impropriety, corruption and tender irregularities at PRASA, which came too late to be investigated and incorporated in this report. The issues covered in the original 37 complaints that have been deferred to the second report are the following:
1. Did PRASA improperly implement an upfront payment to a developer of the City Mall for the construction of an underground train station on the Bridge City Project without proper authorisation during the period 2008 to 2010?
  2. Did PRASA improperly award a CCTV cameras tender to Mr Vusi Twala?
  3. Did PRASA improperly engage various construction companies in respect of 2010 Soccer World Cup projects?
  4. Did PRASA improperly procure Umjantshi House from Transnet in September 2009 by flouting supply chain management prescripts?



5. Did PRASA improperly appoint Ms Shiela Boshielo, the wife of Mr. Bushy Boshielo, the former member of the PRASA Board as General Manager of Autopax?
  6. Did Mr Montana improperly take a Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and return by SAA flight at an estimated cost of R170 000 and did such amount to fruitless and wasteful expenditure?
  7. Did PRASA improperly pay a salary to Mr Mabe, former Executive Corporate Affairs Manager during 2008/2009, after his resignation from PRASA amounting to fruitless and wasteful expenditure?
- (xxi) What is encouraging is that both Mr Montana, and the Board have welcomed the Provisional Report which did not differ vastly from this final report and committed themselves to implementing the remedial action once the report is made final. For this, I am grateful as such conduct is line with the constitutional ideal regarding the relationship between the Public Protector and organs of state as envisaged in section 181 of the Constitution. Section 181 enjoins organs of state to assist, and protect the Public Protector and other institutions supporting constitutional democracy to ensure their effectiveness, among other things.
- (xxii) After a careful examination of the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by PRASA , my findings are the following:
1. **Regarding PRASA's alleged improper extension to other stations nationally, a tender for the installation of high speed passenger gates worth R800 million to Siyangena Technologies in 2009/2010 initially advertised for the Doornfontein station, Gauteng:**

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- a) The allegation that PRASA improperly extended the scope of a tender awarded to Siyangena Technologies for the supply and installation of high speed passenger gates at Doornfontein station to a national scope is substantiated. However, the total amount of the contract was **R1.95 billion** and not **R800 million** as alleged.
- b) The scope of a tender for high speed passenger gates advertised for two train stations, Doornfontein and Nasrec in Gauteng was awarded by the PRASA Board to Siyangena Technologies, and later extended to cover additional stations, on the basis of a closed bidding process with those that had bid for the two Gauteng stations.
- c) The extension of the tender scope beyond what had been advertised was in contravention of paragraph 11.3.2 of PRASA SCM Policy, section 38 of the PFMA, PPPFA and section 217 of the Constitution requiring fair, equitable, transparent, competitive and cost-effective bidding processes.
- d) The extension of Siyangena Technologies' contract to more stations than were specified in the tender advertisement accordingly constitutes maladministration and improper conduct.
2. **Regarding PRASA's alleged improper extension of a tender awarded to Siemens for the Dark Fibre and Integrated Communication Systems amounting to R800 million to additional stations nationally, during the financial year 2009/2010 when it was only advertised in Gauteng:**



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- a) The allegation that PRASA improperly extended the scope and value of a tender awarded to Siemens for Dark Fibre and Integrated Communication Systems beyond what was advertised and approved by the Corporate Tender Procurement Committee (CTPC) with the effect of substantially increasing the contract price is substantiated. However, the total contract amount was **R256 million** and not **R800 million** as alleged.
- b) PRASA improperly extended, to the Durban (KZN) and Western Cape regions, a tender for the design, supply and installation of the Dark Fibre and Integrated Communication Systems, which had been advertised and won by Siemens for the Wits and Pretoria region, without following an open and competitive tender process. This was in contravention of paragraph 11.3.7. of PRASA SCM Policy and section 217 of the Constitution, among others.
- c) The extension of the scope and price of the design, supply and installation of the Dark Fibre and Integrated Communication Systems tender to other regions accordingly constitutes maladministration and improper conduct.
3. **Regarding PRASA's alleged improper termination of all contracts for cleaning services and subsequent irregular appointment of Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services:**
- (a) The allegation that PRASA improperly terminated the contracts of seven (7) cleaning companies and improperly replaced them with Reakgona Commercial



and Industry Hygiene (Reakgona) and Katanga Cleaning Services (Katanga), is substantiated.

- (b) The contracts of 7 cleaning companies were summarily terminated by Mr Montana on 14 March 2012 in contravention of paragraph 13.1 of the contracts between PRASA and the cleaning companies, which prescribes a 48 hour notice to be given to the defaulting party to remedy a breach. He replaced them with Reakgona and Katanga on 15 March 2015, whose services were procured without a transparent and competitive process.
  - (c) The conduct of Mr. Montana with regard to the summary termination of the contracts of 7 cleaning companies is also inconsistent with the provisions of the PRASA SCM Policy, the PFMA, PPPFA and section 217 of the Constitution.
  - (d) PRASA's summary termination of the contracts of 7 cleaning companies and their irregular replacement with Reakgona and Katanga, accordingly constitutes maladministration, abuse of power and improper conduct.
  - (e) The failure by Mr Montana to afford the 7 cleaning companies an opportunity to explain themselves and possibly remedy the breach cannot be considered to be in line with section 33 of the Constitution and the provisions of PAJA.
- 4 Regarding PRASA's alleged improper appointment of Sidas Security on a security tender in replacement of National Force Security on the GCEO's instruction:**

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- a) The allegation that Sidas Security was improperly appointed to replace National Force Security is substantiated. However, no evidence could be found to prove that the improper appointment was done on Mr Montana's instructions.
- b) The month to month contract of National Force Security was terminated on 15 April 2009 and awarded to Sidas Security for **R3 711 197.72**, by Mr Chris Moloil without a tender process or competitive quotations being sought.
- c) The appointment was in contravention of paragraph 11.3.5 of the PRASA SCM Policy and paragraph 4.7.5.1 of the National Treasury SCM Guidelines of 2004.
- d) PRASA's failure to take action against the authorised official, who approved the submission for the appointment of Sidas Security, constitutes maladministration and improper conduct.

**5. Regarding PRASA's alleged improper appointment of Vimtsire Security Services, which failed to meet the minimum requirements for appointment on tender number 525/2010/GAU/PS:**

- a) The allegation that Vimtsire Security Services was improperly appointed while not meeting the requirements is substantiated.
- b) PRASA appointed Vimtsire Security Services on two contracts for tender 525/2010/GAU/PS without an advertisement or competitive quotations. The first contract was signed on 23 February 2010 without specifying the period of the contract for an amount of **R4 596 480.00** and the second contract was signed on 29 May 2010 for the period 13 March 2010 to 13 August 2010 for the amount of **R7 537 680.00**. The contract was further extended by PRASA from 1

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January 2011 to 31 December 2011 for an amount of **R14 441 976.00**, without a competitive process.

- c) The appointment and extension of the contract of Vimtsire Security amounting to **R26 576 136 00.00** were unlawful, in contravention of paragraph 11.3.1 of the PRASA SCM Policy read with the Delegation of Authority, section 217 of the Constitution, among others.
- d) The conduct of PRASA in appointing and extending the contract of Vimtsire Security Services irregularly accordingly constitutes maladministration and improper conduct.

**6. Regarding PRASA's alleged improper appointment and payment of Royal Security for an amount of R2.8 million for security services:**

- a) The allegation that Royal Security was paid **R2.8 million** instead of **R2.5 million** stipulated in the contracts, was not substantiated.
- b) Documentary evidence shows that the amount paid by PRASA to Royal Security was **R2.5 million**.

**7. Regarding PRASA's alleged improper advance payment of R600.000.00 to Enlightened Security:**

- a) The allegation that Enlightened Security was irregularly given an advance payment of about **R600.000.00** is substantiated.

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- b) PRASA made a first payment of **R684.720.00** to Enlightened Security for security services at Mabopane station on **22 October 2008** which was preceded by an invoice dated **19 September 2008** before the signing of the contract and the issuing of a *Notice to Proceed*, which followed on **17 October 2008**.
- c) Mr Joe Ngcobo's conduct in making advance payments to Enlightened Security accordingly constitutes maladministration and improper conduct.
- d) PRASA management became aware of this violation but took no disciplinary steps against the manager responsible, Mr Joe Ngcobo, despite initially commencing a disciplinary process. This conduct is in violation of the accounting officer's responsibility under section 38 of the PFMA and is accordingly irregular and constitutes maladministration and improper conduct.

**8. Regarding PRASA's alleged improper appointment of a media company to produce Hambanathi Magazine during 2008/2009:**

- a) The allegation that PRASA improperly appointed a media company to produce *Hambanathi* is substantiated.
- b) PRASA entered into a contract (referred by it as a partnership) with KG Media providing for the publication and distribution of PRASA information to its commuters and stakeholders, through *Kwela Express*, which used to be a corporate magazine of Metrorail (subsidiary of PRASA, using the name *Hambanathi* when Mr Pule Mabe, the then owner of **Kwela Express**, was employed there).



- c) The contract was from 1 April 2012 to 1 April 2015 (a period of 3 years) for the amount of **R465 669.75** per month which translates to **R5 588 000.37** per annum and a total contract amount of **R16 764 111.00** without a competitive and transparent bid process. Mr Montana extended the contract in March 2015 for a further 3 years **R16 764 111.00** despite a forewarning through a notice issued in terms of section 7(9) of the Public Protector Act, that the arrangement was likely to be determined to be unlawful. Effectively, PRASA is renting space on *Hambanathi/Kwela* for the price of about R465 669.75 a month.
- d) Considering the fact that PRASA created *Hambanathi/Kwela* and simply failed to register it as a patent, I find the arrangement with Mr Mabe's company, KG Media, rather bizarre.
- e) The appointment of KG Media, without a competitive process did not comply with requirements for single sourcing or any of the permissible procurement processes prescribed in the PRASA SCM Policy as production of a corporate newsletter is not an exclusive skills area or product for KG Media and paragraph 11.3.3 of the PRASA SCM Policy prohibits unsolicited bids.
- f) PRASA's appointment and extension of the contracts with KG Media for the *Hambanathi* totalling an amount of **R 33 528 222.00** is unlawful, a flagrant contravention of PRASA's own SCM Policy, Treasury Regulations, the PFMA and section 217 of the Constitution and constitutes maladministration and improper conduct.
- g) Mr Montana's recent extension of the *Hambanathi* contract while being aware contract of an impending finding of maladministration regarding the

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*Hambanathi* while having asked for time extension to respond to the section 7(9) notice, is an act of bad faith, which is inconsistent with his responsibilities under section 195 of the Constitution, requiring a high standard of professional ethics and, which, according to the Constitutional Court, in *Khumalo versus MEC for Education KwaZulu Natal*, imposes a duty on him to correct an irregularity once his attention has been drawn to it. His actions in this regard, constitute gross maladministration and improper conduct. Such conduct is not only unlawful but also displays disconcerting disregard for the rule of law.

**9. Regarding PRASA's alleged improper appointment of Mr Ezra Ndwandwe, on a Change Management Consultancy at a cost of R2 million in 2008/2009:**

- a) The allegation that Mr Montana improperly appointed Mr. Ezra Ndwandwe, is substantiated. However, it is the Consultancy and not the person that was appointed and the amount involved was **R10 833. 774. 00** for 12 months.
- b) Ndwandwe Consultancy was appointed by Mr. Montana for the Value Creation and Culture Change process at PRASA on 14 June 2008 for the amount of R6 220 800.00 without requiring three quotations from suppliers in the PRASA database as prescribed in paragraph 11.3.1.1 of the PRASA SCM Policy. The contract was extended for a further 6 months with the contract amount variation of **R4 612 974.00** exceeding 40%.
- c) The appointment of Ndwandwe Consultancy by Mr Montana was unlawful, in contravention of PRASA's own SCM Policy, Treasury Regulations on procurements, the PFMA and section 217 of the Constitution and accordingly constitutes improper conduct and maladministration.



- d) From the evidence it is clear that Mr Ndwandwe's consultancy's appointment was triggered by an existing relationship, which had included an excursion that took place immediately before the impugned contract was initiated. It is also clear that no process was followed to establish if any other agency offered similar services. More importantly, no demand management exercise preceded the engagement. Unfortunately, the investigation did not examine what the excursion mentioned in the procurement memorandum dated 16 September 2008 was for, whether or not PRASA paid for it and how Mr Ndwandwe's consultancy had been procured it as the impugned engagement apparently flows from that excursion. This constitutes improper conduct and maladministration.

**10. Regarding PRASA's alleged improper increase of the scope and value of a marketing and communications tender number HO/M&C/305/07/2009 awarded to Brand Leadership:**

- a) The allegation that PRASA improperly increased the scope and price of a marketing and communications tender awarded to Brand Leadership, is substantiated. However the tender price and price variation amount were actually higher than alleged.
- b) The scope of a tender recommended by the PRASA Bid Adjudication Committee (BAC) at the value of **R12.000.000.00** was increased beyond the advertised scope to **R29. 528. 000.00** by PRASA's CTPC, when it awarded it without the Accounting Officer's approval. The project timeline was also stretched, by an additional 6 months. It originally ran from October 2009 to September 2010 and was extended to March 2011.



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- c) In increasing the scope and price of the advertising tender in excess of what was advertised and without approval by the GCEO, the conduct of the PRASA CTPC was in contravention of the PRASA SCM Policy, National Treasury SCM Guidelines 5.16.1.1.1 of 2004 setting out a proper process for demand management and the process to be followed in extending the scope of a contract. The conduct of PRASA was improper and constitutes maladministration.
- 11. Regarding the GCEO's alleged improper appointment of Mr Edwin Lekota on a tender amounting to R10 million for the development of a Contingency Emergency Preparedness Programme for Metrorail:**
- a) The allegation that PRASA improperly appointed Mr Edwin Lekota on a tender is substantiated.
- b) Mr Lekota's Lekga Investment Holdings, was appointed directly by PRASA for the ISO 9001: 2000 compliance work without a competitive process.
- c) I am unable to accept Mr Montana's submission that the appointment of Mr Edwin Lekota, former CEO of SARCC, the predecessor of PRASA on a panel with, Dr Chris Dutton and Mr Friedel Mulke as part of the Board of Inquiry in terms of his powers. The evidence shows that Carundell was indeed awarded a contract to deal with the emergency arising from the burning of trains in Soshanguve, City of Tshwane, Gauteng. The same evidence shows that Mr Lekota was subcontracted by Carundel to deal with the burning of the trains.

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- d) However, I am encouraged by Mr Montana's undertaking in his response to the provisional findings, to ensure that such experts are, in future, invited to be part of an existing panel of experts in the PRASA database.

**12. Regarding PRASA's alleged improper award of a tender to Umjanji Consortium, for the media, advertising and broadcasting concession agreement:**

- a) I have deferred my findings on this complaint as PRASA is yet to submit some of the bid documents, key being the tender documents submitted by Umjanji Consortium, which need to be subjected to a forensic examination. Evidence uncovered so far confirms that:

- i. On 31 January 2011, Mr Montana awarded the Media and Broadcasting Services tender HO/CA739/02/2010 to Umjanji Consortium, an entity led by Provantage Media, which is apparently the only constituent part of Umjanji Consortium that attended the compulsory briefing session for the tender on 22 February, 2010.
- ii. Umjanji Consortium was not in existence at the time of closure of the tender on 11 March 2010.

**13. Regarding the GCEO's alleged improper awarding of a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB**

- a) No evidence was found substantiating that Mr Mabunda was or is Mr Montana's friend and that such friendship informed his company's appointment.

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- b) Mr Montana did appoint Siyaya DB, which scored slightly lower than Mott Macdonald, on tender HO/INF/203/06/2010 for rendering of technical assistance and supervision for the national signalling project, following an open and competitive tender process.
- c) I have accepted these reasons given being that the highest bidder failed to meet PRSASA's requirements relating to pricing certainty and BEEE compliance as both cogent and rational
- d) I am accordingly unable to find that the award of the tender to Siyaya DB by Mr Montana and/ or PRASA constitutes maladministration or improper conduct.

**14. Regarding PRASA's alleged improper awarding of a tender in the amount of R22 million for Park Station Development Framework to ARUP, a company associated with its board member.**

- a) The allegation that ARUP was improperly awarded a tender for the Park Station Development Framework is substantiated. However, the amount involved was much less than the alleged **R22 million**, it was **R3 898 940.00** which did not require Board approval.
- b) PRASA conceded that a proper procurement process was not followed in the appointment of ARUP and took action against the persons implicated in the appointment concerned.

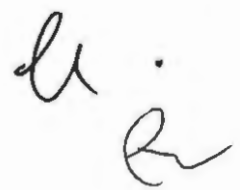
c) I accordingly do not see the need to make a finding of maladministration or improper conduct. The aspect relating to a board member's alleged involvement is addressed separately.

**15. Regarding PRASA's alleged failure to investigate the theft of buses of its subsidiary, Autopax:**

- a) The allegation that PRASA improperly failed to investigate the theft of buses of its subsidiary, Autopax, is not substantiated.
- b) Records show that PRASA conducted an investigation and internal disciplinary hearings regarding the theft of the Autopax buses leading into the suspension of one employee and dismissal of another. Furthermore, cases were registered with the SAPS in respect of the theft of the buses and there were regular follow up activities.

**16. Regarding PRASA's alleged improper awarding of a security services contract to Futuris Guarding in April 2010 at Autopax City to City for a total amount of R231 204.00:**

- a) The allegation that Futuris Guarding was improperly appointed is substantiated. However, the amount involved was higher than alleged as it was about **R10.6 million** for a six month contract.
- b) Although security unarguably involves danger as envisaged in urgency provisions of paragraph 11.3.5 of the PRASA SCM Policy, the implementation of urgency procurement failed to comply with the procedure



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laid out in the PRASA SCM policy in that the deviation was not ratified and approved by the GCEO, a deviation I consider material.

- c) The actions of Mr Joe Buthelezi, Acting Supply Chain Manager in the appointment of Futuris Guarding on a security contract on confinement, without the GCEOs approval constitutes maladministration and improper conduct.
- d) PRASA's failure to take disciplinary action Mr Buthelezi for the appointment of Futuris Guarding constitutes improper conduct and maladministration.

**17. Regarding PRASA's alleged improper termination of the Rasakanya Builders contract on 1 November 2012:**

- a) The allegation that PRASA improperly terminated the contract of Rasakanya Builders is not substantiated.
- b) PRASA terminated its month to month contract with Rasakanya Builders on 28 September 2012, with effect from 01 November, 2012, giving it a month's notice.
- c) I could not find any impropriety with the termination and accordingly am unable to find that PRASA's conduct constitutes maladministration or improper conduct.

**18. Regarding the GCEO/PRASA's alleged improper implementation of an advance payment in the amount of R 80 million for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds thus constituting to fruitless and wasteful expenditure:**

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- a) The allegation that PRASA made an advance payment in the amount of R80 million to FIFA without proper approval, budget or allocated funds which resulted in fruitless and wasteful expenditure is not substantiated.
- 19. Regarding PRASA's alleged improper incurring of an over expenditure of R2.2 billion on PRASA's operations budget in 2009/2010 financial year:**
- a) The allegation that PRASA improperly incurred an over expenditure is substantiated. However, the amount involved was far less than alleged. It was **R523 792 767.00**
- b) PRASA exceeded its budget by **R523 792 767.00** for the 2009/2010 financial year.
- 20. Regarding PRASA's alleged failure to spend a subsidy of R500 million received for Shosholozza Meyl for the 2009/2010 period and not use it for its intended purpose:**
- a) The allegation that PRASA failed to spend the subsidy received for Shosholozza Meyl for 2009/2010 financial year is not substantiated.
- b) PRASA received a government subsidy of R450.00.00 for the year 2009/10 for Shosholozza Meyl.
- c) I am unable to confirm if the subsidy was indeed used for its intended purpose as the operational expenditure for Shosholozza Meyl was not reflected separately in the overall budget of PRASA.

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21. **Regarding PRASA's alleged incurring of rental expenditure for Jorissen Building after vacating it 20 months before the expiry of its lease resulting in fruitless and wasteful expenditure:**
- a) The allegation that PRASA improperly incurred rental expenditure which constitutes fruitless and wasteful expenditure due to vacating of the Jorissen Building before the expiry of its lease agreement is substantiated.
  - b) On the authority of Mr Montana, PRASA (SARCC) paid rental for a vacant office property number 66 Jorissen Street, Braamfontein, Johannesburg, for 20 months after vacating it prior to the expiry of its lease agreement and without exercising its option of subletting.
  - c) The hasty vacation of Jorissen's Place Building resulting in continued full payment of rent for unused lettable space for 20 months. This cannot be consistent with the efficiency and cost effective dictates expected in state affairs under section 195 of the Constitution and the standards set for proper handling of public funds under the PFMA, particularly section 51 thereof.
  - d) The actions of PRASA management and its Board regarding the move to Umjantshi House and payment for vacant premises, for about 20 months and failing to mitigate the loss by subletting the premises, amounts to fruitless and wasteful expenditure.
22. **Regarding PRASA's alleged improper incurring of rental expenditure on Intersite Building after vacating the building 10 months before the expiry of its lease resulting in fruitless and wasteful expenditure:**

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- a) The allegation that PRASA improperly incurred rental expenditure and the consequent fruitless and wasteful expenditure, due to vacating Intersite Building before the expiry of its lease, is substantiated.
  - b) PRASA vacated the Intersite building about 10 months before the lease expiry date and continued with rental payments for the building for the vacant building until the expiry of the lease.
  - c) The conduct of PRASA accordingly constitutes maladministration and improper conduct.

**23. Regarding the GCEO's improper termination of contracts of Executives resulting in fruitless and wasteful expenditure amounting to an estimated R5 million:**

- a) The allegation that Mr Montana improperly terminated the services of 5 of its Executives mentioned in paragraph 6.27.2.1 of this report is substantiated.
- b) Mr Montana terminated the services of five Executives during 2008-2013 without following proper procedure as provided for in paragraph 4.4 of PRASA's Disciplinary Code and Procedure. This resulted in the CCMA overturning some of the terminations and others being settled out of court at cost to PRASA.
- c) PRASA subsequently paid labour dispute settlements amounting to **R3 816 735.32**, principally due to procedural irregularities in the disciplinary steps taken against involved officials, which payments can be said to



constitute fruitless and wasteful expenditure as envisaged in section 38(1)(c)(ii) of the PFMA.

- d) Failure by PRASA to follow its corporate disciplinary procedures and labour laws relating to procedural fairness constitutes maladministration and improper conduct.

**24. Regarding the GCEO's alleged improper suspension of employees resulting in labour dispute settlements amounting to R3.35 million thus constituting fruitless and wasteful expenditure:**

- a) The allegation that the GCEO suspended employees without following proper disciplinary procedures is substantiated in respect of some of the employees as others were not suspended by him.
- b) PRASA suspended 7 employees without following proper procedure as provided for in the Labour Relations Act and paragraph 11 of its Disciplinary Code and Procedure, leading to loss of approximately of R2 million in wages during their suspension period.
- c) The case studies regarding the seven (7) officials mentioned in paragraph 6.28.2.3 of the report support the conclusion of a pattern of habitual suspensions for periods exceeding thirty(30) days without following proper procedure.
- d) The conduct of PRASA in habitually suspending employees was in contravention of paragraph 11.1 of its Disciplinary Code and Procedure which provides that the employer has the right to suspend an employee with

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pay for a period not exceeding thirty (30) calendar days and also in contravention of paragraph 4.4 of PRASA Disciplinary Code and Procedure and Schedule 1 Part VII of the Basic Conditions of Employment Act which provides that employment practices shall ensure employment fairness.

- e) It is not unreasonable to draw a nexus between the payment of salaries for staff sitting at home with pay for long periods of time and failure to manage employment relations appropriately, and the conclusion that the payment of salaries without any value derived therefrom is irregular and constitutes fruitless and wasteful expenditure.
- f) PRASA's conduct in this regard amounts to fruitless and wasteful expenditure in contravention of the provisions of section 38(1) (c) (ii) read with section 51(b)(ii) of the PFMA while being at odds with the financial prudence and efficiency requirements of section 195 of the Constitution.
- g) The conduct of PRASA regarding improper suspension of employees accordingly constitutes maladministration and improper conduct.

**25. Regarding PRASA Board Chairman, Mr Sfiso Buthelezi's alleged failure to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company allegedly providing advisory services to PRASA on the Rolling Stock Programme:**

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- a) The evidence regarding the allegation that Mr Buthelezi, former Chairman of the PRASA Board, improperly failed to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company alleged to be providing advisory services to PRASA is inconclusive.
- b) The documents have not been provided by PRASA, whose GCEO only offered an explanation disputing the allegation and providing the names of companies involved in the said advisory services.
- c) Accordingly, I have deferred my findings on this allegation and will be dealt with in the second report.

**26. Regarding Dr Bridgette Gasa's, a PRASA Board member's alleged failure to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company providing consultancy services to PRASA:**

- a) The allegation that the then PRASA Board Member, Dr Bridgette Gasa, failed to disclose and manage a conflict of interest arising from her appointment to the Board while two companies she had an interest in provided services to PRASA, is not substantiated.
- b) Whilst Dr Gasa was indeed a Director at ARUP from 09 February 2011, she made the necessary disclosure to PRASA on 20 July 2011, resigned on 15 May 2012 and when making her disclosure on 10 October 2012, excluded ARUP, as she no longer was a board member.



c) ARUP SA (Pty) Ltd was indeed awarded a contract by PRASA for the Park Station Development Framework on 21 June 2011; however the contract was for R3.8 million which would not have required Board approval.

**27. Regarding PRASA's alleged improper appointment of Ms Shiela Boshielo, wife of then Board Member, Mr. Bushy Boshielo, as the General Manager of Autopax:**

a) I have deferred my finding on the alleged nepotism regarding the appointment of Ms Boshielo as PRASA has failed to provide the selection and appointment memoranda and some of the relevant documents.

b) In its initial response Mr Montana stated on behalf of PRASA that Ms Boshielo was appointed on 06 April 2010 through a headhunting process. Later, in response to the provisional findings, Mr Montana turned around to state that the submission was a mistake as Ms Boshielo was appointed through a recruitment and selection process and was selected from amongst other candidates but repeatedly failed to honour requests to provide the recruitment and selection documents to substantiate the assertion.

**28. Regarding the GCEO's alleged improper appointment of Mr Joel Chimanda at a cost of R2 million as a Special Advisor:**

a) The allegation that Mr. Montana improperly appointed Mr Chimanda for advisory services is substantiated.



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- b) However, it was Mr. Chimanda's company, AR Chimanda Consulting that was contracted for **R1 999.750.00** on a monthly retainer of **R150 000.00**, which makes the appointment a procurement contract and not an employment contract. As juristic person cannot be an employee, the contract is incapable of being defended under the GGEO's powers to appoint special advisors, as attempted by Mr Montana in his submissions.
- c) The appointment of Mr. Chimanda's company was not preceded by a competitive bid process, nor is he offering exclusive specialised services entitling him to be the sole provider in terms of the provisions of the PRASA SCM Policy
- d) The conduct of Mr Montana, in appointing AR Chimanada Consulting, is accordingly in contravention of the SCM policy, the PFMA, PPPFA and section 217 of the Constitution.
- e) The conduct of Mr Montana accordingly constitutes maladministration and improper conduct.
- 29. Regarding PRASA's alleged improper replacement of the Group Executive HR with the GCEO's uncle, Mr Mphefo Ramutloa, without following proper recruitment process:**
- a) The allegation that Mr. Mphefo Ramutloa was improperly appointed in replacement of Group Executive HR by PRASA is not substantiated.



- b) No evidence could be found to support the allegation that Mr. Mphefo Ramutloa is Mr Montana's uncle.

**30. Regarding PRASA's alleged failure to take disciplinary action against staff members allegedly involved in fraudulent Electronic Funds Transfers amounting to R8.1 million:**

- a) The allegation that PRASA failed to take disciplinary action against employees involved in the fraudulent electronic financial transfers of its funds, from its corporate bank accounts, is partially substantiated.
- b) Action was taken against one of the six (6) employees found responsible by a Deloitte forensic investigation, for security lapses that led to the fraudulent electronic transfer of PRASA funds amounting to R8.1million in its KwaZulu Natal and Gauteng bank accounts.
- c) PRASA took action against Ms Pallaiyah but inexplicably failed to take disciplinary action against the other six individuals recommended for possible disciplinary action as mentioned in paragraph 13.3 of the Deloitte Report of 26 February 2010.
- d) The conduct of Mr Montana regarding failure to take disciplinary action against the other five (5) employees constitutes maladministration and improper conduct.

**31. Regarding Mr Montana's alleged improper taking of a Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and return by SAA flight at an estimated cost of R170 000 and possible fruitless and wasteful expenditure:**

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- (a) The evidence regarding this issue is inconclusive. While the photographic evidence received from the Complainant apparently places Mr Montana on the train and a hotel with women companions, he he has denied the allegation but referred to a different trip.
- (b) I have deferred my finding on this allegation and will be dealt with in the second report.

**32. Regarding Mr Montana's alleged improper transferring of Mr Stephen Ngobeni without a disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability:**

- a) I have deferred my finding on the alleged failure by Mr Montana to take disciplinary action against Mr Stephen Ngobeni as PRASA has failed to provide the necessary documents relating to the issue.
- b) No evidence was found in support of the allegation that Mr Ngobeni is Mr Montana's cousin.
- c) I have deferred my findings on this allegation and will be dealt with in the second report.

**33. General observations**

- 33.1 The transactions investigated and related findings reveal a culture of systemic failure to comply with the SCM policy, particularly involving failure



to plan for bulk procurement, test the market appropriately for competitive pricing and to manage contracts, which culture may have cost PRASA millions in avoidable expenditure and preventable disruption of services.

33.2 There also seems to be a culture of either poor information management or hiding of information that could provide evidence of maladministration and other forms of improper conduct. If the pattern is not arrested it has the potential to derail the effective and efficient procurement of goods and services to support PRASA operations and consequently service delivery by this important national asset. Poor financial management also has implications for the national revenue as it may mean frequent yet preventable rescue funding.

33.3 Regarding PRASA's failure to provide information, it must be appreciated that public accountability via administrative bodies such as the Public Protector is not accountable to Complainants but to the public that entrusts public functionaries with public power and resources. It is, accordingly, not open to public functionaries to try and win a case by withholding or hiding information.

(xxiii) The remedial action I take in terms of section 182(1) (c) of the Constitution is to require:

**(a) The Minister of Transport to:**

- 1) Take cognizance of the findings regarding the unethical conduct and maladministration by PRASA relating to the irregularities mentioned in the report.



- 2) Ensure that the PRASA Board considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA.
- 3) Ensure that the PRASA Board considers the acts of maladministration and improper conduct referred to in paragraph 8 of this report and takes appropriate disciplinary action against the officials of PRASA in respect of their conduct referred to therein.
- 4) Include in her oversight activities with regard to PRASA as an State Owned Enterprise, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of powers conferred under section 182(1)(c) of the Constitution.

**(b) The Chairman of PRASA Board to ensure that:**

- 1) The PRASA Board takes cognizance of the findings of maladministration and improper conduct by Mr Montana and other functionaries at PRASA and takes or ensures that appropriate disciplinary action is taken against the responsible officials, where it considers appropriate.
- 2) The PRASA Board evaluates the effectiveness of PRASA's internal controls on Supply Chain Management and Human Resources processes to identify systemic deficiencies with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report.
- 3) The PRASA Board reviews the PRASA SCM Policy regarding the R350 million threshold value for competitive bidding process of procurement of goods and services



- 4) The PRASA Board reports to the National Treasury and the Auditor-General, particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct, as contemplated in section 85 of the PFMA.
- 5) To commission the National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing ongoing maladministration and related improprieties in its procurement system.

**(c) The Acting GCEO of PRASA:**

- 1) Should ensure that PRASA adopts a monitoring system that ensures that proper procurement processes and HR processes are followed on appointing service providers and individuals.
- 2) To ensure PRASA reviews the existing policy or the policy provisions on managing conflict of interest to ensure there is no confusion regarding expectations from employees and Board Members.
- 3) Together with the Board, review the entire PRASA SCM Policy in particular clause 11.3 of the policy.
- 4) To ensure that prior to signing a formal contract or service level agreement with a contractor must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimise possible fraud and corruption. This must include legal vetting by at least the Legal Services of the agency. Such contracts or agreements must be actively managed in order to ensure that both the agency and the contractors meet their respective obligations.



5) To ensure that there is compliance with paragraph 11.1 of the Disciplinary Code and Procedure of Metrorail to avoid prolonged and costly suspensions of employees.

**(d) The National Treasury's Chief Procurement Officer:**

- 1) In consultation with the PRASA Board, consider commissioning a forensic investigation on all PRASA contracts or tenders valued above R10 000 000.00 issued between 1 April 2012 and 30 June 2015.
- 2) The terms of reference to be approved by the Public Protector and to include a forensic examination of all suspected or alleged corrupt relationships.
- 3) The Public Protector to be kept abreast of the progress of the investigation and favoured with the final report.



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## 6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

### 6.1 Complaint 1: Regarding PRASA's alleged improper extension to other stations nationally, a tender for the installation of high speed passenger gates worth R800 million to Siyangena Technologies in 2009/2010 initially advertised for the Doornfontein station in Gauteng:

#### 6.1.1 Common cause

6.1.1.1 It is common cause that PRASA, through Intersite a subsidiary of its predecessor SARCC, awarded a tender for the installation of high speed passenger gates at Nasrec and Doornfontein stations to Siyangena Technologies per contract number SG/GATES/003/2009. PRASA conceded in its response received on 29 August 2013 that the tender was later extended to seven other stations across the country. Those are Cape Town, Rhodesfield, Windermere, Langa, Bridge City, Moses Mabhidia and Orlando.

#### 6.1.2 Issues in dispute

6.1.2.1 The key issue for my factual determination was whether or not the 2010 Soccer World Cup PRASA readiness was justification for foregoing tender requirements for bulk procurement. I further had to make a determination on whether or not there was no competitive tender process at all for the scope expansion. PRASA denied that there was no bidding process, submitting that a closed tender was extended to the original four service providers who had submitted bids for the original two 2010 Soccer World Cup stations speed gates project.

"Derailed"

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- 6.1.2.2 The justification offered by Mr Montana for increasing the scope to cover seven more stations was that it was discovered that these stations which had also been designated as World Cup Stations had excluded the critical work of installing modern speed gates. In his submissions, including a response to a notice issued under section 7(9) of the Public Protector Act, Mr Montana submitted that the extension was done to ensure World Cup 2010 readiness and that the use of the closed tender complied with the SCM Policy requirement of a competitive process that is open, transparent and fair. He provided some of the tender documents to support his submission.
- 6.1.2.3 I must state upfront, that the documents submitted by mr Montana were not always reliable as some crucial documents were undated and unsigned. Notwithstanding that, the documents disclose that the roll out from two Gauteng stations to national took place in 2011, well after the hosting of the 2010 Soccer World Cup, which took place in June and July 2010. However, the documents also confirm PRASA's submission that there was a closed tender process.
- 6.1.2.4 PRASA submitted that the following two (2) tenderers met the minimum technical requirements for the two Gauteng stations , for which the tender had been advertised:

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Table: Tenders complying

No.	Supplier	Tender Price (Excl VAT and contingency)	Tender Price (Incl VAT and contingency)	Tender delivery completion
1.	Protea Coin	R613 095 371.97	R698 928 724.04	Five months
2.	Siyangena Technologies	R965 304 413.71	R1 100 447 031.56	Five months

- 6.1.2.5 It further submitted that after a diligent evaluation process, the tender was awarded to Siyangena Technologies.
- 6.1.2.6 The documents relating to the initial appointment of tender number SG/GATES/003/2009 supply and installation of Access Gates (Speedstiles) at Doornfontein and Nasrec stations were not provided.
- 6.1.2.7 The documents submitted by PRASA show that an Intersite adver with tender number SG/GATES/003/2009, was issued in an unknown newspaper and on an unknown date. The same indicate the tender to be for "Supply and Installation of Access Gates (Speedstiles) at Doornfontein and Nasrec Stations – Specialised".
- 6.1.2.8 One of the documents, provided to my office by PRASA, is an unsigned letter dated **4 November 2010**, prepared by Ms Matshidiso Mosholi, Manager in Procurement, addressed to tenderer concerning the Supply and Installation of Access Gates at Doornfontein and Nasrec tender. The letter stated that PRASA



wished to rollout the project to priority corridors nationwide. As a result the tenderers were invited to a closed briefing session to be held at Umjantshi House on **8 November 2010**. If this letter is to be accepted as authentic. The closed tender process for the roll out happened long after the 2010 Soccer World Cup had taken place. As can be noted, the notification went out in November 2010, about four months after the Soccer World Cup.

- 6.1.2.9 The confirmation that the roll out took place after the World Cup, is further provided by an undated and unsigned Submission for Adjudication. The undated and unsigned documents left me uneasy and in doubt of the reliability and authenticity of such documents. Notwithstanding the doubtful authenticity of unsigned documents, the submission confirms that there was a closed tender process for 7 stations across the country with a **closing date of 17 November 2010**, confined to the four companies that had submitted bids for the original project for Doornfontein and Nasrec in Gauteng. It's also worth noting that the 2010 World Cup is not mentioned as a justification for the roll out, but only mentioned in tracing the genesis of the High Speed Gate initiative. In the Submission for Adjudication the following was stated:

*"On 30 June 2009 PRASA, through Intersite, went out on tender SG/GATES/003/2009 for supply and installation of access gates Doornfontein and Nasrec Stations: 2010 World Cup.*

*A decision was made then to extend the scope of this engagement to also include seven other critical 2010 stations including Cape Town, Rhodesfield, Windermere, Langa, Bridge City, Moses Mabida and Orlando.*

*To roll out the project to the entire network a confined tender was called among the four companies that initially responded to the original open tender viz. Omega Fire and Security, Marohi-KgT Consortium, Siyangena Technologies and Protea Coin.*



*Proposals were sought and received from all four vendors. All four vendors were provided a list of Large, Medium and Small stations to be rolled out. The view was to have a sense of the total cost of the entire project so that a decision of financing, implementation and prioritisation could be made."*

Table: Procedures

<i>Date advertised</i>	<i>Confinement to companies that tendered initially</i>
<i>Method of Advertising</i>	<i>N/A</i>
<i>Briefing session</i>	<i>10/11/2010</i>
<i>Closing date &amp; time</i>	<i>17/11/2010 at 10h00</i>
<i>Closing Venue</i>	<i>30 Wolmarans Street Braamfontein</i>
<i>Number of tenders issued/sold</i>	<i>4</i>
<i>Numbers of tenders received</i>	<i>4</i>
<i>How tenders issued/sold</i>	<i>In sealed envelopes in the Tender Box</i>
<i>Tenders received from</i>	<i>Marothi KgT Consortium, Siyangena Technologie, Protea Coin and Omega Fire and Security</i>
<i>Validity expiry date</i>	<i>31 March 2011</i>

6.1.2.10 The documents further show that the implementation of the roll out followed a year later in 2011. In a document signed by the Chairperson of the CTPC on 20 February 2011 it was stated that a meeting was convened on 14 February 2011 and a resolution was taken that they concurred with the recommendation that business be awarded to Siyangena Technologies in the amount of R1 100 447



031.56 (R1.1billion) inclusive of VAT subject to the recommendations to clean up the following:

- That the respective end-user sign the documents;
- That a list of stations as per Annexure A be clearly attached;
- That the price differentials be explained.
- That the background captures the original prices of the pilot project.
- Confirmation that funds are available.
- Member E Swanepoel assists in cleaning up the document and to align it for GCEO's approval.
- That the CPO, the Chairperson and Tiro Holele avail themselves and that all of the above is done.

6.1.2.11 An undated, unsigned Submission for Adjudication provides for the appointment of Siyangena Technologies for the supply and installation of access gates for the amount of R1 100 447 031.56. In the submission it is further recommended that: *"The quoted price be considered indicative subject to negotiations with the preferred bidder and SCM puts together a team inclusive of Technical, legal and finance to negotiate price, funding and implementation conditions."*

6.1.2.12 There was another copy of an undated PRASA Board of Control Resolution of PRASA Board, signed by Mr T Mohube, Company Secretary which states that at the special PRASA Board of Control meeting held on 28 March 2011, the PRASA Board of Control considered the submission from the FCP Committee and having satisfied itself that the tender process that was followed was in line with the SCM Policy and was fair, transparent and objective, resolved, *inter alia*, the following:



*"Siyangena Technologies should be appointed as a preferred bidder for the Supply and Installation of a Speed Gates in the total amount of R1, 959, 642, 353.00 including VAT. The price includes Public Address, Electronic Display PRASA Boards, Help Points, CCTV and Monitoring as well as Smoke Detection all integrated as a system through Network."*

6.1.2.13 In view of the fact that the roll out happened about a year after the 2010 Soccer World Cup, I am unable to accept Mr Montana's submission that the roll out was for meeting the 2010 Soccer World Cup needs. I must also indicate that Mr Montana's changing narrative regarding what happened is a cause of concern regarding honesty. Regarding whether or not there was a closed tender, I have accepted the evidence, though costing of undated and unsigned documents, purely because the original procurement documents have not been provided.

**6.2 Complaint 2: Regarding PRASA's alleged advance payment to a developer of the City Mall for the construction of an underground train station on the Bridge City Project without proper authorisation during the periods 2008 to 2010:**

6.2.1 Common cause

6.2.1.1 It is common cause that PRASA was involved in the Bridge City Urban Renewal Project. This was confirmed in PRASA's response received on 29 August 2013 and was further confirmed by the GCEO in his response dated 5 June 2015 to the notice I issued in terms of section 7(9) of the Public Protector Act. The GCEO also informed that PRASA invested over R1,2 billion in the project which included construction of station box for R100 million which was successfully completed in 2009, state of the art underground rail station completed in 2011 at the cost of



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**7.36** Regarding PRASA's alleged improper transfer of Mr Stephen Ngobeni without a disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability thereby amounting to maladministration:

7.36.1 I have been unable to conclude whether or not there was an improper transfer of Mr Ngobeni without a disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability.

7.36.2 In order for me to adjudicate the matter, I would need to have had sight of the documents relating to the transfer in question and personnel file of Mr Ngobeni. However, PRASA failed to provide me with the abovementioned documentation and accordingly I have deferred my finding on this allegation and will be dealt with in volume 2 of this report.

7.36.3 No evidence was found in support of the allegation that Mr Ngobeni is Mr Montana's cousin.

## **8. FINDINGS**

After a careful examination of the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by PRASA, my findings are the following:



- 8.1. Regarding PRASA's alleged improper extension to other stations nationally, a tender for the installation of high speed passenger gates worth R800 million to Siyangena Technologies in 2009/2010 initially advertised for the Doornfontein station, Gauteng:**
- 8.1.1. The allegation that PRASA improperly extended the scope of a tender awarded to Siyangena Technologies for the supply and installation of high speed passenger gates at Doornfontein station to a national scope is substantiated. However, the total amount of the contract was R1.95 billion and not R800 million as alleged.
- 8.1.2. The scope of a tender for high speed passenger gates advertised for two train stations, Doornfontein and Nasrec in Gauteng was awarded by the PRASA Board to Siyangena Technologies, and later extended to cover additional stations, on the basis of a closed bidding process with those that had bid for the two Gauteng stations.
- 8.1.3. The extension of the tender scope beyond what had been advertised was in contravention of paragraph 11.3.2 of PRASA SCM Policy, section 38 of the PFMA, PPPFA and section 217 of the Constitution requiring fair, equitable, transparent, competitive and cost-effective bidding processes.
- 8.1.4. The extension of Siyangena Technologies' contract to more stations than were specified in the tender advertisement accordingly constitutes maladministration and improper conduct.

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8.32.6. I have deferred my findings on this allegation and will be dealt with in the second report.

**8.33. General observations**

8.33.1. The transactions investigated and related findings reveal a culture of systemic failure to comply with the SCM policy, particularly involving failure to plan for bulk procurement, test the market appropriately for competitive pricing and to manage contracts, which culture may have cost PRASA millions in avoidable expenditure and preventable disruption of services.

8.33.2. There also seems to be a culture of either poor information management or hiding of information that could provide evidence of maladministration and other forms of improper conduct. If the pattern is not arrested it has the potential to derail the effective and efficient procurement of goods and services to support PRASA operations and consequently service delivery by this important national asset. Poor financial management also has implications for the national revenue as it may mean frequent yet preventable rescue funding.

8.33.3. Regarding PRASA's failure to provide information, it must be appreciated that public accountability via administrative bodies such as the Public Protector is not accountable to Complainants but to the public that entrusts public functionaries with public power and resources. It is, accordingly, not open to public functionaries to try and win a case by withholding or hiding information.



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## 9. REMEDIAL ACTION

The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with a view of placing the Complainant as close as possible to where they would have been had the improper conduct or maladministration not occurred, while addressing systemic procurement management deficiencies in PRASA, is the following:

### 9.1. The Minister of Transport to:

- 9.1.1 Take cognizance of the findings regarding the unethical conduct and maladministration by PRASA relating to the irregularities mentioned in the report.
- 9.1.2 Ensure that the PRASA Board considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA.
- 9.1.3 Ensure that the PRASA Board considers the acts of maladministration and improper conduct referred to in paragraph 8 of this report and takes appropriate disciplinary action against the officials of PRASA in respect of their conduct referred to therein.
- 9.1.4 Include in her oversight activities with regard to PRASA as a State Owned Enterprise, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of powers conferred under section 182(1)(c) of the Constitution.

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**9.2. The Chairman of PRASA Board to ensure that:**

- 9.2.1. The PRASA Board takes cognizance of the findings of maladministration and improper conduct by Mr Montana and other functionaries at PRASA and takes or ensures that appropriate disciplinary action is taken against the responsible officials, where it considers appropriate.
- 9.2.2. The PRASA Board evaluates the effectiveness of PRASA's internal controls on SCM and HR processes with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report.
- 9.2.3. PRASA Board considers amending the R350 million threshold value of its SCM Policy for competitive bidding process of procurement of goods and services.
- 9.2.4. The PRASA Board reports to the National Treasury and the Auditor-General, particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct, as contemplated in section 85 of the PFMA.
- 9.2.5. To support National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing maladministration and related improprieties in its procurement system.

**9.3. The Acting GCEO of PRASA:**

- 9.3.1. PRASA should adopt a monitoring system that ensures that proper procurement processes and HR processes are followed on appointing service providers and individuals.



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- 9.3.2. Review the existing policy or the policy provisions on managing conflict of interest to ensure there is no confusion regarding expectations from employees and Board Members.
- 9.3.3. Together with the National Treasury, commission a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing maladministration and related improprieties in its procurement system.
- 9.3.4. Together with the Board, review the entire PRASA SCM Policy in particular clause 11.3 of the policy.
- 9.3.5. To ensure that prior to signing a formal contract or service level agreement with a contractor must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimise possible fraud and corruption. This must include legal vetting by at least the Legal Services of the agency. Such contracts or agreements must be actively managed in order to ensure that both the agency and the contractors meet their respective obligations.
- 9.3.6. To ensure that there is compliance with paragraph 11.1 of the Disciplinary Code and Procedure of Metrorail to avoid prolonged and costly suspensions of employees.
- 9.4. The Chief Procurement Officer of the National Treasury:**
- 9.4.1. To conduct a forensic investigation into all PRASA contracts above R10 million since 2012.



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- 9.4.2. The terms of reference to be approved by the Public Protector.
- 9.4.3. The Public Protector to be kept abreast of the progress of the investigation.

## 10. MONITORING

- 10.1.1. The Minister of Transport to submit an implementation plan indicating how the remedial action referred to in paragraph 9.1 above will be implemented, within 30 days from the date of my final report.
- 10.1.2. The Chairman of the PRASA Board to submit an implementation plan indicating how the remedial action referred to in paragraph 9.2 above will be implemented, within 30 days from the date of my final report.
- 10.1.3. The Acting GCEO of PRASA to submit an implementation plan indicating how the remedial action referred to in paragraph 9.3 above will be implemented, within 30 days from the date of my final report.
- 10.1.4. The Chief Procurement Officer of the National Treasury to submit an implementation plan indicating how the remedial action referred to in paragraph 9.4 above will be implemented, within 30 days from the date of my final report.

"Derailed"

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10.1.5. All actions requested in my report as part of the remedial action I have taken in terms of my powers under section 182(1) (c) of the Constitution to be finalised within six months and a final report presented to my office.

*"The principle of legality is applicable in all exercises of public power and not only in administrative action" as defined in PAJA. It requires that all exercises of public power are, at minimum, lawful and rational.*

Justice Skweyiya in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49

ADV T N MADONSELA  
PUBLIC PROTECTOR OF THE  
REPUBLIC OF SOUTH AFRICA

DATE: 24 August 2015

Assisted by: Governance and Integrity Branch

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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION (PRETORIA)**

**CASE NO:**

In the matter of:

**PASSENGER RAIL AGENCY  
OF SOUTH AFRICA**



Applicant

and

**DIRECTORATE FOR PRIORITY CRIMES  
INVESTIGATION**

First Respondent

**NATIONAL PROSECUTING AUTHORITY**

Second Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**POPO SIMON MOLEFE**

state the following under oath:

*Handwritten signatures and initials:*  
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## A INTRODUCTION

1. I am an adult businessman. I am the chairman of the Board of Control (**'the Board'**) of the applicant, the Passenger Rail Agency of South Africa (**'PRASA'**). PRASA's primary business is to deliver commuter rail services in South Africa.
2. The facts contained in this affidavit are, to the best of my knowledge and belief, true and correct. Some of the facts to which I depose are within my personal knowledge and some are not, as will appear from the context. Certain facts to which I depose have been presented to me by employees of PRASA or investigators who are involved in or connected to the investigation of the conduct referred to below. These are confirmed by PRASA employees or members of the investigative team. Other facts appear from documents which form part of PRASA's records and are under my control. I respectfully submit that any facts that are not in my personal knowledge and are unconfirmed are consistent with and corroborated by documents or other evidence and are in any event admissible under section 3 of the Law of Evidence Amendment Act 45 of 1988.
3. I make legal submissions in this affidavit on the basis of advice received from PRASA's legal representatives, which I believe to be correct. Legal argument will be addressed in respect of these issues at the hearing of this application, where necessary.
4. The central purpose of this application is to compel the first respondent, the Directorate of Priority Crimes Investigation, (**'the DPCI'**), reasonably to investigate and bring to finality its investigations into two of PRASA's complaints about criminal conduct. Relief is also sought to ensure that steps are taken that will enable the effective preservation and protection of assets. Certain further relief is also sought.

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5. The two complaints relate to suspected criminal conduct amounting to national priority offences and other offences that fall within the remit of the DPCI's mandate as contemplated by Chapter 6A of the South African Police Services Act 68 of 1995 ('**the SAPS Act**'). PRASA alleges that the suspected offences were committed in connection with two PRASA tenders. These tenders concern first, the installation of integrated security management access systems in stations across the country both preceding and following the 2010 World Cup and second, the purchase in 2013 of some 70 locomotives. The contracts concluded as a result of these tenders have a combined value of in excess of R9 billion.
  
6. In recent years, PRASA has sought to investigate numerous incidents of alleged corruption, other criminal conduct and other irregularities relating to many tenders. PRASA is currently investigating about one hundred and forty-two (142) matters arising during the period 2008 to 2015. PRASA and the DPCI have prioritized the irregularities and criminal conduct committed in connection with the two tenders referred to above. This is due to their seriousness and magnitude and the need expeditiously to protect a significant amount of public money and property that may be the proceeds or instruments of crime.
  
7. The procurement process for the provision of integrated security management access systems at stations in fact entailed more than one procurement process. Each resulted in the award of contracts to Siyangena Technologies (Pty) Ltd ('**Siyangena**'). Initially Siyangena was appointed as a nominated sub-contractor to contractors appointed to upgrade two stations (Nasrec and Doornfontein) in anticipation of the Confederations Cup that preceded the 2010 Soccer World Cup. Just before the 2010 Soccer World Cup,

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PRASA purported to 'extend' Siyangena's scope of work (although Siyangena did not have a direct contract with PRASA) to seven further stations. In late 2010 / 2011 PRASA and Siyangena concluded a contract for the installation of the systems to a further 62 stations with a contract value of some R1,95 billion. This contract was preceded by a closed tender where there was no reason to issue a closed tender. In 2014, and pursuant to a new procurement process that commenced in 2013, PRASA and Siyangena concluded a contract to upgrade a further 151 stations, with a contract value of some R2.5 billion. The award of the 2010/2011 and 2013/2014 tenders and contracts are the subject of recent review proceedings. I refer to these proceedings as '**the Siyangena review**'. I refer collectively to these tenders and contracts as the '**Siyangena tenders and contracts**'

8. The locomotives tender culminated in the conclusion of a contract with Swifambo Rail Leasing (Pty) Ltd ('**Swifambo**') for the purchase of 70 diesel-electric and hybrid locomotives for a price of some R3.5 billion, subject to exchange rate fluctuations, due to risk PRASA assumed. The price has been subject to heavy increases due to exchange rate fluctuations. PRASA and Swifambo concluded the contract on 25 March 2013. I refer to the contract as '**the Swifambo contract**' and the tender process that culminated in its conclusion as '**the Swifambo tender**'. PRASA has instituted review proceedings *inter alia* to declare the contract void *ab initio*, the tender process and contract unlawful and have the tender award set aside. I refer to these proceedings as '**the Swifambo review**'.

9. The Siyangena and Swifambo tenders and contracts have been the subject of scrutiny by the Auditor-General and Public Protector respectively. More particularly, scrutiny was

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16. PRASA has, from the outset, tendered and provided substantial assistance to the DPCI and NPA in their investigations. For example, PRASA has made its own investigative teams available to the DPCI and NPA to assist as required. PRASA has done so to ensure that the complaints could be effectively investigated and ultimately lead to prosecutions and to ensure that assets that are used in or are the proceeds of crime can be effectively preserved and protected by the NPA.

17. However, the DPCI has failed reasonably to conduct the investigations or bring them to finality. The DPCI has also failed reasonably to co-ordinate the investigations with the NPA or to enable the triggering of asset preservation procedures. The effect is that serious criminality is being left unchecked, investigations may be compromised and substantial assets are at risk. This results in immense prejudice to PRASA and the public interest.

18. PRASA has duly decided to institute these proceedings. PRASA institutes these proceedings:

- 18.1. on its own behalf,
- 18.2. in the interests of rail commuters whom it serves, and
- 18.3. in the public interest.

19. I deal with the following issues in turn:

- 19.1. The parties
- 19.2. PRASA
- 19.3. The legal framework

*Handwritten signature and initials:*  
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**HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 36337/2017**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE:	<del>YES</del> / NO.
(2) OF INTEREST TO OTHER JUDGES:	<del>YES</del> / NO.
(3) REVISED:	✓
DATE	04/05/2018
SIGNATURE	

In the matter between:

**PASSENGER RAIL AGENCY OF  
SOUTH AFRICA**

Applicant

**ORGANISATION UNDOING TAX ABUSE**

Intervening Party

and

**DIRECTORATE FOR PRIORITY  
CRIMES INVESTIGATION**

First Respondent

**NATIONAL PROSECUTING AUTHORITY**

Second Respondent

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**JUDGMENT**

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**DAVIS, J**

Introduction

[1] In this matter four interlocutory applications came before me in the Third Court on 30 April 2018. As the various interlocutory applications are being applied for by different parties, it will avoid confusion to refer to the parties as in the main application.

[2] The Applicant in the main application is the Passenger Rail Agency of South Africa (PRASA). The First Respondent in the main application is the Directorate for Priority Crimes Investigation (DPCI) and the Second Respondent is the National Prosecution Agency (the NPA). The Organization Undoing Tax Abuse (OUTA) is the intervening party. The NPA abides the decision of the court and did not participate in the interlocutory applications.

[3] The four interlocutory applications are the following:

- 3.1 The Rule 7 Proceedings launched by the DPCI;
- 3.2 The condonation application launched by the DPCI;
- 3.3 The counter-application by PRASA;
- 3.4 The intervention application by OUTA.

[4] The procedural history

The procedural history of the interlocutory applications are (briefly) the following:

- 4.1 On 29 May 2017 PRASA launched the main application;
- 4.2 On 5 June 2017 the DPCI lodged its notice of opposition;



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- 4.3 On 21 June 2017 the State attorney on behalf of the DPCI requested an extension of time for the delivery of the DPCI's answering affidavit, which time would expire on 27 June 2017;
- 4.4 On 22 June 2017 PRASA's attorneys granted such extension to 14 July 2017;
- 4.5 On 12 July 2017 the DPCI lodged a Rule 7 notice, disputing the authority of the then Chairperson of PRASA and its Board of Control, Dr Molefe, to have launched the main application;
- 4.6 On 13 July 2017 PRASA's attorney claimed that the Rule 7 notice was out of time and therefore irregular, the 10 days period after service of the main application having expired on 12 June 2017. Simultaneously a power of attorney from PRASA's Group CEO and Group Executive: Legal, Risk and compliance (also referred to as "Head of Legal") was sent to the State Attorney.
- 4.7 Leaving further correspondence between the parties aside for the moment, a notice in terms of Rule 30 was delivered by PRASA on 26 July 2017 claiming the irregularity of the Rule 7 notice;
- 4.8 On 2 August 2017 PRASA's attorneys sent an affidavit deposed to by Dr Molefe on 26 July 2017, being prior to the expiry of his term of office on 31 July 2017, to the State Attorney. This affidavit makes reference to a resolution taken by the PRASA Board of Control to institute, inter alia, the present proceedings. The resolution was taken at a special board meeting on 21 September 2015. This affidavit was subsequently served on the State Attorney



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on 7 August 2017 together with confirmatory affidavits thereto by four other board members;

- 4.9 Despite the above and, intent on pursuing the disputed authority raised in its Rule 7 notice, the DPCI lodged a substantive (but conditional) application in terms of Rule 27 (3) of the Uniform Rules (referred to as the condonation application);
- 4.10 PRASA opposed the condonation application. In its opposition it again annexed the affidavit of Dr Molele and other board members and, reliant thereon and on the contents of the opposing affidavit by its "Head of Legal", claimed certain relief in a counter application, notably the setting aside of the DPCI's Rule 7 notice alternatively a declaratory order that the PRASA main application was duly authorised;
- 4.11 The DPCI did not answer or reply to the abovementioned PRASA affidavit and its counter-application.
- 4.12 In the meantime, OUTA has delivered an application for leave to intervene on 31 July 2017 which application was opposed by the DPCI on the basis that the PRASA main application was fatally defective due to lack of authority and that leave to intervene should not be granted in respect of a defective application. OUTA has delivered a replying affidavit to the DPCI's answering affidavit;
- 4.13 The papers in the main application are, as yet, incomplete in that the DPCI has not yet delivered its answering affidavit which ostensibly, on the correspondence, has been ready since the previously extended date for filing of 14 July 2017;



4.14 OUTA has indicated that its founding affidavit is ready for delivery immediately upon being granted leave to appeal.

[5] I consider it inimical to the interests of justice that, where matters of public interest are concerned, organs of state indulge in costly squabbles of interlocutory and somewhat technical nature rather than engage with the merits of the matter in an expeditious, responsible and transparent manner.

[6] Context

The context of the relief claimed in the main application, to my mind, adequately illustrates this point:

6.1 PRASA has in recent years sought to investigate numerous incidents of alleged corruption, other criminal conduct and irregularities relating to various tenders, including the two mentioned in the main application, namely the “Swifambo and Siyangena tenders”. Fruitless, wasteful or irregular expenditure of between R 9 billion and R 14 billion are alleged in this regard.

6.2 Some of the irregular and unlawful activities were set out in a report by the Auditor General in the Draft Management Report of 31 March 2015 and others were highlighted in a report by the previous Public Protector entitled “Derailed”.

6.3 The magnitude and severity of the “problems” uncovered were such that it overwhelmed PRASA’s Board of Control. It therefore took the step of engaging forensic investigators lead by PRASA’s attorneys Werksmans to assist in unearthing the relevant information. Werksmans were mandated to commence their investigations on 5 August 2015. The investigations bore

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substantial fruit in respect of, inter alia, the two tenders referred to in paragraph 6.1 above which had been prioritized by PRASA.

6.4 On 21 September 2017 and at a special board meeting of the PRASA Board of Control a resolution was taken which had been detailed in the affidavit of Dr Molefe in paragraph 8 thereof as follows:

“8 *On that day, the Board resolved that:*

8.1 *PRASA launch any application proceedings and institute any action proceedings that PRASA may be duly advised (by Werksmans) to launch or institute, and which proceedings are deemed to be the appropriate remedial actions to any findings that may arise from the investigation.*

8.2 *PRASA defend any application proceedings and action proceedings that may be launched or instituted by any third parties as a result of remedial steps taken by PRASA to deal with any findings by Werksmans during the course of the investigation.*

8.3 *That POPO SIMON MOLEFE be and is hereby authorised to take all steps and do all things necessary with regards to the proceedings referred to in paragraph 1 and 2 above including the signing of all documents and deposing to affidavits in regard thereto, and insofar as he has done so before the*



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*adoption of these resolutions, such action/ s be and is / are hereby ratified.*

*8.4 That Werksman Attorneys of 155-5<sup>th</sup> Street, Sandown, Sandton be appointed as PRASA's attorneys in regard to the proceedings referred to in paragraphs 1 and 2 above".*

- 6.5 The resolution followed on complaints filed with the South African Police Services (the SAPS) regarding the 37 complaints initially made to the Public Protector, including complaints of criminal conduct regarding the award of the two mentioned tenders and conduct surrounding their execution.
- 6.6 From an early stage, the SAPS referred the complaints to the DPCI for investigation as these complaints fell within its constitutional and statutory mandate. The founding affidavit is replete with complaints regarding the dilatory and alleged lackadaisical and unorganized fashion in which the investigation has been handled since.
- 6.7 The relief claimed in the main application is the following:
- (a) Declarations that the DPCI has failed reasonably to conduct and / or continue to finality the PRASA / Siyangena and Swifambo investigations;
  - (b) A declaration that the DPCI has failed reasonably to conduct and co-ordinate the investigations co-operatively with the NPA to enable the effective utilization of asset protection

procedures provided for in the Prevention of Organised Crime Act 121 of 1998;


- (c) An order directing the DPCI to take such steps as are necessary to finalise its investigations in respect of the related complaints by taking inter alia the steps set out in prayers 5.1 to 5.5 of the notice of motion;
- (d) An order directing the DPCI to finalise its investigations within 30 days or such other time as may be determined by the Court or directing the Head of the DPCI to request the NPA to lead the investigations in terms of section 28(2) of the National Prosecution Authority Act 32 of 1998;
- (e) Various relief aimed at preserving the confidentiality of certain evidence before the Court and to ensure that a financial analysis conducted in respect of the Swifambo matter be placed before the Court under an appropriate confidentiality regime;
- (f) An order directing the DPCI to supply the NPA with the financial analysis.

6.8 It is in this context that the DPCI's attack in terms of Rule 7 must be considered.


[7] Uniform Rule 7

The relevant portions of Uniform Rule 7 provide as follows:

*"Power of Attorney*


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*... the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, where after such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application ...*

*(4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power ...”*

[8] Authority to Act

- 8.1 It is clear from the wording of the rule that it is primarily designed to ascertain whether the attorney acting for a party has the necessary mandate or power of attorney to represent the specific party or client.
- 8.2 Based on the wide wording of Rule 7(1), it is also often used to dispute the authority of anyone alleging that the proceedings have been authorised by a party, particularly in the instance of corporate or other legal entities.
- 8.3 The best evidence that proceedings have been authorised by a corporate entity is customarily the production of a resolution of the board of such an entity to this effect, introduced by an official of the entity. It is usual and desirable for such a resolution, if it exists, to be annexed and proven by the founding affidavits in motion



proceedings but such method of proof is not essential in every case. In each case, the court must decide whether sufficient evidence has been placed before it to warrant the conclusion that it is indeed the applicant that is litigating and not some unauthorized person purportedly acting on its behalf. Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk 1957 (2) SA 347 (C) quoted with approval in Poolquip Industries (Pty) Ltd v Griffin 1978 (4) 357 (WLD) with reference to a string of similar judgments at 386 F-H.

- 8.4 One should also be mindful of the fact that “*the deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit*”. Rather “*it is the institution of the proceedings and the prosecution thereof which must be authorised*”. Ganes and Another v Telecom Namibia Ltd 2004 (3) SA 615 (SCA). Once the proceedings have been authorised on behalf of a party, it is unnecessary that a witness should additionally be authorised. Eskom v Soweto City Council 1992 (2) SA 703 (W).
- 8.5 It is a question of fact whether the evidence tendered on the issue of authority is sufficient to establish whether it is in fact the applicant litigating.
- 8.6 “*The manner in which the authority is challenged is also relevant to the kind of evidence that would be required to satisfy a court as to the existence of authority*” : Tzaneen Local Transitional Council v Louw et Uxor 1996 (2) SA 860 (T) at 863B-C and Tattersall and Another v Nedcor Bank Ltd 1995 (3) SA 222 (A) at 228F – 229D.

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[9] I am of the view that the issue of whether the present proceedings are in fact those of PRASA and whether they have been duly launched is of far greater importance than the issues of whether the Rule 7 notice was delivered in time and, if not, whether “good cause” has been established for the granting of condonation and, if not, whether the notice should be set aside as an irregular step or not. Determination of the issue of authority would also be dispositive of these other questions, including that of intervention of OUTA.

[10] The Rule 7 notice

10.1 The “manner” in which PRASA’s authority was challenged has been formulated as follows in the DPCI’s notice in terms of Rule 7:

*“The deponent to the founding affidavit, Dr Popo Simon Molefe, does not allege that he has been authorised by the Board of PRASA, the applicant herein, to launch this application.*

*The applicant is a juristic person, a state owned entity with legal personality established in terms of section 22(1) of the Legal Succession to the South African Transport Services Act No 9 of 1989 and it has a Board of Control in which authority to manage PRASA vests.*

*As a result, the Board’s resolution authorizing the launching of this application is a sine qua non for the launching of the application.*

*The absence of the Board’s resolution is fatal to this application.*

*Wherefore the First Respondent hereby calls upon the applicant to produce a Board resolution which authorises the deponent to the*




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*founding affidavit to launch this application and to depose to an affidavit on behalf of the applicant ...”*

- 10.2 The consequences to be achieved by this notice has been stated on behalf of the DPCI in heads of argument filed on its behalf to be that *“should this application (the Rule 7 attack) be granted, there will be no prejudice to PRASA as at this stage a new Board has been appointed and they can go back and rectify this irregularity and bring back the case and all their rights will remain intact”*.
- 10.3 The aforesaid submission was premised on the fact, as stated by the State Attorney in his affidavit delivered in support of the DPCI’s application for condonation, that *“... it was also raised by client in that consultation [of 10 July 2017] that it has learned through the media that the PRASA Board did not quorate (sic) at the time when Dr Molefe deposed to the founding affidavit and launching (sic) the application. Senior counsel undertook to consider the issue. It was on the strength of this revelation and failure by Dr Molefe to allege in the founding affidavit that he was duly authorised which strengthened the suspicion that indeed Dr Molefe did not have authority to institute the application. The Rule 7 notice was delivered on this basis”*.
- 10.4 So far the grounds for disputing the authority of the PRASA proceedings and the manner in which it has been raised.

[11] Evaluation

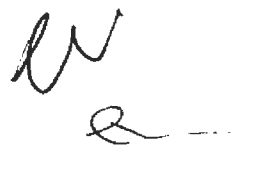
- 11.1 To start off with, the attack on the alleged lack of authority to depose to an affidavit is unfounded and misplaced and has determinatively been dealt with by the Supreme Court of Appeal in

  
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Gane's case mentioned in paragraph 8.4 above. No such authority to depose is necessary. Insofar as it may have been, it has in any event been granted by the Board.

- 11.2 The allegation that a Board of Control resolution is a sine qua non for the launching of legal proceedings is also factually incorrect. The PRASA Board of Control has, as it is empowered to do in terms of section 24 (5) of its enabling statute mentioned in the Rule 7 notice, delegated the authority to institute proceedings to an employee. In the affidavit delivered by PRASA in support of its counter-application and in opposition to the DPCI's condonation application, its Group Executive: Legal, Risk and Compliance (also known as Head of Legal) produced such a "delegations document" which clearly indicate that the power to institute legal proceedings and to appoint attorneys and counsel to act on behalf of PRASA has been delegated to the said deponent as the responsible person and that the accountability responsibility has been delegated to the Group CEO.
- 11.3 In response to the Rule 7 notice, PRASA's attorney have forwarded a power of attorney signed by the Head of Legal and the Group CEO of PRASA, reading as follows:

*"... in our respective capacities as Acting Group Chief Executive Officer and Group Executive: Legal, Risk and Compliance of the Passenger Rail Agency of South Africa ("PRASA") and as the accountable and responsible person authorised to (a) institute legal proceedings on behalf of PRASA and (b) appoint attorneys and counsel to act on behalf of PRASA as prescribed in PRASA's*



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*Delegation of Authority (a copy of which is attached) hereby certify that, in our aforesaid capacities, we have duly:*

1. *Authorised the institution of the above proceedings and*
2. *Nominated, constituted and appointed Werksmans ... to act for PRASA, to launch and prosecute the proceedings ...*

*To the extent necessary we hereby ratify, allow and confirm any and all actions already taken by virtue of this Power of Attorney”.*

11.4 As already indicated, all though this Power of Attorney was furnished to the state attorney on 14 July 2017, the DPCI was not satisfied with it and proceeded with its dispute of authority, alleging that the power of attorney was “fatally defective” as it was “inconceivable” that subordinate employees can authorise their employer to institute legal proceedings. No attack was however made on the delegation referred to above itself nor on its validity. A proper power of attorney to institute proceedings was therefore furnished by the duly delegated PRASA employee. It follows that this attack is without foundation.

11.5 In addition to the above, PRASA furnished the State Attorney with a copy of the Affidavit of Dr Molefe referred to in paragraph 6.4 above on 2 August 2017 and separately served and filed the affidavit together with the confirmation affidavits of four other Board members on 7 August 2017.

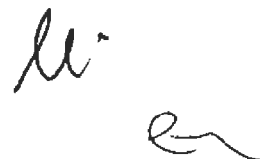
11.6 In the DPCI’s application for condonation launched the next day, 8 August 2017, not a word was said about Dr Molefe’s affidavit nor



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about the resolution of 21 September 2015. Still not a word was said by the DPCI about this after the delivery of the affidavit opposing its condonation application and supporting PRASA's counter application, to which the affidavit of Dr Molefe and that of the other Board members were again attached. In addition, it was common cause during argument of the matter that at 21 September 2015 the PRASA Board of Control was quorate.

- 11.7 Counsel for the DPCI, although conceding that PRASA's Board retained the power to authorise the institution of legal proceedings itself despite the delegation of similar power to its Head of Legal, attacked the Board resolution relied on by Dr Molefe, not on the basis that it had not been properly minuted, but on the basis that it and the Power of Attorney referred to in paragraph 11.3 above are mutually exclusive and mutually destructive.
- 11.8 I cannot agree. Clearly the Board Resolution is blanket in nature, particularly viewed in the context in which it was taken as set out in paragraph 6 above. The exercise of the delegated power reflected in the Power of Attorney was additional and incidental thereto but relating to these specific proceedings. The two powers and the exercise thereof are clearly complimentary to and not destructive of each other.
- 11.9 In view of the uncontested evidence of Dr Molefe, not only has it been established to the satisfaction of the court that the present proceedings are indeed those of PRASA and have been duly authorised, but that the prosecution of the attack on this authority appears to be so without foundation that it was unreasonable.



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11.10 Insofar as it may not yet be apparent, I find that the present proceedings have been duly authorised by PRASA.

11.11 In view of the above finding, I need not make any separate finding in respect of the condonation application or the Rule 30 proceedings except insofar as costs are concerned. It also follows that, once the issue of PRASA's authority is disposed of, there is no further bar or hurdle, insofar as there may have been, for the delivery of the DPCI's answering affidavit in the main application.

[12] OUTA's intervention

OUTA submitted, both in the affidavit filed in support of its intervention and in argument, that it was entitled to join in the main application as it seeks the same relief as PRASA and on the same facts and for substantially the same reasons. It further claimed to act in the public interest and that its joinder would be manifestly convenient and in the public interest. PRASA did not object to this proposed intervention and the only opposition proffered by the DPCI was that mentioned in paragraph 4.12 above. It conceded that, should the issue of authority be decided in PRASA's favour, as it now had, that it would not object to OUTA's joinder. With reliance on, inter alia, Shapiro v SA Recording Rights Association Ltd (Galeta intervening) 2008 (4) SA 145 (W), I am satisfied that OUTA has made out a sufficient case to warrant its intervention in the main application. It has also indicated that, should leave to intervene be granted, it is in a position to deliver its founding affidavit as co-applicant immediately and, as the grounds relied therein are substantially the same as those relied on by PRASA, lastmentioned of which the DPCI (and the NPA) had been aware of for almost a year, it should not present the respondents with any difficulty in delivering their answering affidavits thereto promptly.



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[13] The hearing of the main application

I have been advised by the parties that the review application in respect of the review of one of the tenders forming the subject matter of the main application has been set down for hearing in the Third Court in this Division at the end of June 2018. PRASA would have preferred to have the main application heard simultaneously therewith but the permutations pertaining to this and the exchange of further papers subsequent to the filing of the answering affidavit by the DPCI will have to be taken up by the parties with the Deputy Judge President, with whom they had already had meetings in this regard. Suffice it to say that in the counter application an order for delivery of the answering affidavit in the main application by the DPCI within five days was claimed. There was no objection raised to this proposed time period.

[14] Costs

14.1 As indicated earlier in this judgment, it is to be deplored that organs of state engage in interlocutory skirmishes with each other whilst the main battle is raging around them and they, by their conduct delay any meaningful engagement therein.

14.2 The delay caused by the dispute of one organ of state of the authority by another organ of state for a mandamus to have criminal investigations expedited or concluded has exceeded nine months if calculated from the delivery of the Rule 7 notice and only slightly shorter if calculated from the day of the furnishing of the affidavit of Dr Molefe wherein the Board of Control resolution to initiate proceeding had been detailed. These delays could have been avoided and the manner in which the authority had been challenged was, as already indicated, inappropriate.

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- 14.3 Not only did this delay prejudice progress in the finality of the investigation or at least the consideration of the public interest issues raised in the main application but huge additional costs were incurred.
- 14.4 The DPCI alleged that it would suffer prejudice if the main application is not dismissed due to a lack of authority but demonstrated no such prejudice. Surprisingly it further argued that *“the only possible prejudice (which is denied) [that PRASA would suffer] should the relief be granted, is the delay in the adjudication of the claim”*. This, to my mind, constitute an irresponsible and wasteful type of litigation by an organ of State.
- 14.5 In addition, the prosecution of the challenge to PRASA’s authority is in my view and in the circumstances of this matter and its context, unreasonable to the extent that it warrants a punitive costs order. The same applies to the opposition to OUTA’s application for intervention.
- 14.6 Both PRASA and the DPCI had agreed or conceded that whatever costs order be made, the costs of three counsel would be warranted.

[15] Order

1. Paragraph 2 of the counter-application by PRASA is granted to the effect that:
  - 1.1 It is declared that the main application is duly authorised;
  - 1.2 The DPCI is directed to deliver its answering affidavit to the main application, if any, within five days from date of this order.



2. OUTA is granted leave to intervene in the main application as co-applicant and is directed to deliver its founding affidavit forthwith.
3. OUTA's costs of its application for intervention shall be costs in the main application.
4. The DPCI is ordered to pay OUTA's costs occasioned by the opposition to OUTA's application for intervention.
5. The DPCI is ordered to pay PRASA's costs of the interlocutory applications, including the costs of the condonation application and PRASA's counter application, on the scale as between attorney and client, including the costs of three counsel where employed.



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N DAVIS  
Judge of the High Court  
Gauteng Division, Pretoria

Date of Hearing: 30 April 2018

Judgment delivered: 4 May 2018



## APPEARANCES:

For the Applicant:	Adv. R Hutton SC (with Ms S Cowen and Ms N Kakaza)
Attorney for Applicant:	Werksmans Attorneys, Pretoria
For the Intervening party:	Adv Q G Leech SC (with Ms A Dipa)
Attorney for Applicant:	Alet Uys Attorneys, Pretoria
For the First Respondent:	Adv W Mokhari SC (with Mr MH Mhambi and Ms CT Lithole)
Attorney for Respondent:	State Attorney, Pretoria


"FA9"

PRASA vs DPCI, doob/VL

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 38337/17**

In the matter between:

Applicant

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

and

**DIRECTORATE FOR PRIORITY CRIMES  
INVESTIGATION**

First Respondent

**NATIONAL PROSECUTING AUTHORITY**

Second Respondent

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**FIRST RESPONDENT'S ANSWERING AFFIDAVIT**

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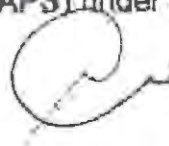
I, the undersigned,

**ALFRED DENNIS REGINALD KHANA**

do hereby make oath and say that:

**INTRODUCTION**

1. I am an adult male person with the rank of Major General employed by the South African Police Services (SAPS) under the Directorate for





Priority Crimes Investigations (hereinafter referred to as ("DPCI")), I execute my duties as the component head of Serious Commercial Crimes Investigations a component which investigates serious commercial crimes within DPCI.

2. The DPCI is currently conducting a criminal investigation into the tenders which were awarded by Passenger Rail Agency of South Africa ("PRASA") to Siyangena and Swifambo. These investigations are currently conducted by the Serious Economic Offences Unit ("SEOU"), a unit which reverts under the component to which I am the head as alluded to above.

3. Brigadier Reginald Mmeli Makinyane ("Makinyane") is currently the head of this unit. When these criminal investigations started, Lieutenant General Bemning Ntlemeza ("Ntlemeza") was the National Head of the DPCI until when his appointment was set aside by the High Court. Lieutenant General Yoliawa Matakata ("Matakata") is currently acting in the position of National Head of DPCI.

4. I am duly authorised to depose to this answering affidavit on behalf of the first respondent. The confirmatory affidavit of Lieutenant-General Matakata is to this effect annexed marked "AK1".

*[Handwritten signatures and initials]*

5. I confirm that the allegations contained in this answering affidavit fall within my personal knowledge and where certain facts which I depose to fall outside of my knowledge, I have accordingly attached confirmatory affidavits to that effect. The contents of this affidavit are therefore both true and correct unless the contrary appears clearly from the context.

6. To this effect, I attach also the supporting and/or confirmatory affidavits of Brigadier Makinyana and Colonel Magobosha which are annexed herein marked Annexures "AK2" and "AK3" respectively.




7. Insofar as I make submissions of legal nature, I do so on the advice of the legal representatives of the first respondent which I received during the consultation in preparation of this answering affidavit and I am advised that further legal submissions will be made during the hearing of this matter.

8. I have read the notice of motion and the founding affidavit of Dr. Popo Simon Molefe ("Dr. Molefe") together with annexures thereto, and answer to the allegations therein contained as I do in this affidavit. My failure to answer to a specific allegation in the founding affidavit and the confidential affidavit should not be construed as an admission of

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same but should be construed as denied unless the context points to the contrary. A Rule 7 notice, challenging the deponent to produce a Resolution of the Board of control of PRASA has since been filed on grounds that Dr Molefe does not have authority to launch the current proceedings on behalf of PRASA. To date no Board resolution has been produced by the deponent. In the absence of the Board resolution, this application should be dismissed.

9. The interlocutory application on this point of authority was set down by the Deputy Judge President for 30 April 2018. Davis J heard the application and found in favour of PRASA. A copy of the judgment is annexed marked "A". I submit that Davis J erred in finding that the proceedings are authorised.
10. The Court hearing the main application is not bound by Davis J judgment. It is interlocutory and not appealable on its own. If it is binding on the review Court, then DPCI will appeal against it at the finalisation of the main application when judgment is delivered on the main application particularly if the judgment may require to be taken on appeal. But I am advised that Davis J's judgment is not final and not independently appealable at this stage.

**PRELIMINARY ISSUES**

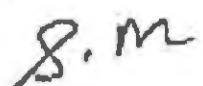
11. The preliminary issue at hand is the authority of the deponent to launch these proceedings on behalf of PRASA. It is a legal issue which is dispositive of this matter. In the delivery of the Rule 7 notice, a letter was addressed to Werksmans Attorneys, by the office of the State Attorney questioning the authority of Dr Molefe to launch the application on behalf of PRASA. A copy of the letter is attached marked "AK4".
12. Werksmans responded to the letter. A copy of the response is attached marked "AK5". It is clear from the response that no such Board resolution exists authorising Dr Molefe to launch these proceedings on behalf of PRASA. In fact no such authority exists. A reply to Werksmans letter by the State Attorney is attached marked "AK6". In fact, to compound Dr Molefe's problems of lack of authority, Werksmans attached a power of attorney which purports to be authorising Werksmans to act on behalf of PRASA, an issue completely irrelevant to Dr Molefe's authority.
13. A copy of such purported power of attorney is attached marked "AK7". The fact of the matter is that Dr Molefe does not have



authority to launch these proceedings on behalf of PRASA. The power of attorney signed by the acting Group CEO of PRASA does not authorise him to do so, neither does it purports to do so. Davis J, is correctly relied on the say so of Dr Molefe in his affidavit that he was authorised by a Board resolution of 2015, which he could not attach. Legal argument will be presented to Court when the main application is heard.

#### THE NATURE OF THE APPLICATION

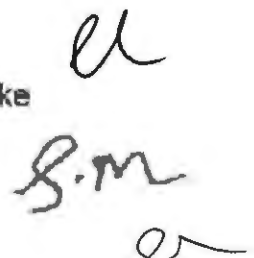
14. This is an extra-ordinary application as evidenced by a long notice of motion with prayers which are extra-ordinarily intrusive on the powers of the DPCI. The effect of the prayers sought is that this Court should order DPCI to conduct these two criminal investigations in a particular way or in a way that is sought and desired by the applicant or to say the least in a manner that is described by the deponent. Such an order if granted, will be overly intrusive and offending on the well-established doctrine of separation of powers.
  
15. On the facts as it will be shown below, it is not the DPCI which delay the investigation. It is PRASA which delay the investigation. It seems as if PRASA has taken a posture that the DPCI criminal investigation



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should be stage managed. What I mean is that the investigation should be controlled and managed by PRASA. It is PRASA officials who should decide who DPCI investigators should brand as a witness and who it should brand as a suspect.

16. It is unheard of that a complainant, who has a direct interest in the outcome of the investigation is the one who is controlling and managing the investigation. In fact, whilst PRASA is the complainant through the statement of Mr Mamabolo, it is not correct that every employee of PRASA should be classified as a complainant and therefore a potential witness. PRASA employs thousands of employees. Within PRASA itself, there are employees who are suspects to the crimes committed as some occupy very senior positions and are still employed by PRASA. Others are no longer employed by PRASA.
17. This is a complex investigation which is multi-dimensional. It would be wrong for PRASA senior officials as they seek to do be allowed to dictate to DPCI investigators as to who DPCI investigators should interview and who not to interview.
18. In fact PRASA has insisted that DPCI should not interview and take



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statements from PRASA employees without the presence of Martha Ngoye and Fanie Dingiswayo. Dr Molefe had in fact issued a statement or email the effect of it was that PRASA employees should not cooperate with the investigation. Since then, DPCI investigators has received no cooperation from PRASA.

19. Appointments arranged were cancelled willy-nilly without valid explanations, documents requested were not forthcoming. PRASA wanted Werksmans to be involved when potential witnesses are interviewed and wanted PRASA to be the one taking down witness statements and submit to the DPCI. If that were to be allowed, it would certainly compromise the investigation and its impartially opening it up to attack by those who are subsequently charged.
20. I have no doubt that had PRASA cooperated with the investigation, it would by now finalised with the docket submitted to the DPP for a decision. The lack of cooperation from PRASA has prompted the DPCI to resort to the section 205 procedure in order to obtain the documents. It is sad that the DPCI had to resort to this extra-ordinary procedure against the so-called complainant when it should be receiving maximum cooperation from the cooperation and not obstructive behaviour. A copy of the section 205 application is

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attached to the confidential affidavit of Colonel Magobosha.

21. The statutory scheme which regulates the DPCI in Chapter 6A of the South African Police Service Act 88 of 1995 ("the SAPS Act"), read together with the Constitutional Court judgment of *Helien Suzman Foundation vs The President of the Republic of South Africa and others* reveal that the DPCI is both structurally and operationally independent. It is required by statute to decide on which matters it regards as priority matters which require investigation by DPCI and its decision in that regard is final. Not even the National Commissioner of Police can override the decision of the National Head of the DPCI on whether a matter that require investigation is a priority crime matter or not.
22. Once the DPCI has designated a priority crimes matter requiring an investigation by the DPCI, it is then required to investigate the matter independently and impartially, without undue influence from anyone. Not only must it be independent and impartial, but it must be seen to be independent and impartial.
23. The DPCI must also preserve the integrity of the investigation but ensuring that sensitive information is kept at all times confidential in

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order not to compromise the investigation and jeopardising the safety of potential witnesses. It must guarantee the integrity of the investigation by ensuring that evidence is procured in a lawful manner and can withstand legal scrutiny in a Court of law once a decision to prosecute is taken by the National Prosecuting Authority ("NPA").

24. The applicant also seeks declaratory orders from this Court. Such declaratory orders as sought by the applicant are undesirable in the circumstances. They also amount to a mere academic exercise. Besides, this Court retains a discretion whether to grant a declaratory order or not. The discretion is exercised judiciously taking into account all relevant factors. This is a classic case where this Court should decline to grant such an order even if it finds that it is competent in the circumstances to make such an order.

25. A declaratory order, in the manner sought by the applicant will not auger well for the structural and operational independence of the DPCI and should therefore not be granted. A prayer which seeks to compel DPCI to appoint Horwath Forensic undermines the authority and impartiality of the DPCI in its conduct of the investigation.

26. Such an order should not be granted under any circumstance. The

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DPCI wishes to investigate these matter impartially and independently without it being perceived to be unduly influenced or siding with other interested persons or parties to these investigations. To the extent that it is alleged or insinuated that DPCI does not have capacity to conduct investigations of these magnitude, such allegations are baseless and false.

27. The NPA's office of Specialised Commercial Crimes Unit has assigned two guiding prosecutors to these investigations as it is normally the practice in these types of matters. There is constant interaction between the prosecutors and the investigation team of the DPCI. DPCI has sufficient human resource and capability to source relevant information such as bank statements and cell phone records, offshore investments and any other relevant information through section 205 subpoenas and it is currently, without revealing details ensuring that such information is procured.
28. The applicant has submitted more than 15 arch lever files to the DPCI consisting of the review applications of Swifambo and Siyangena which were pending before the High Court. The DPCI has received sworn statements from the complainant, Mr Mamabolo and other related documents as well as draft preliminary forensic reports from

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Horwath Forensic. The DPCI investigation team have considered these documents for further leads and can currently not reveal further details for fear of jeopardising the criminal investigation. The DPCI continues to engage with the NPA's SCCU on an ongoing basis with the view to finalising the investigation and submitting the docket to the NPA for a decision. Once the docket is submitted to the NPA for a decision on whether or not to prosecute, and whether the NPA still requires the DPCI to conduct further investigation on specified aspects or obtain further statements from specified persons in order to tie the loose ends.

29. It is therefore a fallacy that the DPCI did not investigate these matters with sufficient degree of aptitude and diligence. The DPCI has investigated these matters with the degree of urgency, and seriousness taking into account the massive amount of money involved. The DPCI cannot reveal further details. As pointed out above, the DPCI has now even resorted to the section 205 to obtain documents.

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**OVERVIEW OF THE FIRST RESPONDENT'S OPPOSITION TO THIS APPLICATION**

30. The applicant's application is ill-conceived and legally untenable and the first respondent opposes the relief sought by the applicant on the grounds set out above and herein below.
31. The primary relief sought by the applicant in this application is a declaration that the first respondent has failed to conduct the investigations into Siyangena and Swifamba reasonably and they sought declaration in particular that Howarth Forensic SA (Pty) Limited be appointed to conduct a financial analysis in respect of PRASA and Siyangena investigations which are currently being investigated by the DPCI.
32. There is clearly no legal basis for this relief which is sought by the applicant. As a matter of law, the investigation of all commercial crimes in terms of Chapter 6A of the SAPS Act vest with the DPCI. DPCI can at its own discretion, and based on its own needs analysis engage the services of a person or entity to assist with the investigation.
33. In terms of section 17B of Chapter 6A of the SAPS Act, the sole

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purpose of the DPCI is to prevent, combat and investigate national priority offences in particular serious organised, serious commercial crime and serious corruption.

34. When DPCI decides to source the services of a service provider to perform a particular function in the investigation, it ensures that the integrity of the investigation is not compromised. Horwath Forensic has rendered services on behalf of PRASA for purposes of PRASA's own internal investigation. PRASA has through the criminal complaint lodged by Marnabolo the complainant engaged with PRASA. PRASA as the complainant has taken such keen interest in the investigation to the extent that its conduct amounts to its desire to control and direct the investigation, including, deciding for the DPCI who to interview, take sworn statements from, and who to conduct financial analysis on behalf of the DPCI. This has gone to a stage where PRASA sought to prevent DPCI from interviewing officials within PRASA without PRASA's permission.

35. In fact, PRASA's view is that it should take statements from PRASA officials and handover to the DPCI instead of DPCI taking statements independently from potential witnesses.

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36. PRASA's conduct amounts to nothing other than the desire to control and direct the investigation, something the DPCI cannot accede to, and should not be seen to be acquiescing to. In as much as the DPCI takes no issue with the complainant's pro-activeness in compiling the evidence and even assisting with the investigation, such assistance should be at the behest of the DPCI and not the other way round and should not be perceived as undue influence by the complainant in the conduct of the investigation.

37. As I have stated above, these investigations are conducted at the most highest level within the DPCI and the NPA's SCCU. The investigations are at an advanced stage and the DPCI cannot risk having the investigations compromised. Sensitive information should be preserved in other instances also concealed from the complainant for fear of unnecessary exposure and leakages.

#### BACKGROUND

38. I deem it necessary to deal with the background which has led to this application before I reply to each allegation contained in the founding affidavit.

39. I will deal with both Siyangena and Swifambo cases which have been

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registered at Hillbrow police station under CAS Numbers, 405/07/2015 and Brooklyn Police Station 278/09/2015.

40. On the 8<sup>th</sup> of July 2015, a case was registered at Hillbrow Police Station by Philemon Makgetiela Mamabolo ("Mr Mamabolo").
41. In his statement Mr Mamabolo made a number of allegations which implicate a number of people who were part of senior management within PRASA. The allegations contained in the statement range from fraud to mal-administration, irregular expenditure and corruption.
42. His statement appears as Annexure "CF1" annexed to the confidential affidavit. The statement contains unsubstantiated allegations against various individuals who are mentioned in the statement.
43. Each of the 23 paragraphs in his statement contains different allegations of crimes allegedly committed within PRASA and a list of suspects who are alleged to have committed these crimes.
44. There is no date on which these crimes are alleged to have been committed neither are there times nor places. Some of the tenders that he alleged have been awarded are even beyond the powers of

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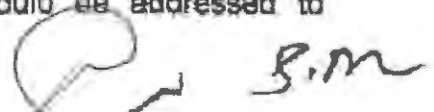
the Group Executive Officer (GCEO) of PRASA. It is only the Board which has powers as the GCEO has the power to award tenders which are less than R100 million.

46. It is not apparent from the statement whether Mr Mamabolo insinuates that the Board acted in cahoots with the GCEO in awarding these tenders. The statement lacked details as indicated above and it is unsubstantiated.
48. On 28 September 2015 Mr Mamabolo made another statement which is an extension of the statement of 8 July 2015. This statement implicates or contains serious allegations on the awarding of a tender which has become known as Swifambo.
47. The allegations which are contained in this statement range from irregular expenditure in awarding a tender to a company, for example, which falsified the information, according to Mamabolo, in order to qualify for the tender.
48. It will appear on the statement of Mamabolo that the tender was evaluated by the Bid Evaluation Committee. It would appear that the tender was under the scrutiny of the Bid Adjudicating Committee as per the Supply Chain of PRASA.

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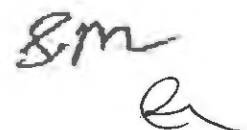
49. The value of the tender which the applicant alleges was awarded to Swifambo can only be awarded by the Board of PRASA in terms of the Supply chain management policy of PRASA and it is not apparent from the papers whether it was awarded by GCEO or the Board.
50. These are some of the issues that arise from the statement of Mamabolo.
51. On 22 March 2016, Mamabolo deposed to another statement under oaths which does not address the same concern which I have raised in my letter dated 29 September 2016 in which Martha Ngoya replied with a letter dated 25 November 2016. In her reply she is disputing my allegations which I have made in my letter dated 29 September 2016. The two letters are attached as annexure "AK9" and "AK10" respectively.
52. I am reliably advised by the investigating team that on numerous occasions they have attempted to consult with Mamabolo but PRASA maintained that Mamabolo was not the complainant and therefore all communications should be addressed to PRASA including permission to interview Mamabolo.
53. PRASA maintained that communication should be addressed to

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Onica Matha Ngoye ("Ngoye") or the Chairperson of the Board of PRASA. In other instances Werksmans would insist that they should be present when an interview is conducted. In fact PRASA's Chairman has intimated that correspondence to PRASA be it to Mamabolo or otherwise should also be copied to Werksmans.

54. DPCI does not have any problem with PRASA assisting and cooperating with the investigations including providing to DPCI all information it believes to be relevant to the investigations.
55. DPCI also appreciates PRASA's desire to assist DPCI by making potential witnesses available to be interviewed by DPCI investigators. What DPCI regards as improper is for PRASA to seek to dictate as to who DPCI should speak to within PRASA, and to direct DPCI on what to do with the information at its disposal.
56. As I have pointed out that these tenders which are the subject of these investigations go way beyond the financial delegation of the Group CEO, it would be naive for the DPCI to be directed by the complainant to only constrain its investigation on the GCEO and these other persons identified by Mamabolo in his statements and not look at the conduct of the Board members who at the relevant times

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approved the award of these tenders to Siyangena and to Swifambo and also not look at the conduct of those who internally advised either financially, legally, corporately that the tender be awarded to Siyangena and Swifambo and the reasons why they advised in the manner in which they did and what they stood to personally benefit financially or otherwise.

57. So, within PRASA, the investigation cannot naively be limited to a few people identified by Mamabolo and PRASA. It should go beyond that and that is precisely what the DPCI is focusing on. The DPCI is a highly specialised priority crimes investigative unit with highly skilled investigators of many years of experience and it is well aware of possible machinations in matters like this with complex web of history and role players.

58. These are very complex investigations which require meticulous and in-depth investigation which looks at all avenues and angles and not a short gun approach envisaged by PRASA.

#### INTERNAL HANDLING OF THE INVESTIGATIONS

59. At the time, all these cases were opened, the head of the DPCI was General Ntlembeza who in terms of the DPCI protocol was responsible

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to allocate to any relevant component of the DPCI the responsibility to investigate.

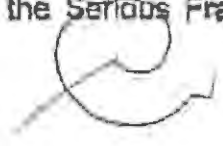
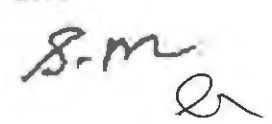
60. Indeed, as per the protocol and procedure, he allocated the matter to the component of the Serious Commercial Crimes and he tasked Major-General Mosipi who at the time was in excess on the structure of the DPCI.

61. As will appear from the records that Major-General Mosipi combined a multi-task team of investigators which included, *inter alia*, Colonel Komane from the Johannesburg SCCU, Brigadier (at the time Colonel), Basi from Serious Fraud Unit and Colonel Mosito. General Mosipi who acted as the supervisor.

62. Before June 2015 General Mosipi was an acting component Head of Serious Commercial Crimes Unit.

63. On or about June 2015 I was appointed as Component Head of Serious Commercial Crimes Unit, in other words, I was promoted from being a Brigadier to a Major General, the same position which General Mosipi was acting on.

64. I must mention that Colonel Basi was from the Serious Fraud Unit

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which qualified the statement that I made earlier that this team was a multi-disciplinary team which was led by General Mosipi.

65. My appointment as Head of Serious Commercial Crimes Unit coincided with the suspension of General Booysen as KwaZulu Natal Provincial Head. I was then subsequently deployed to act as the Provincial Head of DPCI in KwaZulu Natal Province until January 2016.
66. This is important because there are serious yet unsubstantiated allegations that the DPCI has changed the team of investigators in order to frustrate the progress of this case. These allegations are based on unfounded and baseless suspicion which is not supported by a single shred of evidence. The allegations are clearly false.
67. On or about January 2016 I then returned from KwaZulu Natal to my position of Head Component of Serious Commercial Crimes.
68. My return from my position coincided with General Mosipi's lateral transfer to SAPS since he had become additional to the current structure due to my appointment as the substantive Head of the component.



69. After familiarising myself with the matter, I met with General Mosipi, for a briefing on the progress in the investigations thus far.

70. In my own assessment I was not entirely satisfied with the progress report or the briefing I received at the time. The impression I got, which was of concern to me was that there was no hands on approach to the investigations by the investigation team and most of the things which legislatively were to be done by DPCI as the investigating unit were informally and unofficially done by PRASA through either its attorneys or service providers appointed by PRASA's attorneys on behalf of PRASA.

71. This included responsibilities such as obtaining documentation, whereas only the DPCI is in law empowered through a section 205 subpoena to obtain evidence of cell phone records, bank statements and the like.

72. I remember vividly contacting Brigadier Basi who was now heading a new unit. My discussion with him somewhat confirmed my concerns that the investigating team had outsourced that which statutorily DPCI is supposed to be doing. Basi had lost touch with the intimacy of the investigation due to other pressing commitments in his new role

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73. In view of my concerns that not much was accounted for which was attended to by the DPCI investigating team at the time, I decided that DPCI should assert its role as the investigative unit in these investigations and play a hands on approach in order to expedite the investigation and finalise it without undue delay. It is not in the interest of the DPCI to have an endless investigation, neither is it in the interest of those suspected of having committed crimes and to the complainants.

74. However, the DPCI cannot conceivably put a timeframe of when the investigation would be finalised especially in an investigation which is prosecutorially guided.

75. I then tasked Brigadier Makinyane who is the Head of the Serious Economic Offences Unit ("SEOU") as well as Colonel Magobosha who are both working under my supervision to lead the investigation under my supervision and report to me about the development of the matter.

76. I have specifically instructed Brigadier Makinyane to keep a closer watch on the investigation and its progress and provide me with regular updates. Colonel Magobosha is the lead investigator

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currently. He is a dedicated officer with an unmatched wealth of investigative experience in priority crimes investigations. He is a meticulous investigator who so far has demonstrated that he is hands on and in complete control of the investigation. He is in touch with the complainant and has arranged interview meetings with the complainant, particularly Mamabolo.

77. Although his attempts to finalise statements of other potential witnesses was met with lack of cooperation from PRASA, particularly with regard to the provisions of documentation to enable these potential witnesses to refresh their memories before they sign his statement.
78. It would be inappropriate for the DPCI to permit PRASA as the complainant to play a leading role in the conduct of the investigation. The DPCI must play a leading role and not the other way round.

#### THE PROGRESS OF THE INVESTIGATIONS

79. As I have already stated before that there has been a conflict of interest in this matter where PRASA wants to be a player and a referee at the same time, which I can explain as follows, certain individuals within PRASA sought these two investigations to be done


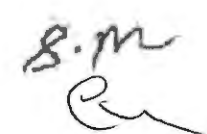
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abruptly and be finalised at whatever costs. On the other hand, DPCI is interested in thoroughly investigating these matters.

80. This conduct by PRASA of wanting to control the investigation is clearly bordering on interference with the powers vested with DPCI and I am tempted to even conclude that this court application is a sign of desperation to control the investigation from PRASA.

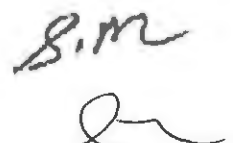
81. To me this is unacceptable as the DPCI is an independent investigative directorate which is statutorily tasked with investigating and combating crimes, and PRASA is an organ of State which should be seen to be cooperating with the investigation in order to assist DPCI to identify the suspects and the evidence within PRASA so that the perpetrators should be brought to book

82. Since my decision to assemble the team and gave it matching orders and ordering it to be in charge of the investigation and impressing upon it to expedite the investigation and obtain witness statements, they have done so except that the statements remain unsigned due to witnesses asking for documents which PRASA had to date refused to make available despite repeated requests from the DPCI investigators.

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83. Basically, the sworn statement of Mamabolo under CAS Number CAS 405/07/2015 which implicates a number of people within PRASA draws conclusions without supporting facts. What it means is that the investigators are entitled to question Mamabolo further, which they did. On the last occasion Mamabolo was interviewed in the presence of the guiding prosecutor and PRASA's legal representatives and legal advisors.
84. This will further elicit, as it did the necessity to interview identified persons within PRASA and outside PRASA. This process is ongoing.
85. With regard to the conduct of the investigation previously as foreshadowed by what I have said above, I became particularly concerned when I received a letter from one of the Directors of Swifambo who alleged that his bank statements were in the hands of third parties who were investigating him unlawfully.
86. I was concerned that the evidence illegally obtained may jeopardise the prospects of a successful prosecution at a later stage and it was important that the DPCI should control and be in charge of the investigation and ensure that all evidence obtained is obtained lawfully.



87. I was then forced to withdraw the appointment and mandate of Howarth. A copy of the letter dated 27 May 2016 is annexed hereto marked Annexure "AK11"

88. I must hasten to mention that the investigations in these matters is still pending and meetings were scheduled with witnesses and the guiding prosecutor in certain instances.

89. I know as a matter of fact that there have been a number of investigative meetings which have been held with both the identified witnesses, Mr Mamabolo and also the NPA, the guiding prosecutor which has been provided by the NPA.

90. There has been several interactions between the investigative team and the NPA prosecutors which PRASA is not privy to and should not be privy to. There has been discussions regarding the case that took place between the investigative team and the NPA prosecutors which PRASA and the public should not be privy to. To do so would be to compromise and jeopardise the investigations.

91. One of the meeting was held on 3 July 2017 and further meetings were planned to take place as part of the investigations.

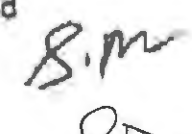
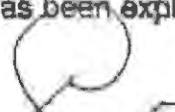
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92. Further, I know as a matter of fact that an investigation plan has been approved as well as the case plan has been completed by the NPA. As the matter currently stands, we are waiting for directions from the NPA. Therefore the allegation that the DPCI does not have an investigation plan is not true. The updated investigation plan will be attached to the confidential affidavit of Colonel Magobosha.
93. The investigation plan cannot be shared with PRASA and the public. To do so is to defeat the very purpose of an impartial investigation. The investigation plan is a confidential document agreed upon between the DPCI and the guiding prosecutors pertaining to how the investigation should be conducted.
94. Therefore, it is my view that the investigations are going well insofar as these two matters are concerned.

#### **CHANGING OF THE INVESTIGATION TEAM**

95. It has been insinuated in the papers that the office of the DPCI has changed the investigating team in order to frustrate the investigations of these two matters.
96. These allegations are not true and lack basis as it has been explained



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*supra* that General Mosipi was acting in the position. He was laterally transferred to SAPS when I was appointed to be the component head, the position he held in an acting capacity before my appointment and when I was acting KZN Provincial Head of DPCI. Upon my return from KwaZulu Natal I then resumed my duties.

87. As I have mentioned above, when I was appointed component head, Mosipi became additional to the existing structure and was thus in excess. In order to be optimally utilised in other areas within SAPS, he was thus laterally transferred. There was no malice in his transfer, neither was it improperly engineered by anybody within DPCI's management.

88. On the 25<sup>th</sup> of January 2017, I addressed a letter to PRASA. The contents of the letter are self-explanatory. It can never be suggested that there was something untoward in the letter. It was imperative in my view to explain to PRASA and its legal representatives the role of DPCI in the conduct of the investigations. A copy of the letter is annexed marked "AK8".

89. The allegations which were made by Mamabolo were made without supporting documents or evidence of any nature. In other words

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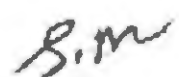
these allegations were unsubstantiated and there was a need for Mamabolo to substantiate the allegations.

100. This he could do with the assistance of PRASA or its legal representatives or anybody within PRASA with personal knowledge or evidence to substantiate the allegations. This was necessary given that the more than 15 arch lever files which were provided by PRASA in the two review applications were focusing on the irregular appointments of Swifambo and Siyangena and not on the criminal element of fraud, corruption and the like. The review papers to say the least were of little assistance to the police.

101. I emphasised the need that the police in the investigations need to collect all the relevant evidence in support of the allegation complained about.

102. The sole purpose of collecting evidence and of substantiating the statement is to put the Prosecutor in a better position to be able to make an informed decision about the matter.

103. The only documents that we have been provided with by the applicant in respect of this matter are documents which have been utilised in a civil matter as well as the review application.

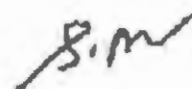


- 32 -

104. My understanding is that the DPCI is investigating a criminal matter where there is a need to collect documents and exhibits which are implicating the suspects criminally.
105. Further, it is known that the standard of proof in a civil case and review application are distinguishable from the standard of proof in a criminal case. In a civil case, the standard of proof is on the balance of probabilities, whereas in the criminal trial it is beyond reasonable doubt. Thus if the investigation is later shown to have been conducted recklessly or capriciously, the possibility of the DPCI being sued for wrongful arrest looms large.
106. I submit that the applicant has failed to prove that it is entitled to the relief that it seeks and therefore this application should be dismissed.

**AD SERIATUM ANSWER TO THE FOUNDING AFFIDAVIT**

107. Any allegations that are not specifically addressed should be taken to be denied to the extent that such allegations are inconsistent with the explanation provided in this answering affidavit.



"FA10"

IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR  
INCLUDING ORGANS OF STATE

---

AFFIDAVIT OF SESWANTSHO GODFREY LEBEYA

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I, the undersigned,

**SESWANTSHO GODFREY LEBEYA**

states under oath as follows:

1. I am a member of the South African Police Service ("**SAPS**"), holding the rank of Lieutenant General and appointed as National Head, Directorate for Priority Crime Investigation-("**DPCI**") in terms of section 17CA of the South African Police Service Act 68 of 1995 for a non-renewable contract for a period of seven (7) years from 1 June 2018. I am also an Advocate of the High Court of South Africa and a Doctor of Law. My physical address is Promat Building, 1 Cresswell Road, Silverton with telephone number 0128464001.
2. The facts contained in this affidavit are, mostly based on the reports kept by the DPCI, save as otherwise stated to be within my own personal knowledge. The facts are to the best of my knowledge and belief both true and correct.

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3. To the extent that I do not possess personal knowledge of the issues raised and stated in this affidavit, I relied on the information furnished to me by the officials of the Directorate for Priority Crime Investigation (DPCI). In addition, my knowledge of facts contained herein is derived from documentation, relating to this matter, which is now under my control and supervision.

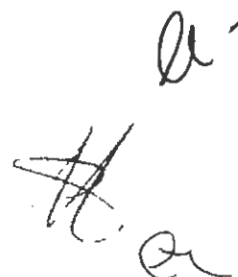
#### **CASES REPORTED BY PRASA WHICH WERE UNDER INVESTIGATION IN 2015**

4. The two case dockets that follows below were registered in 2015 and investigated by the DPCI.

5. **Hillbrow CAS 405/07/2015 (allegations of Fraud and Contravention of Public Finance Management Act 1 of 1999)**

- 5.1. The complainant on the case was Passenger Rail Agency of South Africa (PRASA), represented by Mr Mamabolo who was employed as Assistant Manager (Special Operations) at PRASA, and the allegations were based on Public Protector's report, "Derailed Report".

- 5.2. The allegations emanate from the tender alleged to have been irregularly awarded by PRASA to a company called **Swifambo Rail Leasing (Pty) Ltd** (Swifambo), for the purchasing of 88 locomotives. Swifambo then subcontracted 100% supply of the locomotives to a Spanish company called Vossloh Espana. The value of tender was estimated at R3.9 billion.

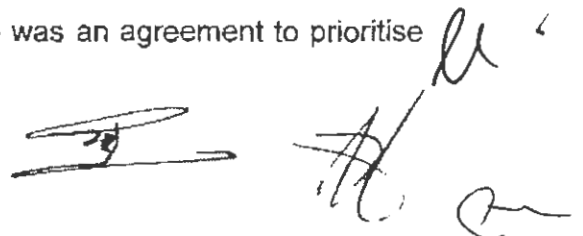


6. **Brooklyn CAS 278/09/2015 (allegations of Fraud, Contravention of Section 38 (1) Public Finance Management Act 1 of 1999, Contravention of Prevention and Combating of Corrupt Activities Act 12 of 2004)**

- 6.1. The case was initially opened by Mr. Paul O'Sullivan, and Mr. Mamabolo also submitted a statement representing PRASA on the matter
- 6.2. During the period 2009/2010 PRASA awarded a tender to a company called **Siyangena Technologies (Pty) Ltd (Siyangena)** for the installation and maintenance of CCTV cameras and equipment for Control Rooms for two PRASA train stations in Gauteng namely, Doornfontein and Nasrec for an amount of R2.9 billion.
- 6.3. The allegations are that the scope of the tender was later extended to cover additional stations nationally without following PRASA Supply Chain Management Policy, in contravention of Public Finance Management Act and with fraudulent and corrupt intention of benefiting Siyangena and other beneficiaries.

**CASES EMANATING FROM THE PUBLIC PROTECTOR'S REPORT ("DERAILED REPORT")**

7. It appears from the letters between the then Component Head: Serious Commercial Crime Investigation and PRASA that, although the Public Protector report contained a number of allegations, there was an agreement to prioritise

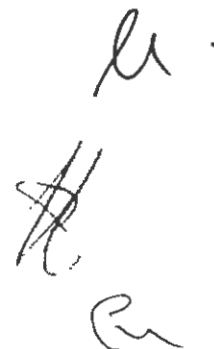


the two cases mentioned above (Hillbrow CAS 405/07/2015 and Brooklyn CAS 278/09/2015).

8. Based on the above arrangements, the other eighteen (18) new cases were only registered on 6<sup>th</sup> August 2019. These cases emanate from the 'DERAILED REPORT' by the Public Protector for contravention of Section 38(1) (c) (ii) read with section 51 (b) (ii) of the Public Finance Management Act (PFMA), Act 1 of 1999. The docket relates to various findings of irregular/ fruitless and unauthorized expenditure made by the Public Protector

9. The list of the cases referred to are as follows:

- Hillbrow CAS 211/08/2019;
- Hillbrow CAS 212/08/2019;
- Hillbrow CAS 213/08/2019;
- Hillbrow CAS 214/08/2019;
- Hillbrow CAS 215/08/2019;
- Hillbrow CAS 216/08/2019;
- Hillbrow CAS 218/08/2019;
- Hillbrow CAS 221/08/2019;
- Hillbrow CAS 222/08/2019;
- Hillbrow CAS 224/08/2019;
- Hillbrow CAS 225/08/2019;
- Hillbrow CAS 227/08/2019;
- Hillbrow CAS 228/08/2019;
- Hillbrow CAS 230/08/2019;



- Hillbrow CAS 231/08/2019;
  - Hillbrow CAS 233/08/2019;
  - Hillbrow CAS 745/08/2019; and
  - Hillbrow CAS 746/08/2019.
10. One (1) Enquiry, vide Serious Economic Offences Unit Enquiry CAS 19/08/2019, relating to the fraudulent electronic transfer of funds amounting to R8, 1 million from PRASA account to a number of beneficiaries was also registered. The enquiry was later closed when it transpired that there was a docket Pretoria Central CAS 631-09-2008, which was registered for the same allegations. The said case docket was then reopened.

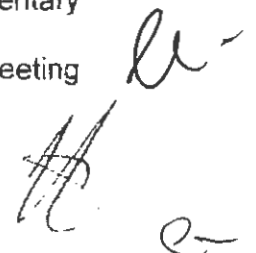
**ALLEGATIONS OF FAILURE AND/OR DELAY BY DPCI TO FINALISE INVESTIGATIONS ON HILLBROW CAS 405-07-2015 AND BROOKLYN CAS 278-09-2015**

11. I have been informed that four main factors, to wit, **failure by the complainant to submit sufficient detail of the allegations; unavailability of certain documents relating to the tenders; appointment of forensic auditors; and lack of cooperation from PRASA officials**, which are explained below, contributed to the delay in finalizing the investigation of these cases.
12. **With regard to failure by the complainant to submit sufficient detail of the allegations**, a statement of Mr Mamabolo who was representing PRASA in the two matters which was already obtained required additional necessary information relating to the PRASA supply chain policies that were in place at




the time the two tenders were processed. There was also a need to indicate what happened on the two tenders, which was not in line with the policies, which were supposed to be followed. This part of evidence was supposed to be obtained by way of a supplementary statement from Mr Mamabolo or by another person from PRASA who has knowledge of the policies.

13. This prompted the Component Head: Serious Commercial Crime Investigation (**SCCI**) to write a letter dated the 29<sup>th</sup> September 2016 addressed to Group Executive: Legal Risk & Compliance, Ms Ngoye and Acting Group Chief Executive Officer, Mr Letsoalo. Copy of the letter which was delivered on 27 October 2016 is annexed hereto this statement and **marked SGL- 1**.
14. I am advised that in the meeting of 27 October 2016, the DPCI was represented by Major General Khana, who was the Component Head: SCCI at the time, Brigadier Makinyane who is the Section Head: Serious Economic Offences Unit (**SEOU**) and Colonel Govindasami. PRASA was represented by Mr Letsoalo who was the Acting Group Chief Executive Officer (GCEO), Mr Zide (Company Secretary), Mr Dingiswayo and Ms Ngoye.
15. The response received from PRASA dated 25 November 2016 signed by Ms Ngoye is annexed hereto this statement and **marked SGL- 2**. The response appears to have not addressed the issues raised, but provided copies of review applications for the civil proceedings on the two tenders.
16. Another meeting took place in the office of the former Component Head: SCCI Major General Khana, on 7 February 2017 and the need for the supplementary statement of Mr Mamabolo was again discussed and explained. The meeting



was attended by Mr Dingiswayo, Ms Ngoye, Major General Khana, Brigadier Makinyane, and Brigadier Magobosha (Colonel at the time). During the meeting it was agreed that Mr Dingiswayo be the contact person.

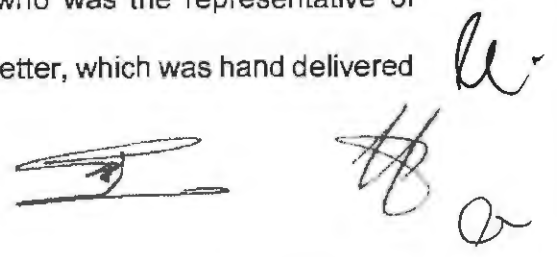
17. The first meeting that was arranged by the investigators with Mr Dingiswayo for 14 February 2017 could not take place because of a letter dated 13 February 2017, which was received from the Chairperson of PRASA Board (Dr Molefe) addressed to the office of the National Head, DPCI. The letter directed, amongst others, that PRASA officials will not be meeting with the investigators until he (Molefe) get a response on his letter. Copy of the letter signed by the Chairperson of PRASA dated 13 February 2017 is annexed to this statement and marked **SGL- 3**.

18. There was continuous telephonic and/or email communication between the DPCI and PRASA. PRASA approached the court to seek orders directing the DPCI to do its work. However, the investigation could unfortunately not move forward as expected due to the deficiencies identified in Mr Mamabolo's statement. The requirements were in line in line with case plan.

19. **With regard to the unavailability of certain documents relating to the tenders**, the lack was hindered the finalisation of the statements of some witnesses, which contributed to the delay of the investigation of these matters.

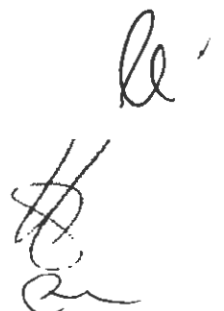
20. The witnesses were interviewed by the investigators with copies of documents that were not clear enough for them to respond.

21. Requests were made through Mr Dingiswayo who was the representative of PRASA, which were unsuccessful. Copy of the letter, which was hand delivered

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to PRASA for the attention of Mr Dingiswayo dated 12 October 2017 is annexed hereto this statement and **marked SGL- 4**. However there was no response received.

22. Another letter dated 27 February 2018 to Mr Molapo, who was appointed as Acting Group Executive Officer is annexed to this statement and **marked SGL- 5**. Unfortunately, no response was received.
23. Mr Zide who acted as Group Chief Executive Officer was at one stage identified by PRASA as the one who would also depose to the affidavit that was supposed to supplement what was lacking in the affidavit of Mr Mamabolo. Meetings were arranged between Mr. Zide and the investigators but could not take place as a result of the former's unavailability.
24. On 24<sup>th</sup> of April 2018 the investigators applied for subpoena in terms of section 205 of the Criminal Procedure Act (Act 51 of 1977) in order to get the required information/ statement from Mr Zide. The subpoena was authorised and served, but was not honoured by the official. Copy of the subpoena is annexed hereto this statement and **marked SGL- 6**.
25. The lead investigator, Brigadier Magobosha approached the lead Prosecutor (Adv. Wolvaardt) with a view to enrol the matter on the date specified on the subpoena. He was informed by the Prosecutor that Adv. Bhengu who signed the subpoena did not have delegation to do that, therefore the subpoena is defective and the matter could not be enrolled

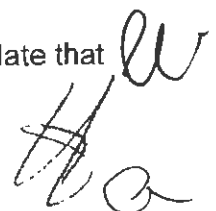


26. Since my appointment on 1 June 2018, I have met the previous Board, the Administrator and the Current Board on nine occasions. The meetings which were cordial were held on 12 June 2018, 26 June 2018, 03 October 2018, 25 March 2019, 08 April 2019 (NDPP's Office), 30 October 2019, 10 January 2020, 19 March 2021 (virtual) and 07 April 2021 (virtual).

27. **With regards to the appointments of Horwath Forensics**, (now known as Crowe Forensics), it was initially appointed by the DPCI to render forensic investigation services in support of the criminal investigation. Crowe's letter of appointment dated 28 December 2015 is attached for ease of reference and **marked SGL-7**. At the time of the appointment, Werksmans attorneys was rendering legal services to PRASA and Crowe Forensics was subcontracted to Werksmans attorneys. The cost of services by Crowe Forensics to the DPCI were also to be paid by PRASA through Werksmans attorneys.

28. Major General Khana, the former Component Head: Serious Commercial Crime Investigation, was informed by Werksmans Attorneys of a complaint by Mr Mashaba, one of the suspect in the case. Mr Mashaba complaint was that a private investigation company, named Basileus Consilium Professional Services (**BCPS**), and subcontracted by Werkmans Attorneys, was in possession of bank statements of his private bank account and the belief was that the bank statements could only have been requested from the bank through a police investigation.

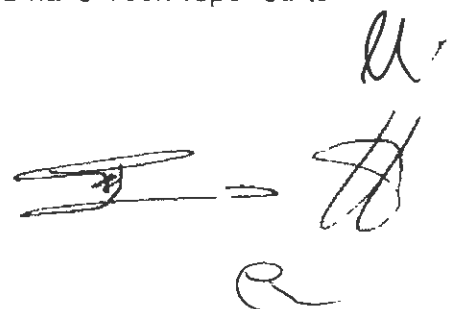
29. On 27 May 2016 the office of the Component Head: Serious Commercial Crime Investigation send a letter to the chairperson of the PRASA Board of Directors informing the chairperson of the SCCI's decision to withdraw the mandate that



was issued by the office's letter dated 28 December 2015. Copy of the letter dated 27 May 2016 is annexed to this statement and **marked SGL-8**. Initially there was an indication that the office of Component Head: SCCI would reconsider Crowe Forensics' appointment after it had been established that they are "**Forensic Accountants**" and not "**Forensic Investigating Company**". That is the reason why the SEOU investigating team continued to engage with Crowe Forensics up until they received a preliminary report in April 2017.

30. On 19 April 2017 a meeting, between Mr Sacks of Crowe Forensics and the SEOU offices took place on their analysis to the investigation team and provided them with a copy of the preliminary report. The preliminary report was discussed with the prosecutors on 20 April 2017. The prosecutors raised a concern and discomfort with the report, stating that the report's objectivity may be questioned. The prosecutors advised that an independent report by a different service provider should be sourced, and as such the investigation team did not continue with Crowe Forensics' services.

31. **With regard to the lack of cooperation from PRASA officials.** Mr Dingiswayo and Ms Ngoye wanted to be part of each and every interview of employees of PRASA witnesses conducted by the investigators. In this regard there was a letter dated 30 June 2017 addressed to the lead investigator, Brigadier Magobosha stopping him to contact Mr Mamabolo directly, directing him to communicate through Ms Ngoye, Mr Dingiswayo and Werkmans Attorney was provided. If he (Magobosha) failed, his conduct would have been reported to

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the court. Copy of the letter from PRASA addressed to Brigadier Magobosha is annexed to this statement and marked **SGL- 9**.

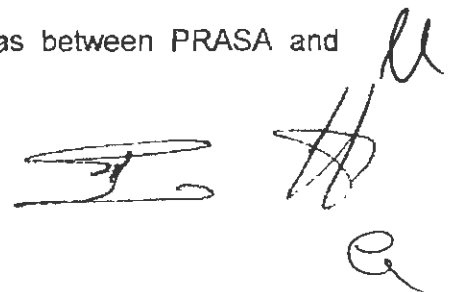
32. The investigators wanted to interview Mr Mamabolo to address the instructions/ requests of the prosecutor guiding on the case. In the civil proceedings instituted by PRASA against DPCI, the documents demanded by PRASA include investigation plan and witness statements obtained in the absence of Mr Dingiswayo and Ms Ngoye. The investigation plan is a document compiled jointly by the investigators and prosecutor guiding on the case, and is not shared with the complainant and or witnesses of the case.
33. As demonstrated by the letters between the entities, the investigators have experienced a number of challenges compounded by the reluctance from the potential witnesses to give statements.

#### **CIVIL COURT PROCESSES**

34. The DPCI received copies of three motion applications on 29 May 2017 namely:

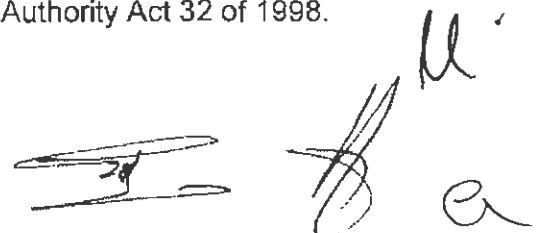
34.1. The first motion application was issued by the Gauteng Local Division of the High Court on 27 November 2015. This application was between PRASA and Swifambo Rail Leasing, with case number 2015/42219. The DPCI was not cited in this application.

34.2. The second motion was issued by the Gauteng Local Division of the High Court on 29 May 2017. This application was between PRASA and

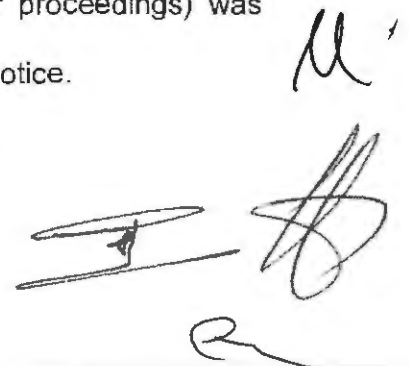
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Siyangena, Justice Goldstein and Justice Joffe, with case number 2016/7839. The DPCI was not cited in this application.

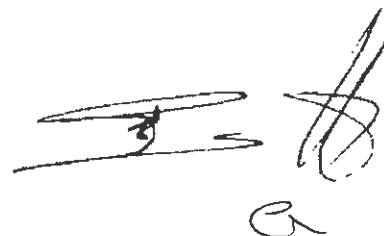
- 34.3. The third motion application was issued by the Gauteng Provincial Division of the High Court on 29 May 2017. This matter was between PRASA, DPCI and National Prosecuting Authority (NPA) with case number 2017/36337.
35. The relief sought under the main application with case number 2017/36337 were the following:
- 35.1. Declarations that the DPCI has failed reasonably to conduct and/or continue to finality the PRASA /Swifambo and Siyangena investigations;
- 35.2. A declaration that the DPCI has failed reasonably to conduct and co-ordinate the investigations co-operatively with the NPA to enable the effective utilization of asset protection procedures provided for in the Prevention of Organised Crime Act 121 of 1998.
- 35.3. An order directing the DPCI to take such steps as are necessary to finalise its investigations in respect of the related complaints by PRASA.
- 35.4. An order directing the DPCI to finalise its investigations within 30 days or such other time as may be determined by the court or directing the Head of the DPCI to request the NPA to lead the investigations in terms of Section 28(2) of the National Prosecuting Authority Act 32 of 1998.

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- 35.5. An order directing the DPCI to supply the NPA with the financial analysis.
36. The motion application between PRASA, DPCI and NPA was filed together with a confidential affidavit and the provisional report on the PRASA matter.
37. On 5 June 2017, the DPCI filed a Notice to oppose the application where it was cited.
38. On 21 June 2017, the Office of the State Attorney, Pretoria, requested an indulgence for the filing of the DPCI's answering affidavit which would lapse on 27 June 2017.
39. On 22 June 2017 PRASA's attorneys granted the indulgence to the DPCI until 14 July 2017.
40. On 12 July 2017 the DPCI lodged a Rule 7 Notice (Power of attorney) disputing the authority of the then Chairperson of PRASA Board, Dr Molefe, to have launched the main application.
41. On 13 July 2017, PRASA's Attorney claimed that the Rule 7 Notice was out of time and therefore irregular as the 10 day period after service of the main application have lapsed on 12 June 2017.
42. On 26 July 2017 a Notice in terms of Rule 30 (Irregular proceedings) was delivered by PRASA claiming the irregularity of the Rule 7 Notice.

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43. On 2 August 2017 PRASA's Attorneys sent an affidavit deposed to by Dr Molefe.
44. On 10 August 2017 DPCI lodged application in terms of Rule 27 (3) (condonation application) of the Uniform Rules.
45. PRASA opposed to the DPCI Rule 7 and Rule 27 and also applied for the setting aside of the DPCI Rule 7.
46. The DPCI did not answer or reply to PRASA's founding affidavit and its counter application.
47. In the meantime Organisation Undoing Tax Abuse (OUTA) delivered an application for leave to intervene on 31 July 2017 and the application was opposed by the DPCI.
48. The Heads of argument for all four interlocutory applications were filed on 7 December 2017. The matter was set down for 30 April 2018. The parties made oral submissions and judgement was delivered on 4 May 2018.
49. The DPCI was ordered to deliver its answering affidavit to the main application, if any, within five days from the date of the order. The DPCI filed its answering affidavit to the main application on 11 May 2018.
50. Upon receipt of the DPCI's answering affidavit, PRASA filed Rule 35(12) Notice (Discovery, Inspection and Production of documents) on 04 July 2018.

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51. On 11 July 2018, the DPCI filed a Notice of intention to oppose PRASA's Rule 35(12) Notice. The DPCI filed answering affidavit to PRASA Rule 35(12) Notice on 2 August 2018.
52. The matter has since remained dormant. As indicated, after my appointment, I decided to engage the PRASA Board and prioritised the Swifambo and Siyangena investigations.

### **CURRENT STATUS OF INVESTIGATIONS**

53. **The status of the investigation is as follows:**

53.1 **On the Swifambo matter**, the case is still under investigation. Three hundred and eight three (383) statements have been obtained and the investigation is about ninety percent (90%) complete. The investigation team is expecting a financial flow draft report from the appointed auditors.

53.2. On the **Siyangena matter**, the investigation is about seventy five percent (75%) complete. One hundred and eighty five (185) statements have been obtained.

53.3. On the **cases emanating from the Public Protector's report ("Derailed report")**, four of the eighteen cases that were opened in 2019 have been finalised. Fourteen cases are still under investigation and a total of fifty three (53) statements have been obtained. The investigators are still pursuing the outstanding investigation as agreed with the prosecutors guiding on the matters.

53. I can conclude that the unsound relationship between the DPCI and PRASA between 2015 and 2018 contributed to the delay in completing the investigations.

  
DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at ARCADIA on the 23rd day of August 2021, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

  
COMMISSIONER OF OATHS

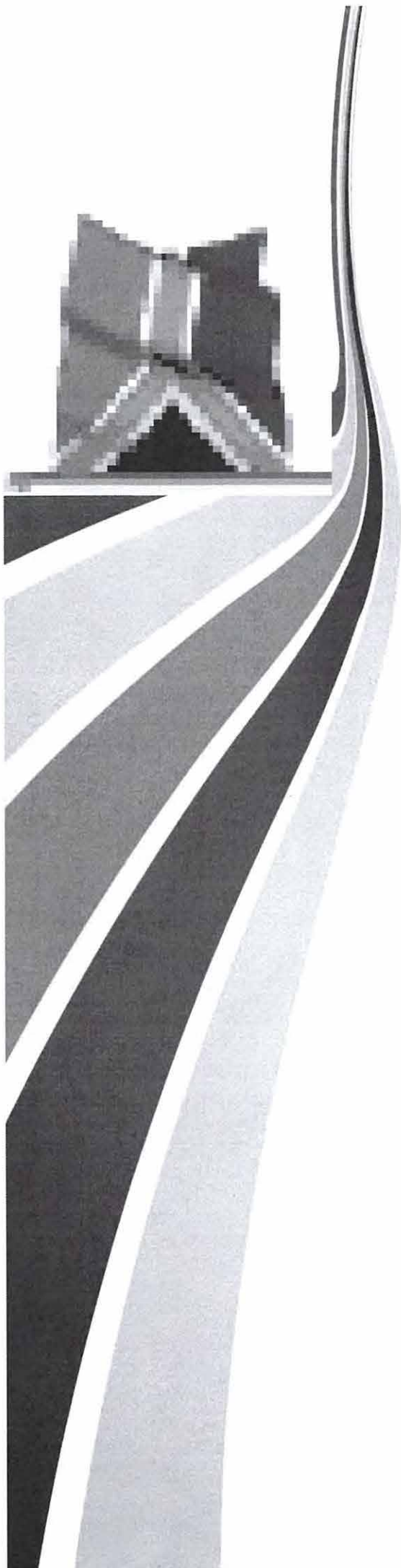
Full Names:

Office:

Business Address:

**HOREB MBHUNGANE**  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY RSA  
MATABANE INC  
887 ARCADIA STREET, ARCADIA  
PRETORIA CENTRAL, 0001





*Seek, Find, Strike*



**HAWKS**  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

**PRESENTATION TO THE STANDING COMMITTEE ON PUBLIC ACCOUNTS ON THE STATUS OF INVESTIGATIONS  
RELATING TO DEPT OF WATER AFFAIRS & SANITATION, ESKOM, TRANSNET, SABC, DENEL, SAA & PRASA**

"FA11"

Presented by the National Head of the Directorate for Priority Crime Investigation  
(Dr/Adv) Lieutenant General SG Lebeya (SOEG)

*[Handwritten signature]*

16 NOVEMBER 2022



# PRESENTATION OUTLINE

- Introduction
- Overview of cases

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## INTRODUCTION

The purpose of this presentation is appraise the SCOPA on the status of investigations involving the following entities:

- Department of Water and Sanitation
- Eskom
- Transnet
- South African Broadcasting Corporation
- Denel
- Passenger Rail Agency of South Africa

*u. e*

## OVERVIEW OF CASES (a)

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
PRASA	3	R 1 515 000	0	R0	17	R 6 364 330 147	1	R 1 640 000
ESKOM	17	R 1 071 277 255	6	R 6 038 304	54	R 3 534 629 650	13	R 327 183 106
WATER & SANITATION	1	R 89 000 000	2	R 46 875 103	10	R 3 580 677 217	2	R 244 091 548
SAA	0	R 279 000 000	0	R0	6	R 0	0	-
TRANSNET	12	R 8 800 000	4	R 1 500 000	8	R 37 000 000	0	-
SABC	1	R 18 290	0	R0	1	STILL TO BE DETERMINED	0	-
DENEL	0	-	0	R0	2	R 3 001 458 077	0	-
<b>TOTALS</b>	<b>34</b>	<b>R 1 449 610 545</b>	<b>12</b>	<b>R 97 594 040</b>	<b>98</b>	<b>R 11 458 624 415</b>	<b>14</b>	<b>R 572 914 654</b>

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## OVERVIEW OF CASES (b) DEPARTMENT OF WATER AND SANITATION

CASE DOCKETS	NUMBER
Cases on hand	15
Cases pending at court	1
Cases submitted for decision	2
Cases under investigation	9
Cases finalised	2
Cases provisionally withdrawn from court	0

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## DEPARTMENT OF WATER AND SANITATION

<b>Case number</b>	Richards Bay Cas 324/07/2022 (MHLATHUZE)	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Fraud and Corruption Money Laundering Defeating the ends of Justice and intimidation	Irregular appointment of service providers (Legal panel) without following the Supply Chain process of Mhlathuze Water Board as well as contravention of section 51(1) of the PFMA by not complying with the operational policies of the public entity.
<b>Date Reported</b>	2022-01-11	
<b>Date of Referral to DPCI</b>	2022-03-30	<b><u>CURRENT STATUS</u></b>
<b>Loss involved</b>	R89 Million	The matter has been remanded to <b>2022-12-06</b> .
<b>Entity/Individual involved</b>	Mthokosisi Duze(CEO) Babongile Mnyandu Sithembiso Mhlanga Thabiso Wesly Khumalo	
<b>Number of charges</b>	4	
<b>Number of statements obtained</b>	20	

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**DEPARTMENT OF WATER AND SANITATION (Finalised)**

<b>Case number</b>	Cambridge CAS 100/06/2020	<p><b>SYNOPSIS OF CASE</b> Allegations of procurement fraud and corruption at the Amatola Water Board, wherein the National Department of Water and Sanitation approved the budget of R230 million for draught relief in the Eastern cape – for financial year 2019 – 2020. Amatola Water was appointed as an implementing agent. Later the aforesaid budget confirmation is said to have been utilised for Covid-19 relief projects such as water carting tanks and rain water harvesting tanks. It is alleged that the Ministers office has exacted pressure and influence as to which service providers must be allocated work and at how much share of the budget allocation must go to which service provider – in particular Sand Abstraction – Empowerment Water Solution (EWS). Which was to be the pilot project as one of the response mechanism to draught.</p> <p><b>CURRENT STATUS</b> On 2022-09-22, the matter was withdrawn by the DPP due to insufficient evidence.</p>
<b>Offence</b>	Procurement fraud and Contravention of PFMA	
<b>Date Reported</b>	(The Complainant, former CEO, reported the matter herself to the DPCI and the case was registered on 2020-06-08)	
<b>Date of Referral to DPCI</b>	2022-03-30	
<b>Loss involved</b>	R230 000 000.00	
<b>Entity/Individual involved</b>	Amatole Water Board, Eastern Cape	
<b>Number of charges</b>	2	
<b>Number of statements obtained</b>	26	

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**CASES UNDER INVESTIGATION  
DEPARTMENT OF WATER AND SANITATION**

PROVINCE	NO OF CASES	TYPE OF CRIME	CHARGES
EASTERN CAPE	02	Procurement Fraud	03
GAUTENG	03	Procurement Fraud	03
LIMPOPO	02	Procurement Fraud	02
KWAZULU NATAL	02	Procurement Fraud	03
MPUMALANGA	01	Procurement Fraud	01
<b>TOTAL</b>	<b>10</b>		

A total of **178 Statements** have been obtained in the ten (10) cases involving a total amount of **R 1 098 768 461,00**

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## OVERVIEW OF CASES ESKOM (a)

CASE DOCKETS	NUMBER
Cases on hand	96
Cases pending at court	17
Cases submitted for decision	5
Cases under investigation	54
Cases finalised	13
Cases provisionally withdrawn from court	5

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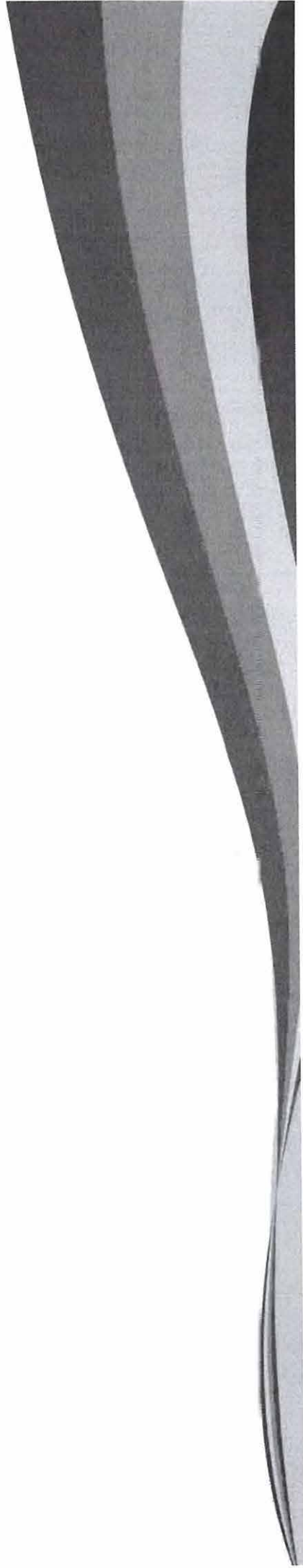
## OVERVIEW OF ESKOM CASES (b)

Province	No. of Cases on hand	Finalised cases
Eastern Cape	9	3
Free State	4	0
Gauteng	41	10
Limpopo	1	0
Mpumalanga	39	0
Western Cape	2	0
<b>TOTALS</b>	<b>96</b>	<b>13</b>

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# OVERVIEW OF ESKOM CASES ON THE COURT ROLL



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# OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	Witbank CAS 223/03/2022
<b>Offence</b>	Possession of suspected stolen property
<b>Date Reported</b>	2022/03/08
<b>Date of Referral to DPCI</b>	2022/03/08
<b>Loss involved</b>	5 940 kg R 266 716. 00
<b>Entity/Individual involved</b>	Sicelo Vilakazi
<b>Number of charges (to be continuously updated)</b>	01

**SYNOPSIS OF CASE**

The accused Sicelo Vilakazi who is the driver at MRS Scrap Metal was arrested with a full load of Aluminium conductor that he claimed to have collected from someone Marikana (informal settlement) in Vosman (Kwaguqa)

**CURRENT STATUS**

The case is remanded to **2022-11-28**



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## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

Case number	Vosman CAS 169/03/2022	<u>SYNOPSIS OF CASE</u>
Offence	Possession of Aluminium Conductor Tempering with Essential Infrastructure	A truck with high bundles of Eskom identified conductor cables were found in Thabiso Mathe's yard. After interrogation of the 12 arrested illegal immigrants from Mozambique, it was found that they were working for Thabiso Mathe. He (Thabo) was arrested.
Date Reported	2022/03/08	<u>CURRENT STATUS</u>
Date of Referral to DPCI	2022/03/08	The case is remanded to <b>2022-11-28</b>
Loss involved	R 20 million	
Entity/Individual involved	Thabiso Mathe	
Number of charges (to be continuously updated)	01	

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# OVERVIEW OF ESKOM CASES ON THE COURT

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<b>Case number</b>	Bedfordview CAS 345/08/2017, Phola CAS 123/03/2019, Phola CAS 124/03/2019 & Phola CAS 125/03/2019	<b>SYNOPSIS OF CASE</b> In 2008, Alstom S & E Africa (Pty) Ltd ("Alstom") was awarded by Eskom a tender at Kusile Power Station. The scope of the work, amongst others, include completion and erection of Air Cooled Condenser
<b>Offence</b>	Fraud Contraventions of PRECCA Contraventions of POCA (Money laundering)	Alstom subcontracted part of the work to various entities who in return also subcontracted smaller entities. Tubular Construction Projects (Pty) Ltd ("TCP") was subcontracted by DBT Technologies (Pty) Ltd ("DBT"), one of the companies subcontracted by Alstom.
<b>Date Reported</b>	2017-08-30	The allegation is that during the implementation of the project (between 2013 and 2015), there were payment disputes between Alstom, DBT and TCP. In an attempt purportedly to resolve the disputes, Mr Hlakudi facilitated the scoping of the work allocated to Alstom negotiations with TCP which led to direct appointment of TCP by Eskom on work that was previously sub contracted by DBT to TCP.
<b>Date of Referral</b>	2017-11-27	
<b>Loss involved</b>	R745 804 316.25	
<b>Entity/ Individual involved</b>	France Hlakudi Tubular Construction Projects (Pty) Ltd Hlakudi Translations and Interpretations (Pty) Ltd. A Masango H Kgomoeswana Tony Trindade Mike Lomas	On 2015-09-02, Mr Hlakudi, after being authorised by the Executive Procurement Committee, wrote a letter to TCP requesting negotiations to commence between TCP and Eskom for the purpose of TCP becoming the sole negotiating party for the Air Cooled Condenser erection for Unit 4 to 6. On the same day, TCP paid an amount of R400 000 into the bank account of Hlakudi Translations and Interpretations (Pty) Ltd, a company in which Mr Hlakudi is the sole Director.
<b>Number of charges (to be continuously updated)</b>	03	

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# CTD...OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<p><b>Case number</b></p> <p>Bedfordview CAS 345/08/2017, Phola CAS 123/03/2019, Phola CAS 124/03/2019 &amp; Phola CAS 125/03/2019</p>	<p><b><u>CURRENT STATUS AND OUTSTANDING INVESTIGATION</u></b>  <b><u>Bedfordview CAS 345/08/2017 and Phola CAS 125/03/2019 (Main case)</u></b></p> <p>Court case: The matter was postponed to <b>2022-04-04</b> to inter alia provide the newly appointed Legal Aid Attorney of one of the accused, an opportunity to peruse the case docket. The Westminster Magistrates Court based in London in the UK adjourned the extradition hearing of Michael Lomas to <b>2022-12-15</b> for judgment.</p> <p>The High Court of South Africa: Gauteng Division, Johannesburg issued a restraint order valued at R1.4bn against former Eskom executives and former Tubular Construction Projects contractors. On 2021-05-04, the restraint order was executed by the appointed curator.</p> <p><b><u>Phola CAS 123/03/2019, Phola CAS 124/03/2019 (Second leg)</u></b></p> <p>Under investigation</p> <p><b><u>Expected Date of finalisation</u></b></p> <p>December 2022.</p>
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## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

Case number	Witbank CAS 264/06/2021	
Offence	Theft of coal Corruption Attempted Escaping from lawful custody	<p><b>SYNOPSIS OF CASE</b></p> <p>The Coal Transporter colluded with the Eskom weighbridge clerks by sending the photo of the waybill details of the load at the receiving power station. The waybill will then be submitted to the Eskom weighbridge clerks for processing and issuing of the delivery note which will be presented to the mine for the payment claim to Eskom.</p> <p>The load will then be diverted to the <b>privately owned</b> coal yard.</p> <p>Eskom will then pay the coal to the mine , which was not delivered to Eskom.</p> <p><b>CURRENT STATUS</b></p> <ul style="list-style-type: none"> <li>The matter is remanded to <b>2022-11-29</b></li> </ul>
Date Reported	2022/03/11	
Date of Referral to DPCI	2022/03/11	
Loss involved	R 22 000. 00	
Entity/Individual involved	B Mnkandla	
Number of charges (to be continuously updated)	03	

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## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	Kriel CAS 101/03/2022
<b>Offence</b>	Theft of Catch-light Diesel
<b>Date Reported</b>	2022/03/20
<b>Date of Referral to DPCI</b>	2022/04/22
<b>Loss involved</b>	R 200 000. 00
<b>Entity/Individual involved</b>	Douglas Ralulimi
<b>Number of charges (to be continuously updated)</b>	01

### SYNOPSIS OF CASE

Fraudulent claims of diesel submitted to Eskom for payment , while the diesel was in fact, not delivered.  
The truck driver colluded with the Eskom weighbridge clerks and the receiving officer to let him drive out after weighing the diesel load in the power station premises, before offloading the diesel.

Eskom will then pay for the-bill of the diesel it never received.

### CURRENT STATUS

The case is remanded to **2022/11/22**.

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## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	<b><u>SYNOPSIS OF CASE</u></b>
Mount Road cas 311/09/2021	The accused was employed at Eskom , Gqeberha, during the period March 2011 to May 2021 as a Senior Billing Clerk. The accused was responsible for the processing of electricity meter readings on the billing system. The readings were captured by route contractors at customer sites using handheld devices and were forwarded to the accused electronically. The accused then had to bill the customers for electricity usage in accordance to the readings. The accused, however made a misrepresentation to Eskom in that she unlawfully and intentionally processed false readings on the billing system for which the customers were billed for a lower electricity usage. Thus causing Eskom a financial loss of R11 841 319.57 million.
<b>Offence</b>	
<b>Date Reported</b>	
<b>Date of Referral to DPCI</b>	
<b>Loss involved</b>	
<b>Entity/Individual involved</b>	
<b>Number of charges (to be continuously updated)</b>	
	<b><u>CURRENT STATUS</u></b>
	The case is remanded for 2023-03-22 to 2023-03-23



## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	Mount Frere CAS 56/05/2018	<b>SYNOPSIS OF CASE</b>
<b>Offence</b>	Fraud	The suspects unlawfully reconnected electricity which was cut by Eskom including by tempering and damaging of Eskom's electricity supply systems.
<b>Date Reported</b>	2016/02/29	<b>CURRENT STATUS</b>
<b>Date of Referral to DPCI</b>	2018/05/08	The case has been remanded to <b>2023-03-27</b>
<b>Loss involved</b>	Nil	
<b>Entity/Individual involved</b>	Zanemvula Adolphus Magabitshana Notemba Millicent Mpiti Mkululi Wiseman Ntshangase	
<b>Number of charges (to be continuously updated)</b>	01	



## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	Cleveland CAS 58/04/2017	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Fraud and Corruption	<p>The complainant alleges that in January 2016, received an information that Miss Nthabiseng Makheka had without permission, used someone else username and password to access the Eskom financial management system and <b>captured</b> fraudulent invoices for a company called Fountain.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>The matter is remanded to <b>2022/11/23</b>.</p>
<b>First Appearance</b>	2020/07/22	
<b>Remand date</b>	2022/11/23	
<b>Loss involved</b>	R 181 868 954-00	
<b>Persons/Entity involved</b>	Miss Nthabiseng Makheka	
<b>Number of charges (to be continuously updated)</b>	17	

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# OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	Madeira CAS 261/05/2019	<b><u>SYNOPSIS OF CASE</u></b>  The suspect unlawfully connected to Eskom electricity network structure illegally and thus causing a financial loss to Eskom.	
<b>Offence</b>	Fraud	<b><u>CURRENT STATUS</u></b>  The docket was before court on 2022/08/16 and was remanded to <b>8-9 December 2022</b> for trial	
<b>Date Reported</b>	2018/01/20		
<b>Date of Referral to DPCI</b>	2019/05/20		
<b>Loss involved</b>	R376 000,00		
<b>Entity/Individual involved</b>	John Tazvivinga		
<b>Number of charges (to be continuously updated)</b>	01		

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## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<p><b>Case number</b></p>	<p><b>WEST RAND SOCIU:</b>          Alberton CAS 572/9/2015,          Orlando CAS 234/05/2017,          Orlando CAS 235/05/2017,          Muldersdrift CAS 356/08/2017,          Muldersdrift CAS 94/05/2017,          Brits CAS 234/05/2017 and          Roodepoort CAS 387/05/2017          Brackendown 41, 210/3/2015, 94 &amp; 95/08/2016          Maydon Wharf 144, 145, 146/2/2015, 142/3/2015,          388, 389/4/2015</p>	<p><b><u>SYNOPSIS OF CASE</u></b></p> <p>Mr. Godfrey Lebethe, is the owner of a private scrap metal dealer. It was alleged that he and senior managers of Eskom secretly and unlawfully created fraudulent documentation in order to buy and sell Eskom properties without the knowledge of Eskom.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Case is postponed to <b>24 November 2022</b></p>
<p><b>Offences</b></p>	<p>Possession of stolen property, theft of Copper, Fraud, Immigration Act, Environment Act</p>	
<p><b>Loss involved</b></p>	<p>R 5 million</p>	
<p><b>Persons/Entity involved</b></p>	<p>Godfrey Lebethe/ Eskom          Sachin Ahuja          Ishmail Motaung</p>	
<p><b>Number of charges to date</b></p>	<p>Theft of Eskom Property          Contravention of 2<sup>nd</sup> Hand Goods Act          Fraud</p>	



## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	Kriel CAS 88/05/2012	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Fraud	One Eskom official at Kriel Power Station, finance manager Mr Jacob Sfiso Masina, -unlawfully and intentionally made payments to the two entities (companies), Mandlankosi logistics, which is alleged to be a company belonging to him and Lutshala supply transport which is alleged to be a company belonging to his mother. -The two companies allegedly never rendered any services to Eskom.
<b>Date Reported</b>	2011-01-10	<b><u>CURRENT STATUS</u></b>
<b>Date of Referral to DPCI</b>	2018-11-19	The cases is remanded to <b>16/11/2022</b> for sentencing.
<b>Loss involved</b>	R513 630.00	
<b>Entity/Individual involved</b>	Mandlankosi Logistics	
<b>Number of charges (to be continuously updated)</b>	01	

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## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	Kinross CAS 04/12/2018	
<b>Offence</b>	Theft (Eskom Conductors)	
<b>Date Reported</b>	2018-12-01	
<b>Date of Referral to DPCI</b>	2018-12-03	
<b>Loss involved</b>	R200 000-00	
<b>Entity/Individual involved</b>	Mokoena MN	
<b>Number of charges (to be continuously updated)</b>	01	
<p><b><u>SYNOPSIS OF CASE</u></b></p> <p>On 2018-12-01 Mr Ngidi who was driving a truck with Registration -number CS78RK loaded with Eskom conductors was instructed by Mr Mokoena who was an Eskom Employee to deliver the said load to Kinross scrap yard of which he did, and amount of R76 300 was then paid into Mr Mokoena's account.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>The next court date is <b>2022/12/01</b></p>		

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# OVERVIEW OF ESKOM CASES ON THE COURT ROLL



<b>Case number</b>	Kraaifontein CAS 1026/10/2021
<b>Offence</b>	Theft of Copper cables
<b>Date Reported</b>	2021-10-28
<b>Date of Referral to DPCI</b>	2021-10-18
<b>Loss involved</b>	R94 000.00
<b>Entity/Individual involved</b>	Mapunza Kabuya
<b>Number of charges (to be continuously updated)</b>	Two (2)

## SYNOPSIS OF CASE

On Thursday, 2021-10-28, members of EPR: SOCI, WC:CI Winelands Cluster and Winelands Highway Patrol followed up information that copper is being offloaded from a truck. Observation was done in Old Paarl Road, Brackenfell. Some of the copper was offloaded from a truck to a Nissan LDV. The Nissan LDV was followed to a house at Nr 289, 9th Avenue, Kraaifontein. The premises was raided and 4 suspects were busy weighing the copper. Three of these suspects jumped over the wall and tried to run away, but they were apprehended with the other suspect busy weighing the copper. The driver of the truck was also arrested as he helped them offloading from the truck to the LDV.

## CURRENT STATUS

Case is remanded to 2023/01/24.

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# OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	Vosman CAS 364/03/2022	<b>SYNOPSIS OF CASE</b>	
<b>Offence</b>	Theft of Aluminium Cable	The accused Mr. Antony Malevo was found in the veld between Kromdraai in Witbank area busy cutting the electrical conductor of Eskom Power Line. He was found in possession of the bull- cutter tools and a cable lying on the ground with the estimated value of R1 million.	
<b>Date Reported</b>	2022/03/21	<b>CURRENT STATUS</b>	
<b>Date of Referral to DPCI</b>	2022/03/21	The next court date <b>2022/11/28</b>	
<b>Loss involved</b>	R1 million		
<b>Entity/Individual involved</b>	A Mlevo		
<b>Number of charges (to be continuously updated)</b>	01		



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## OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	<b>Bredasdorp CAS 85/11/2021</b>	<b><u>SYNOPSIS OF CASE</u></b>	
<b>Offence</b>	Theft of copper cables	On 2021-11-14 information was received from Crime Intelligence that Kay-Ann Olkers stole copper cables valued at R306 000-00 from Eskom and her husband sold it to a scrapyard.	
<b>Date Reported</b>	2022-07-27	DPCI: Serious Organised Crime Investigation: EPR Unit followed up the information and visited the residential address of the <b>accused</b>	
<b>Date of Referral to DPCI</b>	2021-11-14	On the premises copper cables were confiscated. During further investigation more copper cables were found at Get Scrap Metal and Waste Scrap Yard, situated at 6 Sealy Street, Bredasdorp.	
<b>Loss involved</b>	R 306 000.00	<b><u>CURRENT STATUS</u></b>	
<b>Entity / individual involved</b>	Kay – Ann Olkers	Case remanded to <b>2022/11/21</b>	

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# OVERVIEW OF ESKOM CASES ON THE COURT ROLL

<b>Case number</b>	<b>Kliptown CAS 383/01/2022</b>	<p><b><u>SYNOPSIS OF CASE</u></b></p> <p>The complainant Mr Ngobeni alleges that on 2022-01-31 at about 10:00, he was on duty patrolling around Kliptown Policing area at Holomisa Squater camp in Klipspruit. Whilst patrolling, he noticed a man with boxes of electricity cables, He stopped him and asked where did he get those boxes. He failed to explain to the complainant, the suspect was then arrested. Officials from Prasa came in and identify the cables as theirs. They alleges that the copper cable came out from the Robot.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Case appeared before court and it has been reminded to <b>2022-11-15</b></p>
<b>Offence</b>	Tampering with Essential Infrastructure: Cable Theft entail Infrastructure Act	
<b>Date Reported</b>	2022-01-31	
<b>Date of Referral to DPCI</b>	2022-02-01	
<b>Loss involved</b>	R15 000-00	
<b>Entity/Individual involved</b>	Lehlonolo Mokoena	
<b>Number of charges</b>	01	

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# OVERVIEW OF ESKOM CASES ON THE COURT ROLL

**Case number** Vosman CAS 143/03/2022

**Offence** Tampering with Essential Infrastructure

**Date Reported** 2022-03-08

**Date of Referral to DPCI** 2022-03-08

**Loss involved** R100 million

**Entity/Individual involved** Private individuals

**Number of charges** 01

**SYNOPSIS OF CASE**

aluminium conductor was found cut and stolen from the Eskom Power line between Balmoral and Bronkhortspruit. Thirteen suspects were arrested.

**CURRENT STATUS**

Case appeared before court and it has been remanded to **2022-11-28**

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## ESKOM (FINALISED MATTERS)

<b>Case number</b>	Sandton CAS 464/11/2018	<p><b><u>SYNOPSIS OF CASE</u></b></p> <p>The complainant alleged that he was working for Eskom as Chief Financial Advisor and he received information regarding fraudulent transaction processed by SAP system for an amount of about R3 000 000.00 , paid to Megra Transport Close Corporation.</p> <p>The complainant alleges that the suspect Mr Mosai Barnard Moraka with ID No: 751217 5545 083 was employed at Eskom as Financial Controller for Primary Energy, of which he fraudulently loaded invoices of the supplier by the name of Megra Transport CC as a coal transporter, and payments were transferred from Eskom business account into Megra Transport business account. The director of Megra Transport Mr Victor Tshabalala with ID No: 701123 5078 086 benefited from fraudulent transactions. The company suffered actual loss of R 34 984 427.57.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Accused were convicted on 2022/03/29 Suspects, Mr Victor Tshabalala and Mr Mosai Moraka were found guilty of 53 counts of fraud and theft and sentenced 20 years imprisonment each</p>
<b>Offence</b>	Fraud and theft	
<b>Date Reported</b>	2019/10/22	
<b>Date of Referral to DPCI</b>	2019/10/22	
<b>Loss involved</b>	R 34 984 427,57	
<b>Entity/Individual involved</b>	Victor Tshabalala Mosai Moraka (Financial Controller)	
<b>Number of charges</b>	02	
<b>Number of statements obtained</b>	A1-A25	

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## ESKOM (FINALISED MATTERS)

<b>Case number</b>	Mount Frere Cas 142/06/2019	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Theft	<p>The accused was the client of Eskom. She unlawfully disconnect the supply of electricity in her residential place and further unlawfully connected the electricity in order to avoid payment to Eskom using unknown person.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Withdrawn by court – Accused passed away</p>
<b>Date Reported</b>	15/06/2019	
<b>Date of Referral to DPCI</b>	16/06/2019	
<b>Loss involved</b>	R238 421,00	
<b>Entity/Individual involved</b>	Mxolisi Ngcwabe	
<b>Number of charges</b>	01	

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## ESKOM (FINALISED MATTERS)

<b>Case number</b>	JHB SOCIU Kliptown CAS 119/09/2021	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Tampering with Essential Infrastructure: Cable Theft	<p>The complainant, Constable Nkwagatse, alleged that on 2021/09/10 at about 21:05 he was on duty when he received a call from Crime Intelligence about a truck at a scrap Metal place at number 18 Pallet crescent, in Devland that is about to transport melted copper out of the scrap Yard. He rushed there to attend to the scene, and on arrival there at the scrap Metal place they did not to open for them, they had to jump the wall. Whilst searching the premises, they found bricks of melted copper.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Case withdrawn .PRASA , Transnet, City Power and Eskom could not identify the cable as theirs.</p>
<b>Date Reported</b>	2021/09/10	
<b>Date of Referral to DPCI</b>	2021/09/10	
<b>Loss involved</b>		
<b>Entity/Individual involved</b>		
<b>Number of charges</b>	02	

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# ESKOM (FINALISED MATTERS)

<b>Case number</b>	Sandton CAS 39/06/2016	<p><b><u>SYPNOSIS OF CASE</u></b></p> <p>Two Eskom Employees colluded with one of the Service Providers to charge Eskom the higher rate, whereas there was an overseas service provider who charge the lower rate. Due to the actions of the employee Eskom suffered an actual loss R240 000 000,00</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Matter withdrawn on 2020/07/24. Insufficient evidence.</p>
<b>Offence</b>	Fraud	
<b>Date Reported</b>	June 2016	
<b>Date of Referral to DPCI</b>	June 2016	
<b>Loss involved</b>	R 240 000 000,00	
<b>Entity/Individual involved</b>		
<b>Number of charges (to be continuously updated</b>		

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## ESKOM (FINALISED MATTERS)

<u>SYNOPSIS OF CASE</u>	
<b>Case number</b>	Sandton CAS 266/11/2019
<b>Offence</b>	Fraud and corruption
<b>Date Reported</b>	November 2019
<b>Date of Referral to DPCI</b>	November 2019
<b>Loss involved</b>	
<b>Entity/Individual involved</b>	Mercury Electrical
<b>Number of charges</b>	02
<p>Investigation was conducted by the Eskom service provider by the name of Chedza International Loss Adjusters (Pty) Ltd trading as Crawford and Company SA. During the investigation it was observed that Mr Etheane Petersen mismanaged the contractual relationship between Eskom Simmerpan, Leroy Construction and Mercury Electrical by facilitating the appointment of Mercury Electrical without following the Task order procedure for Facilities Management Service Contract.,</p> <p><b>CURRENT STATUS</b></p> <p>The matter is regarded as finalised. The public prosecutor declined to prosecute any person in this case on 2020-07-10. Insufficient evidence.</p>	

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# ESKOM (FINALISED MATTERS)

<b>Case number</b>	Cleveland CAS 152/11/2019	<b><u>SYNOPSIS OF CASE</u></b>  Eskom received information relating to corrupt activities committed by Eskom Employees. It was alleged that Eskom employees demand gratification in exchange for work allocated to the service providers.
<b>Offence</b>	Precca 12 of 2004	
<b>Date Reported</b>		<b><u>CURRENT STATUS</u></b>  Matter withdrawn on 2020/07/24. Insufficient evidence.
<b>Date of Referral to DPCI</b>		
<b>Loss involved</b>		
<b>Entity/Individual involved</b>	Ms Hattingsh	
<b>Number of charges (co be continuously updated)</b>	02	

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## ESKOM (FINALISED MATTERS)

<b>Case number</b>	Sandton CAS 102/11/2019	<p><b><u>SYNOPSIS OF CASE</u></b></p> <p>This investigation is mainly on request by whistle blowers who may be known or unknown. One of the external investigation firms which was contracted to conduct forensic investigations on behalf of Eskom was G 9 Consulting and Advisory Services headed by Mr Rajie Murugan. Eskom requested G 9 to investigate allegations that senior Eskom officials had been paying PwC millions of rands for developing Professional Services Procedurals manual which did not conform to Eskom Governance and processes PwC also provided training to employees at a highly inflated cost of Approximately R 25 000 per person. Allegations also relates to Scrubbing contract matter that was reported by another employee. Forensic received a request for an investigation emanating from the letter that was written by a senior Eskom official. The content of the letter was that he/she was uncomfortable with PwC Capex (Capital Expenditure) Scrubbing contract due to the following; disbursement of the contract is not in line with Treasury rates and based on the contract the base fees are R 60 million but it was loaded on SAP at R 95 million</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Matter withdrawn. Insufficient evidence.</p>
<b>Offence</b>	Fraud and corruption	
<b>Date Reported</b>		
<b>Date of Referral to DPCI</b>		
<b>Loss involved</b>		
<b>Entity/Individual involved</b>	Anoj Singh Prish Govender Poobie Govender	
<b>Number of charges (co be continuously updated)</b>	02	

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# ESKOM (FINALISED MATTERS)

<b>Case number</b>	Mount Frere Cas 143/06/2019	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Theft	The accused was the client of Eskom. She she unlawfully disconnect the supply off electricity in her residential place and further unlawfully connected the electricity in order to avoid payment to Eskom using unknown person
<b>Date Reported</b>	15/06/2019	<b><u>CURRENT STATUS</u></b>
<b>Date of Referral to DPCI</b>	16/06/2019	Accused was found guilty. She paid a fine of Ten thousand rand (10 000,00)
<b>Loss involved</b>	R178 000,00	
<b>Entity/Individual involved</b>	Neliswa Maphekula	
<b>Number of charges</b>	01	

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# ESKOM (FINALISED MATTERS)

<b>Case number</b>	Mount Frere Cas 197/07/2019	<b><u>SYNOPSIS OF CASE</u></b>	The accused ( <b>Eskom employee</b> ) , unlawfully connected Eskom electricity to the members of the public Without being authorised by Eskom.
<b>Offence</b>	Theft	<b><u>CURRENT STATUS</u></b>	The accused was found guilty He was sentenced to undergo <b>fifteen (15) years</b> direct imprisonment.
<b>Date Reported</b>	08/07/2019		
<b>Date of Referral to DPCI</b>	10/07/2019		
<b>Loss involved</b>	R632 258,00		
<b>Entity/Individual involved</b>	Sandile Andries Ntobela		
<b>Number of charges</b>	01		

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## ESKOM (FINALISED MATTERS)

<b>Case number</b>	WEST RAND SOCIU: Muldersdrift CAS 4/6/2018 and Rosedale CAS 27/10/2018
<b>Offence</b>	Theft of Eskom Property Contravention of 2 <sup>nd</sup> Hand Goods Act Fraud Possession of stolen property
<b>Date reported</b>	
<b>Date of referral to DPCI</b>	
<b>Loss involved</b>	R650 000.00
<b>Persons/Entity involved</b>	
<b>Number of charges to date</b>	04

### SYNOPSIS OF CASE

A disruptive operation was conducted and during the search in a Scrapyard Dealer Muldersdrift, a large quantity of copper cables were found at the premises. The said copper was stolen from Upington. The copper was allegedly stolen by the accused who was a former employee of Eskom.

### CURRENT STATUS

The matter appeared at Kagiso Court on the **29 September 2022** and the accused was **found not guilty**

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**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

## ESKOM (FINALISED MATTERS)

<b>Case number</b>	Vosman CAS 55/03/2022	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Tempering with Essential Infrastructure	<b>Aluminium Conductor</b> was found cut and stolen on the Eskom Power Line between Balmoral and Bronkhortspruit. No suspect identified
<b>Date Reported</b>	2022/03/08	<b><u>CURRENT STATUS</u></b>
<b>Date of Referral to DPCI</b>	2022/03/08	Investigations completed but couldn't link anyone on the case. Docket closed.
<b>Loss involved</b>	R 120 000. 00	
<b>Entity/Individual involved</b>	Eskom Aluminium Conductor	
<b>Number of charges (to be continuously updated)</b>	01	



## ESKOM (FINALISED MATTERS)

<b>Case number</b>	Vosman CAS 144/03/2022	<b>SYNOPSIS OF CASE</b>
<b>Offence</b>	Tempering with Essential Infrastructure	Aluminium Conductor was found cut and stolen on the Eskom Power Line between Balmoral and Bronkhortspruit. No suspect identified.
<b>Date Reported</b>	2022/03/08	<b>CURRENT STATUS</b>
<b>Date of Referral to DPCI</b>	2022/03/08	Investigations completed but couldn't link anyone on the case.
<b>Loss involved</b>	R 134 000. 00	Docket closed
<b>Entity/Individual involved</b>	Eskom Aluminium Conductor	
<b>Number of charges (to be continuously updated)</b>	01	

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## ESKOM (FINALISED MATTERS)

<b>Case number</b>	Vosman CAS 145/03/2022	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Tempering with Essential Infrastructure	Aluminium Conductor was found cut and stolen on the Eskom Power Line between Balmoral and Bronkhortspruit. No suspect identified
<b>Date Reported</b>	2022/03/08	<b><u>CURRENT STATUS</u></b>
<b>Date of Referral to DPCI</b>	2022/03/08	Investigations completed but couldn't link anyone on the case.
<b>Loss involved</b>	R 120 000. 00	Docket closed
<b>Entity/Individual involved</b>	Eskom Aluminium Conductor	
<b>Number of charges (to be continuously updated)</b>	01	

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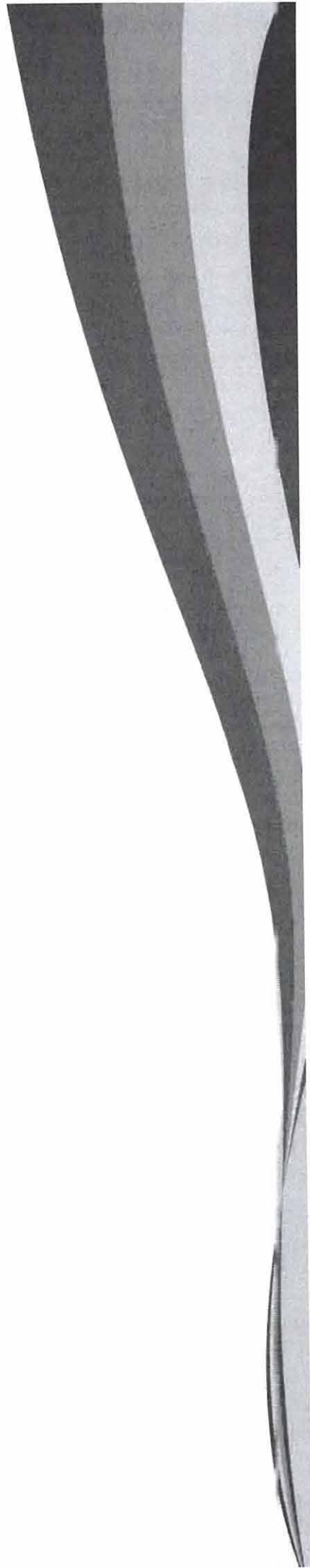
## ESKOM (FINALISED MATTERS)

<b>Case number</b>	Vosman CAS 146/03/2022	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Tempering with Essential Infrastructure	Aluminium Conductor was found cut and stolen on the Eskom Power Line between Balmoral and Bronkhortspruit. No suspect identified.
<b>Date Reported</b>	2022/03/08	<b><u>CURRENT STATUS</u></b>
<b>Date of Referral to DPCI</b>	2022/03/08	Investigations completed but couldn't link anyone on the case.
<b>Loss involved</b>	R 60 000. 00	Docket closed
<b>Entity/Individual involved</b>	Eskom Aluminium Conductor	
<b>Number of charges (to be continuously updated)</b>	01	

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# ESKOM CASES PROVISIONALLY WITHDRAWN



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## ESKOM CASES PROVISIONALLY WITHDRAWN

<b>Case number</b>	Wierdabrug CAS 158/04/2020	<b><u>SYNOPSIS OF CASE</u></b>	
<b>Offence</b>	Fraud and theft	The arrest came as a result of a search that was conducted by Serious Organised Crime Investigation, after receiving information that the suspects were illegally selling electricity to the public. Two cell phones were seized and analysed. Eskom voucher meter numbers in groups were found on one of the cell-phones. Cash was also seized in the premises. And two suspects were placed under arrest.	
<b>Loss involved</b>	Still to be determined		
<b>Persons/ Entity involved</b>	Mr. AM. Sefoka Mrs. LP. Sefoka	<b><u>CURRENT STATUS</u></b>	
<b>Number of statements</b>	21	On the 16 <sup>th</sup> of November 2020 the matter was provisionally withdrawn for finalisation of the investigation.	
<b>Number of charges to date</b>	2		

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## ESKOM CASES PROVISIONALLY WITHDRAWN

<b>Case number</b>	Loate CAS 172/04/2020	<p><b>SYNOPSIS OF CASE</b></p> <p>Serious Organised Crime Unit opened a case docket, Loate CAS 172/04/2020, after he received information from the source about the selling of Eskom electricity coupons at a certain House in Mabopane. A search was conducted with the assistance of Flying Squad members. Plenty of Eskom coupons together with documents having names of people and meter numbers were found. Eskom Technicians identified the coupons as belonging to Eskom and were taken for analysis. Cellphones and cash was seized.</p> <p><b>Current status:</b> Provisionally withdrawn on On the 16<sup>th</sup> of November 2020 for further investigation.</p>
<b>Offence</b>	Fraud Theft and Contravention of Infrastructure Act 18 of 2015	
<b>Loss involved</b>	Still to be determined	
<b>Persons/Entity involved</b>		
<b>Number of statements</b>	13	
<b>Number of charges to date</b>	2	

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## ESKOM CASES PROVISIONALLY WITHDRAWN

<b>Case number</b>	Kriel CAS 71/09/2021	
<b>Offence</b>	Theft of coal	
<b>Date Reported</b>	2021/09/22	
<b>Date of Referral to DPCI</b>	2021/09/22	
<b>Loss involved</b>	R 22 000. 00	
<b>Entity/Individual involved</b>	S Mdzebele and others	
<b>Number of charges (to be continuously updated)</b>	01	
<b><u>SYNOPSIS OF CASE</u></b>		
<p>The Coal Transporter colluded with the Eskom weighbridge clerks by sending the photo of the waybill details of the load at the receiving power station. The waybill will then be submitted to the Eskom weighbridge clerks for processing and issuing of the delivery note which will be presented to the mine for the payment claim to Eskom.</p> <p>The load will then be diverted to the <b>privately owned</b> coal yard.</p> <p>Eskom will then pay the coal to the mine , which was not delivered to Eskom.</p>		
<b><u>CURRENT STATUS</u></b>		
Provisionally withdrawn for further investigation by the PP.		

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## ESKOM CASES PROVISIONALLY WITHDRAWN

<b>Case number</b>	Witbank CAS 244/06/2021	
<b>Offence</b>	Theft of coal	
<b>Date Reported</b>	2021/06/11	
<b>Date of Referral to DPCI</b>	2021/06/11	
<b>Loss involved</b>	R 22 000. 00	
<b>Entity/Individual involved</b>	Eskom – Duvha Power Station	
<b>Number of charges (to be continuously updated)</b>	01	
<b><u>SYNOPSIS OF CASE</u></b>		
<p>The Coal Transporter colluded with the Eskom weighbridge clerks by sending the photo of the waybill details of the load at the receiving power station. The waybill will then be submitted to the Eskom weighbridge clerks for processing and issuing of the delivery note which will be presented to the mine for the payment claim to Eskom.</p> <p>The load will then be diverted to the <b>privately owned</b> coal yard.</p> <p>Eskom will then pay the coal to the mine , which was not delivered to Eskom.</p>		
<b><u>CURRENT STATUS</u></b>		
<p>Provisionally withdrawn on the first appearance of the accused to finalise the investigation. The investigation completed and the accused <b>is</b> at large and cannot be traced to be served with the J157.</p>		

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## ESKOM CASES PROVISIONALLY WITHDRAWN

Case number	Garsfontein CAS 230/12/2018	<u>CURRENT STATUS</u>
Offence	Fraud and theft	On 24 April 2020 during the search at Hartebeespoortdam and two Credit Dispensing Units and the Eskom coupons were seized and handed to Eskom official for analysis.
Loss involved	R50 million	
Persons/Entity involved	Mr. P. Ngwetsana and Mrs. A. Ngwetsana	<u>STATUS</u> On 24 <sup>th</sup> of April 2020 the warrant of arrest for the suspects were authorised and were executed and both suspects and were arrested.
First Appearance	28 <sup>th</sup> April 2020	On the 25 May 2021 matter was provisionally withdrawn for further investigation.
Number of statements	58	

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## CONTRIBUTING FACTORS TO WITHDRAWAL OF CASES

- Cases generated by Police Operations (search and seizures)
- Investigations to be conducted are informed by items seized
- Ownership of exhibits seized

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## OVERVIEW OF ESKOM CASES UNDER INVESTIGATION

PROVINCE	NO OF CASES	TYPE OF CRIMES	NO. OF CHARGES		
FREE STATE	4	THEFT GENERAL ELECTRICITY	1		
		THEFT OF COPPER CABLES	2		
		POSSESSION OF SUSPECTED STOLEN COPPER CABLE	1		
		FRAUD, CORRUPTION, CONT. OF PFMA/ PRECCA	8		
GAUTENG	10	THEFT OF COPPER CABLES	1		
		BOMB THREAT	1		
		FRAUD, CORRUPTION, CONT. OF PFMA/ PRECCA	1		
LIMPOPO	1	FRAUD, CORRUPTION, CONT. OF PFMA/ PRECCA	19		
		THEFT OF CABLES (COPPER / ALLUMINIUM)	4		
		TAMPERING WITH ESSENTIAL INFRASTRUCTURE	5		
		THEFT OF SPARES	1		
		SABOTAGE	3		
		THEFT OF COAL	1		
		THEFT OF CATCH LIGHT DIESEL	7		
		MPUMALANGA	39	THEFT OF CABLES (COPPER / ALLUMINIUM)	4
				TAMPERING WITH ESSENTIAL INFRASTRUCTURE	5
				THEFT OF SPARES	1
SABOTAGE	3				
THEFT OF COAL	1				
THEFT OF CATCH LIGHT DIESEL	7				
THEFT OF CABLES (COPPER / ALLUMINIUM)	4				
TAMPERING WITH ESSENTIAL INFRASTRUCTURE	5				
THEFT OF SPARES	1				
SABOTAGE	3				

510 statements have already been obtained in the 51 cases, which involve an estimated value of R365 million.

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## OVERVIEW OF CASES TRANSNET

CASE DOCKETS	NUMBER
Cases on hand	25
Cases pending at court	13
Cases submitted for decision	4
Cases under investigation	8
Cases finalised	0
Cases provisionally withdrawn from court	0

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	PTA SOCI: Silverton CAS 379/02/2021 and Akasia CAS 300/02/2021
Offence	Theft of copper cable and Possession
Date reported	3 May 2021
Loss involved	R2 million
Persons/Entity involved	Malibongwe Zwane Thapelo Hosea Ntshabele Jypsy Mongwe Solomon Maredi
Number of statements	15
Number of charges to date	2

### SYNOPSIS OF CASE

The Complainant in the matter, employed as a production Manager at Electrical Section at Transnet, Koedoespoort, Silverton, alleged that four Transnet employees were allegedly involved in the stealing of copper from the depot and allegedly selling it to the neighbouring scrap metals around Pretoria.

After thorough investigation, an operation was conducted on 03 May 2021 whereby the alleged suspects were arrested and detained at SAPS Silverton.

### CURRENT STATUS

The matter is appearing before Pretoria Regional Magistrate Court and the next court date is the **25/01/2023 for Trial**. All accused are out on bail.

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	Belfast CAS 62/10/2021	<u>SYNOPSIS OF CASE</u>
Offence	Possession of suspected stolen property	The complainant alleges that he received a call that there was a power failure at Wonderfontein where five suspects were seen using water bridge to the railway line. The drone team was used to keep them under surveillance. Approximately 67 metres of Transnet overhead contact wire was cut to the value of R15000.
Date Reported	2021-10-15	
Date of Referral to DPCI	2021-10-15	<u>CURRENT STATUS</u>
Loss involved Entity/Individual involved	R15000 Twice Musa Mabuza Celemuza Sandile Mabuza Lucky Saneliso Shabangu Rose Lindiwe Semelani	Court matter, remanded to <b>2023-01-05</b> for judgement
Number of charges (to be continuously updated)	1	

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# OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

<b>Case number</b>	Vosman 371/02/2021	
<b>Offence</b>	Tampers with, damages or destroys essential infrastructure and	
<b>Date Reported</b>	2021-02-26	
<b>Date of Referral to DPCI</b>	2021-02-26	
<b>Loss involved</b>		
<b>Entity/Individual involved</b>	Clement Nkosinathi Ngobeni	
<b>Number of charges (to be continuously updated)</b>	2	
<b>Number of statements obtained</b>	25	
<p><b>SYNOPSIS OF CASE</b></p> <p>On 2021-02-25 at about 21:30 the complainant was informed via WhatsApp that there were suspects busy stealing at the pipeline. They went to the crime scene and found the suspect busy digging using the generator and they arrested them. They did not steal anything.</p> <p><b>CURRENT STATUS</b></p> <p>Case has been remanded to 2023-01-18</p>		

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# OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

		<u>SYNOPSIS OF CASE</u>
<b>Case number</b>	Delmas 181/09/2021	<p>The complainant alleged that he received information that there will be theft of diesel at Welgevonden Transnet pipeline. They drove to the said address and formed three teams to cordoned the area where the diesel was ought to be drained. On the very same day at about 19:00 they received information that the vehicle arrived and dropped three African males to begin the work. The complainant watched them checking if it was safe for them to start working as there was already a drilled hole ready to drain the diesel from. As they were about to start draining, the complainant confronted them and arrested them. They then searched their vehicle and found tools used to dig up and bore holes at the Transnet pipeline. The suspects were apprehended and taken to the police station for further assistance.</p> <p><b>CURRENT STATUS</b></p> <p>Postponed <b>2022-12-06</b> in Demas magistrate court.</p>
<b>Offence</b>	Tampers with, damages or destroys essential infrastructure	
<b>Date Reported</b>	2021-09-25	
<b>Date of Referral to DPCI</b>	2021-09-29	
<b>Loss involved</b>		
<b>Entity/Individual involved</b>	MT Maseko	
<b>Number of charges (to be continuously updated)</b>	3	
<b>Number of statements obtained</b>	42	

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	SYNOPSIS OF CASE
Phola CAS 24/02/2020	<p>The complainant alleges that on 2020-02-08 at about 04:22 he received a call from his colleague who is monitoring the working area with CCTV informing him that there is a white bakkie inside Petronet premises which seems to be loading containers. The complainant immediately drove to the scene security guard took long to open the gate. The complainant and his colleagues saw a white ford ranger bakkie with reg. no ND 718 600 driving off through the gate. He was immediately stopped and the driver introduced himself as Baloyi Livers, a Transnet employee and further said he is in a hurry to Witbank. The complainant then requested him to search the vehicle and he agreed. Whilst the complainant was searching the vehicle the suspect requested to have a word of a deal with him and the complainant ignored him and continued to the loading beam of his bakkie and <b>found 23 of 25L containers full of diesel</b> and he was asked what are the container doing he could not give a clear answer and lastly said he was trying to steal diesel and it was his first time and therefore he is sorry it will never happen again. Suspect was arrested and properties were booked into SAP13 no 31/2020 for further investigation.</p>
Offence	
Date Reported	
Date of Referral to DPCI	
Loss involved	
Entity/Individual involved	
Number of charges (to be continuously updated)	
Number of statements obtained	
	<p><b>CURRENT STATUS</b></p> <p>Case remanded to <b>2022-11-17</b></p>

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	Delmas CAS 50/07/2020	<u>SYNOPSIS OF CASE</u>
Offence	Criminal amendment Act 18 of 2015 Tampering and damaging of essential infrastructure	<p>The complainant was patrolling at Vlaaklaas Road when he noticed two males moving next to the diesel pump that is situated next to the valve of the diesel pump. He drove towards the males and they started running. He chased and caught them and went back to the diesel valve and find the wheel spanner, round pole and the diesel valve was damaged, the damage is estimated at R1500.00</p> <p><u>CURRENT STATUS</u></p> <p>Case remanded to <b>2023-02-16</b> for trial</p>
Date Reported	2020-07-10	
Date of Referral to DPCI	2020-09-15	
Loss involved		
Entity/Individual involved	Moyo Nyosha Thoma Takuza	
Number of charges (to be continuously updated)	2	

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	Phola 21/12/2020	<u>SYNOPSIS OF CASE</u>
Offence	Criminal amendment Act 18 of 2015 Tampering and damaging of essential infrastructure	<p>The complainant alleges that on 2020-12-09 at about 23:50 he was busy performing his duty with his colleagues when he received a call from that there were three african males who were busy digging Transnet pipelines and there was a white Toyota Hilux with reg no JSX 378 MP next to them. The complainant rushed next to where they were damaging the Transnet pipeline and there came the Toyota Hilux and they tried to stop. it but it drove away until the it fell next to a fence of the farm and trapped. When the complainant arrived to the trapped bakkie he managed to catch one suspect . The driver and the other two suspects escaped.</p> <p><u>CURRENT STATUS</u></p> <p>Case postponed to <b>2022-12-06</b> for trial</p>
Date Reported	2020-12-22	
Date of Referral to DPCI	2021-03-23	
Loss involved	R250 000.00	
Entity/Individual involved	Steven Phillip Mbatsana	
Number of charges (to be continuously updated)	3	

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	Embalenhle 117/07/2022	
<b>Offence</b>	Tampers with, damages or destroys essential infrastructure	
<b>Date Reported</b>	2022-07-13	
<b>Date of Referral to DPCI</b>	2022-07-29	
<b>Loss involved</b>	R10 000.00	
<b>Entity/Individual involved</b>	Mackenzie	
<b>Number of charges (to be continuously updated)</b>	2	
<p><b><u>SYNOPSIS OF CASE</u></b></p> <p>The complainant, Bidvest Protea Coin, stated that on 2022-07-11 at about 06:00 he was on duty , patrolling when he received a complaint from “control office”, informing him that there was a valve tempering (BV/65 and BV66) between Secunda and Balfour. At about 02:00 while patrolling he find a truck on the road , he tried to stop it. but it did not. He managed to chase it until it stopped. When searching the truck he found stolen petrol.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Case has been remanded to <b>2022-11-03</b></p>		

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	Leslie CAS 35/07/2022			<u>SYNOPSIS OF CASE</u>
Offence	Tampering, Theft and possession of suspected stolen property			On 2022-07-12, the complainant patrolled and inspected the Secunda/Kendal fuel pipeline and found that everything was in order. At about 07:10 the complainant received a call from his colleague informing him about tampering of an infrastructure at Secunda/ Kendal Transnet pipeline on R580. He then rushed there and on his arrival he notice that there was a hole of about 1.2 metres deep, the fuel pipe was drilled and closed with a valve. The matter was investigated and the suspect was arrested
Date Reported	2022-07-12			
Date of Referral to DPCI	2022-07-12			
Loss involved	R 500 000			
Entity/Individual involved	Obrien Allistair Mackenzie			
Number of charges (to be continuously updated)	3			<p><u>CURRENT STATUS</u></p> <p>The case is postponed to <b>2023/01/23</b> for further investigation</p>

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

<b>Case number</b>	Phola CAS 61/07/2022	<b>SYNOPSIS OF CASE</b>
<b>Offence</b>	Tampering and damaging of essential infrastructure	<p>On Saturday 2022-07-23, 10(ten) suspects were arrested By Bidvest security after they were monitored by a drone. The suspect had dug a hole on Transnet fuel pipeline and welded a false valve with a 10 meter pipe to extract a product from Transnet fuel pipeline. Before the suspect can extract the product they were intercepted and arrested. During the arrest a Tanker and generator were found at the crime scene. The damage on Transnet pipe line can be estimated to 1 000 000,00. The exhibits were booked at Phola saps 13 and suspect appeared before Ogies Magistrate court.</p> <p><b>CURRENT STATUS</b></p> <p>The case is postponed to <b>2022/12/06</b> for further investigation</p>
<b>Date Reported</b>	2022-07-23	
<b>Date of Referral to DPCI</b>	2022-07-23	
<b>Loss involved</b>	R1 000 000.00	
<b>Entity/Individual involved</b>	Themba Vincent Khoza Michael Mathonsi Calvin Candru Mashela Mbongeni Desmond Mthombeni Chिताuro Elvis Moleke Selby Masemola Mimoni Kgothatso Nkuta Jabulani Thabang Mashiloane Stephen Modise Mgedezi Vusi Johannes Twala	
<b>Number of charges (to be continuously updated)</b>	02	

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

<b>Case number</b>	Greylingstad CAS 03/08/2022	<b>SYNOPSIS OF CASE</b>
<b>Offence</b>	Tampering with essential infrastructure and theft	<p>The complainant alleges that while she on 2022-08-03 she was on Patrol when she receives a complain of theft of diesel ,she visited the crime scene where she found one truck with its tanker stucked in the field and one tanker was without a horse also stucked on the maize field both the tankers were full of diesel with an unknown value, then a black ford ranger and the horse were found on the road to Standerton and five suspects were found and arrested on the crime scene.</p>
<b>Date Reported</b>	2022-08-03	
<b>Date of Referral to DPCI</b>	2022-08-03	
<b>Loss involved</b>	R 500 000,00	
<b>Entity/Individual involved</b>	Norman Shadrack Bhembe Sifiso Nesh Magagula Sipho Matuse Bongani Leornad Nkuna Petros Lucky Shabangu	
<b>Number of charges (to be continuously updated)</b>	04	<b>CURRENT STATUS</b>
		The case is postponed to <b>2023-01-25</b>

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	<b>SYNOPSIS OF CASE</b>	
Delmas CAS 19/08/2022	<p>The complainant alleged that on 2022-08-03, he was on duty patrolling Transnet pipeline around Delmas, while patrolling the pipeline. He received a WhatsApp message from the control room to patrol bolt valve from 90 to 95 as there was a pressure drop detected and there were suspects and he was given the location by drone team. On the arrival at the scene, Puntstaan farm near R548 road. he find that the suspect have already left the scene and he notice that they have dug the hole and got to the Transnet pipeline conveying fuel and connected at the valve to a yellow pipeline, and fuel was leaking, a filling part of the dug hole and there was eleven(11) 25l containers containing fuel He then patrolled around and noticed a tanker truck (white tanker truck Reg ABS7743) about 800m from the scene. He called for a back-up, and they searched the scene. The drone team arrive and one suspect was arrested.</p>	
Offence		
Date Reported		
Date of Referral to DPCI		
Loss involved	R1 million	
Entity/Individual involved	Munyaradzi Muchenje	
Number of charges (to be continuously updated)	03	
<b>CURRENT STATUS</b>		
The case is postponed to <b>2022-11-07</b> for further investigation.		

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## OVERVIEW OF TRANSNET CASES ON THE COURT ROLL

Case number	Phola CAS 69/08/2022	<u>SYNOPSIS OF CASE</u>
Offence	Tampering and damaging with essential Infrastructure	The complainant alleges that he was contacted by the drone pilot, Informing him that he is seeing suspicious movements next to the pipeline . Therefore security back up was requested and they rushed to the said area and found about 6 african males busy digging a pipeline using Shovels, connecting a generator with a welding machine. The suspects were arrested.
Date Reported	2022-08-23	
Date of Referral to DPCI	2022-08023	
Loss involved	Still to be established	
Entity/Individual involved	Abraham Chinsela Maptumo Cathbert Moyo Mabutho Muhle Milton Selton Magic Ndlovu Tarugarira Admire	<u>CURRENT STATUS</u>  The case is postponed to <b>2022-11-07</b> for further investigation
Number of charges (to be continuously updated)	18	

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**CASES UNDER INVESTIGATION  
TRANSNET**

PROVINCE	NO OF CASES	TYPE OF CRIME	CHARGES
Gauteng	01	Fraud and corruption	02
Mpumalanga	06	Damage to Infrastructure / Theft to fuel	06
Total	07		

59 Statements have been obtained on the seven (7) cases involving a total amount of R63 million

*R. G.*

**OVERVIEW OF CASES**  
**SOUTH AFRICAN BROADCASTING CORPORATION**



<b>STATUS OF CASE DOCKETS</b>	<b>NUMBER</b>
Cases on hand	2
Cases pending at court	1
Cases submitted for decision	0
Cases under investigation	1
Cases finalised	0
Cases provisionally withdrawn from court	0

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**OVERVIEW OF CASES ON COURT ROLL  
SOUTH AFRICAN BROADCASTING CORPORATION**

<b>Case number</b>	Brixton CAS 156/05/2018
<b>Offence</b>	Fraud and corruption
<b>Date Reported</b>	2018/05/15
<b>Date of Referral to DPCI</b>	
<b>Loss involved</b>	R18 290
<b>Entity/Individual involved</b>	Sully Motsweni
<b>Number of charges</b>	01

**SYNOPSIS OF CASE**

The accused, an employee at , misrepresented to SABC and applied for or requested travel and accommodation expenses for official trips, while knowing that they were for her personal vacation.

**CURRENT STATUS**

Case remand to **2022-11-25** for trial proceedings.

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**CASES UNDER INVESTIGATION  
SOUTH AFRICAN BROADCASTING CORPORATION**

<b>PROVINCE</b>	<b>NO OF CASES</b>	<b>TYPE OF CRIME</b>	<b>CHARGES</b>
Gauteng	01	Fraud and corruption	02
Total	01		

**4 Statements have been obtained. The amount involved is R18 290 000.**

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# OVERVIEW OF CASES

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## DENEL



CASE DOCKETS	NUMBER
Cases on hand	2
Cases pending at court	0
Cases submitted for decision	0
Cases under investigation	2
Cases finalised	0
Cases provisionally withdrawn from court roll	0

RF



## CASES UNDER INVESTIGATION DENEL

PROVINCE	NO OF CASES	TYPE OF CRIME	CHARGES
Gauteng	02	-Theft of Intellectual Property -Right, and -Corruption	02
Total	02		

33 Statements have been obtained on the two (2) cases involving a total amount of R 4.3 billion

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## OVERVIEW OF CASES

### PASSENGER RAIL AGENCY OF SOUTH AFRICA



CASE DOCKETS	NUMBER
Cases on hand	21
Cases pending on the court roll	3
Cases submitted for decision	0
Cases under investigation	17
Cases finalised	1
Cases withdrawn	0

95



**HAWKS**  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

## OVERVIEW OF PRASA CASES ON THE COURT ROLL

Case number	Morgenzon CAS 33/04/2022
Offence	Tampers with, damages or destroys essential infrastructure and theft
Date Reported	2022-04-29
Date of Referral to DPCI	2022-04-29
Loss involved	R1.5 million
Entity/Individual involved	Kashveer Harrilli Johannes Mahlomola Mphasha Sipho Maseko Samuel Motlalephule Tsotetsi Joseph Phillip Thyse Etienne van der Westhuizen
Number of charges (to be continuously updated)	04
<p><b><u>SYNOPSIS OF CASE</u></b></p> <p>On 2022/04/29 disruptive operation was conducted by Secunda Serious Organised Crime Investigation at about 12:00, after an information was received from Transnet employee about five suspects who were stealing Transnet railway line at Morgenzon. On arrival at an identified area, five suspects were found busy loading railway lines in the two trucks one tractor, and were all arrested</p> <p><b><u>CURRENT STATUS</u></b></p> <p>Court matter remanded to <b>2022-11-15</b> for further investigation</p>	

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**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

## OVERVIEW OF PRASA CASES ON THE COURT ROLL

<b>Case number</b>	<b>Daggakraal CAS</b> 32/10/2022	<b>SYNOPSIS OF CASE</b>
<b>Offence</b>	Tampers with, damages or destroys essential infrastructure and	On 2022-10-14 at about 14:00 information was received that there are suspects who are removing the railway tracks in Daggakraal. On arrival of the investigation team, Willem Harmse and Joseph Phillip Thysse who are the accused on Morgenzon CAS 33-04-2022, were found, tampering and damaging of essential infrastructure. They were arrested.
<b>Date Reported</b>	2022-10-14	
<b>Date of Referral to DPCI</b>	2022-10-14	
<b>Loss involved</b>	Still to be determined	
<b>Entity/Individual involved</b>	1. Willem Harmse 2. Joseph Phillip Thysse	<b>CURRENT STATUS</b>  Court matter, remanded to <b>2022-11-07</b> for further investigation
<b>Number of charges (to be continuously updated)</b>	03	

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## OVERVIEW OF PRASA CASES ON THE COURT ROLL

Case number	<u>SYNOPSIS OF CASE</u>
<p><b>Hillbrow CAS</b> 566/07/2015</p> <p>Fraud (Read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997), Forgery and Uttering</p>	<p>PRASA alleged that the suspect, Mr Daniel Mtimkulu had presented fraudulent qualifications, namely:</p> <ul style="list-style-type: none"> <li>• National Diploma in Mechanical Engineering from Vaal Technikon,</li> <li>• Bachelor of Technology in Engineering from Vaal Technikon</li> <li>• Letter of recognition as Doctor from Technische Universitat Muchen from Germany, Mechanical and Maintenance Engineering from University of Witwatersrand, Masters Degree in Engineering from University of Witwatersrand).</li> </ul> <p>As a result of his misrepresentation he was appointed as Executive Manager: Engineering Services.</p>
<p><b>Date Reported</b></p>	<p>In June 2010, the accused also presented PRASA with a letter addressed to himself pretending to be from a German company called DB Schenker, offering him the position of Engineering Services Specialist at an annual salary of R 2 800 000.00. As a result of this letter, PRASA made a counter-offer to the accused in the amount of R 2 800.000.00 in the position of Executive Manager: Engineering Services.</p>
<p><b>Date of Referral to DPCI</b></p>	<p><b>CURRENT STATUS</b></p>
<p><b>Loss involved</b></p>	<p>The accused was found guilty and convicted of three (3) counts of fraud.</p>
<p><b>Entity/Individual involved</b></p>	<p>The case is currently remanded to <b>23 November 2022</b>, for sentencing.</p>
<p><b>Number of charges</b></p>	

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**PRASA CASES (FINALISED MATTER)**

<b>Case number</b>	JHB SOCIU JHB Central CAS 802/08/2021	<b><u>SYNOPSIS OF CASE</u></b>
<b>Offence</b>	Theft of copper cables	The accused were arrested while busy cutting the cables, using cutting torch at corner of Crown wood & Coach street in Crown mine, Johannesburg.
<b>Date Reported</b>	26 August 2021	<b><u>CURRENT STATUS</u></b>
<b>Date of Referral to DPCI</b>	26 August 2021	The case was finalized at court.
<b>Entity /Individual involved</b>	Matobela Ngobane Nyon Brighton Ramabone Moeketse Ramabone M Ngwenya Lasmus Ngwenya Lifalenkosi	Five accused were <b>convicted</b> and sentenced to undergo two years imprisonment each,
<b>Loss involved</b>	R1 200 000	

29

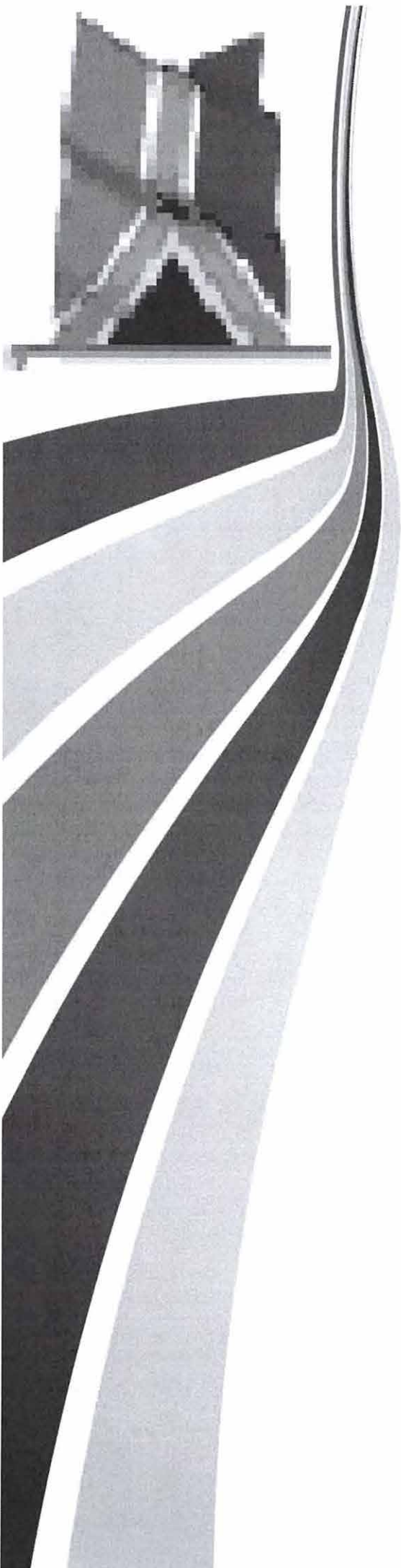


## CASES UNDER INVESTIGATION PRASA

PROVINCE	NO OF CASES	TYPE OF CRIME	CHARGES
Gauteng	17	Procurement Fraud	17
Total	17		

857 Statements have been obtained on the seventeen (17) cases involving a total amount of R 6, 8 billion

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**HAWKS**  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

*Thank you*

*The DPCI shall at all times enforce the Law of the Republic without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the Constitution and the Law*

[Section 17 E(10) of the South African Police Service Act 68 of 1995]

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# **NPA REPORT TO STANDING COMMITTEE ON PUBLIC ACCOUNTS (SCOPA): SELECTED SOES AND OTHER CASES**

16 November 2022



**National Prosecuting Authority**  
South Africa

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National Prosecuting Authority  
South Africa

# Contents

- 01 Introduction: NDPP
- 02 SOE referrals - Progress
- 03 ID: Progress SOEs
- 04 Asset Forfeiture Unit
- 05 Closing Remarks

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# 1 INTRODUCTION BY NDP

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# Introduction

NPA presentation to the Committee on 16 November 2022 on cases emanating from:

- ❖ SIU Proclamations involving:
  - ✓ Department of Water and Sanitation, Eskom, Transnet, SABC, Denel, SAA, PRASA
  
- ❖ **Issues to be covered:**
  - ✓ Number of cases withdrawn
  - ✓ Reasons for withdrawal
  - ✓ Cases before the courts
  - ✓ Cases finalised
  - ✓ Cases where sentences have been handed down
  - ✓ Reasons why investigations are taking long
  - ✓ Cases where assets have been recovered.

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# NPA Mandate and SIU Referral Framework

The National Prosecuting Authority (NPA) was established in terms of section 179 of the Constitution and bears the responsibility of providing a coordinated prosecuting service that:

- ❖ ensures justice is delivered to the victims of crime through general and specialised prosecutions;
- ❖ removes the profit from crime and recovers stolen funds; and
- ❖ protects certain witnesses in the process.

For its part, the **SIU Act** allows members of the SIU to conduct searches, seizures and production of documents by parties (civil evidence).

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## Why the need for SIU Referrals?

- ❖ In essence, the investigations undertaken by the SIU or as part of the State Capture Commission of Enquiry (Zondo Commission) do not satisfy criminal standards for prosecutions.
- ❖ Therefore, the NPA must work with investigators (either within the ID or the DPCI) to conduct criminal investigations and ensure that the evidence meets criminal prosecution standards. That said, the work of the SIU is important and contributes greatly in this process.
- ❖ Whereas the Zondo Commission's reports remain a critical point of reference for the work of the NPA in relation to high level and complex corruption, the inclusion of a recommendation in those reports does not determine whether the NPA will prosecute a particular case. For this to happen, cases must meet criminal standards for prosecution, and this necessitates criminal investigations to be undertaken.

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## Measures to enhance prosecutions

- ❖ The tide is turning – impunity is no longer a given.
- ❖ Over the past 6 months, since we were last before SCOPA, the NPA's leadership and its staff – by design and not by default - have implemented key initiatives to rebuild a fit-for-purpose organisation to deliver accountability and uphold the rule of law.
- ❖ The Investigating Directorate (ID) has stable and competent leadership, whose successes result from enhanced internal and external collaboration and focused case prioritisation. This strategy resulted in the enrolment of nine seminal cases at the end of September 2022, the product of long-standing investigations by the ID and Directors of Public Prosecutions (DPPs), in close collaboration with the DPCI.

## Measures to enhance prosecutions (cont.)

- ❖ Establishment of **joint NPA/DPCI Task Force**, multiple partner approach between DPCI, NPA (ID, SCCU, DPPs, AFU, STU, SOC) and FIC. Its **mandate** is to drive coordination and coherence in responses to Zondo reports. Reliance on prosecution-guided investigation (PGI) approach.
- ❖ **Increased collaboration through other structures:** Bodies feeding into Task Force include an Advisory Panel, Top Priority Corruption Task Team, ACTT EXCO and Case Management meetings; NPA EXCO and DPP Case Management Meetings.
- ❖ **Co-location** of investigators, analysts and prosecutors
- ❖ **Building partnerships and adopting bold and innovative measures** with the private sector to strengthen and supplement the skills of our prosecutors through specialised training and the contracting of forensic specialists, while zealously guarding our independence.

## Measures to enhance prosecutions (cont.)

- ❖ **Establishing the ID as a permanent entity** as announced by the President in his response to the Zondo Commission's recommendations – beneficial for several reasons:
  - ✓ Facilitate attraction of needed specialised skills and qualifications
  - ✓ Provide security of tenure to investigators and prosecutors as permanent staff
  - ✓ Enable continuity in case work without risk of being recalled/reassigned as currently the case
  - ✓ **Safeguard the independence** of a pivotal anti-corruption fighting entity in SA architecture

- ⚠ Permanent will require **legislative changes that will take time** – in the *interim*, the Minister has been asked to confer, by regulation, **peace officer powers to ID investigators** in terms of the CPA *without delay* to enhance significantly their ability to do their work.

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## High-Level Overview of Cases

- ❖ Most matters related to ESKOM, TRANSNET, DENEL, SABC and SAA have been declared by the Investigating Directorate in terms of Section 28(1) or 28(13)
- ❖ Some matters or 'legs' relating to the above and dealt with by the ID as well as SCCU or DPP offices, have not been the subject matter of SIU referrals
- ❖ Close working relationship and cooperation between the ID, DPCI and NPS (collective of SCCU, Serious and Complex Tax Component, Organised Crime and DPP offices) exist
- ❖ Collaboration between law enforcement agencies has resulted in magnificent improvements in the investigation and prosecution of SIU matters

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# 1 SOE Referrals - NPS

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## DEPARTMENT OF WATER AND SANITATION

- 19 matters referred to NPA – 10 referrals which were recently received in 2022
- One matter declined to prosecute due to main witness retracting her statement and insufficient evidence
- Lepelle Water Board Polokwane CAS 23/12/2015 is on the Top Ten Priority List for close monitoring of progress as various challenges were experienced, namely:
  - Reluctant witnesses
  - Changes of prosecutors due to resignations/death, relocation of staff, inclusion of other legs from other Divisions
  - Availability of documents
- Pretoria CAS 475/08/2020 is an example where the offence was committed in 2015, SIU Proclamation in 2018 and DPCI docket opened in 2020. Delays result in additional burden to obtain statements, documents and required chain evidence as well as memory recollection of witnesses

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## DEPARTMENT OF WATER AND SANITATION (cont.)

### ➤ **Court case**

➤ In September 2022, several accused were charged in the ongoing probe relating to the malfeasance at the bulk water utility Mhlathuze Water, involving about R37m. Case is postponed until 6 December 2022. Six people have been arrested, including Nonhlanhla Mkhize, Director-General in the KZN Premier's Office.

### ➤ **Sentence:**

➤ The Klerksdorp Regional Court sentenced Antoinette Hillary Naidoo (39) to 12 years imprisonment, with 2 years suspended effectively convicting her to 10 years direct imprisonment, on 25 charges of fraud. She defrauded Midvaal Water Company, known as Midvaal of an amount of R1,3 million while employed as the Financial Accountant. (Not SIU

Referral)

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## SABC

### ➤ **SUMMARY:**

- 7 matters referred to NPA : One in court (partly heard), two declined to prosecute, four under investigation

### ➤ **DETAILS:**

- One matter in court, partly heard and postponed to 1 December 2022 (SABC Group Executive: Sport Division, State v Sully Motshweni)
- In matter of Brixton CAS 167/07/2018 the prosecutor has declined to prosecute. Parallel civil process unfolding between the parties in JHB High Court on diverted funds of R7 308 741,95.
- In matter Brixton CAS 127/03/2020, prosecutor declined to prosecute as there is no evidence to support the allegation of a general corrupt relationship between main witness and suspect.

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## **PRASA**

### **➤ SUMMARY:**

- 3 matters referred to NPA : All under investigation (One in early stage Hillbrow Cas 544/01/2022)

### **➤ ENTITIES THAT INVESTIGATED PRASA**

- Auditor General of SA (AGSA) (2015)
- Public Protector (2015 / 2016)
- PRASA internal investigation (Werksmans Attorneys)  
PRASA v Swifambo Rail Agency (Pty) Ltd (2017 (6) SA 223 (GJ))  
Swifambo v PRASA (2020 (1) SA 76 (SCA))
- Judicial Commission of Inquiry into State Capture (ZONDO CJ)
- Special Investigating Unit (SIU)

- DPCI



## PRASA (cont.)

### ➤ CHALLENGES:

- Documents presented to the entities investigating PRASA must be obtained, and these include authenticity and chain evidence
- Time lapses since offences were committed (10 years+) complicate investigations in locating relevant witnesses, refreshing memories and ensuring policies and directives at a specific time are kept in mind.
- Several potential witnesses were initially reluctant to provide assistance, apparently as they themselves were complicit in illegal activities within PRASA
- Both Hillbrow CAS 405/08/2015 and CAS 278/09/2015 are on the ACTT Priority list, the Top Ten Priority List, and monitored by the Task Force as part of the cases in the Zondo Commission recommendations
- DPCI, NPA and other entities are closely collaborating in investigation efforts





## 2 SOE Referrals : ID

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## INVESTIGATING DIRECTORATE

- In March 2019, the President issued a proclamation creating an Investigating Directorate (ID) within the Office of the NDPP in terms of s7 of the NPA Act largely in response to allegations of widespread corruption at the State Capture Commission (SCC)
- The initial Head of the ID was appointed in May 2019 and capacitation of the ID began in July 2019 primarily through
  - reassignment of prosecutors from within the NPA;
  - secondment of investigators from the SAPS, IPID, SARS and SIU; and placement on duty arrangements of DPCI investigators
  - recruitment of investigators and prosecutors on contract for 3 years additional to NPA establishment. First cohort of 21 financial investigators joined in January 2021

## INVESTIGATING DIRECTORATE (cont.)

- The powers and functions of the Directorate are set out in chapter 5 of the NPA Act, they include the power to:
  - subpoena witnesses to furnish documents or to answer questions;
  - apply for and execute search and seizure warrants;
  - compel witnesses to answer questions under oath, including self-incriminating questions, subject to a use immunity
  - prosecute cases after consultation with the relevant DPP
- Through secondment arrangements entered into with partners organisations, the ID can access additional powers such as police powers, subject to the direction of the National Commissioner of Police and through MoUs with SARS, the FIC and the SIU, the ID can use additional capabilities to investigate corruption

## INVESTIGATING DIRECTORATE (cont.)

- The ID's mission is to hold those most responsible for serious, complex and high-level corruption accountable in a criminal court
- Any person may report a matter to the head of the ID by means of an affidavit (s27) and the Director, in the absence of a report, may authorise an investigation into the matter if the following requirements are met:
  - There are **reasonable grounds to suspect** that an offence has been committed (s 28(2)); and
  - the offence is a **specified offence**, which is defined in the NPA Act as, **any matter which in the opinion of the head of an Investigating Directorate falls within the range of matters set out in the proclamation**
- If the **NDPP** refers a matter in relation to the commission of a specified offence to the Director, the **ID is obliged to conduct an investigation** into the matter - (s 28(1)(b))

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## INVESTIGATING DIRECTORATE : Investigations

- Investigations into TRANSNET and ESKOM authorised on 31 July 2019
  - The Report of the Public Protector on the "State of Capture" dated 14 October 2016;
  - Testimony before the SCC alleging serious and high-level corruption within State Owned Enterprises, particularly testimony relating to ESKOM and TRANSNET;
  - Ongoing criminal investigations into unlawful activities committed at ESKOM and TRANSNET relating to serious and high-level fraud and corruption;
  - Ongoing civil litigation relating to alleged irregularly awarded contracts and payments made by ESKOM and TRANSNET and related entities;
  - A report submitted in terms of section 27 of the NPA Act on fraud and corruption.
- SIU Referrals to ID in relation to:
  - Unlawful activities committed at ESKOM, namely ABB – Impulse, Kusile Project, and SAP
  - Unlawful activities committed at Transnet, namely Neotel, Cutting-Edge, and SAP

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# INVESTIGATING DIRECTORATE: OVERVIEW

➤ Overview of progress on SOE's Investigations

Under investigation	08
Reasons why investigations are taking long	Refer to slides (23 to 30)
Number of cases withdrawn	None
Reasons for withdrawal	N/A
Cases before the Courts	05
Cases finalised (Verdict)	None
Cases where sentences have been handed down	None

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## SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

<b>Investigation Priority / Key Focus Areas</b>	<b>ESKOM &amp; TRANSNET SAP CONTRACTS</b>		<b>Case number</b>	Sunnyside CAS 170/12/2017
<b>Date Reported</b>	29 April 2021	<b>Contract Value</b>	R545 million (Transnet) R558 million (Eskom)	
<b>Offence</b>	PRECCA, POCA and CA contraventions, Fraud and Corruption			
<b>Summary</b>	Improper or unlawful conduct by Eskom & Transnet officials or employees in respect of the contracting for or procurement of software licenses and support services to Eskom Transnet.			
<b>Action to Date</b>	The matter is still under investigation. Reason for why the investigations are taking long: <input type="checkbox"/> Complex nature of Investigations			

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## SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

<b>Investigation Priority / Key Focus Areas</b>	<b>TRANSNET NEOTEL CONTRACTS</b>		<b>Case number</b>	Nat HO Anti-Corruption Enquiry 08-10-2019
<b>Date Referred</b>	14 February 2020	<b>Contract Value</b>	R 834 million	
<b>Offence</b>	PRECCA, POCA and CA contraventions, Fraud, Corruption, and PFMA			
<b>Summary</b>	<p>Improper or unlawful conduct by Transnet officials or employees in respect of the contracting or awarding through confinement without procurement process being followed:</p> <p><input type="checkbox"/> The appointment of Neotel was unlawful and invalid in terms of section 2 of the constitution, because the procurement process was not compliant with applicable prescripts regulating public sector procurement.</p>			
<b>Action to Date</b>	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <p><input type="checkbox"/> Complex nature of Investigation</p>			

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## SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	TRANSNET CUTTING EDGE CONTRACTS		Case number	Not yet registered
Date Referred	25 October 2021	Contract Value	R84 million	
Offence	PRECCA, POCA contraventions, Fraud, Corruption, and PFMA			
Summary	<p>Improper or unlawful conduct by Transnet officials or employees in respect of the contracting or awarding through confinement without procurement process being followed:</p> <p><input type="checkbox"/> The appointment of Cutting Edge was unlawful and invalid in terms of section 2 of the constitution, because the procurement process was not compliant with applicable prescripts regulating public sector procurement.</p>			
Action to Date	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <p><input type="checkbox"/> Complex nature of Investigation</p>			

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# SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority	TRANSNET LOCOMOTIVES CONTRACTS	Case number	JHB Central CAS 384-06-2017
Contract Value	<p>95 locomotives = R2.6 billion</p> <p>100 locomotives = R4.4 billion</p> <p>1064 locomotives : 359 CSR = R 18billion</p> <p>322 CNR = R 9billion</p> <p>Maintenance = R 6.1billion</p>	Offence	<p>Corruption PRECCA contraventions</p> <p>Fraud</p> <p>Theft</p> <p>PFMA contraventions</p> <p>POCA contraventions</p>
Summary	<p><b>95 Locomotives</b> : In late 2011 Transnet issued a R2.7bn tender for 95 electric locomotives for its general freight business, which eventually awarded to a consortium led by China South Rail Zhuzhou Electric Locomotive (CSR). CSR owned 70% of the consortium with local partner Matsetse Basadi owning the remainder. CSR was awarded the contract in October 2012, shortly after Transnet CEO, Brian Molefe, had visited them in Hong Kong, which he claims was to check they had the necessary facilities to do the job.</p> <p><b>1064 Locomotives</b> : It is alleged that JJT and CGT were replaced as conduits during 2015: a contract was put in place on 18 May 2015 (after the contract had been awarded) between CSR and a company called Tequesta that was directed by Salim Essa. CSR would pay 21% of the total fee it received from Transnet for the supply of 359 locomotives to Tequesta or any other firm of Tequesta's choosing as an "advisory fee".</p> <p><b>100 Locomotives</b> : Brian Molefe submitted a new confinement motivation to a special Transnet board meeting, except that the contract was to be confined to CSR, not Mitsui. Molefe's request to the Transnet board to confine the bid to CSR was still based on "urgency", despite the fact that CSR (unlike Mitsui) did not have a proven, off-the shelf product, which would lead to significant delays in production and delivery. Transnet's board approved the uncontested award for 100 Electric Locomotives to CSR the same day, 24 January 2014.</p>		
Action to Date	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <p><input type="checkbox"/> Complex nature of Investigation</p>		

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## SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

<b>Investigation Priority / Key Focus Areas</b>	<b>TRANSNET RELOCATION OF 2 OEMs TO DURBAN HARBOUR</b>	<b>Case number</b>	Hillbrow CAS 597/08/2019
<b>Date Reported</b>	August 2019	<b>Contract Value</b>	R1.2 billion
<b>Offence</b>	Corruption PRECCA contraventions, Fraud, Theft, and POCA contraventions		
<b>Summary</b>	In 2014, Transnet approved the placement of two Original Equipment Manufacturers (OEMs) i.e., Bombardier (BT) and China North Rail (CNR) for establishment at Bay Head Durban for the manufacture of Locomotives. At the time the placement of these two OEMs was called a relocation of the OEM's, a term that was regarded as a misnomer. The two OEMs relocated to the Durban Port after being invited by Transnet SOC to forward pricing for the costs of relocation that is estimated to an amount of R1.2 billion for both OEM's.		
<b>Action to Date</b>	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <input type="checkbox"/> Complex nature of Investigation		



## SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

<b>Investigation Priority / Key Focus Areas</b>	<b>SAA - JM AVIATION/SWISSPORT</b>	<b>Case number</b>	<b>ORTIA CAS 114/12/2019 &amp; ORTIA CAS 14/7/2022</b>
<b>Date Authorised</b>	05 August 2022	<b>Contract Value</b>	R1.2 billion
<b>Offence</b>	Fraud, Theft, PRECCA, POCA Contraventions, and PFMA		
<b>Summary</b>	Improper or unlawful activities relating to the contract concluded between SAAT and a joint venture between AAR and JM Aviation South Africa. Corruption, fraud and other unlawful activities relating to the ground handling contract entered between SAA and Swissport, the appointment of JM Aviation South Africa as BEE partner, as well as the ground handling unit purchase and sale.		
<b>Action to Date</b>	The investigation of the matter has been authorised and ongoing.  Reason for why the investigations are taking long: <input type="checkbox"/> Complex nature of Investigation		

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## SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	SAA – MUMBAI/LUFTHANSA	Case number	Enquiry CAS
<b>Date Authorised</b>	19 July 2022	<b>Contract Value</b>	03/04/2022
<b>Offence</b>	Fraud, Theft, PRECCA, POCA Contraventions, and PFMA		
<b>Summary</b>	Improper or unlawful activities relating to the pressure applied to terminate the Lufthansa Consulting contract and also applied to close down the Mumbai Route		
<b>Action to Date</b>	The preparatory investigation of the matter has been authorised and ongoing.  Reason for why the investigations are taking long: <input type="checkbox"/> Complex nature of Investigation		

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## SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	DENEL		Case number	Not yet registered
Date Authorised	Not Yet Authorised	Contract Value	Still to be determined	
<b>Offence</b>	Fraud, Theft, PRECCA, POCA Contraventions, and PFMA			
<b>Summary</b>	Improper or unlawful activities relating to the contract concluded between Denel and VR-Laser.			
<b>Action to Date</b>	<input type="checkbox"/> Matter to be authorised in 3rd Quarter of 2022 / 2023 financial year for investigation.			

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## SOE MATTER REFERRED BY SIU ENROLLED

<b>Investigation Priority</b>	<b>ESKOM ABB IMPULSE CONTRACTS</b>		<b>Case number</b>	<b>Sandton CAS 413/7/2017</b>
<b>Date Reported</b>	July 2017	<b>Contract Value</b>	R1.58 billion (Overpayments to ABB and the Variation Orders – this excludes Rotek Contracts)	
<b>Offence</b>	Corruption PRECCA contraventions and Fraud	<b>Entity involved/Person/s involved</b>	<ul style="list-style-type: none"> <li>• Eskom: Executives</li> <li>• ABB : Employees</li> <li>• Impulse International Employees</li> </ul>	
<b>Summary</b>	<p><input type="checkbox"/> During the period 2013 – 2017 Eskom/Rotek awarded contracts to ABB and Impulse International (Pty)Ltd.</p> <p><input type="checkbox"/> ABB was awarded the Early Works Order and ultimately the Control &amp; Instrumentation (C&amp;I) contract at Kusile Power Station in 2015 to replace Alstom.</p> <p><input type="checkbox"/> ABB appointed a sub-contractor, Leago EPC and Leago Engineering, to conduct work i.t.o. the C&amp;I contract at Kusile.</p> <p><input type="checkbox"/> ABB was later awarded Variation Orders at Kusile Power Station and appointed a sub-contractor, Impulse International (Pty) Ltd to complete the work.</p> <p><input type="checkbox"/> ABB was awarded contract after it was included in the submission to the tender committee after report was finalised;</p> <p><input type="checkbox"/> ABB received an unfair advantage over its competitors as it received information not available to other bidders;</p> <p><input type="checkbox"/> After a fall out between Leago EPC/Engineering, Impulse was brought on board;</p> <p><input type="checkbox"/> Further contracts awarded to Impulse International (Pty)Ltd by Rotek and Eskom due to of a corrupt relationship;</p> <p><input type="checkbox"/> There was a corrupt relationship between employees of Impulse International (Pty)Ltd and employees of ABB</p> <p><input type="checkbox"/> The matter was enrolled on 27 October 2022. The accused were arrested and appeared in the Middelburg SCC Court, and they were granted bail. It is now postponed to 23 March 2023 for further investigation.</p> <p><input type="checkbox"/> The following accused are before the court:</p> <p style="margin-left: 20px;">✓ Matsihela Koko, Kokeitso Aren, Mosima Koko, Thato Choma, Watson Seswai, Johannes Coetzee, Thabo Mokwena, Frans Sithole</p>			
<b>Action to Date</b>				

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## SOE MATTER REFERRED BY SIU ENROLLED

<b>Investigation Priority / Key Focus Areas</b>	<b>ESKOM KUSILE PHOLA BUILD PROJECT</b>		<b>Case number</b>	Phola CAS 123/3/19 & Phola CAS 124/3/19
<b>Date Reported</b>	March 2019	<b>Contract Value</b>	Over R1.5 Billion	
<b>Offence</b>	Corruption PRECCA contraventions Fraud Theft PFMA contraventions POCA contraventions	<b>Entity involved/Person/s involved</b>	<ul style="list-style-type: none"> <li>• Babinatlou Business Services CC</li> <li>• Tubular Holdings (Tubular)</li> <li>• Esor Construction (Esor)</li> <li>• Stefanutti Stocks (Stefanutti)</li> <li>• Tenova Mining &amp; Minerals SA (Tenova)</li> </ul>	
<b>Summary</b>	<p><input type="checkbox"/> It is alleged that employees of Eskom service received gratification from contractors. Investigations conducted revealed that on entity by the name of Babinatlou received an amount of R74 999 035.03 from Kusile Build project contractors namely: Tubular Holdings (Tubular, Esor Construction (Esor) Stefanutti Stocks (Stefanutti) and Tenova Mining &amp; Minerals SA (Tenova). The monies paid to Babinatlou were for either Corporate Social investment (CSI) projects or consulting works according to contracts obtained from aforementioned Eskom Contractors.</p> <p><input type="checkbox"/> Tubular Holdings (Tubular) Investigation (Bedfordview CAS 345/08/2017 &amp; Phola CAS 125/03/2019). The matter is current enrolled, to reappear on 05 April 2023.</p> <p><input type="checkbox"/> Stefanutti Stocks Investigation and Tenova Mining &amp; Minerals SA (Tenova) are still under investigation.</p> <p><input type="checkbox"/> Reason for why the investigations are taking long:</p> <ul style="list-style-type: none"> <li>▪ Complex nature of Investigation</li> </ul>			
<b>Action to Date</b>				

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## SOE MATTER REFERRED BY SIU ENROLLED

<b>Investigation Priority / Key Focus Areas</b>	<b>ESKOM KUSILE PHOLA BUILD PROJECT (Cont.)</b>		<b>Case number</b>	Phola CAS 123/3/19 & Phola CAS 124/3/19
<b>Date Reported</b>	March 2019	<b>Contract Value</b>	Over R1.5 Billion	
<b>Offence</b>	<p>Corruption PRECCA contraventions</p> <p>Fraud</p> <p>Theft</p> <p>PFMA contraventions</p> <p>POCA contraventions</p>	<b>Entity involved/Person/s involved</b>	<ul style="list-style-type: none"> <li>• Babinatlou Business Services CC</li> <li>• Tubular Holdings (Tubular)</li> <li>• Esor Construction (Esor)</li> <li>• Stefanutti Stocks (Stefanutti)</li> <li>• Tenova Mining &amp; Minerals SA (Tenova)</li> </ul>	
<b>Action to Date</b>	<p>SARS Contribution</p> <p><input type="checkbox"/> Polokwane 389/12/19 and 391/12/19 State vs Hudson Kgomoeswane currently on the roll at Pretoria Regional Court. Matter postponed to 09 &amp; 10 March 2023 for trial.</p> <p><input type="checkbox"/> Garsfontein 248-250/12/19 State vs France Hlakudi is currently on the court roll at Pretoria Regional court. Matter postponed to 16 November 2022 for judgement to be handed on objection of charge sheet.</p>			


## SOE MATTER REFERRED BY SIU ENROLLED

<b>Investigation Priority</b>	<b>TRANSNET TRANSACTION ADVISORY CONTRACT</b>	<b>Case number</b>	JHB Central CAS 465/10/2019
<b>Contract Value</b>	<b>13 Contracts = R 1.9 billion</b>	<b>Alleged Bribes / Gratification</b>	R635 million
<b>Offence</b>	Corruption PRECCA contraventions Racketeering Acts Fraud Theft POCA contraventions PFMA contraventions	<b>Entity involved/Person/s involved</b>	<ul style="list-style-type: none"> <li>• Trillian</li> <li>• McKinsey</li> <li>• Regiments Capital</li> <li>• Transnet Officials and</li> <li>• Members of the Transnet Board</li> </ul>
<b>Date Reported</b>	October 2019	<b>Next Court Date</b>	<b>30 November 2022</b>
<b>Summary</b>	<p>It is alleged that Transnet appointed and payed the following transactional advisors: Regiments and Trillian without following proper procedures as stipulated by their Procurement Policy Manual and the PFMA. Contracts were mostly issued on confinement.</p> <p>Contracts were mostly issued on confinement.</p> <p>Albatime owned by Mr. Kuben Moodley received a fee ranging from 5% from all invoices paid by Transnet to Regiments and Trillian. The company Albatime also laundered money through its bank accounts held at Bank of Baroda and ABSA to the alleged front companies or so-called letter box companies</p>		
<b>Action to Date</b>	<p><input type="checkbox"/> The matter was initially enrolled on the 27 May 2022. It is further postponed to 30 November 2022 for final signed indictment and docket disclosure.</p> <p><input type="checkbox"/> The following accused are before the court:</p> <p><input checked="" type="checkbox"/> Koban Moodley, Siyabonga Gama, Garry Pita, Phetolo Ramosebudi, Eric Wood and Daniel Roy, Brian Molefe, Anoj Singh and Regiments Directors: Nevin Pillay and Litha Nyhonyha</p>		


## SOE MATTER REFERRED BY SIU ENROLLED

<b>Investigation Priority / Key Focus Areas</b>	<b>ESKOM ABB GRATIFICATION</b>		<b>Case number</b>	Sandton CAS 620/3/2020
<b>Date Reported</b>	March 2020	<b>Contract Value</b>	R549 million	
<b>Offence</b>	Corruption PRECCA contraventions AND Fraud	<b>Entity involved/Person/s involved</b>	<ul style="list-style-type: none"> <li>• ABB Employees</li> <li>• Impulse International (Pty)Ltd</li> </ul>	
<b>Summary</b>	<p>It is alleged the two former ABB employees and their spouses received gratification from Impulse International (Pty)Ltd (“Impulse”) to secure contracts/inflate prices with ABB, who was their employer at the time.</p> <p>From the investigation it was discovered that ABB employees received large amounts of money from Indiwize Construction (Pty)Ltd (“Indiwize”), a company owned by the late Pragasen Pather who was also the sole director (except for the period March – September 2016) of Impulse International.</p>			
<b>Action to Date</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> The matter was enrolled on 12 July 2022. It was postponed to 14 October 2022 for the State to analyse the information collected during the search and seizure operation conducted on 12 July 2022. The next court date is 21 February 2023.</li> <li><input type="checkbox"/> The following accused are before the court: <ul style="list-style-type: none"> <li>✓ Vernon Pillay, Aradhna Pillay, Mohammed Essop Moodidheen, and Raeesa Moodidheen</li> </ul> </li> </ul>			

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## SOE MATTER REFERRED BY SIU ENROLLED

Investigation Priority / Key Focus Areas	ESKOM REHABILITATION OF FUNDS		Case number	Sunnyside CAS
<b>Date Reported</b>	September 2017	<b>Contract Value</b>	Over R1.7 billion	427/04/2021
<b>Offence</b>	Fraud, Theft, Money Laundering, Perjury, Uttering and Forgery	<b>Entity involved/Person/s involved</b>	<ul style="list-style-type: none"> <li>• Alleged Companies Directors, and</li> <li>• Former Executives</li> <li>• Relevant Board Members</li> </ul>	
<b>Summary</b>	<p><input type="checkbox"/> Eskom (Over R1.7 billion) unlawful actions relating to the Rehabilitation funds of the Optimum Mine and Koorfontein Mine.</p> <p><input type="checkbox"/> During the investigation of the Eskom leg of the State Capture investigation under Sandton CAS 507/9/2017 it was established the accused committed unlawful actions relating to the Rehabilitation funds of the Optimum Mine and Koorfontein Mine</p>			
<b>Action to Date</b>	<p><input type="checkbox"/> Matter enrolled on the 25th of May 2022.</p> <p><input type="checkbox"/> The following accused were arrested and appeared in the Randburg magistrate court:</p> <p>✓ Ronica Ragavan, Joel Raphela, Pushpaveni Govender</p> <p><input type="checkbox"/> On the 13th of July 2022 the matter was transferred to the Johannesburg High Court, and it will appear on the 14 April 2023 for pre-trial.</p>			

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## IMPEDIMENTS TO INVESTIGATIONS

- Criminal conduct characterised by a high degree of sophistication concerning the methods of committing and camouflaging the crimes;
- This complexity contrasts with the broad lack of training of investigators and prosecutors in specific relevant matters such as forensic accounting, public procurement processes of state-owned entities;
- Roles players include senior political figures, senior executives and multi-national companies supported by enabler accountants, lawyers and management consulting firms; and
- Data intensive docketed run into terabytes of information that require careful management in light of onerous discovery requirements in criminal cases

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## INSTITUTIONAL IMPEDIMENTS

- Skilled and capable investigators and prosecutors –who are equal to the scale and scope of the investigations and prosecutions the ID is seized with
- Dire skill shortages in the public sector with constraints on employing skills outside of the NPA - recruitment of financial investigators and critical litigation skills at sustainable remuneration rates remains a challenge
- Digital and Commercial investigation capability critical in cases where terabytes of data have to be analysed and processed

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# 4 Asset Forfeiture

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## **AFU LEGAL REGIME**

### **OVERVIEW OF PROVISIONS OF PREVENTION OF ORGANISED CRIME ACT, 1998 RELATING TO ASSET RECOVERY IN THE NATIONAL PROSECUTING AUTHORITY**

- The Prevention of Organised Crime Act, 1998 (POCA) enjoins the NPA & National Director to give effect to the following asset recovery measures:
  - Conviction-based forfeiture to recover the benefit derived from crime (Chapter 5 of POCA)
  - Non-conviction-based forfeiture to recover the proceeds of unlawful activities and instrumentalities of offences (in terms of Chapter 6 of POCA);
- The legal architecture of POCA applies to organised crime and all individual wrongdoing.
- AFU mandate is to conduct litigation on behalf of the National Director of Public Prosecutions through conviction and non-conviction-based forfeiture mechanisms

## AFU: “TAKING THE PROFIT OUT OF CRIME”

- The Asset Forfeiture Unit (AFU) was created in order to ensure that the powers in POCA to seize criminal assets are used to their maximum effect in the fight against crime, and particularly, organised crime
- In determining the asset forfeiture potential of any matter, the AFU is guided and relies on:
  - Forensic audit reports, FIC reports and/or any other investigation reports by other law enforcement agencies
  - Investigations by the SAPS, DPCI and/or the Investigating Directorate
  - Further investigations/analysis by AFU financial investigators

## AFU INVOLVEMENT IN SIU REFERRALS

- The AFU is intimately involved in cases relating to SAA, Denel, PRASA, Transnet, SABC, Eskom and the Department of Water and Sanitation together with different structures in Law Enforcement
- The AFU is part of the Top Priority Case Forum where cases such as Lepelle Water Board, SAA, Eskom and PRASA priority cases are being investigated and prosecuted
- Eskom referrals by SIU overlap with existing investigations conducted by the Unit, in consultation with the Investigating Directorate of the NPA, in respect of the recommendations of the Zondo Commission
- In many instances the SIU is proceeding with civil recoveries or asset recovery type applications in the Special Investigating Tribunal. The Asset Forfeiture Unit is accordingly not in a position to proceed with asset forfeiture proceedings in cases where the SIU is already dealing with recoveries
- AFU, together with other law enforcement agencies, is also evaluating the civil asset recovery potential of all matters, if and when referred by the SIU, and which matters are not already dealt with by the SIU

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## **AFU RECOVERIES TO DATE**

- The AFU made two recoveries in Eskom matters which were referred by the SIU after the orders were obtained.
- **Eskom/Mc Kinsey Consultancy Fees**
  - The AFU obtained a preservation order in McKinsey on 14 December 2017. The recovery of R902m was made on 7 Jul 2018.
  - The matter was initiated before the Proclamation R11 of 2018 was published in the Government Gazette on 6 April 2018.
- **Koornfontein and Optimum Colliery Mine Rehabilitation Fund Case**
  - AFU obtained a preservation order on 8 March 2018; R1,939bn was recovered on 26 April 2018.
  - The recovery was made 20 days after Proclamation R11 of 2018 was published in the Government Gazette but before the matter was referred by the SIU.

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## AFU FREEZING ORDERS TO DATE

- The AFU has several freezing orders currently in place:
- **Eskom/France Hlakudi and Others:**
  - Relating to the manipulation of contracts for condensers at Kusile Power Station
  - The AFU restrained R1,49bn on 20 April 2021. The criminal matter is ongoing.
- **Eskom/Moroka Matter**
  - Relates to a financial controller at Eskom colluding with suppliers to generate fictitious invoices
  - The AFU restrained R11,7m on 9 November 2021. The criminal matter is ongoing
- **Eskom/Tegeta/Optimum Coal Mine and Terminal**
  - The AFU has obtained a preservation order in the amount of R3,975bn on 23 March 2022. The forfeiture process is ongoing

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## AFU PRESERVATIONS AND RESTRAINTS TO DATE

- **Eskom/Tegeta/OCM/Templar**
  - The AFU obtained a preservation for R1,385bn on 24 March 2022. The forfeiture process is ongoing
- **SAA/Vuma matter**
  - Relates to the illegal sale of aircraft parts
  - The AFU obtained a restraint in the amount of R5m on 5 Jul 2021. The criminal matter is ongoing
- **Transnet/Albatime/Moodley**
  - Relates to fraud and corruption linked to procurement of locomotives and rail maintenance
  - AFU obtained a restraint in the amount of R232m on 21 June 2020. The criminal matter is ongoing
- **Transnet/Regiments Capital**
  - The matter relates to the looting of the Transnet Pension Fund.
  - The AFU obtained a restraint for R1,685bn on 18 November 2019. The criminal matter is ongoing

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# 5 CLOSING REMARKS

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## Concluding remarks

- There is still work to be done, but the hard, focused work and close collaboration are bearing fruit.
- The President's response to the SCC recommendations confirms that SA is continuing with its multi agency approach to tackling corruption, but with enhanced capacities, partnerships, and of course improved coordination. This means that the NPA and SIU need to further improve collaboration and alignment, while respecting their respective mandates.
- By drawing on our respective strengths, we can tackle corruption from various angles, and therefore more effectively. It's not a competition - it's a team effort.
- In line with the above, an **MoU between the NPA, SIU and SAPS (including DPCI) is to be signed** very soon.



## Concluding remarks (cont.)

- Criminals will exploit the gaps in law enforcement cohesion. We need clear strategies to stay one step ahead of them by ensuring our respective mandates align to close these gaps. Recent joint successes show that this is possible. Take for example the collaboration between the SIU and the NPA's AFU in the recent Lotto case.
- Our focus is on building the NPA as a fit-for-purpose organisation that lives the fundamental values of integrity, professionalism, accountability and credibility. We are grateful for our recent budget allocation, which will enable us to continue to pursue bold and innovative partnerships, including with non-traditional partners, such as the private sector to build this capacity.
- The wheels of justice - grinding at first - are now turning and will gain momentum. Our actions demonstrate that impunity is no longer a given; we are confident that the rule of law will prevail.

*E. R.*



National Prosecuting Authority  
South Africa

# Thank you

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## Legal Opinion on SSA 2014 Cabinet directive on vetting; Follow up engagement with law enforcement agencies on DWS, Eskom, Transnet, Denel, SAA & Prasa investigations

Public Accounts (SCOPA)

16 November 2022

Chairperson: Mr M Hlengwa (IFP)

### Meeting Summary

The Committee convened in Parliament to discuss the parliamentary legal opinion regarding the State Security Agency's 2014 Cabinet directive on vetting, and to have a follow-up meeting with the investigating agencies – the Special Investigating Unit, the HAWKS and the National Prosecuting Authority – on cases being investigated.

The legal opinion confirmed the Committee's position that the Standing Committee on Public Accounts (SCOPA) was empowered by law to request an update on vetting employees of state-owned enterprises (SOEs). To argue that such an update was part of "accountability to the Joint Standing Committee on Intelligence (JSCI)", as the Minister was doing, and that only the JSCI may hold the State Security Agency (SSA) to account, was a narrow interpretation of the Intelligence Services Oversight Act, 1994, that could lead to a situation that was inconsistent with the Constitution and the requirement for Parliament to maintain oversight of all organs of state.

In the past, SCOPA had received briefings on SSA vetting from previous Cabinet Ministers in both the fifth and sixth Parliaments. The request for the briefing was informed by the 2014 Cabinet resolution that said that executives and people in supply chain management positions must be vetted.

Based on the legal advice received, the Committee would write again to the Minister in the Presidency to inform him of the legal opinion, and to request him to appear before SCOPA on this matter on Wednesday, 30 November. Should the Minister refuse to report to SCOPA, the Committee would exercise its right to initiate the process to summon the Minister to provide the information requested.

On the update by the investigation agencies on cases under investigation, the Hawks told the Committee that at the Department of Water and Sanitation, they had 15 cases on hand, with one case pending in court, two cases submitted for decision making, nine cases under investigation, and two cases that were finalised. At Eskom, they had a total of 96 cases on hand, with 17 of them pending in court, five cases submitted for decision making, 54 under investigation, and 13 cases that had been finalised. They had a total of 25 cases at Transnet, with 13 pending in court, four submitted for decision making, eight under investigation, and no finalised cases. They were investigating two cases at the South African Broadcasting Corporation (SABC), with one case pending at court and another case under investigation. This was also the situation regarding Denel. At the Passenger Rail Agency of South Africa (PRASA), they investigated 21 cases, three pending on the court roll, 17 under investigation, and one finalised case.

The National Prosecuting Authority (NPA) told the Committee that the tide was turning, and impunity was no longer a given. Over the past six months, since they were last before SCOPA, the NPA's leadership and its staff have implemented key initiatives to rebuild a fit-for-purpose organisation to deliver accountability and uphold the rule of law. The Investigating Directorate (ID) had stable and competent leadership, whose successes resulted from enhanced internal and external collaboration and focused case prioritisation. This strategy resulted in the enrolment of nine seminal cases at the end of September, the product of long-standing investigations by the ID and Directors of Public Prosecutions (DPPs), in close collaboration with the HAWKS.

The Committee was pleased to hear that there were a lot of cases under investigation, but was concerned about the delays in the conclusion of the cases. The Members questioned the lack of skills and capacity within the investigating agencies, and the lack of high-profile arrests in the SOEs. They felt that asset forfeiture was an easy way out of jail time for those who were found guilty, and expressed concern that there was a syndicate in operation at PRASA.

### Meeting report

#### Legal advice on Ministerial refusal to provide an update on vetting of SOE officials

Adv Frank Jenkins, Acting Chief Legal Advisor, Parliament, said their office had been requested by the Chairperson of the Standing Committee on Public Accounts (SCOPA) to consider and urgently advise on the refusal of the Minister and the Deputy Minister responsible for state security to appear before the Committee to provide an update on the vetting of officials working in state-owned enterprises (SOEs).



1/15/25, 5:25 PM

Legal Opinion on SSA 2014 Cabinet directive on vetting; Follow up engagement with law enforcement agencies on DWS, Esko...

He said SCOPA was empowered by law to request an update on the vetting of employees of SOEs. This matter pertained to a range of committees, including the Portfolio Committee on Public Enterprises. To argue that such an update was part of "accountability to the Joint Standing Committee on Intelligence (JSCI)" as the Minister was doing, and that only the JSCI may hold the State Security Agency (SSA) to account, was a narrow interpretation of the Intelligence Services Oversight Act, 1994, that could lead to a situation that was inconsistent with the Constitution and the requirement to maintain oversight of all organs of state.

In the event that it was reasonable and justifiable, in an open and democratic society, to exclude the public, including the media, from the meeting where this information would be tabled, the National Assembly Rules provided for such mechanisms. Should the Minister refuse to report to SCOPA, it may initiate the process to summon the Minister to provide the information.

#### Discussion

Ms B van Minnen (DA) said this was not the first time SCOPA had this conversation with the SSA, and the process of vetting by SCOPA was being frustrated by the Minister and the Deputy Minister of State Security. She wanted to know what the options of the Committee would be if the Minister and Deputy Minister were to reject their summons again.

Ms V Mente (EFF) said the SSA had briefed the Committee on the matter in both the fifth and sixth Parliaments through former Minister Bongani Bongo in 2017 and former Minister Ayanda Dlodlo in 2019 respectively. She asked for clarity on whether there was a part of the SSA that could not be disclosed to SCOPA and what informed it. SCOPA was a parliamentary mechanism meant to oversee and ensure that service delivery was not hindered and public funds were used appropriately, so if there was anything that SCOPA was not allowed to disclose, what would it be?

Mr S So ryo (ANC) agreed with Ms Mente in asking what information the Committee was allowed to receive, because it was confusing that the Committee had been briefed on the vetting issue before, but now there was a rejection from the Executive of the Department of State Security on the same issues. He would have respected the rejection to brief the Committee if the information involved safety and security, which affected people's livelihoods.

The Chairperson said the Committee's decision to open its meetings to the public must not mean that they should remain open where national security matters were concerned. This issue was not about national security, and the Committee was well within its rights to summon the briefing from the SSA, as it was advancing a Cabinet resolution of 2014 that the executives in supply chain management (SCM) must be vetted. He did not understand why this needed to be done secretly.

#### Parliamentary Legal Services' response

Adv Jenkins said the specific mandate of SCOPA was to receive audited financial statements and audit reports provided by the Auditor General (AG) on SOEs. SCOPA was within its rights and powers to exercise its mandate to request information on public funds. He suggested that the Committee writes to the Minister in the Presidency, who was also responsible for State Security, to inform him that the Committee did not agree with his position, and invite him again to appear before it.

The Chairperson agreed that the Committee would write to the Minister in the Presidency who was responsible for State Security, to inform him that the Committee did not agree with his position and invite him again to appear before it at a date and time that the Committee programme would determine. He said 30 November was open in terms of the Committee programme, and suggested that the Committee provisionally reserve that date for the invitation of the Minister in the Presidency. The Members agreed.

Mr A Lees (DA) reminded the Chairperson of his request to obtain a legal opinion about the obligation of the Minister of Public Enterprises and South African Airways (SAA) to provide information requested by the Committee.

The Chairperson said the Committee would also communicate with Adv Jenkins regarding the matter, because the Minister of Public Enterprises had indicated that the processes of the Bill had closed. There were limitations on what they could or could not share with the Committee. They would submit information to the Committee based on what they felt they could share. He said they would share more information on that in writing with Adv Jenkins to get his advice on whether there was any legal basis for that.

He said there was another report that had been requested from him by the former Director-General of Higher Education and Training, but he was sceptical of providing the document to him because it was confidential and he was under the impression that he should have received it from the Department of Higher Education and Training. He would also request Adv Jenkins's advice on the matter in writing, and allowed him to exit the meeting.

#### Status of SOE investigations

The Chairperson welcomed the delegations involved in investigations at state-owned enterprises (SOEs):

- The Directorate for Priority Crime Investigations (DPCI/HAWKS), led by General Godfrey Lebeya;
- The National Prosecuting Authority (NPA), led by Adv Shamila Batohi; and
- The Special Investigations Unit (SIU), led by Adv Andy Mothibi.

He explained that the Committee had decided to revert the meetings back to full normality because the virtual meetings were not serving oversight work, especially with the added pressures of load shedding and connectivity issues. He said the Committee would allow all presentations to be made and would then ask its questions thereafter. He asked that the presenters take the presentations as read and focus on the pressing issues.

#### HAWKS' report on SOE investigations

Gen (Dr Adv) Godfrey Lebeya, Head: National DPCI said he was accompanied by Brigadier General Mmeli Makinyane, Acting Corporate Head of Commercial Crimes, who had been acting in the position since 1 June. They expected to fill the post with effect from 1 December, as the vetting process had delayed them.

The DPCI had also promoted 244 of its personnel, including those who were taken from the South African Police Service (SAPS), which had increased their capacity by over 50%. They also intended to appoint another 290 members with effect from 1 January 2023, and were currently in the selection process, with more than 50 000 applications to consider. They were continuously building the DPCI's capacity to respond to the amount of work they had.

Brig Gen Makinyane presented on the status of investigations relating to:

- The Department of Water and Sanitation (DWS);
- Eskom;
- Transnet;
- The South African Broadcasting Corporation (SABC);
- Denel;
- South African Airways (SAA); and
- The Passenger Rail Agency of South Africa (PRASA)

On the DWS, they had 15 cases on hand, with one case pending in court, two cases submitted for decision making, nine cases under investigation, and two finalised cases.

On Eskom, they had a total of 96 cases on hand, with 17 of them pending in court, five cases submitted for decision making, 54 under investigation, and 13 cases that were finalised.

They had a total of 25 cases with Transnet, with 13 pending in court, four submitted for decision making, eight under investigation, and no finalised cases.

They were investigating two cases at the SABC, with one case pending at court and another case under investigation.

This was also the case for Denel.

At PRASA, they were investigating 21 cases, three pending on the court roll, 17 under investigation, and one finalised case.

#### **NPA Report on selected SOEs and other cases**

Adv Batshi said the investigations undertaken by the SIU or as part of the State Capture Commission of Enquiry (Zondo Commission) did not satisfy criminal standards for prosecutions. The NPA had to work with investigators -- either within the Investigative Directorate (ID) or the DPCI -- to conduct criminal investigations and ensure that the evidence met criminal prosecution standards. That said, the work of the SIU was important, and contributed greatly to this process.

She said the tide was turning, and impunity was no longer a given. Over the past six months, since they were last before SCOPA, the NPA's leadership and its staff have implemented key initiatives to rebuild a fit-for-purpose organisation to deliver accountability and uphold the rule of law. The Investigating Directorate (ID) had stable and competent leadership, whose successes resulted from enhanced internal and external collaboration and focused case prioritisation. This strategy resulted in the enrolment of nine seminal cases at the end of September, the product of long-standing investigations by the ID and Directors of Public Prosecutions (DPPs), in close collaboration with the DPCI.

The NPA had introduced various measures to enhance prosecutions, including the establishment of a joint NPA/DPCI task force, which provided a multiple partner approach involving the DPCI, NPA, ID, Specialised Commercial Crime Unit (SCCU), DPPs, Asset Forfeiture Unit (AFU), SIU, Serious and Organised Crime (SOC), and the Finance Intelligence Centre (FIC). Its mandate was to drive coordination and coherence in response to the Zondo reports. It also increased collaboration through other structures. Bodies feeding into the task force included an advisory panel; a top priority anti-corruption task team (ACTT); executive committee (EXCO) and case management meetings; NPA EXCO and DPP case management meetings.

Adv Rodney de Kock, Deputy National Director of Public Prosecutions, presented on the matters referred to the NPA. He said there were 15 matters referred to the NPA, and 10 of those had been received in 2022. On one matter, they had declined to prosecute due to the main witness retracting her statement, and insufficient evidence. He then provided details on each of the cases.

Mr Matthews Sesoko, Head of Investigations, NPA-ID, presented on the Investigative Directorate and the matters that were referred to the NPA-ID.

He said that in March 2019, the President had issued a proclamation creating an Investigating Directorate (ID) within the Office of the NDPP in terms of s7 of the NPA Act, largely in response to allegations of widespread corruption at the State Capture Commission (SCC). The powers and functions of the Directorate were set out in chapter 5 of the NPA Act. They included the power to subpoena witnesses to furnish documents or to answer questions; apply for and execute search and seizure warrants; compel witnesses to answer questions under oath, including self-incriminating questions, subject to the use of immunity to prosecute cases after consultation with the relevant DPP. He then detailed the SOE case referrals they had dealt with in the ID.

Adv Ouma Rabaji-Rasethaba, NPA Head: Asset Forfeiture Unit (AFU), introduced the AFU to the Committee, and presented on some of the cases they have handled so far. She said the AFU was intimately involved in cases relating to SAA, Denel, PRASA, Transnet, SABC, Eskom and the Department of Water and Sanitation, together with different structures in law enforcement. It was part of the Top

Priority Case Forum, where cases such as those involving the Lepelle Water Board, SAA, Eskom and PRASA priority cases were being investigated and prosecuted.

Eskom referrals by the SIU overlapped with existing investigations conducted by the AFU, in consultation with the Investigating Directorate of the NPA, in respect of the recommendations of the Zondo Commission. In many instances, the SIU was proceeding with civil recoveries or asset recovery-type applications in the Special Investigating Tribunal. The AFU was accordingly not in a position to proceed with asset forfeiture proceedings in cases where the SIU was already dealing with recoveries. The AFU and other law enforcement agencies were also evaluating the civil asset recovery potential of all matters, if and when referred by the SIU, and which matters were not already dealt with by the SIU.

Adv Batohi said the President had announced that the ID would become a permanent organ in response to the Zondo Commission recommendations. Permanence would require legislative changes that would take time, but the Minister had been asked to confer by regulation, peace officer powers to ID investigators in terms of the Criminal Procedure Act (CPA) without delay, to significantly enhance their ability to do their work.

She said the strategy of the NPA, together with the SIU, the South African Revenue Service (SARS), and the AFU, was not just to hold people accountable and to prosecute, but also to get money back to the country, which was important in terms of Chapter 5 and Chapter 6. Chapter 5 depended on criminal convictions, and the challenge with that was that the accused were very good at delaying matters so that they could not be finalised, so the NPA had looked at various strategies to ensure that it could deal with that, and all it could do at the end of the day was to put very stringent cases in court.

Criminals exploited the gaps in law enforcement cohesion, so the investigative agencies needed clear strategies to stay one step ahead of them by ensuring their respective mandates were aligned to close those gaps. Recent joint successes showed that this was possible -- for example, the collaboration between the SIU and the NPA's AFU in the recent Lotto case. Their focus was on building the NPA as a fit-for-purpose organisation that lived the fundamental values of integrity, professionalism, accountability and credibility. They were also grateful for their recent budget allocation, which would enable them to continue to pursue bold and innovative partnerships, including with non-traditional partners, such as the private sector, to build this capacity. "The wheels of justice - grinding at first - are now turning and would gain momentum. Our actions demonstrate that impunity is no longer a given; we are confident that the rule of law will prevail", she said.

**Discussion**

Mr Somiso was concerned about the delays in resolving cases because justice was not being served timeously. It was exhausting to the public and disheartening because people sent cases to the investigative agencies expecting they would be solved. He wanted to know how a lack of capacity affected their ability to solve cases quickly.

Ms Van Minnen said it was concerning to see a long process between cases in litigation and getting them into court, and asked whether there was a prioritisation of having courts deal with the matters, because even though some of them were taken to court, it took a long time before they went to trial. She was pleased to hear about the permanence of the ID, and wanted to know what else needed to be done by whom, and how Parliament could support them in speeding up the process.

She asked how the budget would assist the investigative bodies, and whether it would go directly to the ID or if it would go towards the various collaborative efforts. On the AFU, she wanted to know how non-conviction-based forfeiture worked, and asked if there was a difference between preservation orders and restraint orders, and how they both worked.

Mr Lees asked what the parallel was between what the NPA wanted the ID to achieve and what the Scorpions had achieved, and if there was a possibility of achieving the same standards that the Scorpions achieved through the ID. It was impressive that the Hawks had appointed the number of people it had appointed, and assumed that their budget had been increased considerably because it was significantly lower than the NPA's budget in the last quarter. What was their current budget looking like, and how much did they think would be reasonable enough for them to achieve the goals that Parliament and the public had placed upon their shoulders? When they took cases to court, did they have an objective they pushed for? For example, did they push for convictions or the recovery of certain amounts of money?

Ms Merte was interested to know whether the referrals made by the SIU were dealt with promptly and effectively, and whether they were yielding any results, because the ABB case was reported in 2017, yet it had been postponed to 2023 due to further investigations required. The downside was that Eskom saw a potential that ABB would not be found guilty because they had self-reported and paid the corrupt amount back to them. She did not understand why it was difficult to make a conviction on the matter, because the information was clear to see. She also wanted to know why the investigations into the Department of Water and Sanitation were still ongoing, especially because of the reluctance of witnesses, and asked if there was no mechanism to make people talk in terms of the law.

On PRASA, she said there was clearly a syndicate in operation, because cables could not just be stolen for measly amounts by people, and there must have been a bigger company that was buying the cables. If the investigative agencies did not put all their resources together to pin down who the 'big fish' was, the problem would continue, making the efforts to rebuild PRASA futile. She had a problem with the strength, the delays and the ineffectiveness of the investigations.

Ms B Swarts (ANC) asked if any cases were delayed or not progressing because the investigating agencies lacked the skills to investigate or to deal with them, because they had cited a lot of impediments to their investigations and had highlighted that there was a need for certain skills to be able to move those investigations forward. How many cases were not being investigated or were not moving forward because of the lack of appropriate skills?

1/15/25, 5:25 PM

Legal Opinion on SSA 2014 Cabinet directive on vetting; Follow up engagement with law enforcement agencies on DWS, Esko...

She said although the Committee appreciated the update on how cases were progressing, they would have appreciated hearing the number of people in jail because of the convictions made. It seemed like in the cases that were won, it was becoming much easier for them to get the state money back rather than people actually being jailed for the offences they made. She said the investigative agencies needed to deal with the syndicates operating within the SOEs, because recovering state money was not enough. It did not help to blacklist the companies while the corrupt people were still operating within the SOEs, because it created the same cycle of those people creating new companies and stealing state money again.

The Chairperson agreed with Ms Swarts that recovering state money and the asset forfeitures was not enough, and it seemed like the easy way out for criminals. He said it was a common occurrence that the high profile politicians who were found to be corrupt would forfeit assets and pay back the money, but were never actually arrested, and the people who would be arrested would be officials in the lower management. Very few high profile people have been arrested in the past 20 years.

He said in the previous meeting, the NDPP had mentioned that they had a shortage of about 700 prosecutors, and the Department of Justice (DoJ) was to make funds available for them to begin the process of filling those vacancies. He asked if the Department had followed through on that commitment, as part of the Committee's role was to ensure that commitments made to them were followed through to enable them to perform their functions.

He encouraged the collaboration between the investigating agencies to ensure the continued fight against corruption and ensuring that people were arrested, but the main issue that the Committee had was that the agencies were very loud when making arrests, but then there seemed to be no loud progress on the cases after the arrests were made.

#### **HAWKS response**

Gen Lebeya said a lack of capacity affected them a lot, and they were going to appoint senior managers effective from 1 December. They could have done that long ago if the vetting had been quicker. They were currently waiting for the appointment of more senior management, but because a decision was made that they could not appoint senior management without the approval of the SSA, that had delayed them.

The Chairperson interjected to say this was one of the reasons that the Committee had summoned the SSA to the Committee, because lack of capacity affected the investigative agencies' ability to do their work effectively, and the SSA needed to come and account to the Committee.

Gen Lebeya said some of their vetting was done by the SSA, and some were done by the DPCI's Crime Intelligence. They were still waiting for that process to conclude, and top secret security clearance was needed. Overall, the law required that everyone within the DPCI must have security clearance, even if it was not top secret, but people were still able to perform their duties while in the process of application for their security clearances, but could not hold senior management positions without the top secret security clearances.

The top secret security clearance was finalised within 60 days, so to give time to those applying, they advertised the positions before they became vacant. For example, when they knew some senior managers would retire at the end of the year, they would advertise the positions three months before the year ended so those who applied could go through the vetting process earlier.

Regarding the budget, he said the reason they were working hard to appoint and fill vacant positions was to ensure that they fully capacitated the DPCI to meet the current workload and exhausted their current budget to get an additional budget of about R1.3 billion. Once they filled the vacant positions and met their budget, they would be able to speed up the manner in which they dealt with the cases.

He said their investigations were always done from the perspective of tracing the syndicate ring from within or outside the specific entities where there was corruption at play. They often found that those within the entities were working with people from outside, and if they could not find the leaders, they found those who benefited from the corruption.

He said they tried not to lose the cases when they went to court after they made arrests. They had about 11 000 accused persons who were appearing in court, because, in most of their cases, they were dealing with groups, rather than individuals. This was also the case in some of their high profile cases. The reason why it was not so loud when the people arrested by the Hawks went to court was because they went there in their individual capacities and not through the Hawks vehicles in which they were arrested, so perhaps the media were unable to grasp that, but the cases did continue and most of them were in court daily.

The DPCI was collaborating with the NDPP and the SIU. There was also an operational committee where all the operations worked together with the ID and allowed their investigators to work together. They also discussed how things were going to work when the ID became permanent, because all of the agencies were interested in dealing with criminals. They were also working closely with the AFU of the NPA, and the agencies had agreed with one another that they would collaborate to ensure the success of their operations.

#### **SIU's response**

Adv Mofhebi said they were seeing progress, and the collaboration yielded results, as matters were receiving attention. They had signed a memorandum of understanding (MOU) to enhance further collaboration between the investigative agencies. He agreed with the Members that consequence management also needed to be enacted on the directors of the SOEs, and not just the officials in lower positions. The Special Tribunal had played an important role in several matters in the High Court, and the SIU was working hard to ensure increased recovery and the disciplinary processes also affected the Directors.

The ABE matter was receiving attention from all aspects. Some of the matters under investigation were complex, but the SIU ensured that the implicated directors were also identified and that the blacklisting of the company would also affect them. The Companies Act was also straightforward -- that if their actions were deliberate, the directors must also be declared delinquent. ABB had been retained because Eskom had said they still needed them to finish the work that they had started, and the focus now was on ensuring that they would not make a profit. The matter was going to be transferred to the Special Tribunal for a Tribunal order.

He said part of the work of the SIU was to work with the state to improve administration, which was part of their systemic recommendations to ensure that as the SIU investigated corruption, it also investigated maladministration with the intended objective of improving administration. Some of the work they had done collaboratively with the other agencies had yielded results, including the National Lottery case and Eskom case, which the public had welcomed.

The implementation plan of the Zondo Commission that the President presented, had focused on PRASA among other entities, and there was various work being done by the investigative agencies to implement that plan. To move the Zondo recommendations forward the SIU would consider an amended proclamation to ensure that they investigated the collapse of PRASA.

The Zondo recommendations said there was a need to delve deeply into the causes of the ruin at PRASA and who should be held responsible for it. The Commission did not have enough time to probe into that, and the SIU would process a proclamation to that effect. The integrated approach in the model that they agreed upon in the MOU would assist them in ensuring that they produced the results timely and that evidence was gathered in a manner that would enable them to take action.

He agreed that the Committee could assist them in terms of the funding model, as they believed that there was a case for it to be reviewed so that they did not depend on the state institutions they investigated to pay.

**NPA's response**

Adv De Kock said they operated in a system where the obligation and duty to prove each and every allegation made against the accused was compulsory when dealing with commercial investigations. This meant that before a prosecutor entered a courtroom with an accused person, the prosecutor had to anticipate every aspect of the claim and consider the evidence it needed to provide. The accused person also had a right to file for a contestation, which was the core reason they struggled to conclude cases. When the accused was confronted with a solid case, their default position would be to not settle, even though they knew they stood to lose.

The prosecution was also in the hands of the court to allocate time for the cases to be heard, and they did their best to utilise the court time allocated to them. What often happened was that on the date of the court case, they were confronted by another application from the accused, which was often designed to prevent the court case from proceeding. This was frustrating cases being concluded.

One of the initiatives that was being attempted by the NPA to solve this was to meet with the Chief Justice to ask how best the cases could be moved forward. The Chief Justice had also deliberated with Judge Presidents, and they had agreed that the NPA must engage with their Judge Presidents for the long, complicated cases in the High Court. The same process would be followed with regional courts, where they would engage with the Regional Court Presidents on how to manage the cases. There were currently 18 courts which were all occupied with cases, and every time a new case was brought into the courtroom, it automatically had to compete for court time with existing cases, and that was the extent of the challenges.

Adv Babji-Rasethaba said non-conviction based forfeiture referred to taking away a person's assets without their conviction or approval. The Prevention of Organised Crime Act was geared toward being a draconian measure to fight corruption and organised crime. The point of non-conviction based forfeiture was to take the profit out of crime and ensure that people did not hold on to assets they received from committing crime. In essence, non-conviction based asset forfeiture was for instrumentalities of crime and profits of crime. Instrumentalities of crime referred to tainted property, such as a car that was used to transport drugs or a getaway car used in a robbery, so it meant people should not use their property to commit criminal offences.

She said there was no difference between restraint and preservation orders, as they used the terminology of the Prevention of Organised Crimes Act (POCA). In future, they might use a restraint order in terms of conviction-based forfeitures or a preservation order in terms of non-conviction based forfeitures. She said the courts appointed a curator who would be either a chartered accountant or a lawyer with experience managing assets. They would wait for the standardisation of the case, whether a non-conviction based or conviction-based forfeiture, to defer the property or the amount to the court. Once approved, the money was deposited into the asset recovery account. It was a very stringent process, where the courts required constant reports.

Mr Sesoko referred to the ABB matter, and said that at the time of the arrest, certain procedures had been conducted which had resulted in the need for an analysis of the actual infringement, so that was the reason for the case being postponed to 2023. Regarding the lack of skills, he said that where the NPA lacked skills, they sourced the required skills from service providers.

Adv Babji said there was a shortage of highly specialised skills to deal with complex cases. They had received the budget they needed for the current allocation, but it would need to be reviewed once there was more clarity about the ID and its permanence and new powers. The NPA was also engaging with the private sector to get highly specialised skills, and were acutely aware that they needed to ensure that they made independent decisions on whether to prosecute or not, and would ensure at all times that their decisions would be guided by evidence. They needed the skills to get to the point where they had enough evidence to make such decisions.

They had received the budget for the ID, and it was ring-fenced for the ID through the Department of Justice (DoJ). For now, it was sufficient, but it would have to be reviewed. The first thing that needed to be done regarding the permanence of the ID was registration. They were already engaging with the DoJ to facilitate the registration of the ID as a permanent structure. They were

considering the permanence of the structure, the powers that would flow once the legislation was passed, as well as the various partnerships that they would need to ensure continuation of the collaboration with all the stakeholders.

Regarding the parallel between the Scorpions and the ID, she said the methodology would certainly be the same, but the one big difference was that the ID was going to specifically investigate corruption matters and not the broader mandate of the organised crime that the Scorpions had. Organised crime was a serious problem in the country, and the DPCI tried to do a lot in that regard, but it was a serious problem. Looking at the recent publication on the global index of organised crime, South Africa had serious problems regarding organised crime. It was not winning the battle, and the country needed to figure out what more it needed to do.

The various challenges that the criminal justice system of the country was facing in that regard included the lack of skills relating to the investigation of organised crime, lack of capacity, as well as corruption within the criminal justice system ranks. Organised criminals had so much money, and one of their targets was to corrupt government people. If those in government did not have the highest standards of integrity, they would always be fighting a losing battle. Government also had to look at policies that could be adopted to make it difficult for organised criminals to operate. For example, one of the good policies that government was looking at was the temporary ban on the exportation of scrap metals.

The vetting issue had been a perennial problem and challenge. The NPA had engaged with the new Deputy Director-General (DDG) of the SSA, and there was some movement in certain key positions in the NPA, as they were trying to get vetting partners expedited in the ID. The DDG of SSA had told the NPA that the SSA could look at a new process that would allow the entity itself to do a lot of the preliminary work, and the SSA would do the final assessment at a later stage. This would help a lot, because currently if some of the NPA people did not have top secret clearance, they could not access some of the key documents needed for investigations.

She said they ought not forget where the country came from in terms of its fight against corruption and the depletion of the skills, and what had happened in the DPCI and the NPA in the past few years. Capacity needed to be rebuilt, but she was very confident with the work in the DPCI and the ID, which was sort of becoming a snowball effect, where momentum was building in their collaboration even with the SIU and the AFU, as well as SARS. SARS was helping a lot because, in all the corruption, money was involved so the money and assets were being followed.

The investigating agencies were looking at how they could use a combination of all their strategies to become more effective in the fight against corruption. Adv Batochi had expected everything to work more quickly, but with the amount of groundwork that needed to be done to recapitulate law enforcement and to get the necessary powers and skills, it had been challenging, but the work was being done regardless.

#### **Chairperson's concluding remarks**

The Chairperson said the Committee understood that the law enforcement agencies and the organised crime prevention sector were specifically targeted by the age of state capture, as there had been a deliberate erosion of capacity, so there needed to be considerable efforts to rebuild the entities for them to be able to respond to their mandates. However, the luxury of time was scarce, so the pace needed to be doubled and tripled in the efforts currently being made to rebuild, to avoid the illusion that state capture was in the past.

State capture remained within the SOEs in different structures and different forms because its agents would not rest, as they were trying to protect their ill-gotten gains of the past and the present, and that reality needed to be confronted. "The longer we take to fix the problem, it persists and entrenches itself in different forms and the only way where corruption can find itself uncomfortable is where people are put behind bars", he said. The consequences must be a deterrent, and any settlement must run parallel with jail time because the ease of paying back or asset forfeiture was just a slap on the hand.

The Chairperson thanked the NDPP, the Head of the Hawks, and the Head of the SIU and their delegations for a fruitful engagement, and thanked the Members for availing themselves for the meeting.

The meeting was adjourned.

*Seek, Find, Strike*



**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

**Presentation to the Portfolio Committee on Police on progress made on investigations resulting from the Judicial Commission of Inquiry into Allegations of State Capture**

"FA14"

07 June 2023

Presented by Lieutenant General (Dr/Advocate) SG Lebeya:  
National Head of the Directorate for Priority Crime Investigation



## INTRODUCTION AND PURPOSE

- The purpose of the presentation is to apprise the Portfolio Committee on Police on progress made on investigations resulting from the Judicial Commission of Inquiry into Allegations of State Capture.
- The presentation comprises of a legend that indicates the status of the investigations addressing the Zondo Commission recommendations and an overview thereof.

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## STATUS OF INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION RECOMMENDATIONS

### LEGEND

- Number of cases on the court roll	04
- Number of cases pending decision from NPA:	1
- Number of cases dockets under investigation:	8
- Number of enquiries under investigation:	37
- Number of cases finalised:	2
- Number of arrests: Natural persons: 19 Juristic persons: 08	27

*ER*



# OVERVIEW OF CASES PENDING AT COURT

ENTITY/ DEPARTMENT INVOLVED	NUMBER OF CASES	NUMBER OF RECOMMENDATIONS ADDRESSED	NUMBER OF ARRESTS
Department of Transport and Safety (North West) and South African Airways (SAA)	1	1	7 (4 natural persons & 3 entities)
Department of Human Settlement (Free State)	1	13	18 (13 Natural persons & 5 entities)
Passenger Rail Agency of South Africa (PRASA)	2	1	2 (Natural Persons)
<b>TOTAL</b>	<b>4</b>	<b>15</b>	<b>27 (19 natural persons and 8 entities)</b>

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## OVERVIEW OF CASES UNDER INVESTIGATION

ENTITY/ DEPARTMENT INVOLVED	NUMBER OF CASES	NUMBER OF RECOMMENDATIONS ADDRESSED	NUMBER OF STATEMENTS OBTAINED
Department of Human Settlement Free State	2	14	1229
Passenger Rail Agency (PRASA)	2	16	797
ESKOM	5	5	2
BOSASA and officials from Government Departments / SOE's	19	19	11
EOH Holdings (Pty) Ltd	2	2	10
SAA	3	3	3
Mhlathuzi water	1	1	3
Department of Transport	1	1	3
Transnet	1	1	1
SSA	11	18	62
<b>TOTAL</b>	<b>47</b>	<b>80</b>	<b>2 121</b>

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## CASES FINALISED (1)

**Recommendation No:120** -Free State Housing Project

**Accused:** Moses Mpho "Gift" Mokoena

**Station & CAS:** Park Road CAS 1158/11/2021

### **Synopsis of the case:**

Prosecution by the National Prosecuting Authority of Mr Moses Mpho "Gift" Mokoena who was the Head of the Department of Human Settlements in Free State in 2010 and early in 2011 for contravention of sections 38(1)(a)(iii),(b),(c)(ii) and (g) of the Public Finance Management Act 1 of the 1999 as amended and contravention of Section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA).

### **Outcome:**

The accused was convicted on one count for contravention of Section 86 of the PFMA and one count for contravention of section 34 of PRECCA. He was **sentenced to 10 years imprisonment suspended for five years on count 1 and 5 years imprisonment suspended for 5 year on count 2.**

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## CASES FINALISED (2)

**Recommendation No:** 4 (South African Airways (SAA))

**Accused:** Duduzile Myeni

**Station & CAS:** Hillbrow CAS 571/11/2020

**Synopsis of the case:**

Prosecution of Ms Myeni for her disclosure of Mr X's identity during her testimony in the State Capture Commission.

**Outcome:**

The accused was convicted and sentenced to pay a fine of one hundred and twenty thousand rands or two years imprisonment, half suspended for five years.

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## Collaboration with the National Prosecuting Authority

- Fifteen (15) DPCI investigating officers were assigned to the Investigative Directorate to continue investigating, amongst others, one hundred and forty (140) cases that were previously investigated by the DPCI and declared by the ID. These investigators are still serving in the ID. Some of the matters that are currently investigated by the DPCI, are being guided by the prosecutors from the ID.
- The DPCI is also collaborating with the NPA through the "Task Force", jointly coordinating the work flowing from the recommendations of the Commission.
- The Task Force's key mandate is the prioritisation of state capture cases, focusing on operational case prioritisation as well as enhancing coordination.
- Other recommendations for criminal investigation are dealt with by the Investigative Directorate.

*E. R.*



## Establishment of the DPCI Task Team

- In November 2022, a DPCI team of twenty (20) experienced investigators, led by senior officers from the operational investigation components were assembled to prioritise the investigations emanating from the State Capture Commission.
- We are continuously recruiting personnel to increase the capacity of the DPCI.

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# Conclusion

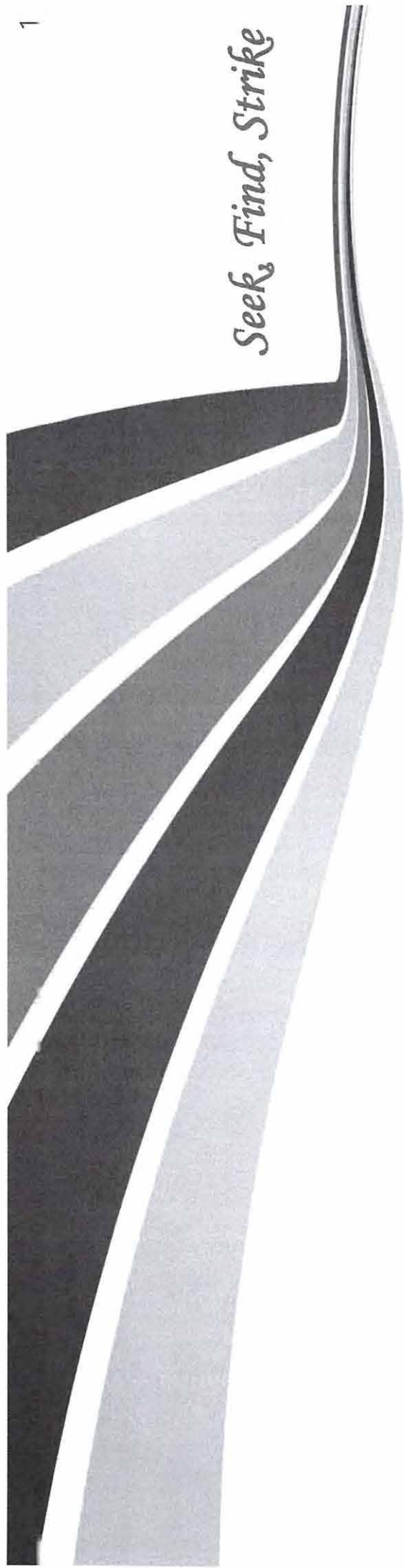
*The DPCI shall at all times enforce the Law of the Republic without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the Constitution and the Law*

*Thank You*

*Seek, Find, Strike*

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*Seek, Find, Strike*



**HAWKS**  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

**PRESENTATION TO THE STANDING COMMITTEE ON PUBLIC ACCOUNTS (SCOPA) ON THE STATUS OF INVESTIGATIONS RELATING TO REFERRALS BY THE SPECIAL INVESTIGATING UNIT, STATE CAPTURE AND THE NATIONAL SKILLS FUND**

**"FA15"**

**22 November 2023**

Presentation by: Lieutenant General (Dr/Advocate) SG Lebeya (SOEG):  
National Head of the Directorate for Priority Crime Investigation



# Presentation outline

- 1. Mandate**
- 2. Introduction and purpose**
- 3. Section 1: SIU Referrals**
  - Summary of cases referred by SIU
  - Summary of cases and amount involved per Department and Entities.
  - Overview of cases per provinces.
- 4. Section 1(a): other cases dealt with by the DPCI in the same department and Entities**
  - Summary of cases
  - Summary of cases and amount involved per department and Entities
- 5. Section 2: State Capture**
  - Overview of registered cases addressing recommendations from Zondo Commission.
  - Overview of cases on the court roll.
  - Overview of cases under investigation.
- 6. Collaboration with the National Prosecuting Authority (NPA).**
- 7. Cases finalised: convictions.**
- 8. Dependency on external auditors**
- 9. Conclusion**

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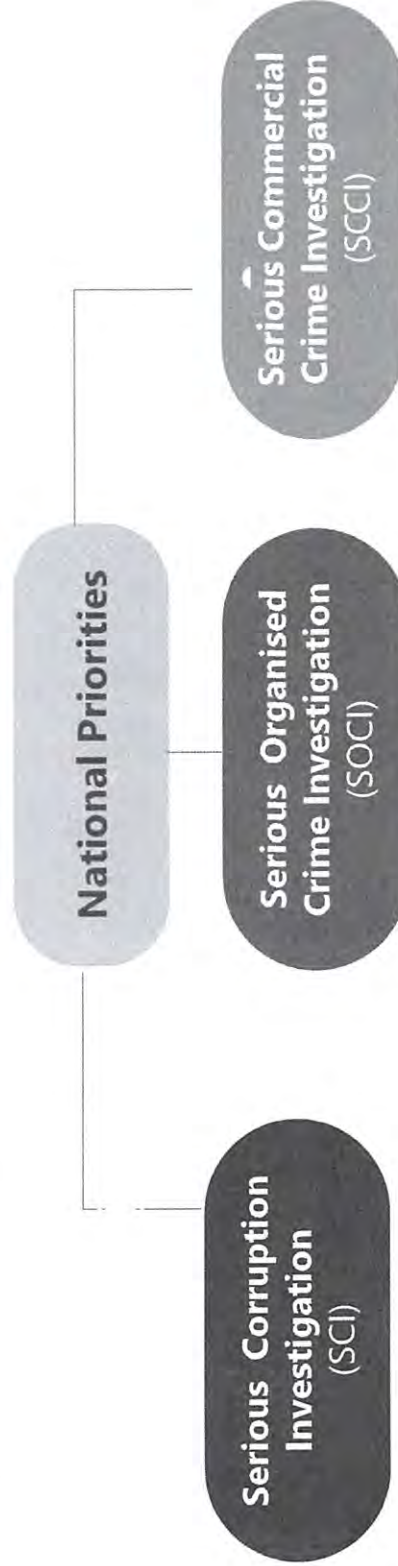


# MANDATE OF THE DPCI

**In terms of Section 17D of the South African Police Service Act, the Mandate of the DPCI is as follows:**

- (1) The functions of the Directorate are to **prevent, combat and investigate—**
- (a) **national priority offences**, which in the opinion of the National Head of the Directorate need to be addressed by the Directorate;
- (aA) offences referred to in Chapter 2 and Section 34 of the Prevention and Combating of Corrupt Activities Act (PRECCA), 12 of 2004;
- (2) If, during the course of an investigation by the Directorate, evidence of any other crime is detected and the National Head of the Directorate considers it in the **interests of justice, or in the public interest**, he or she may extend the investigation so as to include any offence which he or she suspects to be connected with the subject of the investigation.

**Section 17A of the Police Act defines “National Priority Offence”** as organised crime; crime that **requires national prevention or investigation**; crime that **requires specialised skills** as referred to in section 16(1) of the SAPS Act. The priorities are cross-cutting. One cannot occur without affecting the other(s) and because of this, the DPCI specialises in **project investigations** which draws in the investigative expertise of multiple investigators in different environments.



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## Introduction and purpose

- The Directorate for Priority Crime Investigation (DPCI) received an invite in line with the provisions of section 17K(1) of the **South African Police Service Act 68 of 1995**, from the Standing Committee on Public Accounts (SCOPA) to brief the committee on the progress made by the Special Investigating Unit relating to the **State Capture matters and investigations conducted on the Department and Entities as listed below:**
  - Passenger Rail Agency of South Africa (PRASA)
  - Eskom
  - Department of Water and Sanitation
  - South African Airways (SAA)
  - Transnet
  - South African Broadcasting Corporation (SABC)
  - Denel
  - National Skills Fund (NSF)
- The reported offences include: Fraud, forgery, theft, corruption and money laundering, damage to essential infrastructure, intimidation, theft of copper cables & possession of suspected stolen goods, theft of diesel, theft of coal, bomb threat etc.
- New charges may be added as the investigation unfolds.

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# SECTION 1

## Special Investigating Unit Referrals

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# SUMMARY OF CASE DOCKETS/ENQUIRIES: SIU REFERRALS

## LEGEND

**Number of cases/enquiries on hand** **45**

- Number of court cases: 7
- Number of cases pending decision from NPA: 4
- Number of enquiries pending decision from NPA: 1
- Number of cases under Investigation: 33
- Number of cases provisionally withdrawn from court 1
- **Finalised cases:** 1

o Declined to prosecute : 1

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## SUMMARY OF CASES AND ESTIMATED AMOUNT INVOLVED

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
PRASA		-	-	-	1	R4 024 000 .00	-	-
ESKOM	5	R13 023 319.57	2	R7 014 940.00	12	R141 523 043.96		
WATER & SANITATION			2	R 54 595 723.81	15	R3 124 184 651,69	0	
SAA	-	-	1	R6 200 000.00	-	-	-	-
TRANSNET	-	-	-		3	R127 500 000.00	-	-
SABC	1	R18 290.00			2	R55 000 000.00	1	TBD
DENEL	-	-	-	-	1	R3 000 000 000.00		
TOTALS	6	R13 041 609.57	5	R67 810 663.81	34	R6 452 231 695.65	1	

*GR*

## OVERVIEW OF CASES PER PROVINCES

Province	No. of Cases on hand	No. of cases in court	No. of cases submitted for decision	No. of cases under investigation	Finalised cases
Eastern Cape	13	3	1	9	0
Gauteng	10	1	2	7	1
KZN	7	0	1	6	0
Limpopo	4	0	0	4	0
Mpumalanga	7	0	1	6	0
Western Cape	2	2	0	0	0
Northern Cape	2	0	0	2	0
<b>TOTALS</b>	<b>45</b>	<b>6</b>	<b>5</b>	<b>34</b>	<b>1</b>

*E. R.*



**CASES REFERRED BY SIU BUT FOUND THAT INVESTIGATIONS ALREADY EXIST IN THE DPCI**

Allegations on one referral from SIU were already under investigation in the DPCI on **Bedford-view CAS 345/08/2017**.

The matter is pending at court - **remanded to 2024-05-23**



*K. R.*



# ESKOM

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# SUMMARY ON STATUS OF ESKOM CASES

STATUS OF CASE DOCKETS	NUMBER
Cases on hand	19
Cases pending at court	5
Cases submitted for decision	2
Cases under investigation	11
Cases finalised	0
Cases provisionally withdrawn from court (currently under investigation)	1

*u. R*



# ESTIMATED AMOUNT INVOLVED: ESKOM CASES

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
ESKOM	5	R13 023 319.57	2	R7 014 940.00	12	R141 523 043.96	0	

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# ESKOM

<b>Case number</b>	Mount Road Cas 311/09/2021	<p><b>SYNOPSIS OF CASE</b></p> <p><b><u>Clerk at the Eskom Office in Gqeberha processed false readings</u></b></p> <p>The accused was employed at Eskom Office, Gqeberha during the period March 2011 to May 2021 as a Senior Billing Clerk. The accused was responsible for the processing of electricity meter readings on the billing system. The latter readings were captured by route contractors at customers' sites on handheld devices and forwarded to her electronically. The accused then had to bill the customers for electricity usage in accordance to the readings. The accused, however made a misrepresentation to Eskom, in that she unlawfully and intentionally processed false readings on the billing system for which the customers were billed for lower electricity usage. Thus causing Eskom a financial loss of R11 841 319.57.</p> <p><b><u>Current status</u></b></p> <p>The case is remanded to 2024 -01-24.</p>
<b>Offence</b>	Fraud	
<b>Date Reported</b>	2021-09-20	
<b>Date of Referral to DPCI</b>	2021-09-20	
<b>Loss involved</b>	R11 841 319.57	
<b>Entity/Individual involved</b>	Liesl Wolmarans South African	
<b>Number of charges</b>	172 counts	
<b>Number of statements obtained</b>	10	
<b>Investigating officer</b>	1	
<b>Prosecutor assigned</b>	1	

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# ESKOM

<b>Case number</b>	Mount Frere CAS 56/05/2018
<b>Offence</b>	Fraud
<b>Date Reported</b>	2016/02/29
<b>Date of Referral to DPCI</b>	2018/05/08
<b>Loss involved</b>	Nil
<b>Entity/Individual involved</b>	1.Zanemvuula Adolphus Magabitshana 2.Notemba Millicent Mpiti 3. Mkululi Wiseman Ntshangase
<b>Number of charges</b>	01
<b>Number of statements obtained</b>	10
<b>Investigating officer</b>	1
<b>Prosecutor assigned</b>	1
<b>SYNOPSIS OF CASE</b>	<p>The suspects allegedly reconnected electricity fraudulently from Eskom by unlawfully and intentionally tempering, damaging and colluded with one another in this act.</p> <p><b><u>Current status</u></b></p> <p>The case is remanded to 2023-11-20 for trial.</p>





# ESKOM

<b>Case number</b>	MTHATHA CAS 261/05/2019	<b>SYNOPSIS OF CASE</b>
<b>Offence</b>	Fraud	It is alleged that people connected to ESKOM electricity network structure illegally.
<b>Date Reported</b>	2018/01/20	
<b>Date of Referral to DPCI</b>	2019/05/20	<b>Current status</b>
<b>Loss involved</b>	R376 000,00	The case is remanded to <b>2023-11-22 to 23.</b>
<b>Entity/Individual involved</b>	John Tazvivinga	
<b>Number of charges</b>	01	
<b>Number of statements obtained</b>	10	
<b>Investigating officer</b>	1	
<b>Prosecutor assigned</b>	1	

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**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

# ESKOM

<b>Case number</b>	Bredasdorp CAS 85/11/2021
<b>Offence</b>	Theft of copper cables & possession of suspected stolen goods
<b>Date Reported</b>	2022-07-27
<b>Date of Referral to DPCI</b>	2021-11-14
<b>Loss involved</b>	R306 000,00
<b>Entity / Individual involved</b>	Kay-Ann Olkers, Percival Olkers, Carlo Cloete, Inge-Loreal Fortuin
<b>Number of charges</b>	2
<b>Number of statements obtained</b>	34
<b>Investigating officer</b>	One investigating officer
<b>Prosecutor assigned</b>	One Prosecutor
<b><u>SYNOPSIS OF CASE</u></b>	
<p>On 2021-11-14, information from Crime Intelligence (CI) that Kay-Ann Olkers stole copper cables valued at R306 000-00 from Eskom and her husband sold it to a scrapyard. DPCI: EPR visited residential address of Kay-Ann Olkers at 20 Carnation Avenue, Bredasdorp and confiscated copper cables. More copper cables were found at Get Scrap Metal and Waste Scrap Yard, at 6 Sealy Street, Bredasdorp.</p> <p><u>Exhibits seized:</u>            840 kg copper cables valued at R92 400-00, confiscated at 20 Carnation Avenue, Bredasdorp            624 kg copper cables valued at R68 640-00, confiscated at Get Scrap Metal and Waste Scrap Yard</p> <p>On Wednesday 2022-07-27 DPCI, CI Winelands, Gans Bay Detectives, Struisbaai Detectives, Combined Private Investigation (CPI) and Eskom conducted searches, executed (J50) Warrant of Arrests on 4 suspects.</p> <p>(J51) Search Warrant was executed at 20 Carnation Avenue, Bredasdorp. The office at Eskom in All Saints Road, Bredasdorp; where Kay-Ann Olkers previously worked was also searched in terms of a (J51) Search Warrant. Three (3) suspects were arrested at their residential addresses and one (1) at work.</p>	
<b><u>CURRENT STATUS</u></b>	
The matter is continuing in the regional court. Next <b>court date- 2024-01-24</b>	

## ESKOM

<b>Case number</b>	Atlantis CAS 08/10/2022	<p><b><u>SYNOPSIS OF CASE</u></b></p> <p>It was alleged that a truck driver, tasked with the delivery of diesel to the Eskom Ankerlig power station, offloaded diesel at Eskom. The plant operator declared that the diesel tanker was empty and that all diesel had been off loaded. Information was received that the tanker still contained approximately half a tank of diesel upon exiting the power station.</p> <p>On 2022-12-23 after an extensive investigation by the CATS team, the plant operator was arrested for theft of diesel.</p> <p><b><u>CURRENT STATUS</u></b></p> <p>The case is remanded to <b>2023-12-05</b> for further particulars.</p>
<b>Offence</b>	Theft of Diesel & fraud	
<b>Date Reported</b>	2022-10-01	
<b>Date of Referral to DPCI</b>	2022-11-25	
<b>Loss involved</b>	R500 000,00 (retrieved)	
<b>Entity/Individual involved</b>	Andrew Gysman (Eskom employee)	
<b>Number of charges</b>	2	
<b>Number of statements obtained</b>	22	
<b>Investigating officer</b>	1	
<b>Prosecutor assigned</b>	1	

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**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

## REGISTERED INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION RECOMMENDATIONS: CASES ON COURT ROLL

Case number	Bedfordview CAS 345/08/2017 Phola CAS 125/03/2019
Offence	Fraud Contraventions of PRECCA Contraventions of POCA (Money laundering)
Date Reported	2017-08-30
Date of Referral to DPCI	2017-08-30
Loss involved	R745 804 316,25
Entity/Individual involved	1. France Hlakudi 2. A Masango 3. H Kgomoeswana 4. Tony Trindade 5. Mike Lomas 6. Tubular Construction Projects (Pty) Ltd 7. Hlakudi Translations and Interpretations (Pty) Ltd.
Number of charges (co be continuously updated)	
Number of statements obtained	424
Investigating officer	2
<p style="text-align: center;"><b><u>SYNOPSIS OF CASE</u></b></p> <p>In 2008, Eskom awarded a tender at Kusile Power Station to Alstom S &amp; E Africa (Pty) Ltd ("Alstom"). The scope of the work, amongst others, included the completion and construction of the air cooled condensers for Units 4 to 6 at Kusile Power Station. Alstom subcontracted part of the work to various entities who in return also subcontracted smaller entities. Tubular Construction Projects (Pty) Ltd ("TCP") was subcontracted by DBT Technologies (Pty) Ltd ("DBT"), one of the companies subcontracted by Alstom. It is alleged that during the implementation of the project (between 2013 and 2015) there were payment disputes between Alstom, DBT and TCP. In an attempt, purportedly to resolve the disputes, Hlakudi facilitated the de-scoping of the work allocated to Alstom in the project and also facilitated negotiations with TCP which led to direct appointment of TCP by Eskom on work that was previously sub contracted by DBT to TCP.</p> <p>On 2015-09-02, Hlakudi, after being authorised by the Executive Procurement Committee, wrote a letter to TCP requesting negotiations to commence between TCP and Eskom for the purpose of TCP becoming the sole negotiating party for the construction of the air cooled condensers for Unit 4 to 6. On the same day, TCP paid an amount of R400 000-00 into the bank account of Hlakudi Translations and Interpretations (Pty) Ltd (HTI), a company in which Hlakudi is the sole Director.</p> <p style="text-align: center;"><b><u>CURRENT STATUS AND OUTSTANDING INVESTIGATION</u></b></p> <p><b><u>Bedfordview CAS 345/08/2017 &amp; Phola CAS 125/03/2019</u></b> On 2019-12-19, four (4) suspects were arrested and charged together with seven (7) entities. The matter was enrolled at Palm Ridge Magistrate Court. On 2021-04-15 a 5th suspect was arrested in the UK and the extradition process is ongoing. On 2023-01-30, the Minister of State for Security in London in the UK issued an extradition order for the 5th accused. The accused appealed the order and the outcome of the appeal is awaited.</p> <p>The court case was remanded to <b>2024-05-23 for pre-trial.</b></p>	

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# WATER AND SANITATION

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# SUMMARY ON CASES FOR WATER & SANITATION

STATUS OF CASE DOCKETS	NUMBER
Cases on hand	17
Cases pending at court	0
Cases submitted for decision	2
Cases under investigation	15
Cases finalised	0
Cases provisionally withdrawn from court	0

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## OVERVIEW OF AMOUNT INVOLVED: WATER & SANITATION CASES

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
WATER & SANITATION	0	-	2	R 54 595 723.81	15	R3 124 184 651,69	0	

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# SOUTH AFRICAN AIRWAYS (SAA)

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## SUMMARY ON STATUS OF SAA CASES

STATUS OF CASE DOCKETS	NUMBER
Cases on hand	1
Cases pending at court	0
Cases submitted for decision	1
Cases under investigation	0
Cases finalised	0
Cases provisionally withdrawn from court	0

*h. R.*

# ESTIMATED AMOUNT INVOLVED: SAA CASES

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
SAA	-	-	1	R6 200 000.00	-	-	-	-

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# TRANSNET

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## SUMMARY ON STATUS OF TRANSNET CASES

STATUS OF CASE DOCKETS	NUMBER
Cases on hand	3
Cases pending at court	0
Cases submitted for decision	0
Cases under investigation	3
Cases finalised	0
Cases provisionally withdrawn from court	0

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# ESTIMATED AMOUNT INVOLVED: TRANSNET CASES

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
TRANSNET	-	-	-	-	3	R127 500 000.00	-	-

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# SOUTH AFRICAN BROADCASTING CORPORATION (SABC)

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## SUMMARY OF STATUS OF SABC CASES

STATUS OF CASE DOCKETS	NUMBER
Cases on hand	3
Cases pending at court	1
Cases submitted for decision	1
Cases under investigation	1
Cases finalised	0
Cases provisionally withdrawn from court	0

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**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

## ESTIMATED AMOUNT INVOLVED: SABC CASES

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
SABC	1	R18 290.00	0		2	R55 000 000.00	1	-

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# SABC

<b>Case number</b>	<b>Brixton CAS 156/05/2018</b>	
<b>Offence</b>	Fraud and corruption	
<b>Date Reported</b>	2018-05-15	
<b>Date of Referral to DPCI</b>	2018-05-18	
<b>Loss involved</b>	R18 290	
<b>Entity/Individual involved</b>	SABC	
<b>Number of charges</b>	1	
<b>Number of statements obtained</b>	A1-A5	
<b>Investigating officer</b>	1	
<b>Prosecutor assigned</b>	1	
<b><u>SYNOPSIS OF CASE</u></b>		
One of the SABC employees, Sully Motsweni requested travel and accommodation payments for her personal vacation and misrepresented to the SABC that the travellers were on SABC business whereas they were Two Oceans Marathon runners.		
<b><u>CURRENT STATUS</u></b>		
The case is remanded to 2023-11-29 for trial		

U. R



# DENEL

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## SUMMARY ON STATUS OF DENEL CASES

STATUS OF CASE DOCKETS	NUMBER
Cases on hand	1
Cases pending at court	0
Cases submitted for decision	0
Cases under investigation	1
Cases finalised	0
Cases provisionally withdrawn from court	0

*E. Q*



# ESTIMATED AMOUNT INVOLVED: DENEL CASES

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
DENEL	-	-	-	-	1	R3 000 000 000.00		

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**SECTION 1(a)**

**OTHER CASES DEALT WITH BY THE DPCI IN THE SAID DEPARTMENT AND ENTITIES**

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# SUMMARY OF CASE DOCKETS/ENQUIRIES

## LEGEND

<b><u>Number of cases/enquiries on hand</u></b>	<b>132</b>
- Number of court cases:	23
- Number of cases pending decision from NPA:	16
- Number of cases under Investigation:	68
- Number of <u>enquiries</u> under Investigation:	25
- Number of cases provisionally withdrawn from court	13
- <u>Finalised cases:</u>	4
o Guilty	2
o Declined to prosecute	2
o Accused deceased	1

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**HAWKS**  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

# ESTIMATED AMOUNT INVOLVED

STATUS	COURT DOCKETS		CASES SUBMITTED FOR DECISION		CASES UNDER INVESTIGATION		FINALISED	
	NO OF CASES	VALUE / POTENTIAL VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE	NO OF CASES	VALUE
PRASA	2	R7 271 854.00	-	-	17	R10 266 124 000.00	-	-
ESKOM	19	R1 129 840 365.70	15	R113 055 688.10	69	R7 627 553 988.31	4	R954 565 128.28
WATER & SANITATION	2	-	1		6	R1 273 402 802.00	0	
SAA	1	R221 235 051.00	1	R9 000 000.00	3	R2 400 000.00	-	
TRANSNET	1	R2 000 000.00	0		0			
SABC		-	-	-	-	-	-	-
DENEL		-	-	-	-	-	-	-
NSF		-	-	-	1	R2 500 000 000.00		
<b>TOTALS</b>	<b>25</b>	<b>R1 139 112 219.70</b>	<b>17</b>	<b>R123 055 688.10</b>	<b>96</b>	<b>R21 667 080 790.31</b>	<b>4</b>	<b>R954 565 128.28</b>

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## OVERVIEW OF ARRESTS

COURT DOCKETS		
ENTITY	NO OF CASES	NO OF ACCUSED ARRESTED
PRASA	2	2
ESKOM	19	43
WATER & SANITATION	2	8
SAA	1	7 (4 natural & 3 juristic persons)
TRANSNET	1	4
<b>TOTAL</b>	<b>25</b>	<b>64</b>

*E. R.*

## EXAMPLE OF A CASE REPORTED IN 2012 AND 2013 AND FINALISED IN 2023 ESKOM

<b>Case number</b>	Nelspruit CAS 763/11/2013		
<b>Offence</b>	Fraud/ Theft and money laundering		
<b>Date Reported</b>	2013-11-27		
<b>Date of Referral to DPCI</b>	2013-12--05		
<b>Loss involved</b>	R2,6 million		
<b>Entity/Individual involved</b>	<ul style="list-style-type: none"> <li>• Cinderella Moropane: <b>court sentenced</b></li> <li>• Micheal Chimanzi: <b>sentenced</b></li> <li>• Nwabisa Ngxola: <b>sentenced</b></li> </ul>		
<b>Number of charges</b>	02		
<b>Number of statements obtained</b>			
<b>Investigating officer</b>	1		
<b>Prosecutor assigned</b>	1		
	<p style="text-align: center;"><b><u>SYNOPSIS OF CASE</u></b></p> <p>It is alleged that two suspects who were Eskom employees colluded with the director of Chimanzi Investment where they submitted fraudulent invoices for the services that were not rendered.</p> <p style="text-align: center;"><b><u>CURRENT STATUS</u></b></p> <ul style="list-style-type: none"> <li>• Mr Chimanzi &amp; his Company were sentenced to <b>8 years imprisonment which was wholly suspended for the period of 5 years</b></li> <li>• Nwabisa Ngxola was sentenced to <b>10 years direct imprisonment.</b></li> </ul> <p>The other suspect Cinderella Moropane will be sentenced or <b>2024-02-24.</b></p>		

L. G.

## EXAMPLE OF A CASE REPORTED IN 2012 AND 2013 AND FINALISED IN 2023 ESKOM



<b>Case number</b>	Kriel CAS 88/05/2012	<b>SYNOPSIS OF CASE</b>
<b>Offence</b>	Fraud and Corruption	<p>One Eskom official at Kriel Power Station, finance manager Mr Jacob Sfiso Masina, has unlawfully and intentionally made payments to the two entities (companies), Mandlankosi logistics, which it is alleged that the company belongs to him and Lutshala supply transport which it is alleged that the company belongs to his mother, of which those companies never rendered any services to Eskom</p>
<b>Date Reported</b>	2011-01-10	
<b>Date of Referral to DPCI</b>	2018-11-19	
<b>Loss involved</b>	R513 630.00	
<b>Entity / Individual involved</b>	Mandlankosi Logistics Sifiso Jacob Masina	
<b>Number of charges</b>	02	<b>CURRENT STATUS OF INVESTIGATION</b>
<b>Number of statements obtained</b>	14	<p><b>On 2023-04-25</b> Sifiso Jacob Masina, former Kriel Power Station finance Manager was <b>found guilty and sentenced to eight (8) years imprisonment wholly suspended for five (5) years</b> on condition that he is not found guilty of the same offence during the time of suspension.</p>
<b>Investigating officer</b>	1	He was also ordered to pay back an amount of <b>R513 630.00</b> to Eskom .
<b>Prosecutor assigned</b>	1	




**SECTION 2**  
**STATE CAPTURE MATTERS**

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**OVERVIEW OF REGISTERED INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION RECOMMENDATIONS**

In November 2022, a team comprising of twenty (20) experienced investigators, led by senior officers from the operational investigation components were assembled to prioritise the investigations emanating from the State Capture Commission. The DPCI is continuously recruiting personnel to increase the capacity.

**LEGEND**

<b><u>Number of cases/enquiries on hand</u></b>	<b>47</b>
- Number of court cases:	5
- Number of cases pending decision from NPA:	2
- Number of cases under Investigation:	10
- Number of <u>enquiries</u> under Investigation:	30
- Finalised cases:	2
- Number of arrests: Natural persons: 23 Juristic persons: 10	33

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## OVERVIEW OF CASES ON THE COURT ROLL

ENTITY/ DEPARTMENT INVOLVED	NUMBER OF CASES	AMOUNT INVOLVED	NUMBER OF RECOMMENDATIONS ADDRESSED	NUMBER OF ARRESTS
Department of Transport and Safety (North West) and South African Airways (SAA)	1	R 221 235 051,00	1	7 (4 natural persons & 3 entities)
Department of Human Settlement (Free State)	1	R250 000 000,00	13	18 (13 natural persons & 5 entities)
Passenger Rail Agency of South Africa (PRASA)	2	R5 771 854,39	1	2 natural persons
Eskom	1	R745 804 316,25		6 (4 natural persons and 2 entities)
<b>TOTAL</b>	<b>5</b>	<b>R1 222 811 221,64</b>	<b>15</b>	<b>23 natural persons and 10 entities)</b>

*E. R.*


**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

# SAA / SA EXPRESS

<b>Case number</b>	MMABATHO CAS 181/05/2020 Recommandation – No. 3	<p><b>SYNOPSIS OF CASE</b></p> <p>During 2014, the North West Government embarked on a process to recapitalise and commercialise its two airports, Mafikeng and Pilaesberg Airports. State-owned SA Express (SAX) was appointed to render the service without following the supply chain management processes (open tender). The North West Department of Community Safety And Transport did not have a budget for the project. The department needed around R200 million over five years to subsidise the service to be rendered by SAX and a further estimated R200 million for the airline to secure a management company to provide a ground handling and facility management services at both airports,</p> <p>The North West Department of Community Safety And Transport paid SAX exorbitant rates to operate the Mafikeng and Pilaesberg airports, when compared with industry standards. The North West government forked out R50 million to SAX for a series of subsidies and concessions to get the routes operational before any work was actually done. The agreement was signed off by SAX executives, Money was siphoned off to various entities and shelf companies connected to Mr van Wyk. Koroneka Trading was appointed to handle ground services followed by Valotec, Pamco and Mamco at the Mafikeng and Pilaesberg airports respectively. The investigation was conducted to gather material or relevant information into the matter.</p> <p><b>CURRENT STATUS</b></p> <p>Investigation has been finalised on this matter. The DPP decided to prosecute the former HoD of the Department of Transport, Mr Bailly Motlhakoleng and former general manager Commercial: SA Express, Mr Brian Van Wyk and the Directors together with their companies who were appointed as service providers in the contract.</p> <p>The accused were arrested on 2022-09-29 and 2022-09-30 and they appeared in court on 2022-09-30.</p> <p>Pre-trial conference is set for <b>2024-01-29</b>.</p> <p><b>The trial date is set for 2024-05-13 to 2024-05-29.</b></p>
<b>Offence</b>	Fraud, corruption, money laundering and contravention Of PFMA	
<b>Date Reported</b>	2020-05-14	
<b>Date of Referral to DPCI</b>	2022-05-21	
<b>Loss involved</b>	R221 235 051-00	
<b>Entity/Individual involved</b>	<b>Department of Safety and Transport</b> i. Mr BT Van Wyk: Former General Manager Commercial SA Express ii. Mr B Motlhakoleng: former HoD NW iii. Mr S Phiri: Director of Servilex Investment Holding cc (life partner of Mr Van Wyk) iv. Mrs N Dube: Director of Valotec Facility Management Company	
<b>Number of charges</b>	48	
<b>Number of statements obtained</b>	82	
<b>Investigating officer</b>	2 investigating officers 2 PCSI members	
<b>Prosecutor assigned</b>	4	
<b>AFU Contribution</b>	AFU has drafted documents on chapter 5 & 6 relating to the house, vehicles and the flat	



## REGISTERED INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION RECOMMENDATIONS: CASES ON COURT ROLL

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

Case number	Offence	Date Reported	Date of Referral to DPCI	Loss involved	Entity/Individual involved	Number of charges	Number of statements obtained
Park Road CAS 486/02/2020	Fraud Contravention of PFMA Contravention of PRECCA Contravention of POCA (Money Laundering)	2020-02-11	2022-02-11	R 250 Million	1. M Diedericks (f) 2. ES Magashule 3. T Makepe 4. AK Manyike 5. MJ Matlakala 6. MS Maneli (f) 7. N Mokhesi 8. NB Molikoe 9. SJ Radebe 10. PE Sodi 11. AJ Venter 12. TW Zulu		246
<b>SYNOPSIS OF CASE</b>							
<p>The Free State Department of Human Settlement used Treasury Regulation 16A6.6 to appoint a company, Blackhead Consulting JV to Identify houses in the Free State where Asbestos roofing was used. There was no normal tender process followed because the department piggy backed on a contract similar to this one that was awarded to the company by the Gauteng Department of Human Settlement.</p> <p>A final report was handed over to the FSDHS and a total of R 230 mil was paid to Blackhead Consulting JV. The investigation was divided in to two sections, first if the regulations of Treasury Regulation 16A6.6 was followed and an amount of R 650 000,00 was identified that was paid indirectly to the HOD of the FSDHS by Blackhead Consulting JV for the purchasing of a townhouse in the name of a Trust belonging to the HOD.</p> <p>The second part of the investigation is the financial flow of the money paid to Blackhead Consulting JV. Allegations were made during testimony at the Zondo Commission that various senior government officials received money from Blackhead Consulting JV.</p> <p style="text-align: center;">CURRENT STATUS</p> <p>The case was postponed until <b>2024-04-15 till 2024-06-23</b></p>							

A. R



**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

**REGISTERED INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION  
RECOMMENDATIONS: CASES ON COURT ROLL**

<b>Case number</b>	Park Road CAS 486/02/2020 Cont..
<b>Investigating officer</b>	4
<b>Prosecutor assigned</b>	1
<b>AFU Contribution</b>	Yes

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**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

## REGISTERED INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION RECOMMENDATIONS: CASES ON COURT ROLL

Case number	Hillbrow CAS 566/07/2015
<b>Offence</b>	No recommendation Fraud Theft Forgery and Uttering
<b>Date Reported</b>	2015-07-18
<b>Date of Referral to DPCI</b>	2016-04-22
<b>Loss involved</b>	R5 771 854,39
<b>Entity/Individual involved</b>	Former PRASA Official (Mr Daniel Motshutshisi Mtimkulu)
<b>Number of charges (co be continuously updated)</b>	3
<b>Number of statements obtained</b>	44
<b>Investigating officer</b>	1
<b>Prosecutor assigned</b>	1
<b>AFU Contribution</b>	AFU is involved (Advocate A Dabula)

### SYNOPSIS OF CASE

The complainant is Mr Ernest Phakhathi who is employed by PRASA as Executive Manager HRM PRASA RAIL. He alleges that the suspect, Mr Daniel Mtimkulu had presented fraudulent qualifications, namely: (1. National Diploma in Mechanical Engineering from Vaal Technikon, 2. Bachelor of Technology in Engineering from Vaal Technikon, 3. Letter of recognition as Doctor from Technische Universitat Munchen from Germany, 4. Mechanical and Maintenance Engineering from University of Witwatersrand, 5. Masters Degree in Engineering from University of Witwatersrand).

The Accused was appointed and/or promoted to the position of Executive Manager: Engineering Services effective from 1 April 2010, which effectively brought his annual remuneration package to an amount of R1 650 000.00.

In June 2010, the accused also presented PRASA with a letter addressed to himself pretending to be from a German company called DB Schenker, offering him the position of Engineering Services Specialist at an annual salary of R 2 800 000.00. As a result of this letter, PRASA made a counter-offer to the accused in the amount of R 2 800.000.00 in the position of Executive Manager: Engineering Services. The actual loss suffered by PRASA as a result of false letter of employment from DB Schenker is calculated at R 5 771 854.39.

The accused is charged with 8 counts of fraud, theft, forgery and uttering for presenting fraudulent qualifications, fraudulent offer from DB Schenker, presentation of fraudulent letter addressed to PRASA, purported to be from a German university under the name and style of Technische Universitat Munchen.

### **CURRENT STATUS**

**On 31 January 2022 the accused was found guilty and convicted of three (3) counts of fraud,** namely: counts 1, 4 and 8 and alternatives thereto (forgery and uttering). The accused was acquitted on six (6) counts of fraud, namely: counts 2,3,5-7 and 9 and alternatives thereto (forgery and uttering).

**The case is remanded till 4,5 and 8 December 2023 for sentencing.**

*L. P.*



## REGISTERED INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION RECOMMENDATIONS: CASES ON COURT ROLL

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

<b>Case number</b>	Hillbrow CAS 189/03/2021	<b>SYNOPSIS OF CASE</b>
<b>Offence</b>	Defeating the ends of justice	On 12-03-2021 Mr Auswell Mashaba was summoned to testify at State Capture Commission of Enquiry. He failed to make an appearance citing that he was challenging the legality of the summons served.
<b>Date Reported</b>	2021-03-09	On 09-03-2021, Professor Itumeleng Masala, secretary of the State Capture Commission registered a case against Mr Auswell Mashaba for Contravention of Commission Act, ACT 8 of 1947 (Defeating the end of Justice)
<b>Date of Referral to DPCI</b>	2021-03-12	<b>CURRENT STATUS:</b>
<b>Loss involved</b>	None	➤ The suspect appeared for the first time at Johannesburg Magistrate Court on 2022-02-03.
<b>Entity/Individual involved</b>	Mr Auswell Mashaba ( Director Shivambo Rail Agency – PRASA)	➤ The matter has been postponed a number of times in court as Mr Mashaba was busy challenging the legality of the summons through his defence council.
<b>Number of charges</b>		➤ The case last appeared in the Gauteng High Court on 2023-09-15 and is postponed to <b>2024-01-16</b> for the outcome of the representation.
<b>Number of statements obtained</b>	5	
<b>Investigating officer</b>	1	
<b>Prosecutor assigned</b>	1	
<b>AFU Contribution</b>	None	


**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

## REGISTERED INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION RECOMMENDATIONS: CASES ON COURT ROLL

Case number	Synopsis of Case
Bedfordview CAS 345/08/2017	<p>In 2008, Eskom awarded a tender at Kusile Power Station to Alstom S &amp; E Africa (Pty) Ltd ("Alstom"). The scope of the work, amongst others, included the completion and construction of the air cooled condensers for Units 4 to 6 at Kusile Power Station. Alstom subcontracted part of the work to various entities who in return also subcontracted smaller entities. Tubular Construction Projects (Pty) Ltd ("TCP") was subcontracted by DBT Technologies (Pty) Ltd ("DBT"), one of the companies subcontracted by Alstom. It is alleged that during the implementation of the project (between 2013 and 2015) there were payment disputes between Alstom, DBT and TCP. In an attempt, purportedly to resolve the disputes, Hlakudi facilitated the de-scoping of the work allocated to Alstom in the project and also facilitated negotiations with TCP which led to direct appointment of TCP by Eskom on work that was previously sub contracted by DBT to TCP.</p> <p>On 2015-09-02, Hlakudi, after being authorised by the Executive Procurement Committee, wrote a letter to TCP requesting negotiations to commence between TCP and Eskom for the purpose of TCP becoming the sole negotiating party for the construction of the air cooled condensers for Unit 4 to 6. On the same day, TCP paid an amount of R400 000-00 into the bank account of Hlakudi Translations and Interpretations (Pty) Ltd (HTI), a company in which Hlakudi is the sole Director.</p> <p style="text-align: center;"><b><u>CURRENT STATUS AND OUTSTANDING INVESTIGATION</u></b></p> <p><b><u>Bedfordview CAS 345/08/2017 &amp; Phola CAS 125/03/2019</u></b> On 2019-12-19, four (4) suspects were arrested and charged together with seven (7) entities. The matter was enrolled at Palm Ridge Magistrate Court. On 2021-04-15 a 5th suspect was arrested in the UK and the extradition process is ongoing. On 2023-01-30, the Minister of State for Security in London in the UK issued an extradition order for the 5th accused. The accused appealed the order and the outcome of the appeal is awaited.</p> <p>The court case was remanded to <b>2024-05-23 for pre-trial conference.</b></p>
Offence	Fraud Contraventions of PRECCA Contraventions of POCA (Money laundering)
Date Reported	2017-08-30
Date of Referral to DPCI	2017-08-30
Loss involved	R745 804 316,25
Entity/Individual involved	1. France Hlakudi 2. A Masango 3. H Kgomoewana 4. Tony Trindade 5. Mike Lomas 6. Tubular Construction Projects (Pty) Ltd 7. Hlakudi Translations and Interpretations (Pty) Ltd.
Number of charges (co be continuously updated)	
Number of statements obtained	424
Investigating officer	2



**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

**REGISTERED INVESTIGATIONS ADDRESSING THE ZONDO COMMISSION  
RECOMMENDATIONS: CASES ON COURT ROLL**

Bedford-view CAS 345/08/2017, cont..		
<b>Prosecutor assigned</b>	1	
<b>AFU Contribution</b>	The High Court of South Africa: Gauteng local Division, Johannesburg issued a restraint order valued at R1.4bn against former Eskom executives and former Tubular Construction Projects contractors. On 2021-05-04, the restraint order was executed by the appointed curator.	<b><u>CURRENT STATUS AND OUTSTANDING INVESTIGATION cont..</u></b>  <b><u>Second Leg</u></b>  Under investigation

*h. R.*



## OVERVIEW OF CASES UNDER INVESTIGATION

ENTITY/ DEPARTMENT INVOLVED	NUMBER OF CASES	NUMBER OF RECOMMENDATIONS ADDRESSED	NUMBER OF STATEMENTS
Department of Human Settlement Free State	2	14	1807
PRASA	2	16	797
ESKOM	5	5	5
BOSASA and officials from Government Departments / SOE's	19	19	20
Enterprise Outsourcing Holdings (EOH) (Pty) Ltd	2	2	54
SAA	3	3	16
Mhlathuzi water	1	1	3
Department of Transport	1	1	3
Transnet	1	1	7
South African Airways (SAA)	11	18	62
<b>TOTAL</b>	<b>47</b>	<b>80</b>	<b>2 774</b>

During June 2023 a presentation was made to the Portfolio Committee on Police, at which time **2 121 statements** were obtained. Since then an **additional 653 statements** have been obtained. (Total : 2 774)

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# TAX CASES AGAINST INDIVIDUALS AND ENTITIES INVOLVED ON STATE CAPTURE MATTERS CASE PENDING AT COURT

STATION AND CAS NUMBER	ACCUSED	CONTRAVENTION	COURT DATE
Garsfontein CAS 250/12/2018	Coxinel Chicken (Pty) Ltd (Represented by Hlakudi MF)	Fraud Contravention of Sec 235 of the Tax Administration Act (Tax Evasion)	2024-03-13
Garsfontein CAS 249/12/2019	Frans Mangope Hlakudi	Fraud Contravention of Sec 235 of the Tax Administration Act (Tax Evasion)	2024-03-13
Garsfontein CAS 247/12/2019	Hlakudi Translation and Interpretation (Pty) Ltd (Represented by Hlakudi MF)	Fraud Contravention of Sec 235 of the Tax Administration Act (Tax Evasion)	2024-03-13
Garsfontein CAS 248/12/2019	Bon Service Telecom (Represented by Hlakudi MF)	Fraud Contravention of Sec 235 of the Tax Administration Act (Tax Evasion)	2024-05-23
Brooklyn CAS 154/12/2022	Mahlaku Jacqueline Legoabe	Contravention of Sec 234 and 235 of the Tax Administration Act (Tax Evasion)	2024-01-18
Brooklyn CAS 341/09/2022	Intertrading (Pty) Ltd (Represented by Mahlaku Jacqueline Legoabe)	Contravention of Sec 234 and 235 of the Tax Administration Act (Tax Evasion)	2024-01-18
Polokwane CAS 391/12/2019	Maphoko Hudson Kgomoeswana	Fraud	2024-02-15

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**TAX CASES AGAINST INDIVIDUALS AND ENTITIES INVOLVED IN STATE CAPTURE MATTERS  
CASES UNDER INVESTIGATION**

STATION AND CAS NUMBER	OFFENCES	NUMBER OF STATEMENTS OBTAINED
Brooklyn CAS 298/03/2023	failure/neglect to register as a tax practitioner as required under the Tax Administration Act.	6
Brooklyn CAS 560/06/2022	Fraud	11
Brooklyn CAS 252/07/2023	Make, cause or allow making of false statement/entry in return/document or sign statement, return or document without it	9
Brooklyn CAS 666/10/2022	Fraud	6
<b>TOTAL</b>		<b>32</b>

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**HAWKS**  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

### COLLABORATION WITH THE NATIONAL PROSECUTING AUTHORITY (NPA)

- **Fifteen (15)** DPCI investigating officers were placed on duty arrangements to the Investigating Directorate (ID) to continue investigating, amongst others, **one hundred and forty (140)** cases that were previously investigated by the DPCI, and declared by the ID. These investigators are still serving in the ID.
- The main case for BOSASA investigations was one of the cases declared by the ID and at the time it was transferred to the ID, seven (7) suspects were already arrested.
- The DPCI is also collaborating with the National Prosecuting Authority (NPA) through the "Task Force", jointly coordinating the work flowing from the recommendations of the Commission.
- The Task Force's key mandate is the prioritisation of state capture cases, focusing on operational case prioritisation as well as enhancing coordination.

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**HAWKS**

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

## **CASES FINALISED: CONVICTIONS (1)**

### **Recommendation No:120 -Free State Housing Project**

**Accused: Moses Mpho "Gift" Mokoena**

**Station & CAS: Park Road CAS 1158/11/2021**

#### **Synopsis of the case:**

Prosecution by the National Prosecuting Authority of Mr Moses Mpho "Gift" Mokoena who was the Head of the Department of Human Settlements in Free State in 2010 and early in 2011 for contravention of sections 38(1)(a)(iii),(b),(c)(ii) and (g) of the Public Finance Management Act 1 of the 1999 as amended and contravention of Section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA).

#### **Outcome:**

The accused was **convicted on one count for contravention of Section 86 of the PFMA and one count for contravention of section 34 of PRECCA. He was sentenced to 10 years imprisonment suspended for five years on count 1 and 5 years imprisonment suspended for 5 year on count 2**

*T. R.*



## **CASES FINALISED: CONVICTIONS (2)**

**Recommendation No: 4 (South African Airways (SAA))**

**Accused:** Duduzile Myeni

**Station & CAS:** Hillbrow CAS 571/11/2020

### **Synopsis of the case:**

Prosecution of Ms Myeni for her disclosure of Mr X's identity during her testimony in the State Capture Commission.

### **Outcome:**

The accused was **convicted and sentenced to pay a fine of one hundred and twenty thousand rands or two years imprisonment, half suspended for five years.**

*E. E.*



## DEPENDENCY ON EXTERNAL AUDITORS

The DPCI has established a component for Financial Accounting Investigation (FAI) which will, once fully developed be able to deal with forensic auditing services internally.

Currently the DPCI depends mostly on outsourcing. PRASA matters are amongst the matters wherein, to a certain extent, contributed in the delays. (a **forensic auditor was appointed in October 2020 and in May 2023 the auditor terminated the contract due to health reasons.**

The appointment of the new forensic company was finalised on the 1<sup>st</sup> November 2023 and the first report is expected end of February 2024)

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*The DPCI shall at all times enforce the Law of the Republic without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the Constitution and the Law*

*Thank You*

*Seek, Find, Strike*

*F. O.*

**BRIEFING TO PORTFOLIO COMMITTEE ON JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT**

**NDPP'S REPORT IN TERMS OF SECTION 22(4)(g) OF  
THE NPA ACT**

**2023-24**



**National Prosecuting Authority  
South Africa**

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**CONTENTS**

- 1. Constitutional Mandate**
- 2. Introductory Remarks**
- 3. Performance Overview**
- 4. Year to Date Performance**
- 5. Budget Overview**
- 6. Concluding Remarks**

*u. e.*

## VISION, MISSION AND VALUES

### **Vision:**

Justice so that people can live in freedom and security

### **Mission:**

Guided by the Constitution, we in the National Prosecuting Authority, ensure justice to the victims of crime by prosecuting without fear, favour or prejudice, and by working with our partners and the public to solve and prevent crime

### **Values:**

- Integrity
- Professionalism
- Accountability
- Credibility
- Service excellence



## CONSTITUTIONAL MANDATE

### The Constitution

- Chapter 8 of the Constitution – “Courts and Administration of Justice”.  
Section 179 (2) – empowers the NPA to institute criminal proceedings on behalf of the State, and to carry out the necessary functions incidental thereto

### NPA Act

- In terms of section 20(1) of the NPA Act, the power vests in the prosecuting authority, to—
  - a) institute and conduct criminal proceedings on behalf of the State
  - b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings
  - c) discontinue criminal proceedings

*u. R.*

## SUB-PROGRAMME AND MANDATE

- **National Prosecution Services (NPS)** – is responsible for the institution of prosecutions and the appeals that may follow. This includes the resolution of criminal matters brought to the NPS outside the criminal trial process, through Alternative Dispute Resolution Mechanism (ADRM).
- **Asset Forfeiture Unit (AFU)** seizes assets that are the proceeds of crime/have been part of an offence through a criminal/civil process
- **Investigating Directorate Against Corruption (IDAC)** was established in response to allegations emerging from various commissions of Inquiry, of widespread corruption and the high-level capture of large parts of the South African state by individuals and companies for the purpose of stealing public funds.
- **Office for Witness Protection (OWP)** provides for temporary protection, support and related services to vulnerable and intimidated witnesses and related persons in judicial proceedings in terms of the Witness Protection Act, 1998
- **Strategy, Operations and Compliance (SOC)** provides adequate effective and responsive support services in pursuit of good governance.

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## INTRODUCTION

- The NDPP's 2023/24 Annual Report in terms of section 22(4)(g) of the NPA Act focuses on the 2023/24 financial year but also reflects the highlights of performance during her tenure (2019 - to date). It demonstrates significant progress made in rebuilding an organisation that was severely impacted by state capture. This presentation also covers high-level performance from April - August 2024.
- In collaboration with our partners, significant strides have been made in tackling complex corruption. South Africa is one of the few countries in the world that is prosecuting senior government officials (including ex-Ministers) and private sector actors (including top Chief Executive Officers) for complex corruption.
- Over the past five years, 39 high-profile state capture corruption matters were enrolled by the Investigating Directorate Against Corruption (IDAC). Almost 700 government officials and over 1 000 private sector individuals have been convicted of corruption.
- The IDAC is the NPA's sharpest anti-corruption weapon. With the legal framework strengthened, IDAC is now a permanent prosecution-led unit with criminal investigative powers.
- Identified tailored support for the establishment of a Digital Evidence Unit will provide cutting-edge digital evidence capacity in the IDAC to further enhance its capability to combat complex forms of corruption.

9.

## INTRODUCTION (CONT...)

- The SCCU has enrolled four cases related to 16 recommendations from the Zondo Commission, including the 'Asbestos' and 'SA Express' matters. Other matters will be ready for enrolment in the next few months.
- The NPA continues to play a visible role in various international platforms (BRICS, GlobE, IAP) to enhance international cooperation, which have contributed to the high volume of extradition and Mutual Legal Assistance (MLA) requests successfully processed by the NPA.
- Since inception, the Asset Forfeiture Unit (AFU) has frozen R30,38bn, confiscated and forfeited R12,98bn and recovered R11,7bn, of which R6,8bn was returned to victims and R4,89bn paid into Criminal Asset Recovery Account (CARA).
- Since the current NDPP's appointment, AFU has frozen R14,13bn, confiscated and forfeited R4,8bn and recovered R5,09bn. Almost half (46%) of all freezing orders, 37% of all confiscations and forfeiture orders and 44% of all recoveries were attained in the past 5 years.
- The AFU has adopted a strategy and implementation plan which prioritise innovative interventions to pursue the proceeds and benefit of unlawful activities such as, non-conviction based forfeitures, focus on organised crime, international assets recovery, Corporate Alternative Dispute Resolution (C-ADR).
- A collaboration between DPCI and the United States (US) Department of Justice resulted in a recovery of R2.2 bn from the SAP. Of this, R750m has been paid into CARA.

9 2 1

## INTRODUCTION (CONT...)

- In collaboration with relevant stakeholders, notable progress has also been made to address the FATF recommendations that will contribute to South Africa being removed from the FATF's grey list as soon as possible.
- The Thuthuzela Care Centre (TCC) footprint has been expanded from 55 facilities in 2020/21 to 64 in 2023/24.
- The serial rapist prioritisation initiative was launched in September 2023.
  - This is a collaboration between the Sexual Offences and Community Affairs Unit (SOCA) supported by SOC, the DPP offices and the Serial and Electronic Crime Investigations unit of the SAPS' Family Violence, Child Protection and Sexual Offences unit.
  - The top 10 serial rapists per province have already been identified, and through the initiative, the NPA will ensure that the matters are enrolled, trials are prioritised, and convictions secured.
- The NPA's Missing Person Task Team (MPTT) traced and returned remains of the 10th Mamelodi 10 victim to families in collaboration with TRC Unit (DoJ&CD) and conducted symbolic reburials for other victims.
- The MPTT also identified and mapped 44 graves in Zambia for 2024 exhumation and located 23 graves in Zimbabwe. The Home Coming Ceremony for these heroes and heroines recently took place.

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## INTRODUCTION (CONT...)

- Our Strategy, Operations and Compliance (SOC) unit has led the NPA's turnaround strategy to build a capable, modern prosecution service, whose interventions include:
  - ✓ Establishing an Office for Ethics and Accountability (OEA) to promote accountability and service delivery
  - ✓ Launching a Community Prosecution Initiative (CPI) to deal proactively with crimes affecting local communities
  - ✓ Finalising and implementing a C-ADR mechanism to strengthen the NPA's ability to deal with corporate corruption and recover stolen monies
  - ✓ Developing a proactive Organised Crime Strategy to deal with this growing form of criminality
  - ✓ Redesigned our approach to recruitment, retention and skills development relating to specialised investigators and prosecutors in fields such as organised and commercial crime
- Due to successful budget advocacy, in the past 5 years the NPA has increased its staff establishment by almost 2000, of which 1,161 were aspirant prosecutors who have since been employed.
- Disciplinary processes have been instituted against colleagues facing allegations of impropriety. With an annual average of 57 matters over the past five years, 34 dismissals were recorded in this period. Of the 605 grievances in the period (averaging 120 cases p/a), 87% were resolved within the NPA and only 13% escalated to the Public Service Commission.

## INTRODUCTION (CONT...)

SOC is also driving the implementation of other key strategic priorities to improve performance and credibility in the following areas:

- *Prosecution Prioritisation Policy and Practice* - to prosecute more strategically, targeting repeat offenders and crime syndicate leaders together with their assets, as well as crimes which disproportionately undermine public safety.
- *Community Prosecutions Initiative* – to enhance civic responsibility and strengthen social cohesion by empowering communities to identify local criminal justice priorities and participate in proactive crime-fighting efforts.
- *Service Delivery Improvements* - to enhance efficiency and effectiveness of operations, processes, and systems.
- *Amplifying NPA's voice and strategic influence on broader JCPS priority matters* - the effectiveness of the NPA is improved by representing the NPA in strategic national, regional and global fora representing law enforcement professionals, academia, the private sector, civil society, and the media. Numerous newspaper op-ed articles were published to inform the public about key developments at the NPA. 10

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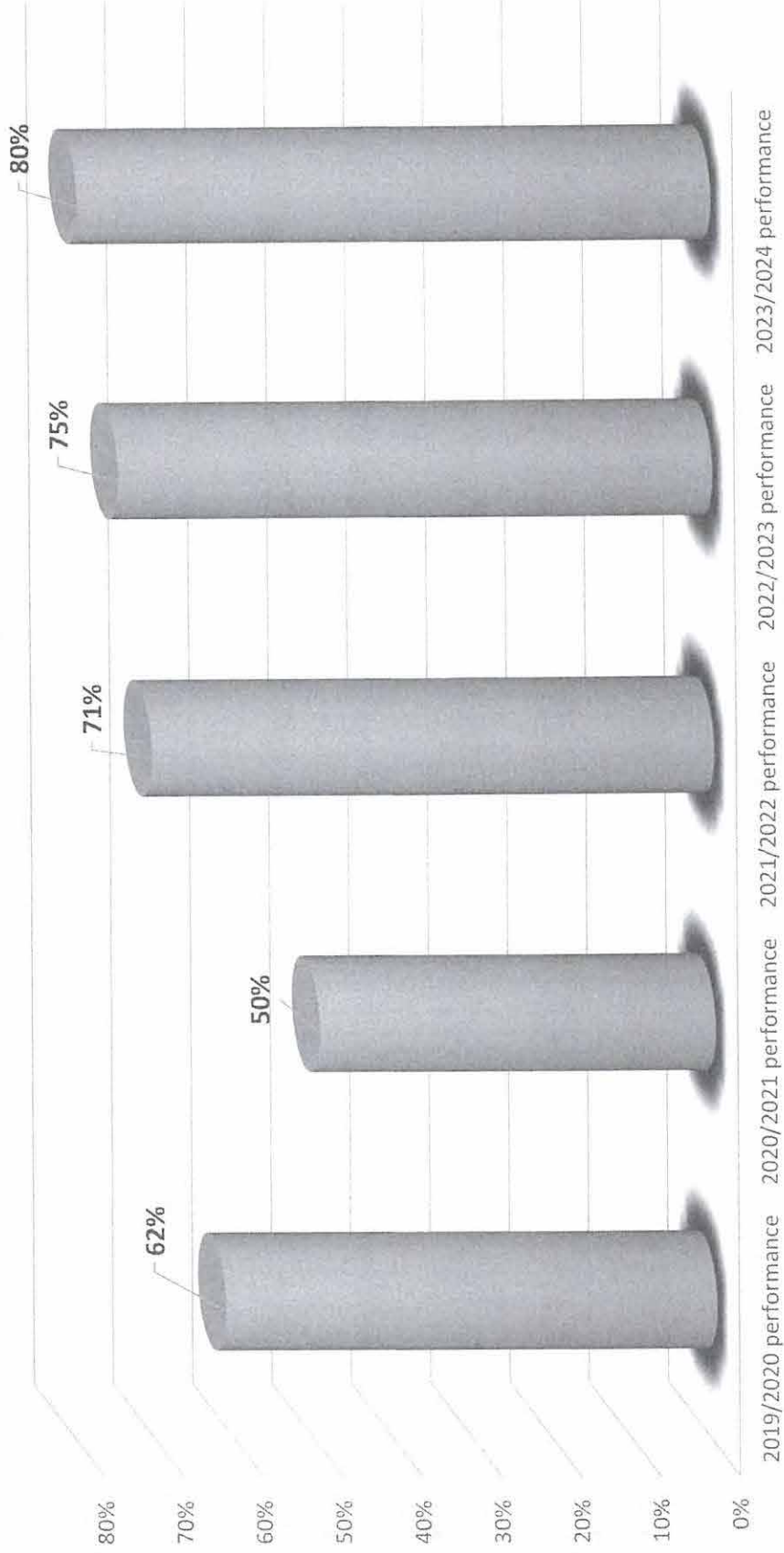
## INTRODUCTION (CONT...)

- To sustain the progress that the NPA has made thus far, enhancing its operational and financial independence is key.
- Such independence is vital for the NPA to improve its efficiency in fearlessly prosecuting and holding the architects of corruption accountable, and to strengthen public trust and confidence.
- The previous Minister of Justice and the Portfolio Committee (PC) on Justice and Correctional Services, made a commitment that the legislative amendments to the NPA Act to address these aspects will be introduced by January 2025. The support of the current PC for this process will be important.
- NPA is judged primarily on its performance in state capture matters, which, while understandable, does not consider the significant work done in various other key focus areas set out in this report. Our improved overall performance is due to the work of many dedicated prosecutors who deal with over 900 000 matters annually.
- The NPA is grateful to the staff who continued to serve the people of South Africa during the state capture era and who have taken up the challenge to build an independent, professional, accountable and credible prosecution service, often working in trying conditions.

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# OVERALL PERFORMANCE TREND - 2019/20 - 2023/24

## NPA Performance (MTSF Period)



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# NPS Performance Overview

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## CONVICTION RATES

Strategic Objective	2019/20	2020/21	2021/22	2022/23	2023/24
	Actual performance	Actual performance	Actual performance	Actual performance	Actual performance
Conviction rate in High Courts	90.9% = 782/860	93.8% = 542/578	90.9% = 648/713	89.3% = 706/791	91.0% = 691/759
Conviction rate in Regional Courts	82.5% = 21 246/25 744	82.2% = 13 358/16 175	80.6% = 16 433/20 385	82.6% = 17 205/20 835	81.8% = 17 328/21 180
Conviction rate in District Courts	95.3% = 195 439/205 121	95.9% = 116 230/121 213	93.9% = 124 152/132 222	94.5% = 140 178/148 415	95.1% = 152 746/160 623
Clearance ratio on decision dockets received	92.5% = 897 622 dealt with	92.7% = 858 155 dealt with	93.4% = 843 911 dealt with	91.8% = 854 802 dealt with	92.8% = 879 240 dealt with

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## CORRUPTION, COMPLEX TAX AND MONEY LAUNDERING

Strategic objective	2019/20	2020/21	2021/22	2022/23	2023/24
	Actual performance	Actual performance	Actual performance	Actual performance	Actual performance
Number of government officials convicted for offences related to corruption	184	86	130	125	135
Number of persons convicted of private sector corruption	233	147	209	203	254
Conviction rate in complex tax cases	92.3%% = 601/651	90.2%% = 277/307	90.5% = 344/380	86.9% = 364/419	89.5% = 161/166
Number of cases finalised with verdicts involving money laundering	72	65	90	89	98
*2023/24 = number of new prosecutions instituted					

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**SERIOUS AND VIOLENT CRIMES**

	2019/20	2020/21	2021/22	2022/23	2023/24
<b>Strategic objective</b>	<b>Actual performance</b>	<b>Actual performance</b>	<b>Actual performance</b>	<b>Actual performance</b>	<b>Actual performance</b>
Conviction rate in murder prosecutions	80.1% = 3 193/3 987	79.3% = 2 123/2 676	77.4% = 2 787/3 600	79.8% = 2 982/3 738	80.4% = 3 025/3 764
Conviction rate in trio crimes	82.2% = 1 355/1 649	85.2% = 809/949	81.3% = 1 038/1 277	82.7% = 1 034/1 250	83% = 1 007/1 213

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## GENDER BASED VIOLENCE AND FEMICIDE

	2019/20	2020/21	2021/22	2022/23	2023/24
Strategic objective	Actual performance	Actual performance	Actual performance	Actual performance	Actual performance
Conviction rate in femicide prosecutions	N/A	94.3% = 231/245	94.3% = 396/420	91.9% = 475/517	91.7% = 511/557
Conviction rate in intimate partner femicide prosecutions	N/A	93.1% = 190/204	93.8% = 316/337	92.2% = 356/386	93.3% = 375/402
Conviction rate in sexual offences	75.2% = 4 098/5 451	75.8% = 2 539/3 349	74.2% = 3 402/4 584	74.9% = 3 451/4 606	72.3% = 3 813/5 276



## GENDER BASED VIOLENCE AND FEMICIDE (CONT....)

- The DNA Backlog project has yielded 49 374 DNA reports between October 2020 and May 2024.
- There are 64 operational TCCs nationwide.
- Matters reported at the TCC sites increased from 36 813 (2022/23) to 41 158 in 2023/24, overall increment of 12%.

### Sentencing of TCC finalised cases:

2022/23FY	2023/24FY	
Life imprisonment (number imposed by courts) 257	Life imprisonment (number imposed by courts) 221	Decrease of 36 (14%)
20–25 years' imprisonment (number imposed by courts) 150	20–25 years' imprisonment (number imposed by courts) 164	Increase of 14 (8.3%)
10–19 years' imprisonment (number imposed by courts) 351	10–19 years' imprisonment (number imposed by courts) 483	Increase of 132 (37.5%)
Number of accused sentenced 1 195	Number of accused sentenced 1 444	Increase of 249 (20.8%)

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## ORGANISED CRIME

	2019/20	2020/21	2021/22	2022/23	2023/24
Strategic objective	Actual performance	Actual performance	Actual performance	Actual performance	Actual performance
Conviction rate in organised crime	95.3% = 242/254	92.5% = 173/187	95.9% = 185/193	94.4% = 221/234	93.4% = 267/286
Conviction rate in environmental crimes	97.1% = 857/883	96.8% = 722/746	97.1% = 702/723	96.0% = 786/819	96.7% = 926/958
Conviction rate in cybercrime prosecutions	98.5% = 320/325	98.9% = 88/89	97.4% = 149/153	92.9% = 39/42	96.5% = 55/57
Conviction rate in essential infrastructure prosecutions	82.6% = 289/350	88.7% = 243/274	83.7% = 416/497	79.9% = 533/667	77.5% = 634/818
Conviction rate in cable theft	N/A	81.5% = 119/146	91.9% = 193/210	85.7% = 294/343	84.1% = 427/508

*R. R.*

## TRC MATTERS

- In 2021, a TRC Component was set up to prioritise and drive progress on TRC matters, working closely with DPCI.
- Dedicated TRC prosecutors were assigned to guide investigations of the 159 identified matters.
- 126 matters were under investigation by 29 TRC investigators from DPCI.
- 30 TRC matters have been finalised.
- The findings in 5 inquests have been finalised. There are 6 matters on the criminal court roll and 16 matters where inquests will be held/inquests re-opened.

## Priority Crimes matters

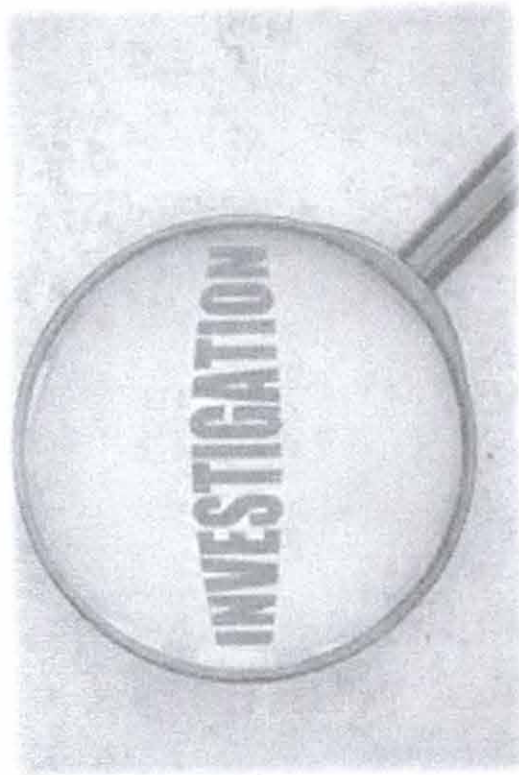
- A Terror Financing National Risk Assessment and a Strategy for Combatting the Financing of Terrorism (CFT) were reviewed and developed respectively.
- A further action identified by FATF, is for SA to enhance the capacity of relevant authorities, including the SAPS and NPA, to effectively address the financing of terrorism.
- Extensive joint training has been conducted, including on the latest amendments made to the Protection of Constitutional Democracy Against Terrorist and Related Activities Act.
- Working with stakeholders, considerable progress is being made in the investigation of cases of money laundering and terror-financing.

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## INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

- In 2023/24, the NPA received and processed 147 new (MLA and extradition) requests including:
  - ✓ 68 were incoming requests from foreign states, while 34 requests were transmitted to foreign states;
  - ✓ 31 requests for extradition of which 19 were issued by South Africa and 12 were received from foreign states (incoming); and
  - ✓ 7 inquiries.
- ✓ Of these, 73 incoming and outgoing MLA and extradition requests were finalised.
- Amongst others, the following requests for extradition were successfully executed:
  - ✓ Ms Nomalanga Moroadi Selina Cholota was surrendered by the USA;
  - ✓ Mr Michael Lomas was surrendered by the UK;
  - ✓ Mr Lehlohonolo Elias Mokotoane surrendered by Lesotho;
  - ✓ Mr Phakamani Mthimkhulu surrendered by Eswatini;
- ✓ Mr Richard John Payne was found extraditable by the UK and in the process of being surrendered.
- ✓ Engagements are ongoing with foreign jurisdictions in pursuance of other extradition requests.

# IDAC Performance Overview



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## INVESTIGATING DIRECTORATE AGAINST CORRUPTION

Action	Number of cases/ recommendations inquiry files
Specific recommendations from the Zondo Commission	122
Investigation authorisations being considered	7
Under investigation	86
Enrolled for criminal trial	21
Finalised	N/A
State capture matters enrolled with no specific recommendations	-
	14

	2019/20	2020/21	2021/22	2022/23	2023/24
Number of matters authorised	72	0	12	13	18
Number of matters enrolled*	5	4	5	18	3

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## IDAC (CONT...)

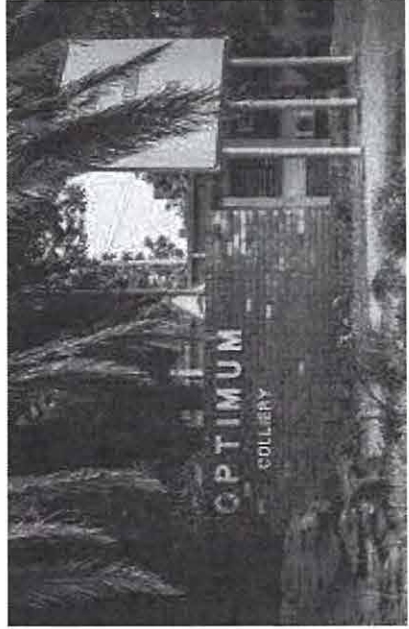
Indicator	Number
Matters authorised	115
Investigations outstanding	78
Matters enrolled	37
Accused persons	208
Accused entities	67
Tax matters enrolled	9
Accused persons in relation to tax offences	13
Accused entities in relation to tax offences	13
Convictions	2
Acquittals/discharges	1
Matters removed from court roll	2
Matters withdrawn (2019 – 31 March 2024)	1

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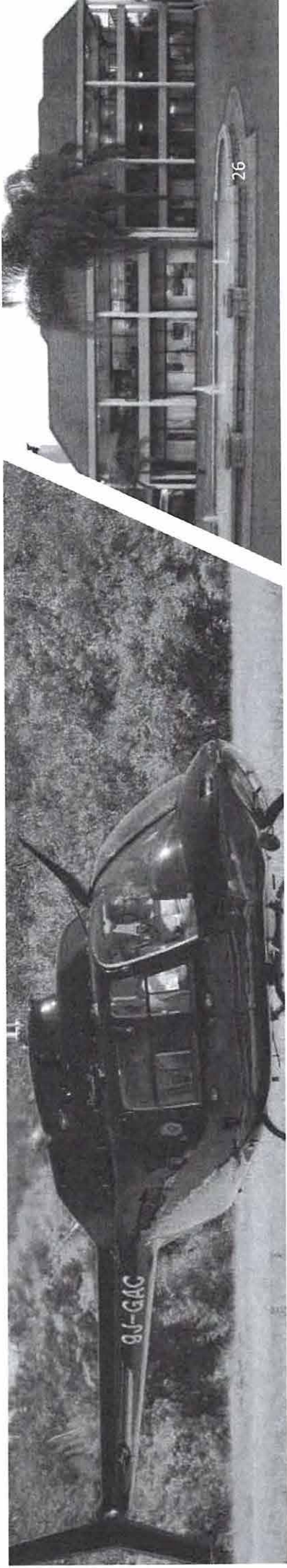
# AFU Performance Overview



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# Removing profit from crime



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## ASSET FORFEITURE

Indicator	2019/20 Actual performance	2020/21 Actual performance	2021/22 Actual performance	2022/23 Actual performance	2023/24 Actual performance
Value of freezing orders in corruption or related offences	R1.6bn	R611m	R5.5bn	R570m	R932m
Value of recoveries in corruption or related offences	R3m	R3m	R117m	R2.63bn	R787m

Indicator	2019/20 Actual performance	2020/21 Actual performance	2021/22 Actual performance	2022/23 Actual performance	2023/24 Actual performance
Value of completed forfeiture cases	R455m	R550m	R550m	R495m	R3.08bn

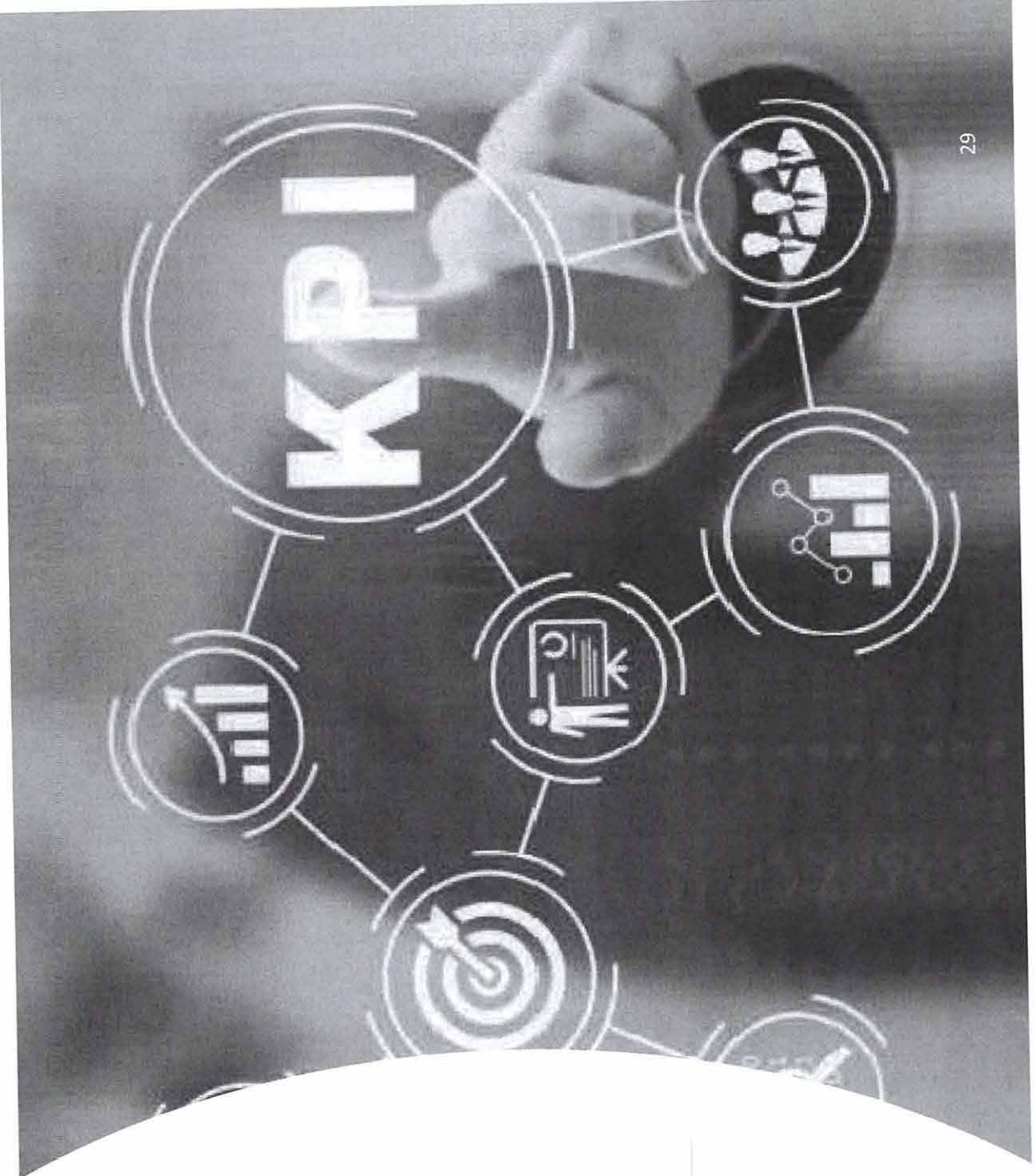
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## ASSET FORFEITURE (CONT . . .)

Indicator	2019/20 Actual performance	2020/21 Actual performance	2021/22 Actual performance	2022/23 Actual performance	2023/24 Actual performance
Number of completed forfeiture cases	417	293	370	521	653
Number of freezing orders obtained	326	320	320	388	420
Value of freezing orders	R1.95bn	R512m	R5.84bn	R871m	R1.87bn
Value of recoveries in terms of POCA	R298m	R117m	R281m	R3bn	R954m
Success rate	98%	99%	99%	99%	99%

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**Year to Date  
Performance  
2024-25**



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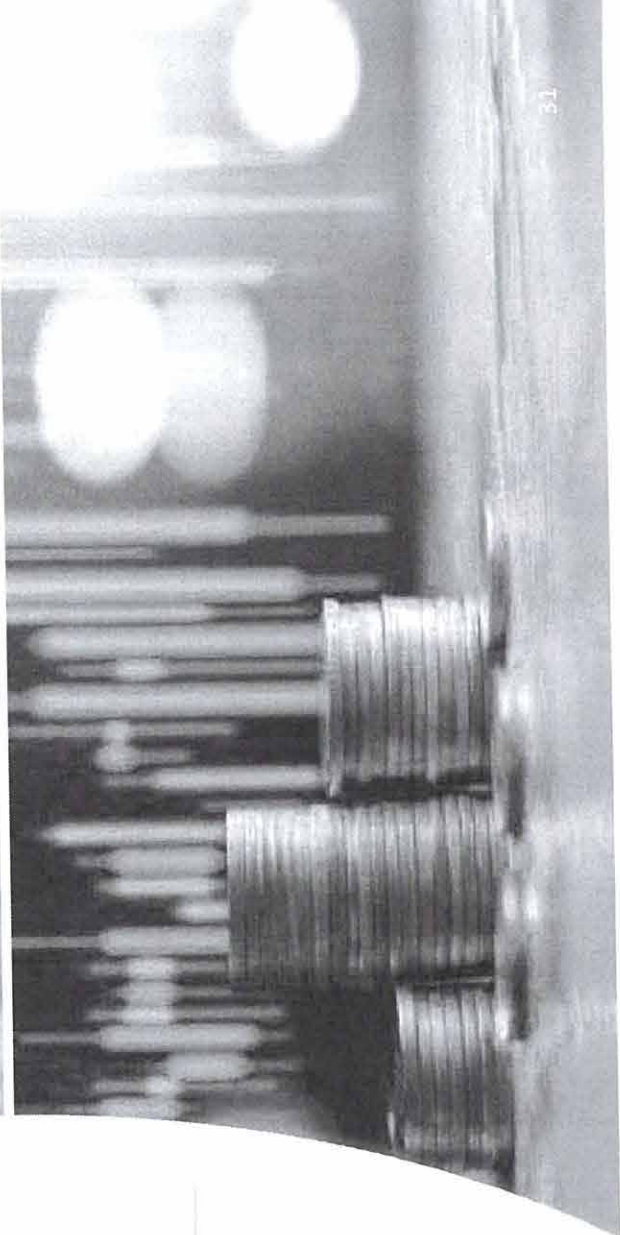
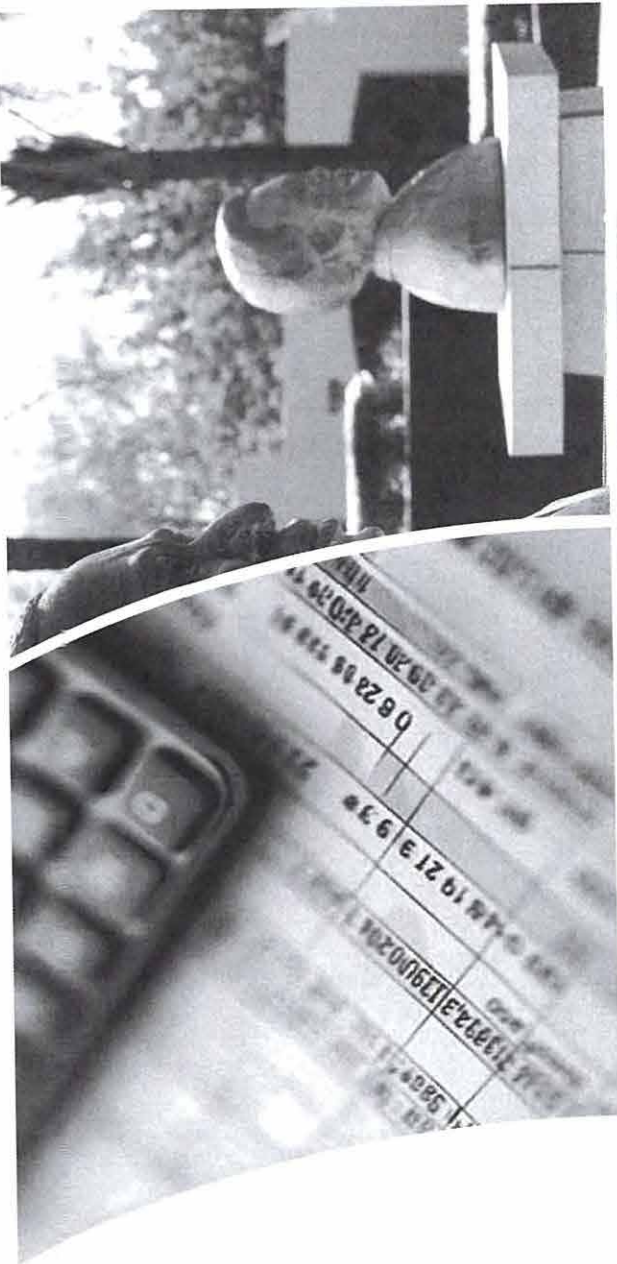
## YTD 2024/25 OVERALL PERFORMANCE

Indicators	Annual Target	Quarter 2 Target	YTD Target	YTD Actual achievement
Conviction rate in sexual offences	70%	70%	70%	71%
Conviction rate in High Court	87%	87%	87%	93%
Conviction rate in Regional Court	74%	74%	74%	82%
Conviction rate in District Court	88%	88%	88%	89%
Number of witnesses and related persons threatened, harmed or killed while on the witness protection programme	0	0	0	0
Conviction rate in complex commercial crime	90%	90%	90%	96%
Number of persons convicted and sentenced of corruption	210	58	90	132
Number of investigations authorised	11	3	4	12
Number of state capture and complex corruption matters related thereto enrolled	6	2	2	2
Number of prosecutions instituted involving money laundering	90	21	39	40
Value of freezing orders obtained for corruption or related offences	R 750m	R 210m	R 282,5m	R 235m
Value of recoveries relating to corruption or related offences	R 350m	R 98m	R 131,8m	R 340m

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# Budget Overview



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## BUDGET VS EXPENDITURE AS AT 31 MARCH 2024

Economic classification	2023/24					
	Adjusted A ppropriation	Shifting / Virement	Final Appropriation	Actual Expenditure	Variance	Expenditure as % of final appropriation
	R'000	R'000	R'000	R'000	R'000	%
Compensation of employees	4,509,656	0	4,509,656	4,572,819	-63,163	101.40%
Goods and services	801,608	-77,630	723,978	719,726	4,252	99.41%
Transfers & Subsidies	22,500	11,592	34,092	33,953	139	99.59%
Machinery and equipment	56,242	-39,733	16,509	16,413	96	99.42%
Payment for financial assets	1,127	256	1,383	1,383	0	100%
<b>Total</b>	<b>5,391,133</b>	<b>105,515</b>	<b>5,285,618</b>	<b>5,344,294</b>	<b>-58,676</b>	<b>101.11%</b>

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**BUDGET VS EXPENDITURE AS AT 31 MARCH 2024 (CONT..)**

- The NPA spent 101.13% of the total budget allocation as at the end of March 2024, before virement.
- The R55m additional funding virement to the NPA in respect of Compensation of Employees (CoE) relates to the Cost-of-Living Adjustment.
- The NPA underspent by 44.77% on Capital Assets, this is due to the reclassification of the Finance Lease to the Operating Lease.



**OVERALL BUDGET GROWTH PER ECONOMIC CLASSIFICATION: MTEF PERIOD**

R'thousand	2023/24	2024/25	2025/26	2026/27	2027/28	Average % increase over MTEF
	Audited Outcome	AENE	Medium Term estimates			
Compensation of employees	4,572,818	4,862,192	5,145,962	5,276,053	5,566,901	4.63%
Goods and services	719,727	726,707	880,696	927,909	917,605	8.48%
Households	22,087	10,200	9,306	9,747	11,651	5.17%
Machinery & equipment	16,413	104,102	38,747	40,518	42,351	-17.90%
Departmental agencies and accounts	11,866	67	13,234	13,840	13,003	6550.26%
Payment for Financial Assets	1,383	14,353				0.00%
<b>Total</b>	<b>5,344,294</b>	<b>5,717,621</b>	<b>6,087,945</b>	<b>6,268,067</b>	<b>6,551,511</b>	<b>4.65%</b>

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**OVERALL BUDGET GROWTH PER SUB PROGRAMME: MTEF PERIOD**

R'thousand	2023/24	2024/25	2025/26	2026/27	2027/28	% Growth over MTEF
	Audited Outcome	AENE	Medium Term estimates			
National Prosecutions Service	4,119,079	4,294,788	4,587,261	4,707,007	4,921,361	4.66%
Investigating Directorate	141,886	259,680	308,645	319,659	334,114	8.98%
Asset Forfeiture Unit	216,662	257,402	276,080	286,259	299,202	5.15%
Office for Witness Protection	178,311	233,832	277,810	289,425	302,513	9.17%
Strategy, Operations and Compliance	688,356	671,919	638,149	665,717	694,321	1.20%
<b>Total</b>	<b>5,344,294</b>	<b>5,717,621</b>	<b>6,087,945</b>	<b>6,268,067</b>	<b>6,551,511</b>	<b>4.65%</b>

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# BUDGET VS EXPENDITURE AS AT 30 SEPTEMBER 2024

Economic classification	2024/25			
	AENE Budget	Expenditure as at 30 Sept 2024	Budget Available	
	R'000	R'000	R'000	
			% Spend	
Compensation of employees	4,862,192	2,351,360	2,510,832	48.36%
Goods and services	726,707	341,373	385,334	46.98%
Households	10,200	9,306	894	91.24%
Machinery & equipment	104,102	5,163	98939	4.96%
Payments For Financial Asset	67	69	-2	102.99%
Departmental agencies and accounts	14,353	14,353	0	100.00%
<b>Grand Total</b>	<b>5,717,621</b>	<b>2,721,624</b>	<b>2,995,997</b>	<b>47.60%</b>

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## Concluding remarks

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## CONCLUDING REMARKS

- The NPA is well positioned to continue on its current upward trajectory, to further consolidate our achievements and entrench our strategic initiatives, as expressed in the theme of our annual report.
- While we are operating in a changing context of a new government and new Portfolio Committee, we are alive to the continuing expectations on the NPA.
- The next 18 months will be crucial as the NPA transitions into a new leadership that will consolidate and build on the progress we have made over the past 5 years.
- Enhancing the NPA's financial and operational independence is a vital component of an effective NPA moving forward.
- The future of the NPA requires innovative solutions to align with our international legal obligations of engaging in multi-stakeholder collaborations and partnerships to deliver on our mandate.
- The NPA is at the forefront of these innovations without compromising its constitutional mandate to prosecute without fear, favour or prejudice.

9 E



National Prosecuting Authority  
South Africa

# Thank you

Head Office: 012 845 6000

E-mail: [communication@npa.gov.za](mailto:communication@npa.gov.za)

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Weavind Park, Silverton, Pretoria, 0184

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# Judicial Commission of Inquiry into State Capture Report: Part V

Vol. 2: SABC, Waterkloof Landing and PRASA



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

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

"FA17"

Report of the Judicial Commission of Inquiry into State Capture: Part V: Vol. 2



PART V: VOL 2

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associated companies) for possible contraventions of sections 12 and/or 13 of the Prevention and Combating of Corrupt Activities Act.

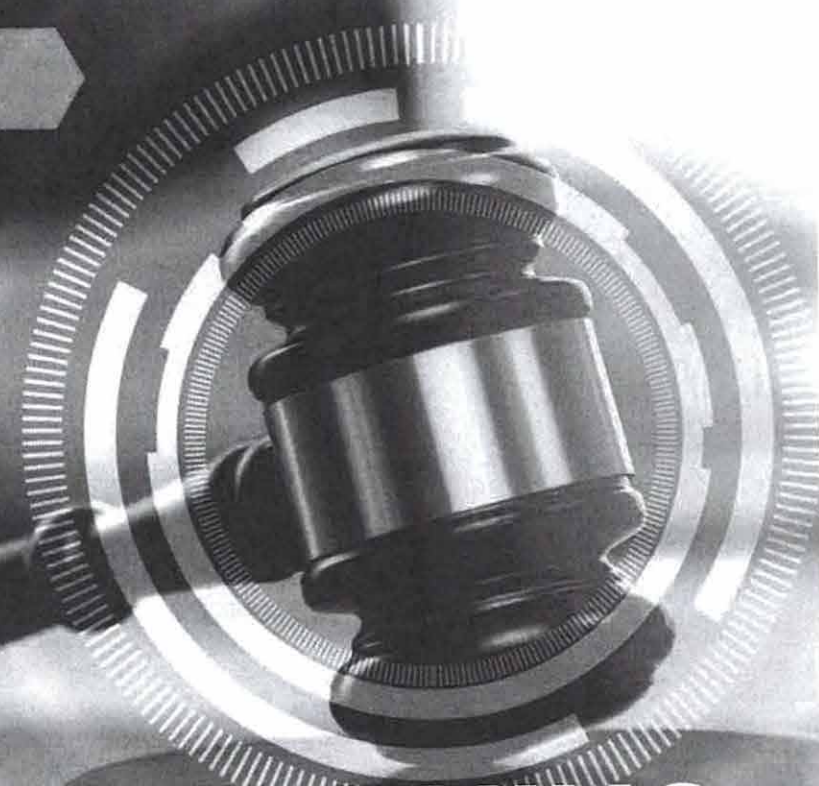
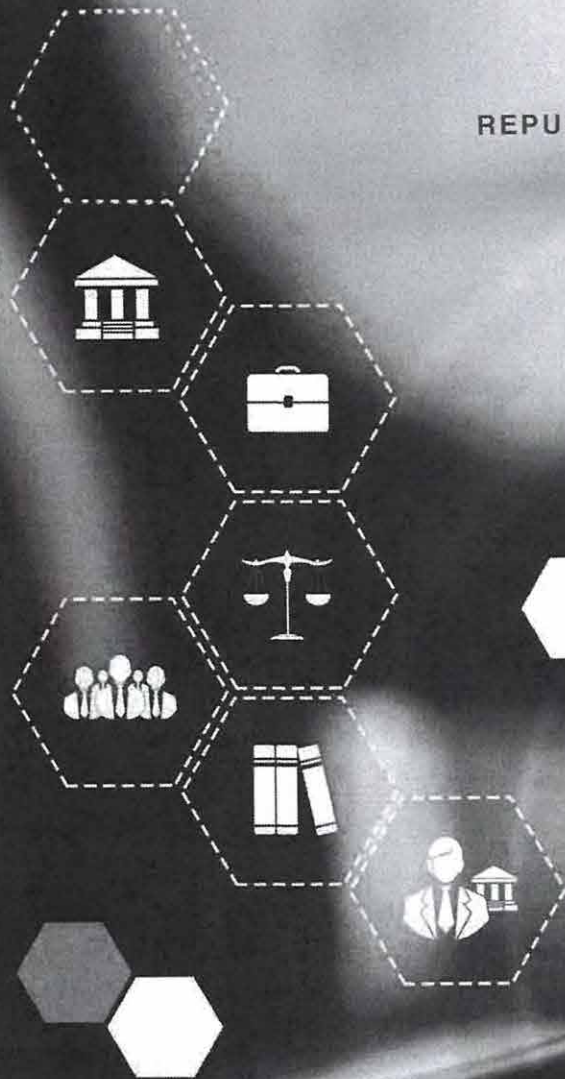
2.94. I conclude this Report with the following observation. Many, many days of the Commission's hearings were devoted to allegations of the capture of PRASA and strident denials thereof, especially by Mr Montana. However, I am left with the uneasy perception that there is much about the ills at PRASA that has not yet been uncovered. That perception is reinforced by what I have set out in the previous sections relating to the instability at PRASA that was exacerbated by the unacceptable delays having a permanent Board and a permanent Group CEO appointed for more than three years and five years, respectively, and also what appears of late to be a harking back to the Montana-style of leadership. I worry that if I do not make a general recommendation about these matters, it is unlikely that PRASA will recover. Having given anxious consideration to the issues, I have decided that a special commission of inquiry be appointed to examine specifically the following matters: why PRASA was allowed to slide into almost total ruin, who should be held responsible for that and who could have benefitted from those that unacceptable state of affairs.

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THE PRESIDENCY  
REPUBLIC OF SOUTH AFRICA



# THE TIDE IS TURNING

Progress Report on Implementation of President Ramaphosa's  
Response to the Judicial State Capture Commission.

NOVEMBER 2023

Several handwritten signatures and initials in white ink, located in the bottom right corner of the page. The signatures appear to be stylized and are partially overlapping.

## TIMELINE

### NOVEMBER 2017

Former Public Protector Adv. Thuli Madonsela recommended that former President Zuma should appoint a commission of inquiry into state capture



### JANUARY 2018

The commission was formally established to begin its investigations

### AUGUST 2018

First hearing took place

### DECEMBER 2021

Final hearing took place after receiving eight extensions

### JUNE 2022

Final reports were published and handed over to President Ramaphosa by the now Chief Justice Raymond Zondo (Reports 5 and 6)  
Report 1 – 4 January 2022  
Report 2 – 1 February 2022  
Report 3 – 1 March 2022

### OCTOBER 2022

President Ramaphosa tables cabinet's response in Parliament

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#### **4. REFORMS TO PREVENT FUTURE OCCURRENCE OF STATE CAPTURE**

##### **4.1 Recommendations for new institutions**

The commission recommended the establishment of several new bodies to tackle corruption, including a permanent Anti-State Capture and Corruption Commission and an independent Public Procurement Anti-Corruption Agency.

Both recommendations are being studied by the National Anti-Corruption Advisory Council, appointed by the President in 2022, who are working with a range of experts on a fundamental review and redesign of South Africa's anti-corruption architecture. A report with recommendations to the President will be finalised by March 2024. The Department of Justice and Constitutional Development (DOJ&CD) has completed its comparative research on the models followed in other countries, and is preparing a proposal on the recommendations for a model for SA's anti-corruption architecture. Draft legislation is also under consideration. This process will respond to the key recommendations of both the State Capture Commission and the National Anti-Corruption Strategy with regard to anti-corruption commissions and agencies.

A decision on the Commission's recommendation for the establishment of a separate commission of inquiry into the Passenger Rail Agency of South African (PRASA) is on hold and awaits the outcome of current investigations by the Hawks and SIU which are at an advanced stage.

R u.

"FA19"



THE PRESIDENCY  
REPUBLIC OF SOUTH AFRICA



# THE TIDE IS TURNING

Progress Report on Implementation of President Ramaphosa's  
Response to the Judicial State Capture Commission.

NOVEMBER 2023

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NO	COLUMN T	FOCUS OF ACTION	ACTION AS DESCRIBED IN PRESIDENT'S RESPONSE	RESPONSIBLE TO IMPLEMENT/ REPORT	PROGRESS	PREVIOUS	CURRENT
8	4.5.2	Investigations by the independent police investigating directorate	Three recommendations arising from the Commission's investigation into the Vrede Dairy Project in the Free State called for independent investigation of abuses and non-responsiveness or inaction by the South African Police Service. These matters have been referred to the Independent Police Investigating Directorate (IPID), which has assigned a team of investigators to deal with these allegations. The team started its work in September 2022	Independent Police Investigating Directorate	The Executive Director of IPID has provided a third progress report on the investigations. The investigation is on-going.	In progress	In progress
9	4.6.8	Establishment of a Special Commission of Inquiry into PRASA	A decision on the establishment of a commission of inquiry into PRASA will be held in abeyance until the completion of the investigations currently underway by the DPCI and SIU.	DPCI SIU	Investigations by the DPCI and the SIU are ongoing.	In progress	In progress
10	4.6.8	Establishment of a Special Commission of Inquiry into PRASA	A determination will be made on whether these processes have sufficiently addressed the matters raised by the Commission and whether a Commission of Inquiry would serve that purpose.	Presidency	The decision on the SCC recommendation regarding the establishment of a Special Commission of Inquiry into PRASA will require an executive decision once the current investigations have been concluded.	In progress	In progress

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**PROCLAMATIONS • PROKLAMASIES****PROCLAMATION 153 OF 2024**

**by the  
PRESIDENT of the REPUBLIC of SOUTH AFRICA**

**SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT AND SPECIAL TRIBUNAL**

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as the "SIU Act"), have been made in respect of the affairs of the Passenger Rail Agency of South Africa (SOC) Limited (hereinafter referred to as "PRASA");

AND WHEREAS PRASA may have suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule, in respect of PRASA, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

- (a) serious maladministration in connection with the affairs of PRASA;
- (b) improper or unlawful conduct by employees of PRASA;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of PRASA; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 01 January 2010 and the date of publication of this Proclamation or which took place prior to 01 January 2010 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise

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or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by PRASA or the State, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg this thirty first day of January Two thousand and twenty four.

## President

By Order of the President-in-Cabinet:

## Minister of the Cabinet

### Schedule

1. Offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which offences were committed in connection with the affairs of PRASA in relation to:
  - 1.1. the award of a tender for the supply of various train locomotives to Swifambo Rail Leasing (Pty) Limited; and
  - 1.2. the award of a tender for the supply and maintenance of an integrated security access management system at various train stations to Siyangena Technologies (Pty) Limited;
2. Serious maladministration in connection with the affairs of PRASA relating to:
  - 2.1. Fraudulent liability claims processed and paid by PRASA's Group Insurance Department, including such claims paid as one time vendor payments; and
  - 2.2. The employment of "ghost" employees identified by PRASA's Project Zivese in August 2021;
3. Any irregular, unlawful or improper conduct by officials or employees of PRASA, the applicable suppliers or service providers, or any other person or entity, in relation to the allegations as set out in paragraphs 1 and 2 of this Schedule.

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**PROKLAMASIE KENNISGEWING 153 VAN 2024**  
**van die**  
**PRESIDENT van die REPUBLIEK van SUID-AFRIKA**

**WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996  
(WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA  
BESTAANDE SPESIALE ONDERSOEKEENHEID**

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as "die Wet"), gemaak is in verband met die werksaamhede van die "Passenger Rail Agency of South Africa (SOC) Limited" (hierna na verwys as "PRASA");

EN AANGESIEN PRASA verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele verrigtinge voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleentheid in die Bylae vermeld, ten opsigte van PRASA, vir ondersoek na die Spesiale Ondersoekeenheid ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleentheid, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in die Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die werksaamhede van PRASA;
- (b) onbehoorlike of onregmatige optrede deur werknemers van PRASA;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voorvermelde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe gepleeg is in verband met die sake van PRASA; of
- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 01 Januarie 2010 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 01 Januarie 2010 of na die datum van publikasie van hierdie Proklamasie, maar wat relevant is tot, verband hou met,

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insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekkeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae tot hierdie Proklamasie, met inbegrip van die verhaal van enige verliese wat deur PRASA of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die een-en-dertigste dag van Januarie Twee-duisend vier en twintig.

### President

Op las van die President-in-Kabinet:

### Minister van die Kabinet

#### Bylae

1. Misdrywe bedoel in Deel 1 tot 4, of artikel 17, 20 of 21 (vir soverre dit op voormelde misdrywe betrekking het) of Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004, en welke misdrywe gepleeg is in verband met die werksaamhede van PRASA met betrekking tot:
  - 1.1. die toekenning van 'n bod vir die verskaffing van verskeie lokomotiewe aan "Swifambo Rail Leasing (Pty) Limited"; en
  - 1.2. die toekenning van 'n bod vir die verskaffing en onderhoud van 'n geïntegreerde sekuriteits toegang bestuur stelsel by verskeie trein stasies aan "Siyangena Technologies (Pty) Limited";
2. Ernstige wanadministrasie in verband met die werksaamhede van PRASA met betrekking tot:
  - 2.1. Bedrieglike aanspreeklikheids eise geprosseseer en betaal deur PRASA se Groep Versekerings Departement, met inbegrip van sodanige eise as "one time vendor" betalings gemaak; en
  - 2.2. Die indiensneming van "spook" werknemers wat deur PRASA se "Project Zivese" in Augustus 2021 geïdentifiseer is;
3. Enige onreëlmatige, wederregtelike of onbehoorlike gedrag deur beamptes of werknemers van PRASA, die toepaslike verskaffers of diensverskaffers, of enige ander persoon of entiteit, met betrekking tot die beweringe in paragrawe 1 en 2 van hierdie Bylae uiteengesit.

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**"FA21"**

**Report of the Portfolio Committee on Police on the 2023/24 Budget Vote 28 and Annual Performance Plan (APP) of the Department of Police (South African Police Service) dated 17 May 2023.**

The Portfolio Committee on Police examined the Budget Vote of the Police (Vote 28) for the 2023/24 financial year, as well as the projections of the Medium-Term Expenditure Framework (MTEF) for 2020-2024, which were included in the Estimates of National Expenditure (ENE) 2023. The budget was examined in conjunction with the Annual Performance Plan 2023/24 and the Strategic Plan (2020-2025). The Committee reports as follows:

## **1. INTRODUCTION**

### **1.1. Structure**

The Report provides an overview of the 2023/24 Budget Hearings of the Department of Police. The Report is structured as follows:

- Section 1: Introduction. This section provides an introduction to this Report as well as a summary of meetings held during the hearings.
- Section 2: Links to other plans for the 2023/24 financial year. This section highlights the strategic focus areas for the Department of Police for the year under review, including the National Development Plan, State of the Nation Address (SONA), and the 2019-2024 Medium-term Strategic Framework (MTSF).
- Section 3: Responses by the Minister of Finance on the Committee's 2022 BRRR.
- Section 4: SAPS budget and performance targets for 2023/24. This section provides an analysis of the budget allocations, spending priorities and performance indicators per programme of the Department of Police for the 2023/24 financial year.
- Section 5: Inputs from police unions and stakeholders. The section provides a summary of inputs by police unions and stakeholders during the budget hearings.
- Section 6: Committee observations. This section provides selected observations made by the Portfolio Committee on Police in general, on the annual performance targets and programme specific issues during the 2023/24 budget hearings and subsequent responses by the Department of Police.
- Section 7: Recommendations and additional information. This section summarises the recommendations made by the Portfolio Committee on Police, as well as the additional information requested from the Department of Police.
- Section 8: Conclusion. This section provides concluding remarks.

### **1.2. Meetings held**

The Committee met on 19 April 2023 to consider the SAPS 2023/24 APP and Budget. A follow-up meeting was held on 03 May 2023 to address selected concerns that were raised during the previous meeting (19 April 2023) and to consider the budget and performance indicators of the Directorate for Priority Crime Investigations (DPCI). During the meeting held on 3 May 2023, the Committee received a presentation from Mr Martin Hood on challenges related to firearm control in South Africa. On 10 May 2023, the Committee met with police unions and stakeholders, including the South African Policing Union (SAPU), the Police and Prisons Civil Rights Union (POPCRU) and the Independent Police Union of South Africa (IPUSA).

## **2. LINKS TO OTHER PLANS**

### **2.1. National Development Plan (NDP)**

Chapter 12 of the National Development Plan (NDP) titled "Building Safer Communities" outlines the responsibilities of the policing portfolio in South Africa. The vision of Chapter 12 is that:

"In 2030, people living in South Africa feel safe at home, at school and at work, and they enjoy a community life free of fear. Women walk freely in the streets and children play safely outside. The police service is well-resourced and professional, staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence, and respect the rights to equality and justice."

Handwritten signature and initials in the bottom right corner of the page.

To achieve this vision, the NDP sets out five focus areas, including:

- Strengthen the criminal justice system;
- Make the police service professional;
- Demilitarise the police;
- Build safety using an integrated approach; and
- Build community participation in safety.

## 2.2. 2019-2024 Medium Term Strategic Framework (MTSF)

The MTSF 2019–2024 aims to address challenges of unemployment, inequality and poverty through, 1) driving a strong and inclusive economy, 2) building and strengthening the capabilities of South Africans, and 3) achieving a more capable state. These underpin the seven priorities of the MTSF –

- **Priority 1:** Building a capable, ethical and developmental state
- **Priority 2:** Economic transformation and job creation
- **Priority 3:** Education, skills and health
- **Priority 4:** Consolidating the social wage through reliable and quality basic services
- **Priority 5:** Spatial integration, human settlements and local government
- **Priority 6:** Social cohesion and safe communities
- **Priority 7:** A better Africa and world

Over the medium-term the SAPS will focus on the following priorities:

- 1) Improving community safety
- 2) Combating gender-based violence and femicide
- 3) Addressing serious and organised crimes
- 4) Preventing, combating and investigating money laundering and terror financing

## 2.3. State of the Nation Address (SONA)

President Ramaphosa delivered his seventh State of the Nation Address (SONA) during a Joint Sitting of the National Assembly (NA) and the National Council of Provinces (NCOP) on 09 February 2023.

The key focus areas of the 2023 SONA related to the South African Police Service (SAPS), were additional personnel and funding to the SAPS, establishment of specialised policing units to address economic sabotage and related crimes, dedicated units to address specialised crimes such as kidnapping, introduction of evidence-based policing, the capacitation of 10111 call centres and community-orientated policing. *Note: The capacitation of 10111 call centres is included as a performance indicator in the 2023 SAPS APP.*

## 3. RESPONSES FROM MINISTER OF FINANCE ON 2022 BRRR

As part of the annual Budget Review, the Minister of Finance reports on the financial recommendations made by Committees of Parliament in the Budgetary Review and Recommendations Reports (BRRRs). Based on the Portfolio Committee on Police's BRRR, the following should be noted:

- 1) **Recommendation:** The Committee recommends that the National Treasury should review its decision to disallow the recruitment of additional personnel and that the South African Police Service (SAPS) should be adequately resourced, especially in terms of personnel, to execute its mandate. It is recommended that 10 000 recruits be allowed for the 2023/24 financial year.

**Response:** The National Treasury does not have a provision in place that disallows SAPS from recruiting additional personnel. SAPS needs to fill its vacant funded posts or appoint additional personnel in line with its human resource budget plan and cannot exceed its allocated budget for compensation of employees. SAPS was allocated R5.8 billion over the 2022 MTEF period to appoint 12 000 police trainees, who will be hired as constables on completion of their training. In addition, SAPS will receive R7.8 billion over the 2023 MTEF period to appoint 15 000 police trainees. More than 7 000 trainees were recruited in 2022/23 and 10 000 trainees will be appointed in 2023/24.

- 2) **Recommendation:** The Committee recommends that the National Treasury should increase the budget of the SAPS to employ additional personnel, especially qualified and skilled detectives. The National Treasury should consider ring-fencing this funding to ensure that it is spent as intended.'

**Response:** The National Treasury notes this recommendation. SAPS has indicated that 3 000 of the 15 000 police trainees to be appointed over the 2023 MTEF period will be appointed in detective services. In the 2020 Budget, the Directorate for Priority Crime Investigation in SAPS was allocated additional funding of R985 million to appoint investigators to strengthen its capacity and help address the case backlog.

- 3) **Recommendation:** The Committee further recommends that ring fenced funds should be made available to adjust the service allowances of detectives to retain skilled personnel and attract new detectives.

**Response:** As part of the 2023 MTEF budget discussions, the National Treasury raised concerns with departments and entities in the peace and security function about their challenges with staff moving across institutions for better remuneration. It was recommended that the conditions of service be standardised across the function to help retain skilled personnel.

#### 4. MEASURING SERVICE DELIVERY AND FINANCIAL PERFORMANCE

##### 4.1. Overall performance targets

In 2023/24, the SAPS has 84 performance targets.

- *Administration Programme: 23 targets, of which 2 targets are new.*
- *Visible Policing Programme: 20 targets, of which 3 targets are new.*
  - *A total of 8 performance targets were removed.*
- *Detective Services Programme: 24 performance targets*
  - *A total of 5 performance targets were removed.*
- *Crime Intelligence Programme: 10 performance targets of which the majority were revised to account for prioritised crime threats.*
- *Protection and Security Services Programme: 7 performance targets*

During 2022, the CSPA has developed guidelines to enhance SAPS performance Indicators. Further thereto, during the CSPA's annual strategic planning session, the SAPS identified the following areas that require focused support by the CSPA on the SAPS' 2023/24 APP:

- Participation in the review of the District One-Plans for the DDM.
- Assessment of the establishment of GBV Desks and the status / state of dedicated VFRs at all police stations.
- Assessment of the extent of feedback to complainants by investigating officers (service standards).
- Implementation of the Integrated Crime and Violence Prevention Strategy (ICVPS).
- Continued collaboration with the monitoring and evaluation of the Ministerial Crime Retreat POA.

During 2022, the Office of the Auditor-General was very critical of the Department's performance indicators and noted that targets were set too low, indicators were too reactive in nature and indicators are inconsistent with lived experiences of citizens.

##### 4.2. Overall budget allocation

In 2023/24, the SAPS received a Main Appropriation of R102.13 billion, which is a nominal decrease of R417.3 million or 0.4 per cent compared to the previous financial year. In real terms (inflation considered), the Department's allocation decreased with R5.18 billion, or 5.06 per cent.

For the third consecutive year, the largest decrease is in the Department's core service delivery programme, Visible Policing. This Programme's appropriation decreased with R904.0 million, or 1.7 per cent in nominal terms compared to the previous financial year. Considering inflation, the

Programme's appropriation decreased with R3.3 billion, or 6.3 per cent. Despite the decreased allocation, the Programme continues to receive more than half of the Department's total 2023/24 budget allocation (51.07 per cent).

**Table 1: Overall difference in 2022/23 and 2023/24 budget allocation**

Programme	Budget		Nominal Increase / Decrease in 2023/24	Real Increase / Decrease in 2023/24	Nominal Percent change in 2023/24	Real Percent change in 2023/24
	2022/23	2023/24				
<b>R million</b>						
Programme 1: Administration	20 512,0	20 977,3	465,3	- 514,6	2,27 per cent	-2,51 per cent
Programme 2: Visible Policing	53 062,4	52 158,4	- 904,0	- 3 340,4	-1,70 per cent	-6,30 per cent
Programme 3: Detective Services	20 854,0	20 856,6	2,6	- 971,6	0,01 per cent	-4,66 per cent
Programme 4: Crime Intelligence	4 372,6	4 381,6	9,0	- 195,7	0,21 per cent	-4,47 per cent
Programme 5: Protection and Security Services	3 754,1	3 763,7	9,6	- 166,2	0,26 per cent	-4,43 per cent
<b>TOTAL</b>	<b>102 555,0</b>	<b>102 137,7</b>	<b>- 417,3</b>	<b>- 5 188,3</b>	<b>-0,4 per cent</b>	<b>-5,06 per cent</b>

Source: National Treasury (2023)

The **Administration Programme** received a Main Appropriation of R20.97 billion in 2023/24, which is a nominal increase of R465.3 million or 2.27 per cent. In real terms, the programme's allocation decreased with R514.6 million or 2.5 per cent.

The **Detective Services Programme** received a Main Appropriation of R20.85 billion in 2023/24, which is a slight nominal increase of R2.6 million or 0.01 per cent compared to the previous financial year. In real terms the programme's allocation decreased by 4.6 per cent.

The **Crime Intelligence Programme's** 2022/23 allocation of R4.37 billion increased slightly with R9.0 million to a Main Appropriation of R4.38 billion in 2023/24, which is a nominal increase of 0.21 per cent and a real decrease of 4.47 per cent.

The **Protection and Security Services Programme** received a Main Appropriation of R3.76 billion in 2023/24, which is a nominal percentage increase of 0.26 per cent compared to the previous financial year and a real decrease of 4.43 per cent.

The percent of total budget per Programme normally remains consistent across financial years, with only slight changes. However, the consecutive decreases in the proportional allocation to the Visible Policing programme remain concerning. In 2022/23, the proportional allocation of the Visible Policing programme was 51.74 per cent, which has decreased by 0.67 per cent to a proportional allocation of 51.07 per cent compared to the previous financial year.

**Table 2: Changes in percent of total budget per Programme**

Programme	Budget	Percent of total budget per programme	Budget	Percent of total budget per programme	Change in percent allocation
	2022/23		2023/24		
<b>R million</b>					
Programme 1: Administration	20 512,0	20,00 per cent	20 977,3	20,54 per cent	0,54 per cent
Programme 2: Visible Policing	53 062,4	51,74 per cent	52 158,4	51,07 per cent	-0,67 per cent
Programme 3: Detective Services	20 854,0	20,33 per cent	20 856,6	20,42 per cent	0,09 per cent
Programme 4: Crime Intelligence	4 372,6	4,26 per cent	4 381,6	4,29 per cent	0,03 per cent

Programme 5: Protection and Security Services	3 754,1	3,66 per cent	3 763,7	3,68 per cent	0,02 per cent
<b>TOTAL</b>	<b>102 555,0</b>	<b>100,00 per cent</b>	<b>102 137,7</b>	<b>100,00 per cent</b>	<b>0,00 per cent</b>

Source: National Treasury (2023)

In terms of allocations per **economic classification** in 2023/24, the most significant increase is in the allocations to **Buildings and other fixed structures**. This allocation increased from R744.2 million in 2022/23 to R1.0 billion in 2023/24, which is a nominal increase of 34.8 per cent. Further, the allocation towards *Transfers to Provinces and municipalities* increased with a nominal percentage increase of 6.64 per cent.

The allocation toward **Agency and support/outsourced services** increased from R424.5 million in 2022/23 to R7.41.1 million in 2023/24, which is a nominal increase of 74.58 per cent (R316.6 million). In real terms, the allocation towards this item increased with R282 million or 66.43 per cent.

It is concerning that the allocation towards **Compensation of employees** decreased despite the increased recruitment under *Project 10 000* and further additional recruitment announced in the 2023 SONA. In 2023/24, the allocation towards *Compensation of employees* is R79.7 billion, which is a nominal decrease of R1.23 billion compared to the previous financial year (R81.02 billion). In real terms, the allocation decreased with R4.9 billion or 6.12 per cent compared to the previous financial year.

**Table 3: Budget per economic classification**

Programme	Budget		Nominal Increase / Decrease in 2023/24	Real Increase / Decrease in 2023/24	Nominal Percent change in 2023/24	Real Percent change in 2023/24
	2022/23	2023/24				
<b>R million</b>	<b>2022/23</b>	<b>2023/24</b>				
<b>Current payments</b>	<b>97 822,6</b>	<b>97 135,6</b>	<b>- 687,0</b>	<b>- 5 224,4</b>	<b>-0,70 per cent</b>	<b>-5,34 per cent</b>
Compensation of employees	81 028,8	79 795,1	- 1 233,7	- 4 961,0	-1,52 per cent	-6,12 per cent
Goods and services	16 793,8	17 340,5	546,6	- 263,3	3,26 per cent	-1,57 per cent
<b>Transfers and subsidies</b>	<b>1 259,4</b>	<b>1 267,2</b>	<b>7,8</b>	<b>- 51,4</b>	<b>0,62 per cent</b>	<b>-4,08 per cent</b>
Provinces and municipalities	57,6	61,4	3,8	1,0	6,64 per cent	1,66 per cent
Departmental agencies and accounts	51,4	53,5	2,1	- 0,4	4,18 per cent	-0,69 per cent
Non-profit institutions	1,0	0,0	- 1,0	- 1,0	-100,00 per cent	-100,00 per cent
Households	1 149,4	1 152,2	2,8	- 51,0	0,24 per cent	-4,44 per cent
<b>Payments for capital assets</b>	<b>3 472,9</b>	<b>3 734,9</b>	<b>262,0</b>	<b>87,5</b>	<b>7,54 per cent</b>	<b>2,52 per cent</b>
Buildings and other fixed structures	744,2	1 003,2	259,0	212,2	34,81 per cent	28,51 per cent
Machinery and equipment	2 681,6	2 683,9	2,3	- 123,1	0,08 per cent	-4,59 per cent
Biological assets	7,6	7,9	0,3	0,0	4,41 per cent	-0,47 per cent
Software and other intangible assets	39,5	39,9	0,4	- 1,5	0,91 per cent	-3,80 per cent
<b>TOTAL</b>	<b>102 555,0</b>	<b>102 137,7</b>	<b>- 417,3</b>	<b>- 5 188,3</b>	<b>-0,4 per cent</b>	<b>-5,06 per cent</b>

Source: National Treasury (2023)

#### 4.3. Infrastructure projects

In 2009/10, South Africa had 1 116 police stations, which increased to 1 158 as at March 2022 (increase of 42 stations over a 22-year period). The SAPS conducts annual accessibility assessments

by conducting feasibility/work study investigations to respond to the growing policing demands. However, this method has come under criticism over the past years because it lacks transparency.

The 2023/24 APP lists 21 new police stations on which construction will be finalised between 2023 and 2025. Of the 21 new stations, eight were started in 2016 and five in 2014. Thus, more than 60% of the police stations currently in construction were started more than five years ago. Of particular concern is the Kwa-Nocomboshe (KZN), Bhosiki (KZN) and Dun Donald (MP) police stations which were all started in 2014 and are expected to be completed in 2025, thus the construction of these police stations would have taken more than a decade to complete.

The table below provides a summary of expenditure on infrastructure:

R million	Audited outcome			Adjusted appropriation	Medium-term expenditure estimate		
	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26
<b>New infrastructure assets</b>	16	21	279	66	69	72	76
<b>Existing infrastructure assets</b>	497	307	126	678	934	976	1 020
<i>Upgrading and additions</i>	497	307	126	678	934	976	1 020
<b>Total Infrastructure</b>	<b>513</b>	<b>328</b>	<b>405</b>	<b>744</b>	<b>1 003</b>	<b>1 048</b>	<b>1 095</b>
<i>Capital infrastructure</i>	513	328	405	744	1 003	1 048	1 095

Source: National Treasury (2023)

#### 4.4. Personnel expenditure and fixed establishment

The SAPS has two separate employment categories under the SAPS Act (police personnel) and the Public Service and Administration Act (administrative personnel). The ratio of police members to population is measured only on the number of operational police members. Over the past 10 years the overall fixed establishment of SAPS has been declining. In 2011/12, the SAPS had 157 518 SAPS Act members, which had decreased to 140 048 in 2022.

Importantly, the SAPS has developed and refined a model to calculate the human resource needs of each police station taking into consideration the minimum number of police officers needed to render an effective police service and the population density of the policing area of each police station.

According to National Treasury, the total expenditure of the SAPS is expected to increase at an average annual rate of 3.9 per cent, from R102.6 billion in 2022/23 to R114.9 billion in 2025/26, mainly due to the allocation of additional funding of R5.8 billion over the MTEF period for cost-of-living adjustments, and R7.8 billion for strengthening capacity at police stations. This will be done by appointing a targeted 5 000 police trainees per year over the next 3 years and absorbing them as constables upon their successful completion of training. This funding also provides for costs associated with training, operational equipment, and the payment of monthly stipends to trainees and their salaries once they are absorbed. As a result, the number of personnel in the Department is set to increase from 178 708 in 2022/23 to 193 708 in 2025/26. Compensation of employees constitutes an estimated 78.7 per cent (R337.2 billion) of the SAPS's total budget over the medium term.

In 2023/24, the allocation to Compensation of Employees is R79.7 billion, which is a nominal decrease of 0.7 per cent compared to the previous financial year's allocation of R81.0 billion. In real terms, the allocation decreased by 6.12 per cent compared to the previous financial year. It is concerning that while the number of recruits and intakes increases, the budget allocation decreases.

#### 4.5. Programme 1: Administration

**Programme purpose:** Provide strategic leadership, management and support services to the South African Police Service.

#### 4.5.1. Performance targets

The Administration Programme has 23 performance indicators for the 2023/24 financial year. There are two new performance indicators. In 2023, the indicator to measure the finalisation of IPID cases was removed. The 2023/24 performance indicators of the Administration programme include:

**Table 4: 2023/24 Performance indicators and targets for the Administration programme**

1. Number of SAPS-owned firearms reported as stolen/lost: Target to reduce by 10% to 652 in 2023/24.	2. The number of <u>new police stations established</u> , as per the SAPS Infrastructure Development Programme. The target to establish 2 new police stations in 2023/24.	3. The number of mobile contact points procured. Target of 15 contact points in 2023/24.
4. Number of identified Closed Circuit Television (CCTV) sited implemented. Target for 45 CCTV sites in 2023/24.	5. Number of identified National Network Communication Infrastructure sites modernised and implemented. Target of 120 WAN sites in 2023/24.	6. Number of new SAPS Act recruits enlisted annually: Target of 10 000 by March 2024. <b>New target</b>
7. Percentage of learners assessed and declared competent upon completion of specified training in prioritised training areas: <u>Crime Prevention</u> : Target of 97% of learners assessed and declared competent.	8. Percentage of learners assessed and declared competent upon completion of specified training in prioritised training areas: <u>Crimes committed against women and children</u> : Target of 97% of learners assessed and declared competent.	9. Percentage of learners assessed and declared competent upon completion of specified training in prioritised training areas: <u>Crime Investigations</u> : Target of 97% of learners assessed and declared competent.
10. Percentage of learners assessed and declared competent upon completion of specified training in specialised capabilities: <u>Public Order Policing</u> : Target of 97% of learners assessed and declared competent.	11. Percentage of learners assessed and declared competent upon completion of specified training in specialised capabilities: <u>Forensic Science</u> : Target of 97% of learners assessed and declared competent.	12. Percentage of learners assessed and declared competent upon completion of specified training in specialised capabilities: <u>Crime Intelligence</u> : Target of 97% of learners assessed and declared competent.
13. Percentage of learners assessed and declared competent upon completion of specified training in specialised capabilities: <u>Cybercrime</u> : Target of 97% of learners assessed and declared competent.	14. Percentage of learners assessed and declared competent upon completion of specified training in <u>Leadership and Management Development Programmes</u> . Target of 97% of learners assessed and declared competent.	15. Percentage of planned ethics and integrity advocacy and awareness programmes completed. Target of 100% (48) programmes completed in 2023/24.
16. Number of incidents of <u>unauthorised expenditure</u> : Target to record zero incidents of unauthorised expenditure.	17. Percentage decrease in the number of incidents of confirmed <u>irregular expenditure</u> . The 2023/24 target is a reduction of 72.25%.	18. Percentage decrease in the number of incidents of <u>fruitless and wasteful expenditure</u> . The 2022/23 target is a reduction of 80%. However, a 103.7% increase was recorded in 2021/22.
19. Percentage of <u>audits completed</u> in terms of the Internal Audit Plan: Target remains unchanged at 100%.	20. Percentage of planned <u>forensic investigations</u> finalised: Target remains unchanged at 100%. Note that the forensic investigations are those conducted within the SAPS by the Internal Audit Component.	21. Percentage of <u>inspections executed</u> in terms of the approved Inspection Plan: Target remains unchanged at 100% (309 inspections).
22. Date of finalisation of the Information Systems and Information and Communication Technology	23. Percentage of IPID-related cases finalised within the prescribed timeframe. Target	

Business Continuity Plan. Target: Implementation by 31 March 2024. <b>New target</b>	remains unchanged in 2023/24 at 90% of cases finalised within 60 calendar days.	
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Source: SAPS 2023/24 APP

In 2023, the SAPS will pursue its exemption from the SITA Act, including the establishment of internal capacity to manage functions taken over from SITA and the exploration of other service provisioning models such as Public-Private Partnerships and Build Own Transfers.

#### 4.5.2. Budget allocation

The Administration Programme received a Main Appropriation of R20.97 billion in 2023/24, which is a nominal increase of R465.3 million or 2.3 per cent compared to the previous financial year. In real terms, the Programme's Appropriation decreased with 2.5 per cent (or R514.5 million).

The increased allocation lies almost exclusively in the Operational Services subprogramme, which increased by 2.29 per cent from R20.3 billion in 2022/23 to R20.8 billion in 2023/24. The Ministry subprogramme received a nominal percentage increase of 0.29 per cent.

**Table 5: Administration Programme: Difference in 2022/23 and 2023/24 budget allocation**

Programme	Budget		Nominal Increase / Decrease in 2023/24	Real Increase / Decrease in 2023/24	Nominal Percent change in 2023/24	Real Percent change in 2023/24
	2022/23	2023/24				
<b>R million</b>						
Sub-programme 1: Ministry	64,0	64,2	0,2	- 2,8	0,29 per cent	-4,39 per cent
Sub-programme 2: Management	107,2	107,2	- 0,1	- 5,1	-0,06 per cent	-4,72 per cent
Sub-programme 3: Operational Services	20 340,8	20 806,0	465,2	- 506,7	2,29 per cent	-2,49 per cent
<b>TOTAL</b>	<b>20 512,0</b>	<b>20 977,3</b>	<b>465,3</b>	<b>- 514,5</b>	<b>2,3 per cent</b>	<b>-2,51 per cent</b>

Source: National Treasury (2023)

The table below shows that the Operational Services subprogramme receives almost the total budget of the Administration Programme at 99.18 per cent, while the Ministry and Management subprogrammes receive 0.31 per cent and 0.51 per cent of the total Programme budget, respectively.

**Table 6: Percent of total Administration Programme budget per subprogramme**

Programme	Budget		Percent of total budget per programme		Change in percent allocation
	2022/23	2023/24	2022/23	2023/24	
<b>R million</b>					
Sub-programme 1: Ministry	64,0	64,2	0,31 per cent	0,31 per cent	-0,01 per cent
Sub-programme 2: Management	107,2	107,2	0,52 per cent	0,51 per cent	-0,01 per cent
Sub-programme 3: Operational Services	20 340,8	20 806,0	99,17 per cent	99,18 per cent	0,02 per cent
<b>TOTAL</b>	<b>20 512,0</b>	<b>20 977,3</b>	<b>100,00 per cent</b>	<b>100,00 per cent</b>	<b>0,00 per cent</b>

Source: National Treasury (2023)

#### 4.6. Programme 2: Visible Policing

**Purpose:** Enable police stations to institute and preserve safety and security; and to provide for specialised interventions and the policing of South Africa's borders.

##### 4.6.1. Performance measurement

The Visible Police Programme has a total of 20 performance indicators, with three new performance indicators and targets.

**Table 7: 2023/24 target of the Crime Prevention subprogramme**

<p><b>1.</b> Number of stolen, lost and illegal firearms (illegal firearms) recovered: The 2023/24 target is to increase the number of illegal firearms recovered by 1% to 4 243. <b>Revised target</b></p>	<p><b>2.</b> Number of identifiable stolen/lost SAPS-owned firearms recovered: The 2023/24 target to increase the recovery with 10% to 242 firearms.</p>	<p><b>3.</b> Percentage of <u>applications for new firearm licenses</u> finalised within 120 working days: Target to finalise 90% of applications within 120 working days. <i>During 2022/23, the estimated achievement on this target was 71.3%.</i></p>
<p><b>4.</b> Percentage reduction in the number of reported <u>contact crimes</u>: The target is set at a reduction of 12.15% to 590 803 in 2023/24.</p>	<p><b>5.</b> Number of escapees from police custody: Target to decrease the number of escapes from custody by 10% to 527 escapes in 2023/24.</p>	<p><b>6.</b> Number of <u>stolen/robbed vehicles recovered</u>: The target is to maintain the number of recovered vehicles at 31 124 in 2023/24.</p>
<p><b>7.</b> Number of national crime awareness campaigns. Target: 20 campaigns in 2023/24 <b>New target</b></p>	<p><b>8.</b> Number of provincial crime awareness campaigns. Target: 180 (20 campaigns per province) in 2023/24 <b>New target</b></p>	<p><b>9.</b> Number of reports on the 10111 Command Centre Reform Project. <u>Target: 4 quarterly project progress reports to the Presidency in 2023/24</u> <b>New target</b></p>
<p><b>10.</b> Percentage of police stations <u>rendering a victim friendly service to victims of crime, including GBVF</u>: The target remains at 100% of functional police stations. <b>Removed targets:</b></p>	<p><b>11.</b> Percentage of police stations that have functional <u>Community Police Forums</u>: The target remains unchanged at 99.57% in 2023/24.</p>	
<p>Percentage of identified <u>illegal liquor outlets closed</u>: The 2022/23 target for the <i>percentage of identified illegal liquor outlets closed</i> remains unchanged at 100%.</p>	<p>Percentage reduction in the number of reported <u>contact crimes at the Top 30 High Contact Crime Weight Stations</u>: The target is set at a reduction of 8.75% to 81 432 in 2022/23.</p>	<p>Percentage reduction in the number of reported <u>contact crimes against women</u> (18 years and above): The target is set at a reduction of 7.2% to 151 338 in 2022/23.</p>
<p>Percentage reduction in the number of reported <u>contact crimes against children</u> (below 18 years): The target is set at a reduction of 6.7% to 33 929 in 2022/23.</p>	<p>Number of Provinces in which the <u>Community-in-Blue Concept</u> has been initiated: The target is to implement the concept in 9 provinces during 2022/23.</p>	<p>Number of Provinces in which the <u>Traditional Policing Concept</u> has been implemented: In 2022/23, the SAPS will implement the concept in one province (unspecified).</p>
<p>Number of cities and towns in which the implementation of the <u>Safer Cities Framework</u> has been initiated: The Framework will be implemented in 20 cities/towns during 2022/23.</p>		

Source: SAPS 2023/24 APP

The removal of targets to measure the reduction of contact crimes or violence against women and children are based on addressing potential underreporting of these crimes. According to the SAPS these are potentially contradictory indicators that may hinder efforts to persuade victims of gender-based violence to report incidents. The inclusion of these targets can also have perverse incentives for police officers not to register cases of gender-based violence in order to meet performance targets.

The **Specialised Interventions and Border Security subprogramme** has nine performance indicators. The majority of performance indicators in the Border Security subprogramme revolve around crime-related hits reacted to because of the Movement Control System (MCS) and the Enhanced Movement Control System (EMCS) on wanted persons and circulated stolen or robbed vehicles. The other performance indicators aim to search 100% of profiled vehicles at land ports, containers at sea ports and cargo consignments at airports for illegal facilitation of persons, contraband, illicit goods and/or stolen/robbed property.

**Table 8: 2023/24 performance targets: Specialised Interventions and Border Security**

1. Percentage of <u>peaceful crowd management incidents</u> policed: Target remains unchanged at 100%	2. Percentage of <u>unrest crowd management incidents</u> stabilised: Target remains unchanged at 100%.	3. Percentage of <u>medium to high-risk incidents</u> responded to, in relation to requests received ( <b>NIU</b> ): Target remains unchanged at 100%.
4. Percentage of <u>medium to high-risk incidents</u> responded to, in relation to requests received ( <b>STF</b> ): Target remains unchanged at 100%.	5. Percentage of crime-related hits reacted to as a result of the Movement Control System (MCS) and Enhanced Movement Control System (EMCS) on wanted persons: Target remains unchanged at 100%.	6. Percentage of crime-related hits reacted to as a result of the MCS and EMCS on circulated stolen or robbed vehicles: Target remains unchanged at 100%.
7. Percentage of profiled vehicles at land ports searched for the illegal facilitation of persons, contraband, illicit goods and/or stolen robbed property: Target remains unchanged at 100%.	8. Percentage of profiled containers at sea ports searched for illegal facilitation of persons, contraband, illicit goods and/or stolen robbed property: Target remains unchanged at 100%.	9. Percentage of profiled cargo consignment at airports searched for illegal facilitation of persons, contraband, illicit goods and/or stolen robbed property: Target remains unchanged at 100%.
<b>Target removed:</b> Percentage of identified <u>illegal mining operations</u> responded to, in relation to medium to high-risk requests received: Target remains unchanged at 100%.		

Source: 2023/24 SAPS APP

The implementation of the Border Management Agency (BMA) should be interrogated thoroughly, especially in terms of resource requirements for the mandatory Border Control functions that must be performed by the SAPS, in the event of the Border Control function being migrated to the BMA. All resources utilised at the border that are used exclusively for border control, can be transferred to the BMA. According to the SAPS, an urgent work study investigation must be done in relation to the separation and the costing of the border control and classical border policing functions.

The border security functions and the resources that are associated with these functions that are required to be transferred to the BMA, is currently being clarified. The SAPS, however, continues to provide border security at the 72 ports of entry (53 land ports, 10 air ports and nine sea ports) during its ongoing engagements with the DHA, on the establishment of the BMA.

The capacitation of the Public Order Policing (POP) capability, together with the implementation of the July Unrest Expert Panel Recommendations and the Farlam Panel of Experts (Marikana), must be prioritised in 2023/24 and going forward.

**4.6.2. Budget allocation**

The Visible Policing Programme's Main Appropriation is reduced from R53.06 billion in 2022/23 to R52.15 billion in 2023/24. This is a nominal decrease of R904 million (or -1.7 per cent) and a real

decrease of R3.34 billion (or 6.3 per cent) and is largely in the Specialised Interventions subprogramme.

The **Specialised Interventions subprogramme's** allocation is reduced from R5.21 billion in 2022/23 to R5.05 billion in 2023/24, which is a nominal decrease of R152.2 million or 2.92 per cent and a real decrease of 7.46 per cent.

**Table 9: Visible Policing Programme: Difference in 2022/23 and 2023/24 budget allocation**

Programme	Budget		Nominal Increase / Decrease in 2023/24	Real Increase / Decrease in 2023/24	Nominal Percent change in 2023/24	Real Percent change in 2023/24
	2022/23	2023/24				
<b>R million</b>						
Sub-programme 1: Crime Prevention	40 813,5	40 075,3	- 738,2	- 2 610,2	-1,81 per cent	-6,40 per cent
Sub-programme 2: Border Security	2 315,8	2 284,0	- 31,7	- 138,4	-1,37 per cent	-5,98 per cent
Sub-programme 3: Specialised Interventions	5 208,4	5 056,2	- 152,2	- 388,4	-2,92 per cent	-7,46 per cent
Sub-programme 4: Facilities	4 724,7	4 742,9	18,2	- 203,4	0,38 per cent	-4,30 per cent
<b>TOTAL</b>	<b>53 062,4</b>	<b>52 158,4</b>	<b>- 904,0</b>	<b>- 3 340,4</b>	<b>-1,7 per cent</b>	<b>-6,30 per cent</b>

Source: National Treasury (2023)

The allocation for the **Border Security subprogramme** decreased from R2.31 billion in 2022/23 to R2.28 billion in 2023/24 (-R31.7 million or 1.37 per cent).

The allocation for the **Crime Prevention subprogramme** decreased from R40.81 billion in 2022/23 to R40.07 billion in 2023/24, which is a nominal decrease of R738.2 million or 1.81 per cent. In real terms, the allocation decreased with R2.61 billion or 6.40 per cent.



The **Facilities subprogrammes** received an allocation of R4.74 billion in 2023/24 which is a slight nominal increase of R18.2 million compared to the previous financial year. However, in real terms this is a decrease of 4.3 per cent.

**Table 10: Percent of total Visible Policing Programme budget per subprogramme**

Programme	Budget	Percent of total budget per programme	Budget	Percent of total budget per programme	Change in percent allocation
	2022/23		2023/24		
<b>R million</b>					
Sub-programme 1: Crime Prevention	40 813,5	76,92 per cent	40 075,3	76,83 per cent	-0,08 per cent
Sub-programme 2: Border Security	2 315,8	4,36 per cent	2 284,0	4,38 per cent	0,01 per cent
Sub-programme 3: Specialised Interventions	5 208,4	9,82 per cent	5 056,2	9,69 per cent	-0,12 per cent
Sub-programme 4: Facilities	4 724,7	8,90 per cent	4 742,9	9,09 per cent	0,19 per cent
<b>TOTAL</b>	<b>53 062,4</b>	<b>100,00 per cent</b>	<b>52 158,4</b>	<b>100,00 per cent</b>	<b>0,00 per cent</b>

Source: National Treasury (2023)

The table above shows a slight reduction in the proportional allocation of the Crime Prevention subprogramme (-0.08 per cent) compared to the previous financial year. Despite this proportional decrease, the subprogramme receives 76.8 per cent of the total allocation of the Visible Policing programme.

#### 4.7. Programme 3: Detective Services Programme

**Purpose:** Enable the investigative work of the SAPS, including providing support to investigators in terms of forensic evidence and criminal records.

##### 4.7.1. Performance targets

The Detective Services Programme has 24 performance indicators in total, of which most are located in the Crime Investigations subprogramme (10 indicators). In 2023, five targets were removed from the Programme, which related to detection rates and circulation of wanted persons in 30 High Contact Crime Weight Stations, so-called cold cases (older than 3 years), and arrests for illegal drug trading.

**Table 11: 2023/24 performance targets of the Crime Investigation subprogramme**

1. Detection rate for contact crimes: The target for 2023/24 is 51.25%.	2. Detection rate for crimes against women (18 years and above): The 2023/24 target is 71.25%.	3. Detection rate for crimes against children (below 18 years): The 2023/24 target is 65.25%.
4. Percentage of identified drug syndicates neutralised with arrests: The 2023/24 target is 70%.	5. Percentage of identified organised criminal groups neutralised with arrests: The 2023/24 target is 70%.	6. Percentage compliance with the taking of <u>buccal samples from schedule 8 arrested offenders</u> : The 2023/24 target is 100%.
7. Percentage of <u>person-to-crime DNA</u> investigative leads finalised. The 2023/24 target is 48%.	8. Percentage of <u>crime-to-crime</u> investigative leads finalised: The 2023/24 target is 45.80%.	9. Percentage of <u>fingerprint</u> investigative leads finalised: The 2023/24 target is 40.2%.
10. Percentage of outstanding Integrated Ballistics Identification System (IBIS) investigative leads finalised: The 2023/24 target is 28.0%.		
<b>Removed targets:</b>		
Detection rate for contact crimes at the 30 High Contact Crime Weight Stations: The 2022/23 target is 45%.	Percentage of outstanding case dockets related to contact crimes older than 3-years finalised: The 2022/23 target is 15%.	Percentage of outstanding wanted persons for contact crimes already circulated at the 30 High Contact Crime Weight Stations finalised: The 2022/23 target is 12%.
Percentage increase in the number of arrests for dealing in illicit drugs: Target remained unchanged at 5%.		

Source: SAPS 2023/24 APP

**Table 12: 2023/24 performance target of the Criminal Record Centre subprogramme**

1. Percentage of results of trial updated in respect of the following: Guilty verdict: The 2023/24 target is 91% of results updated within 20 calendar days.	2. Percentage of original previous conviction reports generated: The 2023/24 target is 92% of results updated within 15 calendar days	<b>Target removed:</b> Percentage of results of trial updated in respect of the following: Not guilty verdict. The 2022/23 target remained unchanged at 95% of results updated within 20 calendar days.
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Source: SAPS 2022/23 APP

**Table 13: 2023/24 performance targets of the Forensic Science Laboratory subprogramme**

1. Percentage of <u>routine case exhibits</u> (entries) finalised: The 2023/24 target remains unchanged at 75% of exhibits processed within 35 calendar days.	2. Percentage of <u>non-routine case exhibits</u> (entries) finalised: The 2023/24 target remains unchanged at 70% of exhibits processed within 113 calendar days.	3. Percentage of <u>case exhibits</u> (entries) not yet finalized exceeding the prescribed periods: The 2023/24 target remains unchanged for the backlog not exceeding 10% of registered case exhibits.
4. Percentage of <u>DNA case exhibits</u>	5. Percentage of Ballistics	6. Percentage of Biology

(entries) not yet finalised exceeding the prescribed time frames: The 2023/24 target is the backlog not to exceed 10% of registered case exhibits.	Intelligence (IBIS) case exhibits (entries) finalised. Target remains unchanged at 95% finalisation within 35 calendar days.	Deoxyribonucleic Acid (DNA) Intelligence case exhibits (entries) finalised: Target remains unchanged at 80% processed within 90 calendar days.
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Source: SAPS 2023/24 APP

In 2022, the Office of the Auditor-General indicated that the measurement of days taken to finalise the analysis of DNA samples once received does not measure the lived experience of citizens as it does not take into account the time from when samples are collected from a victim or suspect to the time they are submitted to the laboratories for processing. The performance measurement does not account for (or track) the full cycle of forensic processing and value added to the criminal justice system.

In early 2021, reports emerged that the SAPS is facing a significant backlog in DNA analysis, which at the time was approximately 240 000 cases. The Committee conducted an oversight visit to the SAPS FSL located in Pretoria (Gauteng province) in May 2021 to assess the capacity of the laboratory, and the SAPS as a whole, to address the backlog. Following the oversight visit, the Committee recommended that the SAPS must provide monthly progress reports on the DNA backlog in the SAPS FSL Biology Section. The monthly reports were changed to quarterly reports, which have been submitted by the Minister of Police.

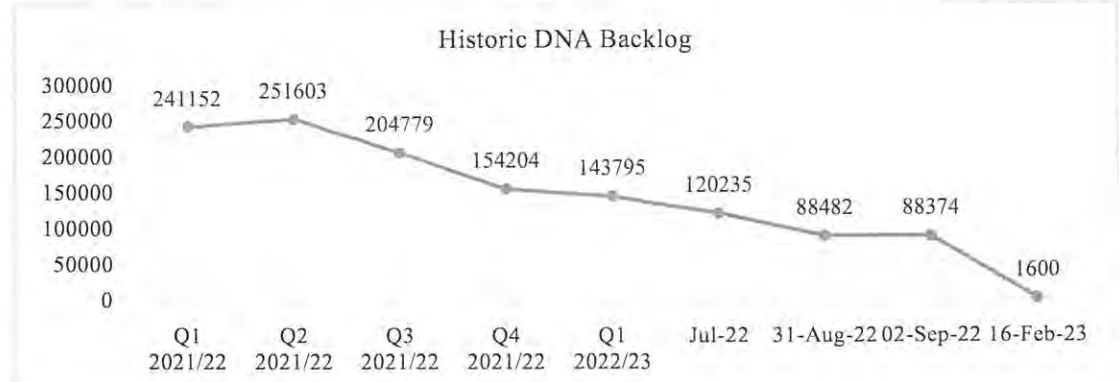
Since March 2021, the SAPS has successfully down-managed the historic (or ring-fenced) DNA backlog (from June 2021), reducing it from 241 152 to 61 487, as at 31 December 2022, and further to 1 600 in February 2023.<sup>1</sup> The majority of these were linked to cases of rape, women abuse and murders. The reduction is attributed to the following factors:

- An additional R250 million was allocated to the operational baseline budget of the FSL.
- Funding certificates were submitted to the Division: Supply Chain Management for the activation of procurement processes to prevent any delays in the bid awarding process.
- Dedicated overtime was allocated for DNA processing (at as March 2022, the overtime payments were R25.5 million).

According to the March 2022 report from the Minister of Police, the following inferences can be made from the Performance Monitoring:<sup>2</sup>

- More cases are finalised from both the backlog and the incoming entries
- There is a reduction in the number of backlog entries
- Court-ready cases are being prioritised
- The approach to case management is balanced to simultaneously reduce the backlog entries and attend to cases that are about to become backlogged
- The constant monitoring of cases is being implemented
- More cases are being registered
- The allocation of cases is being prioritised

The figure below shows the reduction in the DNA backlog between March 2021 and February 2023.



<sup>2</sup> Minister of Police (2022)

#### 4.7.2. Directorate for Priority Crime Investigations (DPCI)

The Directorate for Priority Crime Investigations (DPCI), commonly known as the Hawks is located as a Directorate within the SAPS under the Specialised Investigations subprogramme.

**Table 14: 2023/24 performance targets of the DPCI**

1. Percentage of trial-ready case dockets for serious corruption within the public sector: The 2023/24 target is 70%.	2. Percentage of trial-ready case dockets for serious corruption within the private sector: The 2023/24 target is 70%.	3. Percentage of registered serious organised crime project investigations successfully closed: The 2023/24 target is 72%.
4. Percentage of identified clandestine laboratories dismantled with arrests: The target remained unchanged at 90%.	5. Percentage of trial-ready case dockets for serious commercial crime: The target remained unchanged at 65%.	6. Percentage of serious cyber-related crime support case files successfully investigated within 90 calendar days: The 2023/24 target is 65%.
<b>Target removed:</b> Percentage of trial-ready case dockets for serious corruption within the JCPS Cluster. <sup>3</sup>	<i>Source: SAPS 2023/24 APP</i>	

According to the National Head of the DPCI, "the procurement of specialised technological aids, software licenses for specialised investigative tools and specialised technology equipment, remains a challenge that shall receive attention to ensure the effectiveness of the investigation of all serious crime, especially those crimes being committed in the cyber space". Furthermore, the office accommodation of the DPCI remains a key challenge that must be addressed.

During 2023/24, the DPCI will prioritise the following:

- 1) Investigations and recommendations by the Judicial Commission of Inquiry into allegations of State Capture.
- 2) Corruption and Fraud in the Public Sector, including Organs of State.
- 3) Recommendations and findings of the Financial Action Task Force (FAFT).
- 4) The looting of essential infrastructure.
- 5) Stealing of natural resources.

The DPCI remains severely under capacitated. During the 2022/23 financial year, 564 critical vacant posts were advertised within the DPCI. The appointment of the Deputy National Head, the Divisional Commissioner: National Priority Offences Operations and three Provincial Heads, has strengthened management of the Directorate. Filling of vacant posts on production level shall be aggressively pursued in the 2023/2024 financial year. To implement the Financial Action Task Force standards and enhance the DPCI's capacity in strategic competencies, an additional 2 647 posts are expected to be filled in 2023/24 and 2024/25.

The DPCI is a crucial agency to address the grey-listed status of South Africa and to increase investigations and arrests related to money laundering and terror financing. Over the medium term, the DPCI will aim to increase the number of requests to the Financial Intelligence Centre on money laundering from 86 to 124, and on terror financing from 151 to 218. The DPCI also plans to leverage existing capacity and financial intelligence by adopting a proactive approach of identifying and pursuing high level, complex and serious cases of money laundering.

In 2023, the DPCI will prioritise training of investigating officers on money laundering, asset forfeiture investigations and the Countering of Terror Financing, as there is an expectation to address the deficiencies identified by the FATF in the Post Assessment Report. The DPCI has put measures in place to ensure total cooperation with all critical role-players, to ensure that the remaining concerns of the FATF are effectively addressed. The National Risk Assessment (NRA) Report of the country is a critical guiding document for the DPCI, in this process and the action steps are being put in place are aligned with the NRA, as far as it relates to the mandate of the DPCI.

<sup>3</sup> Between the period 2014/2015 to 2022/2023 the "JCPS Cluster" were reported on in the Annual Performance Plan as a sub-category of the Public Sector. As from the 2023/2024 financial year, the JCPS will be inclusive of all cases reported on in the "Public Sector".

"FA22"

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## JUSTICE AND CONSTITUTIONAL DEVELOPMENT

## Budget summary

R million	2024/25				2025/26	2026/27
	Current payments	Transfers and subsidies	Payments for capital assets	Total	Total	Total
<b>MTEF allocation</b>						
Administration	2 879.6	18.3	8.5	2 906.4	3 083.7	3 330.7
Lower Court Services	6 669.2	31.3	526.2	7 226.7	7 475.8	7 838.1
State Legal Services	1 641.4	29.5	17.7	1 688.6	1 813.5	1 858.7
National Prosecuting Authority	5 830.0	21.6	37.1	5 888.6	6 087.9	6 268.1
Auxiliary and Associated Services	758.9	3 113.9	28.9	3 901.7	4 096.6	4 294.7
<b>Subtotal</b>	<b>17 779.1</b>	<b>3 214.5</b>	<b>618.5</b>	<b>21 612.0</b>	<b>22 557.6</b>	<b>23 590.3</b>
<b>Direct charge against the National Revenue Fund</b>						
Magistrates' salaries	2 450.0	45.6	–	2 495.6	2 606.9	2 726.4
<b>Total expenditure estimates</b>	<b>20 229.0</b>	<b>3 260.1</b>	<b>618.5</b>	<b>24 107.7</b>	<b>25 164.5</b>	<b>26 316.7</b>

Executive authority: Minister of Justice and Correctional Services  
 Accounting officer: Director-General of Justice and Constitutional Development  
 Website: [www.justice.gov.za](http://www.justice.gov.za)

The Estimates of National Expenditure is available at [www.treasury.gov.za](http://www.treasury.gov.za). Additional tables in Excel format can be found at [www.treasury.gov.za](http://www.treasury.gov.za) and [www.vulekamali.gov.za](http://www.vulekamali.gov.za).

## Vote purpose

Uphold and protect the Constitution and the rule of law, and render accessible, fair, speedy and cost-effective administration of justice in the interests of a safer and more secure South Africa.

## Mandate

The Department of Justice and Constitutional Development derives its mandate from the Constitution and a number of acts that assign functions to it. These include: the establishment of magistrate's courts and the appointment of magistrates and other judicial officers; the establishment and functioning of the National Prosecuting Authority; the conducting of criminal proceedings; the prosecution of organised crime and corruption, and the forfeiture of assets obtained through illicit means; the provision of witness protection to vulnerable and intimidated witnesses and their related persons in judicial proceedings; the establishment and functioning of bodies responsible for legal aid, law reform and rule-making; the appointment of masters of the high courts; the management of third-party funds; the administration of the Guardian's Fund and deceased and insolvent estates; the management of state litigation; the regulation and provision of legal advisory services to government departments; the promotion, protection and enforcement of human rights; the protection of vulnerable groups; and the provision of support to chapter 9 institutions.

## Selected performance indicators

Table 25.1 Performance indicators by programme and related priority

Indicator	Programme	MTSF priority	Audited performance			Estimated performance	MTEF targets		
			2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
Number of sexual offences courts designated per year <sup>1</sup>	Lower Court Services	Priority 6: Social cohesion and safer communities	– <sup>2</sup>	– <sup>2</sup>	– <sup>2</sup>	14	15	18	20
Percentage of maintenance matters finalised within 90 days of the date of proper service of process per year	Lower Court Services	Priority 6: Social cohesion and safer communities	84.6% (20 434/ 24 154)	91.2% (22 700/ 24 900)	88.3% (31 850/ 36 085)	92%	89%	90%	92%

Table 25.1 Performance indicators by programme and related priority (continued)

Indicator	Programme	MTSF priority	Audited performance			Estimated performance	MTEF targets		
			2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
Percentage of letters of appointment issued in deceased estates within 21 days of receipt of all required documents per year <sup>1</sup>	State Legal Services		- <sup>2</sup>	- <sup>2</sup>	82.8% (140 959/ 170 340)	75%	75%	85%	90%
Number of activities of the high-level action plan implemented to exit the Financial Action Task Force's grey list per year	State Legal Services		- <sup>2</sup>	- <sup>3</sup>	- <sup>2</sup>	3	3	3	- <sup>3</sup>
Conviction rate: – High courts	National Prosecuting Authority	Priority 6: Social cohesion and safer communities	93.8% (542/578)	90.9% (648/713)	89.2% (705/790)	87%	87%	87%	87%
– Regional courts			82.6% (13 352/ 16 169)	80.6% (16 433/ 20 385)	82.6% (17 196/ 20 818)	74%	74%	74%	74%
– District courts			95.9% (116 230/ 121 213)	93.9% (124 152/ 132 222)	94.5% (139 979/ 148 126)	88%	88%	88%	88%
Total number of Thuthuzela care centres	National Prosecuting Authority		55	60	62	64	66	68	70
Conviction rate in complex commercial crime per year	National Prosecuting Authority		90.2% (277/307)	90.5% (344/380)	87.1% (364/418)	90%	90%	90%	90%
Number of people convicted of corruption and/or offences related to corruption per year	National Prosecuting Authority		233	339	338	334	334	334	334
Number of prosecutions instituted involving money laundering per year	National Prosecuting Authority		- <sup>2</sup>	- <sup>2</sup>	- <sup>2</sup>	84	90	90	90
Value of freezing orders obtained for corruption or related offences per year	National Prosecuting Authority		R611m	R5.5bn	R570m	R2.4bn	R750m	R750m	R750m
Value of recoveries relating to corruption or related offences per year	National Prosecuting Authority		R3m	R117m	R2.6bn	R1.4bn	R350m	R350m	R350m

1. Indicator wording revised to align with the department's 2024/25 annual performance plan.

2. No historical data available.

3. Indicator discontinued.

## Expenditure overview

As part of its overarching goal of ensuring that South Africans feel safe and are able to live without fear, the department invests in initiatives to serve its people as efficiently as possible. Over the medium term, the department will focus on accelerating the implementation of the recommendations of the state capture commission and the Financial Action Task Force, strengthening the response to gender-based violence and femicide, and building capacity in the Office of the Legal Services Ombud and Legal Aid South Africa's land rights management unit.

Despite Cabinet-approved reductions amounting to R5 billion over the next 3 years, total expenditure is expected to increase at an average annual rate of 4.7 per cent, from R23 billion in 2023/24 to R26.3 billion in 2026/27. This is due to additional allocations for compensation of employees (R4.2 billion) to cater for the carry-through cost of the 2023/24 public sector wage agreement. Compensation of employees represents 61.7 per cent of the department's total budget and is expected to increase at an average annual rate of 6.3 per cent, from R13.6 billion in 2023/24 to R16.4 billion in 2026/27. The main impact of the reductions will be on the department's goods and services budget and transfers to public entities. To ensure that critical frontline services are not negatively affected, strict cost-containment measures will be implemented on travel and subsistence, communication, catering, conferences, workshops and other non-essential goods and services items that have not yet been contracted. Public entities are expected to use retained surplus funds to augment transfer payments.

### ***Implementing the recommendations of the state capture commission and Financial Action Task Force***

The department is allocated an additional R627.8 million over the MTEF period to accelerate the implementation of the recommendations of the state capture commission and the Financial Action Task Force. This allocation is split among the department's *Lower Court Services* programme (R282.5 million), *State Legal Services* programme (R31.3 million) and *National Prosecuting Authority* programme (R314 million).

To ensure a systematic and strategic response to the recommendations of the state capture commission, an integrated task force has been established to coordinate investigations, prosecutions and the seizure of assets. The task force is led by the National Prosecuting Authority and includes the Directorate for Priority Crime Investigation, the Financial Intelligence Centre and the Special Investigating Unit. A detailed action plan has been developed and is being implemented. The National Prosecuting Authority's Investigating Directorate has made significant progress in addressing state capture, having declared 99 investigations and enrolled 34 cases (involving 205 accused people), while the Asset Forfeiture Unit has secured freezing/preservation orders to the value of R14 billion. The number of prosecutions of state capture, fraud or corruption and related matters enrolled in the courts is expected to increase from 12 in 2023/24 to 45 in 2026/27. These activities are funded over the medium term within the *National Prosecuting Authority* programme's *Asset Forfeiture Unit* subprogramme, which has a budget of R823.8 million, and *Investigating Directorate* subprogramme, which has a budget of R939 million.

A workstream of law enforcement agencies has been established, also under the leadership of the National Prosecuting Authority, to implement recommendations made by the Financial Action Task Force to remove South Africa from its grey list of countries that are flagged for weaknesses in its framework for combating money laundering and the financing of terrorism. As part of the high-level action plan to implement the recommendations, 3 activities are planned for each financial year from 2023/24 to 2025/26. These include the recording and monitoring of timelines for mutual legal assistance or extradition, the recording of beneficial ownership of trust information, and the establishment and operationalisation of a register to record the number of enquiries to law enforcement agencies. Once a performance baseline is established in 2023/24, a new indicator is expected to commence in 2024/25 that focuses on the prosecution of money laundering and terrorism financing cases, with 270 prosecutions set to be achieved over the medium term.

### ***Strengthening the response to gender-based violence and femicide***

As part of its continuing efforts to afford greater protection to citizens, particularly vulnerable and marginalised groups, the department will continue implementing the recommendations of the presidential summit declaration against gender-based violence and femicide and the national strategic plan on gender-based violence and femicide. It plans to do so by increasing the number of fully operational Thuthuzela care centres from 64 in 2023/24 to 70 in 2026/27 at a projected cost of R27.5 million in the *National Prosecuting Authority* programme. These centres provide victims of sexual offences with 24-hour access to all relevant services, including police, counselling, doctors, court preparation and prosecutors. Plans are also under way to appoint 15 additional personnel at these centres, including site coordinators, victim assistant officers and state advocates, at an estimated cost of R15 million over the next 3 years.

### ***Building capacity for key legal services***

The mandate of the Office of the Legal Services Ombud includes protecting and promoting the public interest in relation to the rendering of legal services; ensuring the fair, efficient and effective investigation of complaints of alleged misconduct against legal practitioners; and promoting the independence of, and high standards of integrity in, the legal profession. To enhance the office's capacity, R16.5 million over the period ahead will be reprioritised from magistrates' salaries to the *Auxiliary and Associated Services* programme, which houses the *Office of the Legal Services Ombud* subprogramme. As a result, spending in this subprogramme is expected to increase at an average annual rate of 53.8 per cent, from R8.3 million in 2023/24 to R30 million in 2026/27.

Additional funds amounting to R156 million over the MTEF period will also be reprioritised from the Department of Agriculture, Land Reform and Rural Development to Legal Aid South Africa, within the *Auxiliary and Associated*

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**THE STATE CAPTURE CONSPIRATORS**





**THE URGENT CASES  
WE CAN ACT ON NOW!**


An Open Secrets Investigation

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## THE STATE CAPTURE CONSPIRATORS

THE URGENT CASES  
WE CAN ACT ON NOW!

An Open Secrets Investigation  
2022



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power & profit | truth & justice

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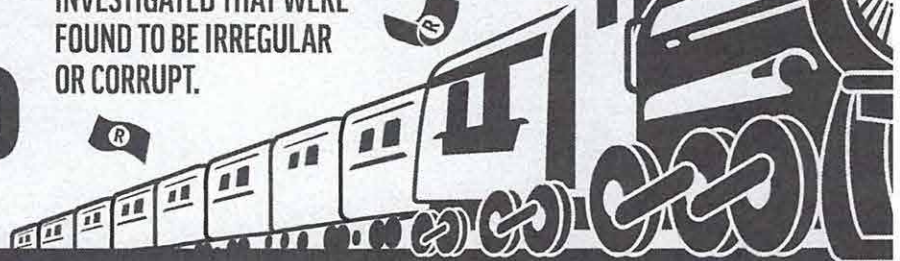
# STATE CAPTURE NUMBERS AT A GLANCE

**550,000**

THE NUMBER OF  
COMMUTERS THAT  
HAVE STOPPED USING  
TRAINS SINCE 2013.

**94%**

THE PROPORTION OF PRASA CONTRACTS  
INVESTIGATED THAT WERE  
FOUND TO BE IRREGULAR  
OR CORRUPT.



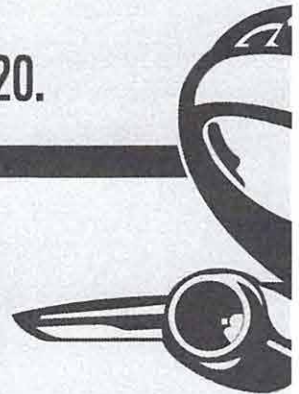
**R4.6 BILLION**



LOSSES REPORTED BY DENEL BETWEEN 2017 AND 2020.

**R50 BILLION**

THE AMOUNT OF PUBLIC MONEY SPENT BY THE  
GOVERNMENT TO BAIL OUT SAA SINCE 2008.



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# R4.3 TRILLION

THE AMOUNT OF GOVERNMENT DEBT.

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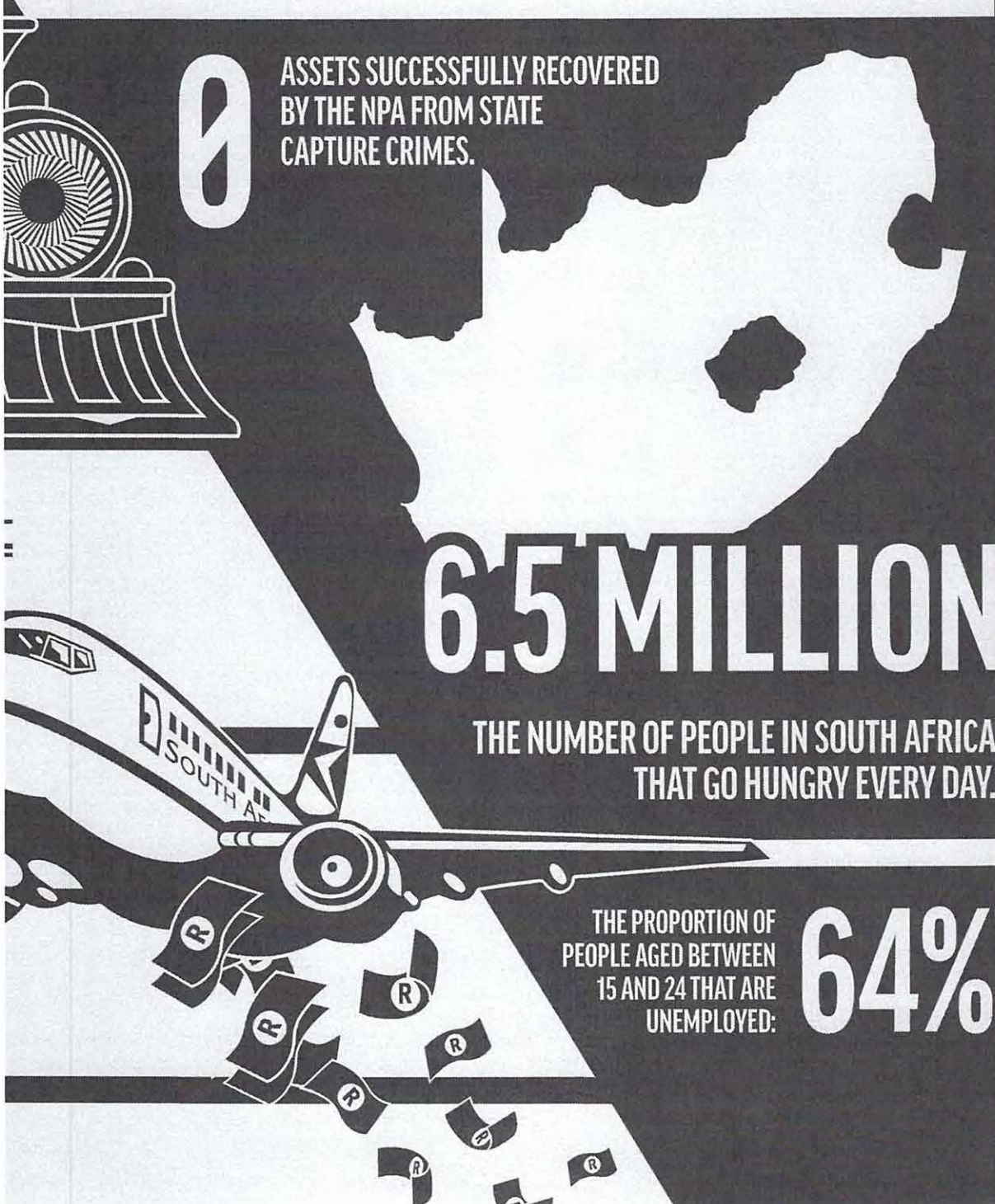
ASSETS SUCCESSFULLY RECOVERED BY THE NPA FROM STATE CAPTURE CRIMES.

# 6.5 MILLION

THE NUMBER OF PEOPLE IN SOUTH AFRICA THAT GO HUNGRY EVERY DAY.

THE PROPORTION OF PEOPLE AGED BETWEEN 15 AND 24 THAT ARE UNEMPLOYED:

# 64%



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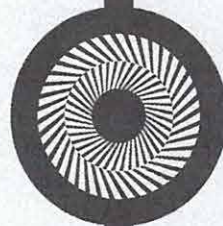
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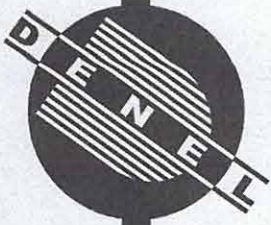


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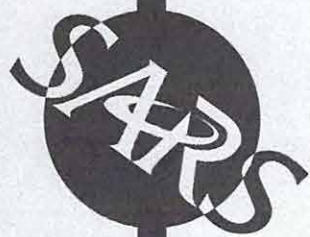
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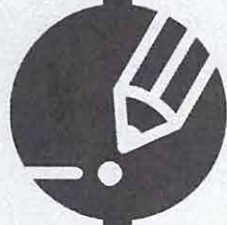
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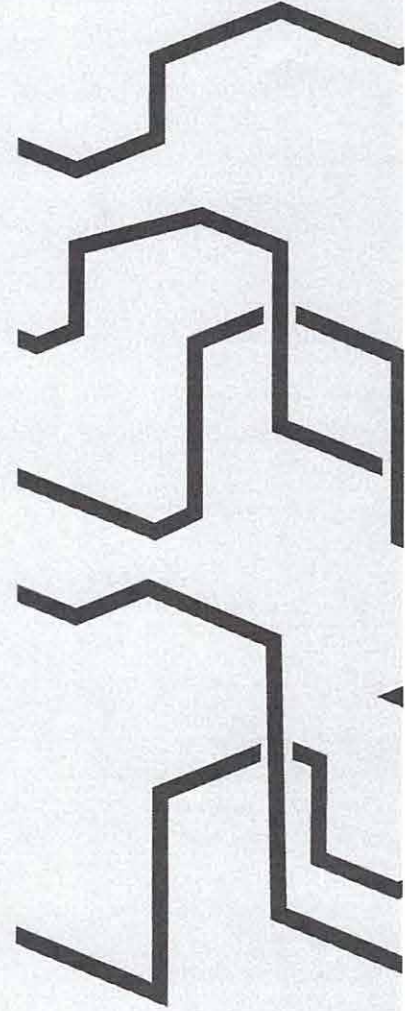
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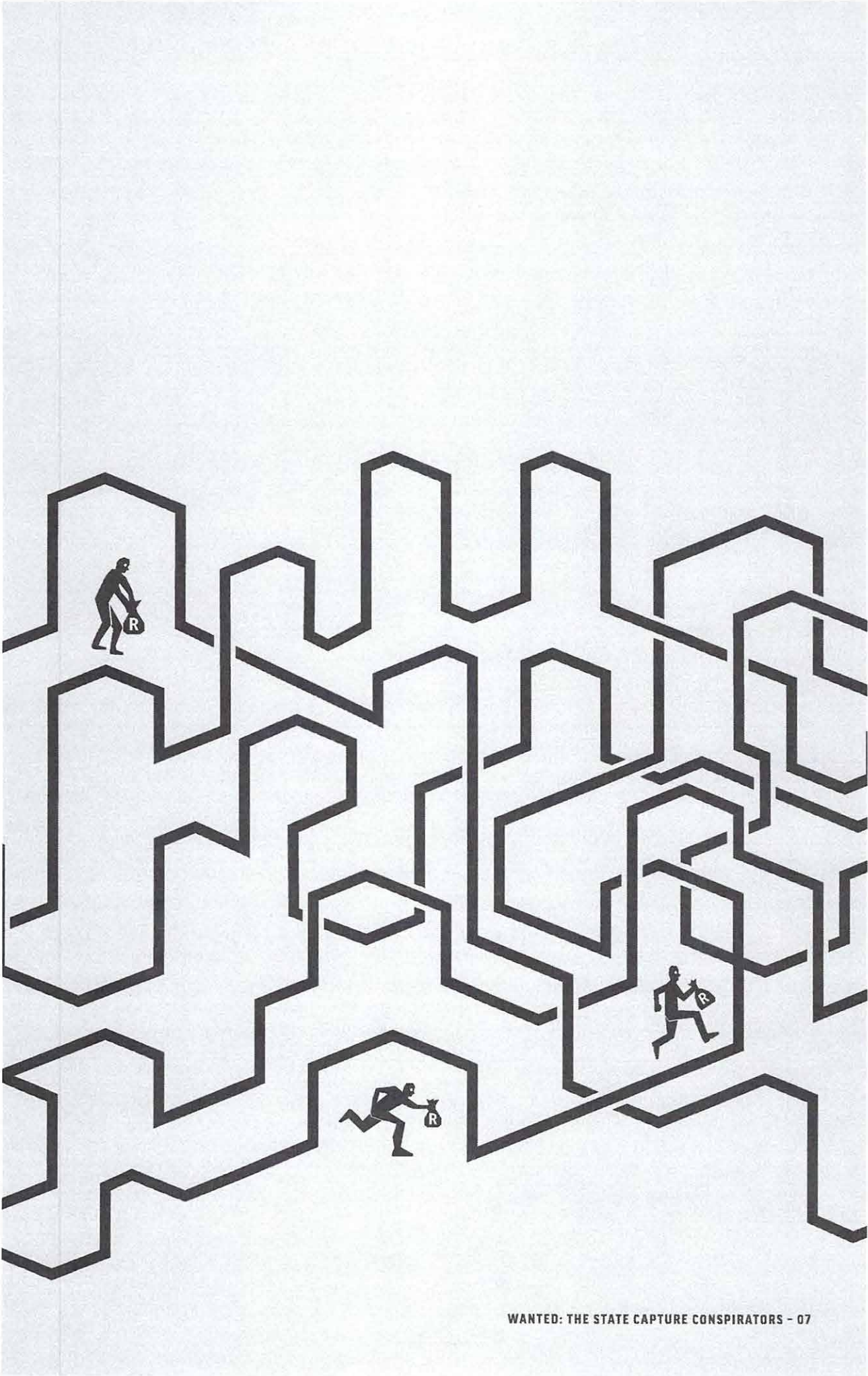
# ABBREVIATIONS

- AFU** Asset Forfeiture Unit (NPA)
- ANC** African National Congress
- ARMSCOR** Armaments Corporation of South Africa
- ATM** automated teller machine
- B-BBEE** Broad-Based Black Economic Empowerment
- BAIT** Business and Individual Tax division (SARS)
- CCTV** closed-circuit television
- CEO** Chief Executive Officer
- CIPC** Companies and Intellectual Property Commission
- COO** Chief Operations Officer
- CTPC** Corporate Tender and Procurement Committee (PRASA)
- CV** curriculum vitae
- DPE** Department of Public Enterprises
- FCIP** Finance, Capital Investment, and Procurement Committee (PRASA)
- FIFA** Fédération Internationale de Football Association
- GDP** gross domestic product
- IDASA** Institute for Democratic Alternatives in South Africa
- IRBA** Independent Regulatory Board for Auditors
- IT** information technology
- JSE** Johannesburg Stock Exchange
- LSSA** Land Systems South Africa
- MP** Member of Parliament
- NHTS** National Household Transport Survey
- NPA** National Prosecuting Authority
- ORCA** Outsourced Risk and Compliance Assessment
- OUTA** Organisation Undoing Tax Abuse
- PFMA** Public Finance Management Act
- POCA** Prevention of Organised Crime Act
- PRASA** Passenger Rail Agency of South Africa
- PRECCA** Prevention and Combating of Corrupt Activities Act
- PwC** PricewaterhouseCoopers
- RFP** request for proposals
- RSR** Railway Safety Regulator
- SAA** South African Airways
- SAAPA** South African Airways Pilots' Association
- SAICA** South African Institute of Chartered Accountants
- SANDF** South African National Defence Force
- SARCC** South African Rail Commuter Corporation
- SARS** South African Revenue Service
- SCA** Supreme Court of Appeal
- SCOPA** Standing Committee on Public Accounts
- SITA** State Information Technology Agency
- SIU** Special Investigating Unit
- SOE** state-owned enterprise
- U.S.** United States



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WANTED: THE STATE CAPTURE CONSPIRATORS - 07

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**This report is about accountability. It shows who was responsible for state capture and how they can be held accountable for their actions. The Zondo Commission has ended its work, but the work of justice remains incomplete as conspirators and beneficiaries of state capture have yet to be held to account.**

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# INTRODUCTION

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It is the end of the Judicial Commission of Inquiry into State Capture. Now what? At the beginning of the Zondo Commission's work, South Africa was steeped in hope that action would finally be taken against corruption. Four years later, in 2022, after scant convictions and investigations against big business and high-profile politicians, that hope is dwindling. The answer to the South African government's lack of accountability for corruption lies in one solution: law enforcement agencies must act. As the nation bristles with hopelessness and numbness against mounting government failures, it is easy to lose belief that state capture and corruption can be disrupted. This report is Part One of a two-part series in which Open Secrets uncovers networks of capture and shows how they can finally be broken and held to account. In this report, we investigate state capture at four important yet under-reported state-owned enterprises (SOEs) and government agencies. We identify the conspirators who dismantled these institutions and how they did it. In Part Two, we investigate those who are meant to hold perpetrators of state capture to account—the Hawks and the National Prosecuting Authority (NPA)—and ask why they are failing to do their jobs. In both reports, we identify the ways in which those accused of state capture crimes must finally be made to face justice.

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Back in 2013, when the infamous Gupta plane jetted into a government military base, bringing wedding guests to a luxury Sun City reception, no one could have predicted what would follow. There were memes and raised eyebrows at the sheer audacity of this strange, wealthy, and seemingly too well-connected family, but the devastation brought about by their state capture network had yet to be fully grasped.

We still do not know the true cost of state capture.

At the state capture inquiry, investigator Paul Holden said that bank documents and invoices put the cost of state capture at R50 billion.<sup>1</sup> As Holden detailed the evidence showing money being moved out of the South African state's coffers and into those linked to state capture, Judge Raymond Zondo seemed shocked by the sheer amount of the losses.

'I'm just digesting,' Zondo said.<sup>2</sup>

President Cyril Ramaphosa, meanwhile, has estimated the full cost of state capture to be around R500 billion.<sup>3</sup> The disbelief evident in Zondo's words has been met with numbness by the wider public. Public spending on basic services has declined as the government struggles to pay its debts, while fuel and food prices continue to rise.

**The cost of state capture—the billions ushered away from the limping state—is most clearly borne by the people who need state funding the most. At every turn, it is the South Africans who were disenfranchised by apartheid who have felt the true burden of corruption.**

During the Covid-19 pandemic, businesses have tried to open their doors, only to watch the lights flicker out as Eskom shrouds their streets in darkness. The Guptas' greedy hand, dirtied by overpriced and useless coal, is ever so clear. After years of investigations and exposés, the Guptas are finally facing justice for extensive profiteering by supplying worthless coal from their Optimum Coal Mine. The NPA's Investigating Directorate has filed preservation orders against the Gupta-owned business, launching a strike to seize the family's assets in the company.<sup>4</sup> In addition, former Trillian boss Eric Wood has been arrested, alongside former Transnet chief executive officer Siyabonga Gama, over corruption at the state agency. Two Gupta brothers, Rajesh and Atul, were also arrested in Dubai in June 2022 in a massive leap of progress for state

capture cases. These advancements by law enforcement agencies are glimmers of hope in an otherwise stark story of unaccountability that has stained South Africa's democracy.

While the Guptas' meddling and stealing has plagued South Africa for almost 10 years, they were not the first to capture the state. Former President Jacob Zuma recently suffered a blow, in February 2022, when his legal bid to remove prosecutor Billy Downer from the Arms Deal case was dismissed.<sup>5</sup> The Arms Deal case dates back to the late 1990s, and even further back if we were to include French weapons dealer Thales' sanctions-busting collaboration with the apartheid regime. Zuma has been the most notable corrupt president, but the African National Congress (ANC) is also still dealing with allegations of corruption under Ramaphosa's supposed 'New Dawn'. Senior ANC politician and parliamentarian Zweli Mkhize is in the running to become the party's next president despite being implicated in the Digital Vibes scandal. Bathabile Dlamini put government grant recipients at dire risk over an expiring contract with a service provider tasked with distributing recipient payments, yet she remains a member of the ANC's highest structure—its National Executive Committee—despite having been convicted of perjury.

Fundamentally, South Africa remains trapped in a cycle of unaccountability, led by the example of its leaders in high office.

Open Secrets has investigated state capture at various SOEs. In our investigative report published in 2020, *The Enablers*, we delved into the high-profile, high-costing state capture crimes at Eskom and Transnet, and the Estina/Vrede Dairy Project in the Free State. But there are stories of state capture at various SOEs, some of them dating back to a time before the Guptas' emergence in the arena of South Africa's political elite.

**They include the Passenger Rail Agency of South Africa (Prasa), South African Airways (SAA), Denel, and the South African Revenue Service (SARS), which are some of the most important but under-investigated state institutions.** Despite years-long allegations of state capture at these public institutions, little has been done to investigate and convict the perpetrators of grand corruption. Notably, at Prasa, little improvement has been made to address corruption. As will be discussed later in this report, the parastatal's current board is continuing the work of its

predecessors to silence whistle-blowers and protect alleged corrupt activity. Open Secrets understands, through reliable information received from a source close to the NPA, that it is unlikely law enforcement agencies will act any time soon to convict the perpetrators and to recover assets purchased from, and used to launder, stolen public funds involving these entities.

Yet there are corporations and businesses that could easily be targeted by law enforcement agencies or regulatory bodies for investigation. This first report is about finding the people and businesses who facilitated state capture at Prasa, SAA, Denel, and SARS and about showing how they can be held to account through legal action or internal and external investigations.

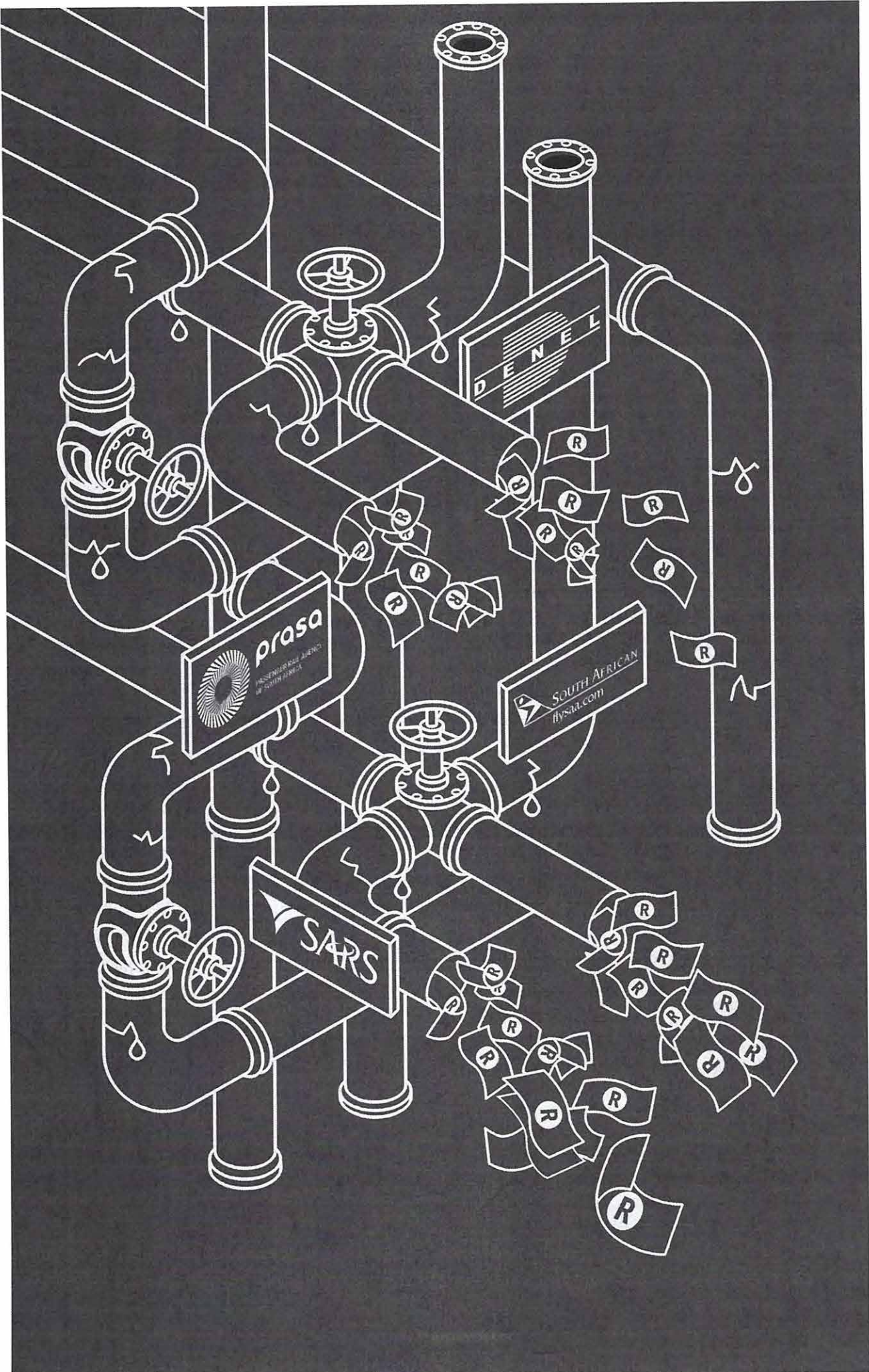
**They are the people, fixers, politicians, and corporations who we call the low-hanging fruit: the easy targets that law enforcement agencies and oversight bodies can investigate, prosecute, or sanction through disciplinary processes, but have failed to pursue.**

However, law enforcement agencies have struggled with corruption and incompetence in their own offices. The second report, which will be released soon, documents the individuals whose actions led to the erosion of the NPA and the Hawks. We show how they abused their authority in these institutions, unduly delayed cases, and made poor decisions that led to disastrous consequences.

We have found the bottlenecks in these agencies: the policemen and public lawyers who investigated and prosecuted cases without sufficient evidence. The people they investigated and prosecuted were often attempting to bust those implicated in corruption. As a result, there were significant delays in key corruption cases—which the bottlenecks caused.

The stories told in this report are about accountability. They show who was responsible for state capture and how they can be held responsible for their actions. The Zondo Commission may have ended its work, but the work of justice remains incomplete as conspirators and beneficiaries of state capture have yet to be held to account.

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## BACKGROUND AND CONTEXT

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Although state capture has mainly been used to describe the corruption involving Jacob Zuma and the Gupta family, and the extensive network of economic looting they facilitated, capture of state resources occurred well before the Gupta-era in South Africa. State capture is generally understood to mean an illicit process in which elite actors wield undue influence over state officials and resources, enabling systematic looting and control over government institutions for their own benefit. When Zuma came into office, in 2009, he may have taken state capture further than any democratic president before him. But he did not invent it—he simply continued what already existed, and what the ANC-led government had already accepted in the running of the country.

In the years immediately after apartheid, corruption was already a feature of South African democracy. According to a 1996 survey published by the Institute for Democratic Alternatives in South Africa (IDASA), 46 per cent of those surveyed believed that most government officials were corrupt and only 6 per cent thought that the government was clean.<sup>1</sup> In 1997, global monitoring agency Transparency International found that foreign businessmen were increasingly concerned about corruption in South Africa and had the perception that the country had become vulnerable in this regard between 1996 and 1997.<sup>2</sup>

Two years later, in 1999, the Arms Deal scandal broke.

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### THE ARMS DEAL

The multibillion-rand scandal was one of the greatest shocks to hit the country. An ANC-led government, which had adorned itself in the hard-fought glory of liberation, faced its biggest loss of trust to date. Thales, the French arms company that had worked with the apartheid regime to bust sanctions, was exposed as having engaged in a similar kind of manipulation of government officials through bribery and procurement violations. Its British counterpart, BAE Systems, was implicated in giving bribes of up to \$150 billion to secure government contracts. Daimler Aerospace, the German aerospace manufacturer, was found to have bribed senior officials, including then ANC Member of Parliament (MP) Tony Yengeni, with luxury vehicles. Former South African President Jacob Zuma is currently facing prosecution for corruption and fraud in relation to the scandal.

Despite being implicated in a scandal involving at least four different countries, Zuma was still put forward as the ANC's presidential candidate during its 2007 conference—a clear indication that in the ruling party, corruption scandals are not an obstacle to political ambitions.

However, the problem of corruption precedes the ANC's rise to power. The apartheid regime was no stranger to corruption. The criminal economic networks the National Party developed in the shadows of its brutal oppression involved many deals that are still shrouded in secrecy. South Africa had already developed a culture of greed when it transitioned to democracy, and the ANC slipped into that culture instead of fighting it.

In present-day South Africa, it is the ANC who bears the most responsibility for implementing (or ignoring) accountability for corruption. The cost of state capture affects every facet of South African society, and the networks of power that have derailed the country have eroded public institutions to the point where some barely function. Prasa, the passenger rail agency responsible for offering safe and affordable commuting to overcome apartheid spatial planning, is just one entity that is facing major challenges in regaining its power while the looters and fixers who captured the agency remain unaccountable.

### THE LOW-HANGING FRUIT

In state-owned entities, corruption has become part of day-to-day life. This report investigates corruption, particularly at Prasa, SAA, Denel, and SARS. It identifies the people and corporations who we refer to as the low-hanging fruit: the easy targets whose corruption has been laid bare through court testimonies, investigations, and inquiry findings, yet who have not been held to account for their role in state capture. They are the people whom law enforcement agencies could investigate and prosecute without needing the specialised financial skills that the Hawks and the NPA have admitted to lacking. Holding them accountable would signal a disruption of state capture.

Prasa had been a site of looting for years before the Guptas emerged on the scene. In a parliamentary committee briefing in February 2021, the Special Investigating Unit (SIU) described the train service provider as the 'Armageddon of corruption'.<sup>3</sup>

Through its nefarious dealings with Vossloh España—a Spanish subsidiary of Germany's Vossloh AG—and Swifambo Rail Leasing, a front company working with Vossloh, billions in public funds were funnelled out of Prasa at the expense of commuters to line the pockets of Prasa's former chief executive officer (CEO), Tshepo Lucky Montana, and other executives and businessmen, who accumulated properties and other luxuries from the corrupt contracts. A network of state capture was ultimately established, with Vossloh racking up billions in benefits as Prasa buckled under resource constraints and mismanagement. In another contract between the passenger rail agency and Siyanga Technologies, our investigation shows how a similar pattern of looting emerged for the benefit of private actors who profited from the corrupt contract. Yet, to date, no one has been held to account. In fact, the



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current Prasa board has been accused of continuing to victimise whistle-blowers who have exposed ongoing corrupt contracts at the parastatal.

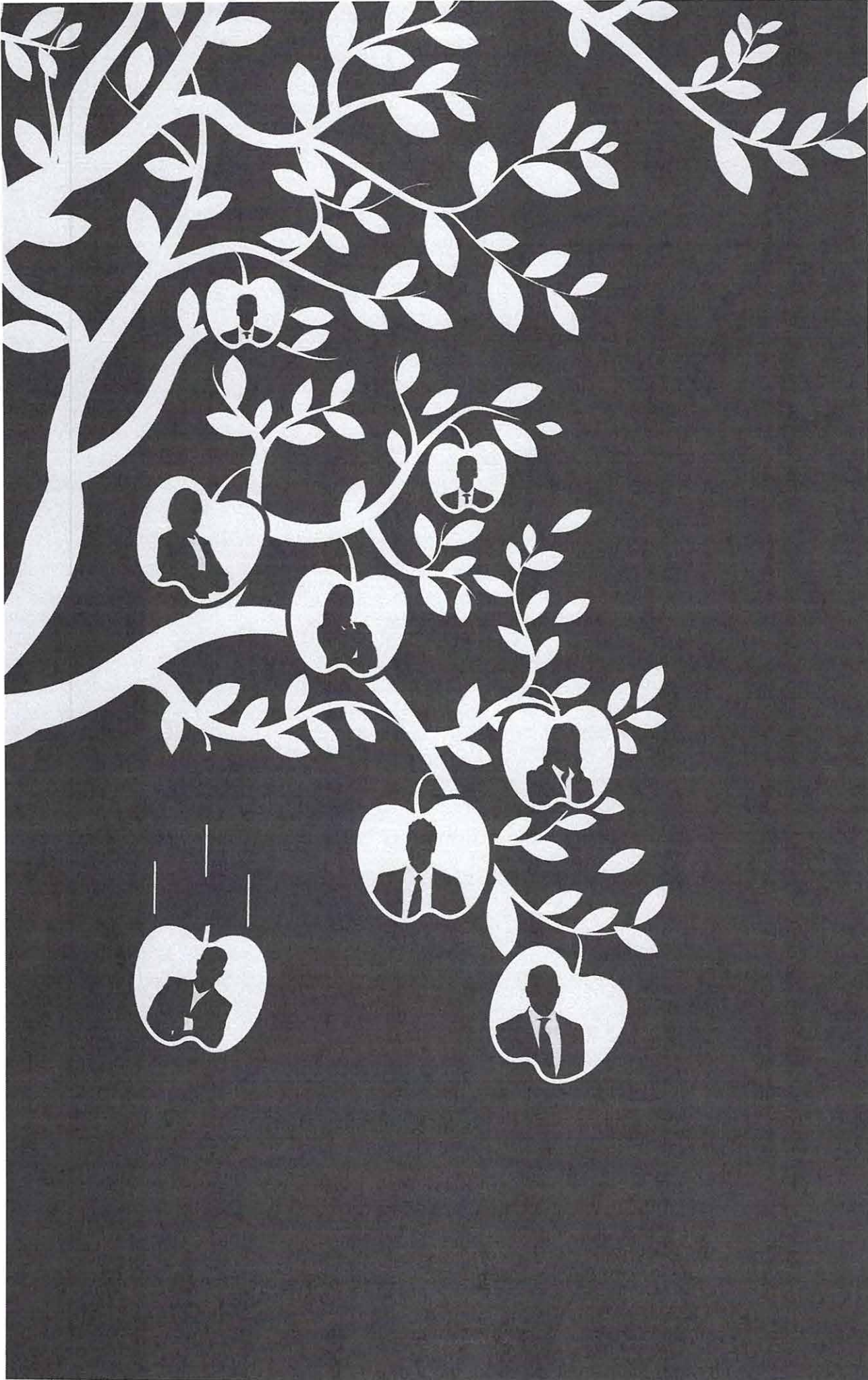
Denel and SAA find themselves in a precarious financial position similar to Prasa, relying on government bailouts to barely stay afloat. The collapse of Denel was orchestrated by senior government officials and private interests, with the board making nefarious changes to the company's management that left it vulnerable to corrupt activities. At SAA, looting under Board Chairperson Dudu Myeni's watch became the norm. Much has been published about the capture of SAA, but this Open Secrets investigation tracks the audit firms that helped crash the airline. None of these firms have faced accountability. Our investigation shows the evidence against them, how they are implicated, and what action can be taken to hold them to account.

Similarly, at SARS, former Commissioner Tom Moyane, Zuma, and US consulting giant Bain have faced few consequences for their actions. The Zondo Commission has definitively found that Moyane, Zuma, and Bain colluded to dismantle SARS. This conclusion confirms the earlier findings of the Nugent Commission of Inquiry into SARS, which had investigated governance and mismanagement at the revenue service. Following the state capture modus operandi, once Bain had infiltrated SARS, it began working towards cementing Moyane's role as commissioner and Moyane, in turn, began collapsing the institution by appointing inept officials to powerful positions and nurturing a patronage network. Our investigation primarily focuses on the consulting giant and how it captured the revenue service, affecting millions of taxpayers and the government's ability to collect tax to pay for basic services.

**This two-part report series primarily focuses on tracking those who are guilty of wrongdoing and holding them accountable.**

**By telling the stories of various SOEs and tracking corrupt officials in law enforcement, the reports demonstrate the problems in our institutions and the ways in which we can finally disrupt state capture. The criminal networks that led to state capture are known. We must take action to disrupt them.**

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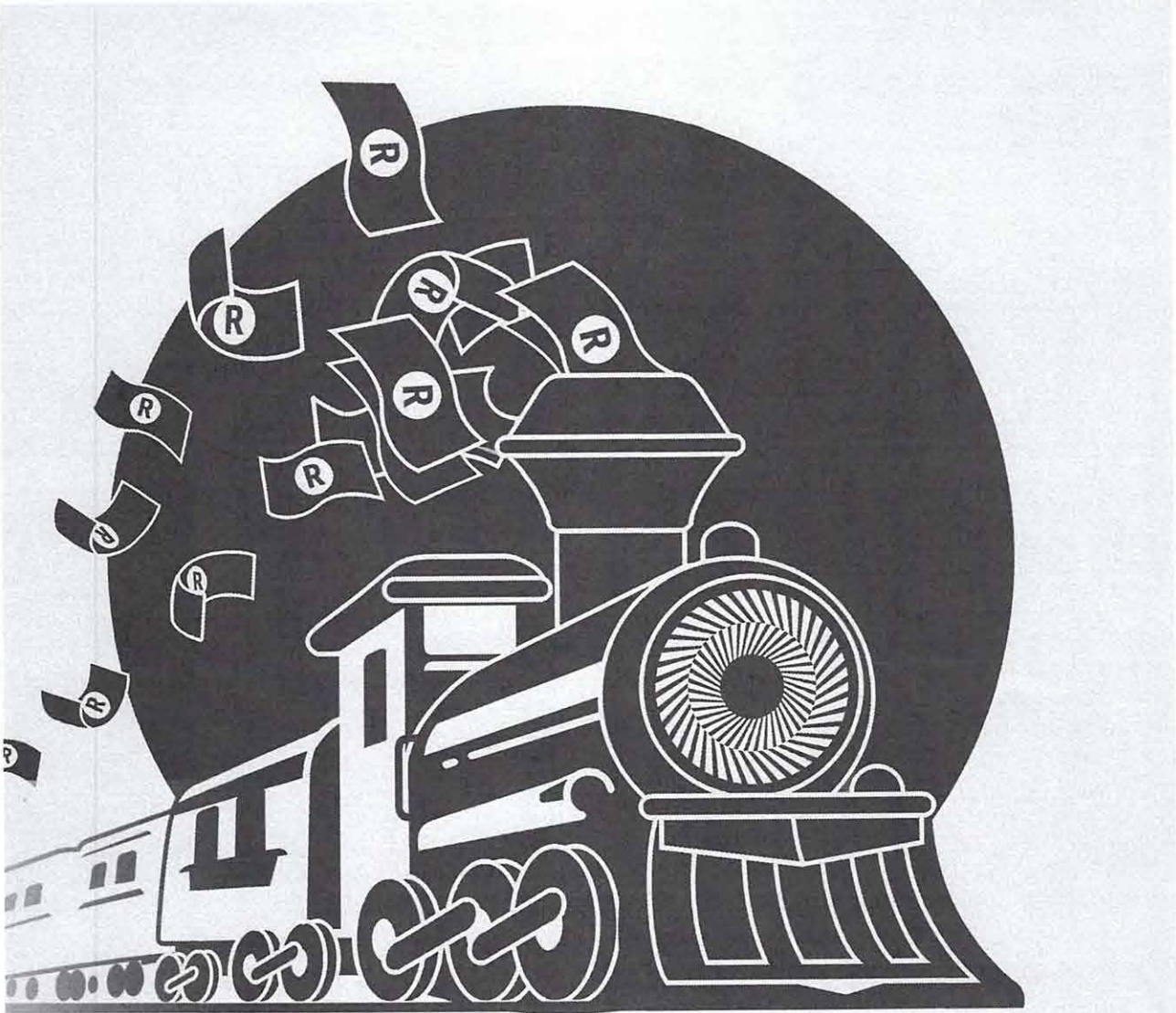
# LOW-HANGING FRUIT: CATCHING THE THIEVES

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It has been almost four years since President Cyril Ramaphosa appointed Shamila Batohi to lead the National Prosecuting Authority and established the Investigating Directorate at the NPA to investigate and prosecute state capture crimes exclusively. In that time, almost nothing has been done to prosecute corruption at Prasa, SAA, Denel, or SARS.

While high-profile corruption cases—such as those of Estina, Transnet, and Optimum Coal Mine documented in our previous report, *The Enablers*—may have caught the eye of law enforcement agencies, there are no signs that perpetrators of corruption at the four state entities and agencies investigated in this report have ever being brought to justice by the Hawks or the NPA. Within each of these entities, Open Secrets has found the looters, fixers, and politicians who committed wrongdoing but continue to walk free despite there being clear evidence implicating them in state capture. They are the low-hanging fruits—the easy targets for winnable cases and investigations—and yet they remain unaccountable.

Significantly, each of the four entities—Prasa, SAA, Denel, and SARS—has a strong impact on the lives of ordinary South Africans. The corruption that has led to their near-collapse has led to an erosion of public trust and a reckoning for democracy. These institutions should belong to the public and act in the interests of the public. But they were captured, and the social harm which comes from that affects the poor the most. We start with Prasa, then detail our investigations at SAA, followed by Denel, and finally SARS. In each case, we tell you about the people who helped capture South Africa and show you how they did it.



## PRASA: THE STATE-OWNED GRAVY TRAIN

The link between corruption and the lived experience of ordinary people is nowhere more obvious than in the case of passenger train services in South Africa. Rail services provided by Prasa have declined so dramatically over the past decade that the majority of working-class South Africans who once relied on its affordable services have had to turn to more expensive modes of public transport. Earlier this year, the National Household Travel Survey (NHTS) found

that a shocking 80 per cent of train users—about 550,000 people—have abandoned their use of rail since 2013.<sup>1</sup> Previously, urban passenger rail—especially in the Western Cape—was the most affordable mode of public transport in a country with deeply entrenched spatial inequality, otherwise known as spatial apartheid. This spatial inequality, rooted in over 100 years of racist urban land policies, still defines most urban areas in South Africa.<sup>2</sup>

Prasa's services are meant to help poor black people affordably access the opportunities available in commercially successful economic centres that were previously designated as 'whites only'. However, after years of systemic corruption and maladministration, the country's majority-black commuters have been left in the dust.

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**The parastatal, and the state organs tasked to run Prasa, have failed to reform and address entrenched systemic corruption and maladministration. In addition, law enforcement agencies have failed to investigate allegations of corruption swiftly and effectively at Prasa, despite damning evidence being available to move these cases forward.**

The failures of the parastatal, state organs, and law enforcement agencies have derailed Prasa and have negatively impacted the lives of people who rely on its services for their livelihoods.

Prasa's decline can be attributed to a network of politically connected actors, multinational corporations, and dodgy fixers who captured its procurement process from around 2009 to 2015, draining the coffers of South Africa's then newest parastatal. After providing a brief history and context for the capture of Prasa, this chapter will focus on two of the most egregious examples of corrupt Prasa contracts—the Swifambo and Siyangena contracts—and the network of actors surrounding them.

### **DERAILING THE COMMUTER'S DREAM**

In the 1990s, the public rail industry was placed under the responsibility of newly formed Transnet Freight Rail, Metrorail, and South African Rail Commuter Corporation (SARCC). They all had different roles, which included bulk commodities transport, asset management, and passenger rail service delivery. In the early 2000s, the Department of Transport recognised the need to consolidate and modernise South Africa's railway infrastructure, which lagged behind modern technology.<sup>3</sup>

A 2005 Department of Transport presentation to Parliament highlighted the 'backlog in investment in commuter rail over the last 30 years' which had left the government with old rolling stock and signalling infrastructure that was very costly to maintain. At the time of the presentation, commuter rail carried over 2.2 million passengers daily.<sup>4</sup> Earlier, in December 2004, the Cabinet had approved a move to restructure South Africa's passenger

rail under one entity reporting to the minister of transport. The government recognised the 'socio-economic role' of commuter trains in helping people access economic opportunities.

In 2008, the Passenger Rail Agency of South Africa—Prasa—was formed under an amendment to the Legal Succession to the South African Transport Services Act. It is wholly government-owned and legally mandated to provide safe and efficient transport for commuters across South Africa. This consolidation of passenger rail under Prasa occurred in the build-up to the much-anticipated 2010 FIFA World Cup in South Africa, when urban rail was set to play a major role in meeting the demand for efficient public transport between stadiums.<sup>5</sup>

Businessman and former anti-apartheid political prisoner, Sifiso Buthelezi, who had been on the board of one of Prasa's predecessors—SARCC—since 2006, was selected to lead the newly formed rail agency's first board, Tshepo Lucky Montana, a young civil servant who had previously worked at the department of public enterprises (DPE) and then the department of transport under Jeff Radebe, was appointed as Prasa's first Group Chief Executive Officer, having served as CEO of SARCC since 2006. With the government committing to a substantial increase in Prasa's funding for the modernisation of its rolling stock and ramshackle rail infrastructure, the stage was set for the transformation of passenger rail in South Africa.<sup>6</sup>

### **THE MODERNISATION PROJECT**

In the 2008–2009 Prasa annual report, Lucky Montana, the newly appointed CEO, said that with the consolidation of various rail and transport entities into Prasa and the major increase in budget, 'Prasa seeks to position itself as the largest provider of low cost, high-quality public transport services to the people of South Africa.'<sup>7</sup> Prasa identified two areas needing major investment and modernisation: rolling stock and outdated railway technology.

In order to succeed in the next phase of rail service delivery, the rail agency needed to contract with companies that could update its rolling stock and its technology. And it is through the corruption of these procurement processes that Prasa began its downward spiral into disarray.

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**The infamous tall-trains contract, which resulted in Prasa spending R2.7 billion on locomotives supplied by Swifambo Rail Leasing, exposed corruption at the rail agency. Despite costing the public coffers billions, the locomotives bought by Prasa were unusable: they were too tall for South Africa's railways. The deal involved a network of shady businessmen, fixers, Zuma-linked ANC 'fundraisers', and Prasa executives and board members.**

This network co-opted the rail agency's modernisation mission to fill its own pockets at the expense of commuters. This is how they did it.

**PROCUREMENT PROCESS: PRASA'S TRAIN WRECK FROM DAY ONE**

In 2009, Prasa had a major shortfall in locomotives for Shosholozza Meyl, its long-distance passenger rail service. In July that year, it published a request for expression of interest stating its desire to fill this shortfall by leasing locomotives.<sup>8</sup> Eight years later, in July 2017, the South Gauteng High Court set aside the Swifambo locomotive contract on the basis of corruption.<sup>9</sup> The Supreme Court of Appeal (SCA) upheld this judgement in November 2018.<sup>10</sup> In May 2019, the Constitutional Court dismissed Swifambo's application for leave to appeal the SCA's judgement. The evidence that emerged from these court cases revealed that Prasa's internal governance had become corrupt.

In response to the call for expression of interest published in 2009, a company called Siyaya Rail Solutions submitted an expression of interest to lease diesel-electric locomotives for Shosholozza Meyl to Prasa. This submission ambiguously introduced Siyaya as a company that developed rail technologies and solutions. Siyaya was formed in 2009—the same year as the publication of Prasa's request.<sup>11</sup> A businessman named Makhensa Mabunda was introduced as its director. Siyaya's submission indicated that it would work with Vossloh España, a Spanish subsidiary of the German railway multinational Vossloh AG.<sup>12</sup>

**SWIFAMBO: A TIMELINE**

- MAY 2011**  
Vossloh España makes recommendations for Prasa to develop its fleet.
- NOVEMBER 2011**  
Prasa publishes a request for proposals to lease 100 locomotives.
- JULY 2011**  
Daniel Mthimkhulu recommends that the Prasa board approves R5 billion to source 100 locomotives.
- FEBRUARY 2012**  
Auswell Mashaba acquires Mafori Finance Vryheid. The company partners with Vossloh España to bid for the Prasa contract.
- MARCH 2012**  
Mafori Finance Vryheid is renamed Swifambo Rail Leasing.
- JULY 2012**  
The Prasa board approves Swifambo's bid.
- MARCH 2013**  
Prasa and Swifambo conclude a contract for the purchase of 70 locomotives valued at R3.5 billion.
- JULY 2014**  
Popo Molefe becomes Prasa chairperson and a new board is appointed.
- JULY 2015**  
*Rapport* newspaper publishes an investigation revealing that the purchased Afro 4000 locomotives are too tall for South African railways.
- JULY 2015**  
Lucky Montana leaves Prasa.
- AUGUST 2015**  
The Public Protector's *Derailed* report is released.
- NOVEMBER 2015**  
The Prasa board launches a court action at the South Gauteng High Court for the Swifambo contract to be set aside.
- JULY 2015**  
The South Gauteng High Court orders the Swifambo contract to be set aside in its judgement.

### INVESTIGATING CORRUPTION

In late 2015, Prasa's new board—chaired by Popo Molefe—hired a law firm, Werksmans, to simultaneously launch massive, internal forensic investigations into hundreds of contracts as well as two major court cases to set aside the multibillion-rand Swifambo contract and the Siyangena contract, which will be discussed later in this chapter. This came after the Public Protector's report was released in August 2015, revealing widespread maladministration and corruption at Prasa.

In May 2011, Vossloh España inspected Prasa's fleet and prepared a status report, recommending what the rail agency needed for its short-, medium-, and long-term development.<sup>13</sup>

In July 2011, Daniel Mthimkhulu, the executive manager of engineering services at Prasa, sent a memorandum to the CEO, Lucky Montana, based on Vossloh's recommendations. He asserted that Prasa's locomotive fleet was outdated, which had an impact on the parastatal's ability to provide a reliable service, and recommended that Montana and the board approve the sourcing of around 100 locomotives at a cost of R5 billion.<sup>14</sup> Mthimkhulu was appointed to his position in 2010 based on a fraudulent CV, which stated that he was a qualified engineer. In 2015, it was revealed that Mthimkhulu—a close associate of Montana—had faked all his qualifications, including a doctorate from Technische Universität München.<sup>15</sup> He had also faked a job offer from Germany to justify a raise to a salary of R2.8 million per annum. In January 2022, the Johannesburg Specialised Crime Court found Mthimkhulu guilty on three counts of fraud. The ruling made Mthimkhulu the first person to be prosecuted for maladministration and corruption at Prasa, seven years after he had already left the parastatal.<sup>16</sup>

Shortly after Mthimkhulu's memo to Montana, in November 2011, Prasa published a request for proposals (RFP) for the leasing of around 100 locomotives. Popo Molefe's founding affidavit in the Swifambo court case later stated that Swifambo Rail Leasing and

Vossloh were 'not mentioned in the tender collection register or compulsory briefing.'<sup>17</sup> The 2017 Horwath Forensics report found that the 'RFP was collected by someone from S Group, and S Group Holdings (Pty) Ltd paid for the tender documents using the reference "Swifambo". [Popo] Molefe assumed they did as an agent for Swifambo.

The S-group is a network of companies, most of them linked to Mabunda, who was introduced as Siyaya's director in 2009. Mabunda is an associate of Montana, with both of them having worked under Jeff Radebe at the department of public enterprises in the early 2000s, before the former moved into the lucrative business of government contracts.<sup>18</sup> Shortly after Prasa published the RFP for the locomotive contract, a shelf company called Mafori Finance Vryheid was acquired by businessman Auswell Mashaba in February 2012. A few days later, in the same month, it submitted a bid for the Prasa locomotive contract, with Vossloh España as its partner. Mafori Finance Vryheid was renamed Swifambo Rail Leasing less than a month later, in March 2012.<sup>19</sup>

### TAILORED TO FIT

The specifications for the locomotive contract should have been drawn up by a cross-functional sourcing committee (CFSC) as required by Prasa's procurement policy. The CFSC is a committee of appointed specialists tasked with drawing up specifications for tenders. Instead, they were prepared by Daniel Mthimkhulu. Further, in its 2017 judgement setting the contract aside, the South Gauteng High Court stated, 'the specifications ought to have been drafted to promote the broadest possible competition'; however, 'Mthimkhulu adopted precisely the opposite approach': numerous specification items were included to ensure Swifambo scored more points in the evaluation phase of the procurement process. For example, the number of engine cylinders was specified at 12, even though the number of cylinders is irrelevant. Swifambo's bid—which was tailored to suit Vossloh's locomotives—included V12 engines containing 12 cylinders.<sup>20</sup>

Based on a partnership with locomotive manufacturer Vossloh España, Swifambo's bid was riddled with glaring irregularities. It did not meet the local content requirements because the Afro 4000 locomotives that Swifambo sought to supply were to be designed

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and manufactured in Spain. In addition, no tax clearance certificate for Vossloh España was submitted despite Swifambo's complete reliance on the Spanish manufacturer to fulfil the contract. Most revealingly, the bid contained no proof that Auswell Mashaba's one-month-old company had any experience in the rail industry.<sup>21</sup>

In fact, it emerged that Swifambo was set up as a front for Vossloh. The South Gauteng High Court concluded thus: 'Swifambo under the agreement with Vossloh was merely a token participant that received monetary compensation in exchange for the use of its B-BBEE [Broad-Based Black Economic Empowerment] rating,' as that was the only thing that prevented Vossloh from bidding on its own.<sup>22</sup> There was no transfer of skills because Swifambo was a shelf company with virtually no employees, supplies, or operations. The court declared: 'there is sufficient evidence... that proves on a balance of probabilities that the arrangement between Swifambo and Vossloh constituted fronting.'<sup>23</sup>

Though not included in the RFP, Swifambo, in its bid, included the option to purchase 88 locomotives at a price ranging from R3.6 billion to R4.3 billion. The Prasa board met and approved Swifambo's bid on 24 July 2012, with Board Chairperson Sfiso Buthelezi and Group CEO Lucky Montana present.<sup>24</sup>

Later, in his affidavit for the Prasa case to set aside the contract at the South Gauteng High Court, then Board Chairperson Popo Molefe stated: 'The decision of the board to award the tender to Swifambo in the absence of detailed and accurate information, and

taking into consideration the value of the tender was R3.5 billion, was astounding.'<sup>25</sup>

### COVERING THEIR TRACKS

Multiple Prasa employees raised concerns about Swifambo's bid both before and after the board approved the front company's application for the locomotive contract. Chief Financial Officer Fenton Gastin sent an email to Lucky Montana, on 21 July 2012—three days before the board met—in which he raised concerns about 'serious' findings in the supply chain management department that needed resolution. However, Montana refrained from pointing out any irregularities in the procurement process at the board meeting, according to Popo Molefe's affidavit, which referenced the meeting's minutes.<sup>26</sup>

'The inference is that Montana was determined to proceed with the process that would result in the appointment of Swifambo as the preferred bidder,' Molefe said, in his affidavit.<sup>27</sup>

Later that year, Non-executive Director Bridgette Gasa sent an email to Sfiso Buthelezi and Lucky Montana reporting that she had received 'intelligence information about Swifambo Rail Leasing' which raised major questions about Swifambo's ability to deliver on the contract. She stated that she could not disclose the information she had received via email because 'these platforms are not safe'. Gasa concluded her email by stating that with this information becoming known to Buthelezi and Montana, 'it would be an anomaly to proceed' with the contract.<sup>28</sup>



### MOLEFE'S REQUEST TO THE ANC TOP SIX

Popo Molefe tried to ask the ANC's top six officials for help to root out corruption at Prasa, but instead he and his board were shunned by the transport ministry.

JACOB  
ZUMA  
PRESIDENT



CYRIL  
RAMAPHOSA  
DEPUTY  
PRESIDENT



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**As with state capture at other SOEs, many effective members of staff at Prasa raised important concerns about dodgy contracts (such as the Swifambo locomotive contract); however, they were quickly sidelined and replaced with more compliant personnel. This report will later detail how whistle-blowers at Prasa were victimised and how they continue to be punished by the rail agency.**

Despite the concerns raised by Prasa staff, the agency and Swifambo Rail Leasing concluded a contract valued at R3.5 billion, on 25 March 2013, for the purchase of 70 locomotives. The contract inexplicably deviated from the request for proposals in that it provided for the purchase of locomotives when the RFP had required leasing. Swifambo's competitors in the tender process were not afforded the opportunity to bid for the outright sale of locomotives.<sup>29</sup> Further, it is only later that year, in June 2013, that Swifambo entered into a contract with Vossloh España.

### THE UNUSABLE TRAINS

In terms of meeting the demands of the locomotive contract, Swifambo's role was limited to minor administrative activities despite it being the sole contracted company.

Auswell Mashaba was essentially a well-connected fixer, who was there to buy exorbitantly expensive locomotives from Vossloh and pass them on to Prasa, pocketing millions of public funds in the process. This plan was going smoothly until 2015, when a *Rapport* investigation revealed an extraordinary detail: the keenly anticipated

Afro 4000 locomotives were too tall for South Africa's railways. This was confirmed by the Railway Safety Regular (RSR) which tested the Afro 4000s that had already been delivered in November 2015. The RSR found that the Afro 4000s were manufactured at a height of 4140mm above the rail, when the maximum height for South Africa's railways is 3965mm. This resulted in abrasion marks on the roofs of the locomotives, according to the RSR's report on the Afro 4000.<sup>30</sup> R2.7 billion had already been paid to Swifambo.<sup>31</sup>

This revelation came as the cracks in Prasa's modernisation were starting to show. Sifiso Buthelezi and his board had been replaced with Popo Molefe and a new board in late 2014 amid increasing signs that Prasa's management was unstable, while Lucky Montana jumped ship in 2015. Molefe immediately recognised that he had entered a deeply compromised organisation. These suspicions were justified when former Public Protector Thuli Madonsela released her *Derailed* report. The report revealed systemic corruption and maladministration at Prasa, with the procurement process consistently flouted, leading to billions in irregular expenditure under Montana and Buthelezi's watch. Molefe immediately launched internal investigations into major Prasa contracts, including the Swifambo locomotive contract. These investigations slowly untangled a dodgy web of politically connected actors and corporations who had co-opted Prasa's procurement process.<sup>32</sup>

### THE ANC LINKS

As the investigations into Swifambo continued and began to reveal major irregularities, Auswell Mashaba grew nervous and made an alarming revelation: **ANC fundraisers had pocketed millions illicitly through the locomotive contract.**

**BALEKA  
MBETE**  
NATIONAL  
CHAIRPERSON



**GWEDÉ  
MANTASHE**  
SECRETARY-  
GENERAL



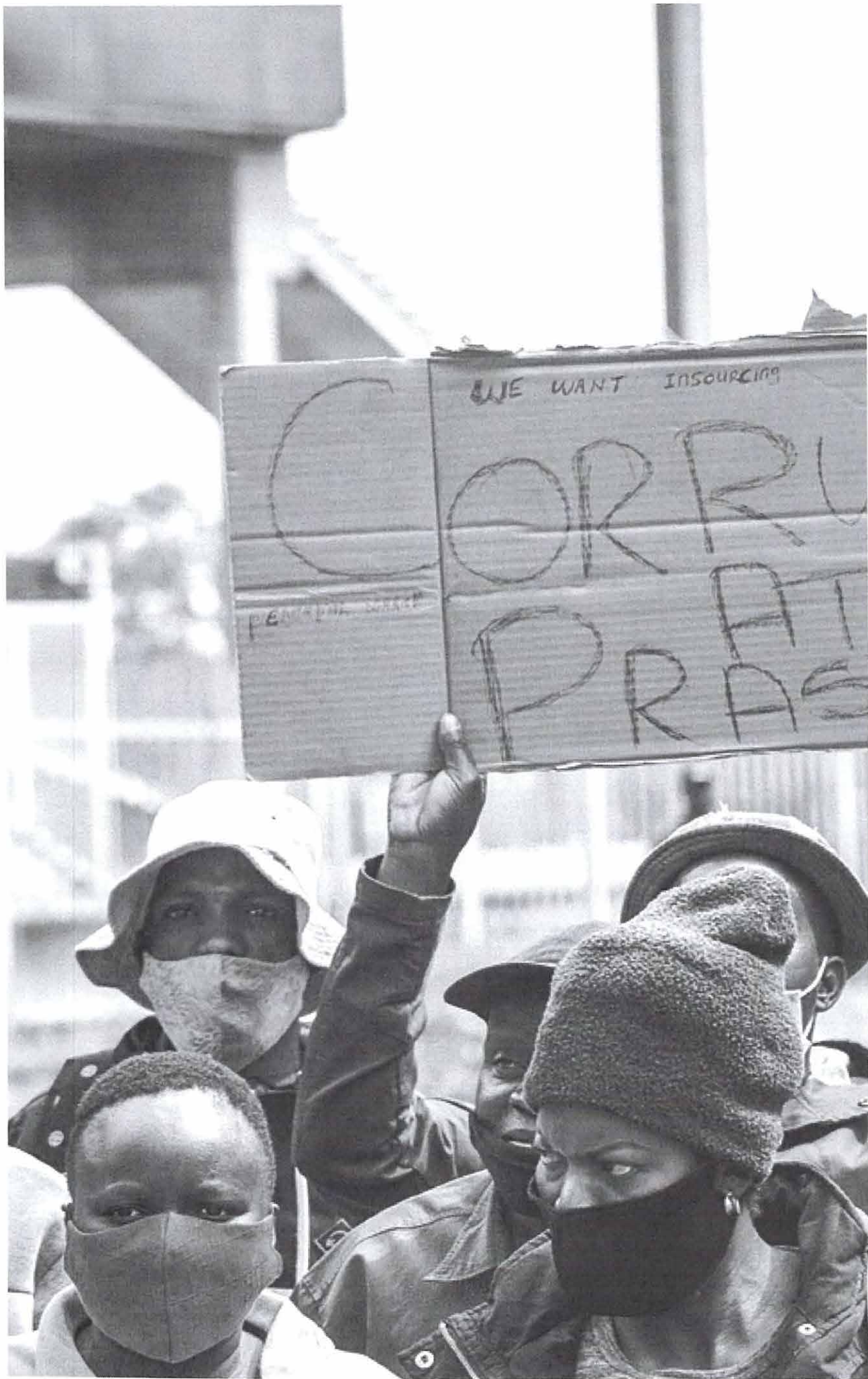
**JESSIE  
DUARTE**  
DEPUTY SECRETARY-  
GENERAL



**ZWELI  
MKHIZE**  
TREASURER-  
GENERAL

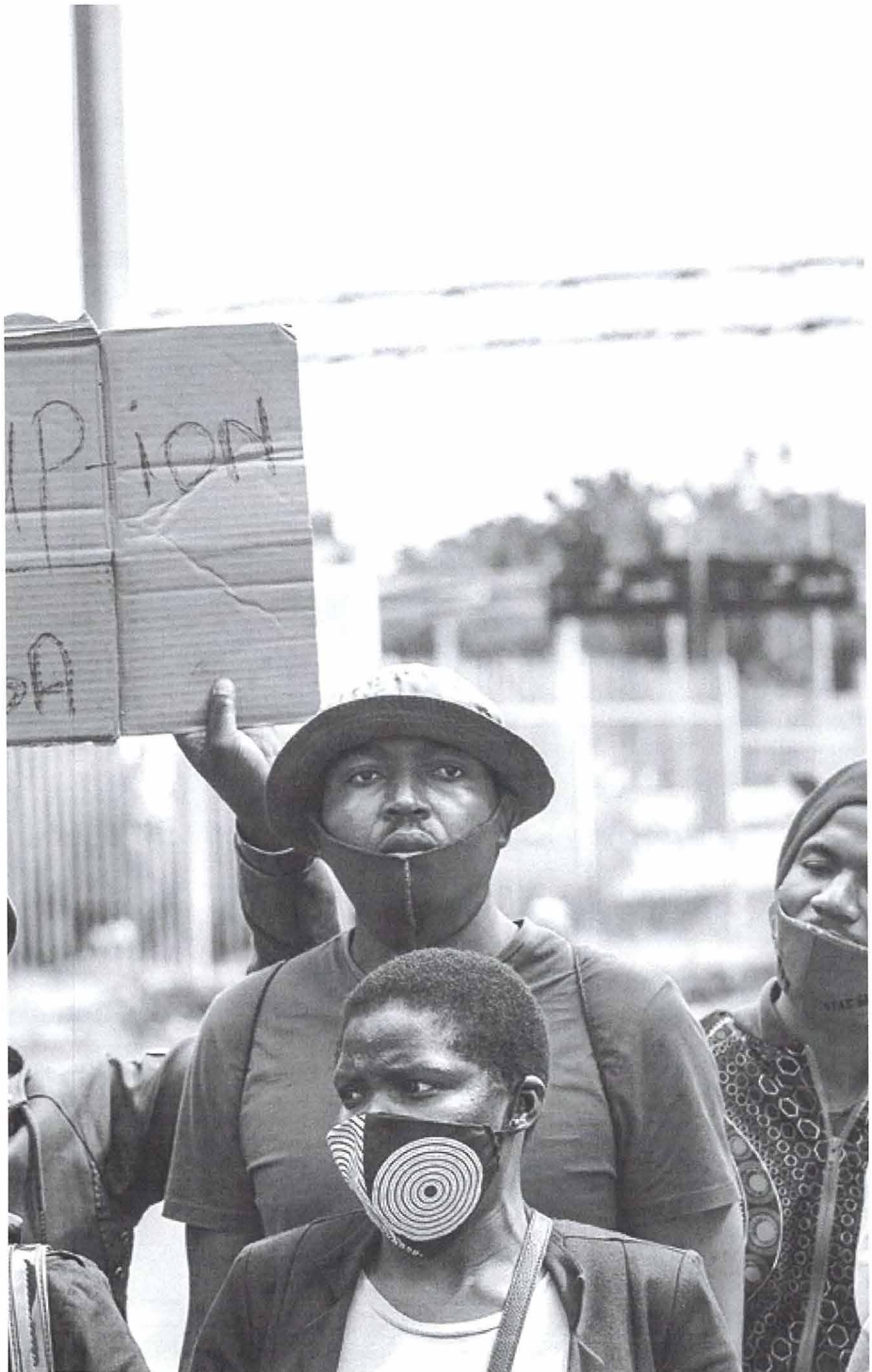


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In August 2015, Philemon Makgatlala Mamabolo, assistant manager of special operations at Prasa, was investigating the Swifambo contract when he got a call from Mashaba who wanted to meet and talk about the deal. At the meeting, Mashaba told Mamabolo that he was worried his involvement in the Swifambo contract would negatively affect his other businesses. He told Mamabolo that he thought people were investigating him and he wanted this to stop.<sup>33</sup> Mashaba then told Mamabolo that he had been approached by Makhensa Mabunda, who had convinced him to get involved with the tender to supply locomotives to Prasa. Mabunda allegedly told Mashaba he was friends with the rail agency's CEO, Lucky Montana, and could secure the contract.<sup>34</sup>

Later that month, Mashaba met with Prasa Chairperson Popo Molefe, when he again explained that he had been approached by Mabunda, who had requested him to set up several shelf companies to get involved in the locomotive contract. Mashaba told Molefe that Mabunda had put him in contact with Maria Gomes, an Angolan businesswoman with close ties to Jacob Zuma and the ANC. According to Mashaba, Gomes told him that she knew the Prasa locomotive contract was worth billions and she could not understand why 10 per cent of its value could not be paid to the ANC.<sup>35</sup> The revelation that millions in Prasa money from the locomotive contract were paid to mysterious ANC fundraisers was confirmed, in 2017, in a report on the flow of funds by Horwath Forensics (now Crowe Forensics) for the Hawks. The report revealed how hundreds of millions in Prasa money was illicitly funnelled through a network of companies and private accounts.<sup>36</sup>

Molefe was one of the few figures at Prasa who tried to address the legacy of state capture while he was board chairperson. In 2016, he called an urgent meeting with the ANC 'top six',<sup>37</sup> requesting their help to deal with the deeply entrenched legacy of corruption that continued to erode the ability of the parastatal to provide its vital public service. This was a key moment in the history of Prasa, as the SOE was finally led by a board which prioritised accountability and the needs of commuters. The board showed its goodwill by commissioning substantial internal investigations and taking corrupt contracts to court. Despite assurances of intervention by the ANC top brass, Molefe and

his board were increasingly isolated by the minister of transport until their term expired in 2017.<sup>38</sup> These instances of seeming complicity by the transport minister and other ANC leaders are what allowed key public institutions such as Prasa to be captured over the past decade.<sup>39</sup>

## FOLLOWING THE MONEY: WINE FARMS AND ITALIAN KITCHENS

The evidence that has accumulated on corruption at Prasa is detailed and important. It is one of the few state agencies at which money flows from corrupt contracts have been tracked and established through investigations, namely through the 2017 Horwath Forensics report on money flows commissioned by the Hawks in December 2015. While the Hawks commissioned the Horwath report, the police have shown little sign of acting on the evidence gathered in the report. An in-depth analysis of the Prasa police investigation will be released in Part Two of this report.

According to the Horwath analysis, Makhensa Mabunda instructed Auswell Mashaba to pay some of the money received from Prasa into specified accounts, without Mashaba knowing who the recipients were or why the payments were being made—other than that they were linked to the ANC. Mashaba confirmed he paid over R86 million from the Prasa locomotive contract to two ANC fundraisers.<sup>40</sup> These payments were made to Maria Gomes' company, Similex, and to Nkosi Sabelo Attorneys, owned by George Sabelo. Sabelo is linked to former President Jacob Zuma and his son, Duduzane, and is a director of Nkosi Sabelo Attorneys, which was implicated in bribery and corruption allegations at PetroSA in 2013.<sup>41</sup>

The payments to ANC 'fundraisers' are but a few of the many suspicious payments documented in the Horwath report. In total, Prasa paid Swifambo R2.3 billion excluding VAT for the locomotive contract, out of which Swifambo paid Vossloh España R1.8 billion. The remaining Prasa money—R451 million—was fraudulently funnelled via Swifambo into trusts, private accounts, property, and even a suspected helicopter.<sup>42</sup>

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**Mashaba channelled at least R103 million of the Prasa money from Swifambo into his own personal and business accounts, moving a whopping R85 million to the Mamoroko Trust, of which he and his wife, Joyce, are the sole beneficiaries.<sup>43</sup>**

Additionally, around R20 million was diverted to other companies owned by Mashaba, such as AM Consulting Engineers and AM Investment.<sup>44</sup> After receiving the Prasa money, entities under Mashaba's control spent just under R50 million on six properties. One of these properties is the luxury AM Lodge, which charges up to R33,000 a night for a stay in its luxury villa.

Swifambo went into voluntary liquidation in 2019 following successive court judgments against the company and its director. The liquidation documents submitted to the Zondo Commission by Tshwane Trust, Swifambo's liquidators, show that Mashaba spent R11 million on a helicopter from Hover Dynamics, R9 million on cars, and half a million rand on jewellery, among other extravagances.<sup>45</sup>

Mashaba pocketed millions for his role in fixing and setting up the Prasa locomotive contract. However, the mastermind of the

contract, Mabunda, got more than R150 million for himself for his role in setting up the deal. Swifambo channelled over R63 million either to Mabunda directly or to entities directly linked to him. These entities included his Siyaya companies, Ernerwaste Solutions, and Nsovo Holdings.<sup>46</sup>

Makhensa Mabunda is a central figure in the capture of Prasa, with much of the Prasa testimony at the Zondo Commission focusing on his extensive influence over the rail agency's procurement process through his Siyaya companies. In a 2018 response to questions in Parliament, Minister of Transport Blade Nzimande confirmed that Mabunda's Siyaya companies had gotten over R5 billion from multiple Prasa contracts over the past decade, with many of the companies flagged for corruption.<sup>47</sup> According to the Zondo Commission, Prasa essentially outsourced its engineering department to Siyaya companies, which profited from overpriced tenders for the supply of fuel on confinement, which is when a competitive procurement process is bypassed.<sup>48</sup>

Mabunda and Montana are 'known associates,' according to Horwath.<sup>49</sup> They both worked for the department of public enterprises, in the early 2000s, under Jeff Radebe. Montana was the parliamentary liaison director, while Mabunda was the financial

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performance director, according to the department's 2002/2003 annual report.<sup>50</sup> There are further sources that link Montana and Mabunda together. Popo Molefe, in his affidavit submitted to the Zondo Commission, also stated that both Mabunda and Montana worked together at the department of transport in 2004 under then transport Minister Jeff Radebe. Molefe alleges that soon after Mabunda left the department of transport to pursue private interests in 2005, he received a tender from a taxi recapitalisation programme headed by Montana.<sup>51</sup>

**The Swifambo liquidation documents revealed that R5.3 million of the Prasa locomotive contract was diverted to a company called Sterlings Living, which specialises in state-of-the-art Italian kitchens.<sup>52</sup> This was for Mabunda's luxury home on the Waterfall Equestrian Estate, north of Johannesburg, which is valued at around R70 million on the market.<sup>53</sup>**

The names of two small auditing firms come up again and again in the investigations into Mashaba and Mabunda's network of companies which received Prasa money. These are Van Wyk Auditors and WKH Landgrebe. Swifambo Holdings, the holding company for Swifambo Rail Leasing, used Van Wyk Auditors, while Swifambo Rail Leasing uses WKH Landgrebe. According to the Horwath report, Swifambo Rail Leasing paid WKH Landgrebe a whopping R27 million, which the investigators deemed 'excessive' for audit fees.<sup>54</sup> WKH Landgrebe used a large chunk of this money to buy Mashaba a controlling stake in a company called Okapi Farming for R24 million in 2013. Okapi owns wine farms in the Western Cape, most notably the luxury Orange Grove Wine and Olive Farm.<sup>55</sup>

It was not only people outside Prasa that profited from the locomotive contract: Horwath's analysis of Swifambo's bank account revealed that shipping and logistics company Sebenza Forwarding and Shipping received R99 million from Swifambo. Previous directors of Sebenza include Sfiso Buthelezi, the board chairperson who approved Swifambo's bid. Buthelezi resigned from Sebenza in 2012; however, he was still an active director

of Makana Investment Corporation—which has a 55 per cent stake in Sebenza—for the duration of the locomotive contract. Horwath stated that Sebenza is 'Prasa's preferred forwarding and clearing service provider' for imported rail infrastructure and that Buthelezi did not disclose interest in the company.<sup>56</sup> Subsequent investigations into the actors involved in the locomotive contract revealed that Sebenza, Vossloh, and Mabunda had a history of dodgy contracts at Prasa.

## A NETWORK OF LOOTERS

Sebenza won at least two other Prasa contracts before the Afro 4000 locomotive contract, according to a 2017 *News24* investigation.<sup>57</sup> Sebenza allegedly invoiced Prasa for around R42 million for the import of steel tracks from European manufacturer Tata Steel France in 2013. Additionally, Vossloh Kiepe—Vossloh España's sister company—was paid R13 million by Prasa, in 2011, for air-conditioning units.<sup>58</sup> This contract was heavily criticised, in 2013, by the Democratic Alliance, who questioned why Prasa was buying fully imported air-conditioning units at double the price of local ones.<sup>59</sup>

A 2016 Werksmans investigation into a number of Prasa contracts revealed that Prasa had a pre-existing relationship with Vossloh. Mabunda's company, Siyaya, introduced Vossloh as a potential partner to Prasa in 2009, the year Prasa was launched.<sup>60</sup> This represented the introduction between Vossloh and Mabunda, two actors who pocketed billions in irregular tenders from the newly formed SOE. The Werksmans report states that on 6 June 2011, a request was submitted to confine—which meant bypassing an open and competitive procurement process—the appointment of a service provider for the installation of air-conditioning systems in Shosholoza coaches. The urgent appointment was motivated by Daniel Mthimkhulu, the same fake PhD who was instrumental in bypassing the procurement process so that Swifambo was awarded the locomotive tender. Chief Procurement Officer Chris Mbatha approved this recommendation, which was followed by CEO Lucky Montana approving it on 27 June.<sup>61</sup> The Werksmans report states, 'This appears to be the genesis of the relationship between Prasa and the Vossloh group, under Mthimkhulu's control, with Mbatha and Montana signing off the necessary approvals.'<sup>62</sup>

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The formal contract between Prasa and Vossloh Kiepe was signed on 29 June 2012 and had a value of R85.8 million.<sup>63</sup> The News24 investigation found the contract irregular and overpriced and noted that a number of the same entities involved in the air-conditioning contract, including the Buthelezi-linked Sebenza Forwarding and Shipping, were paid to transport the air-conditioning units for Vossloh.<sup>64</sup>

Vossloh also had a direct relationship with middleman Makhensa Mabunda. In the Horwath report, the investigators reference a report titled 'Provisional report on the Passenger Rail Agency of South Africa matter' from the financial surveillance department of the Reserve Bank dated 15 February 2017.<sup>65</sup> This report documented 10 payments from Vossloh subsidiaries to Mabunda's companies. The first was a series of six payments made by Vossloh to Siyaya Rail Infrastructure Solutions and Technology, between December 2011 and September 2013, totalling R13.7 million and labelled as 'proceeds for management consulting'. The timing and source of these payments suggest that it was for 'setting up' the irregular air-conditioning contract.<sup>66</sup> The next series of payments was made by Vossloh España to Mabunda's S-Investments, between February 2014 and September 2015, totalling R75.3 million and with the same description.<sup>67</sup> The payments by Vossloh España were first reported on in 2018, and after initially denying the payments, Vossloh AG, the holding company, confirmed that Mabunda was an 'independent sales representative' who had helped bring Vossloh together with Swifambo. They alleged that he was paid commission 'based on market rates'.<sup>68</sup> However, according to the Horwath report, both Mabunda and Vossloh deposited Swifambo's set up fees in 2011–2013 before the front company bid for the contract.<sup>69</sup> This puts into question Vossloh's defence.

**These payments to Mabunda were the first indications of possible kickbacks in relation to the locomotive contract; however, despite this information being reported on for a number of years in the public domain, no German or South African authorities have tried to act against Vossloh.**

This network of multinational corporations, corrupted executives, dodgy middlemen, and board members pocketed billions from corrupt contracts. However, as with most cases of corruption at SOEs, it was the people of South Africa who suffered the consequences.

### SHOSHOLZA MEYL DERAILED

Following the revelations that the Swifambo-supplied locomotives were too tall and that the contract was plagued with serious irregularities, Prasa's new board under Popo Molefe successfully applied to have the contract set aside in the South Gauteng High Court. However, Prasa only managed to recoup R65 million from Swifambo, which went into liquidation in 2018.<sup>70</sup>

Mainline Passenger Services, which oversees Shosholoza Meyl, reported a staggering 90 per cent decline in passenger numbers, from 3.8 million in 2008/2009 to 387,500 in 2018/2019.<sup>71</sup> According to Director General of Transport Alec Moemi, this dramatic decline in passenger numbers and the near-collapse of South Africa's long-distance railway service was due to a major shortfall in locomotives. This had forced Prasa to lease old and unreliable locomotives at exorbitant prices. Unlike urban passenger rail, most long-distance lines are single lines, so if one locomotive breaks down others cannot pass.<sup>72</sup>

This deterioration of services is reflected in recurring stories in the local media about Shosholoza Meyl locomotives breaking down for days in remote areas. In one such reported instance, in January 2020, passengers travelling from the Northern Cape to Cape Town were stranded for three days, allegedly with little food or water while toilets overflowed.<sup>73</sup>

Despite the mountain of evidence against those implicated in corruption at Prasa, not a single one of them has been prosecuted. And the Swifambo saga is not the only nightmare to haunt the rail agency.

### SIYANGENA: THE NEVER-ENDING TECHNOLOGY CONTRACT

The Swifambo locomotive contract—or tall-trains contract—is the most well-known case of recent corruption at Prasa. However, the Siyangena Technologies case, which involved a series of corrupt contracts for the modernisation of Prasa's communication and security systems in the period from 2009 to 2014,

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is arguably the most egregious example of large-scale corruption at the SOE.

The Siyangena case has its origins in 2007, when Prasa was still the South African Rail Commuter Corporation. SARCC had identified a need to upgrade its communication system, which shared information on the movement and times of trains, and for this upgrade to be integrated into the existing rail software. In the specification for the tender, SARCC also set out requirements for additional equipment to modernise certain stations to meet FIFA's requirements for the World Cup in 2010. The additional equipment included CCTV, automatic gate control, and fire protection systems. Siyangena was sub-contracted to service certain upgrades.

After this initial work, the relatively unknown security company would proceed to benefit from countless contract extensions with little to no procurement process for the installation of unnecessary security systems across hundreds of Prasa's stations under the watch of CEO Lucky Montana. The irregular series of contracts was first documented in the Public Protector's *Derailed* report on Prasa, which was released in August 2015. In 2015, Prasa Chairperson Popo Molefe launched a court case against Siyangena in response to the Public Protector's findings and subsequent internal investigations.

### **In 2020, the North Gauteng High Court set aside the Siyangena security systems contracts on grounds of corruption.<sup>74</sup>**

The initial 2007 specification applied to 'any organisation or contractor intending to undertake works on SARCC Metrorail stations' and did not require 'equipment of any specific brand'.<sup>75</sup> All stations at the time were controlled by rotating turnstiles, which were a much cheaper option than automated gates.<sup>76</sup> However, SARCC wanted to install automated gates and fare collection at select new stations for the 2010 FIFA World Cup. The automated gates were not considered a priority and were only to be selectively installed at specific stations.<sup>77</sup>

The first set of upgrades was installed by Siemens, to satisfy FIFA's requirements for the World Cup. Siemens was set to continue with the work until soccer boss Mario Ferreira and his company, Siyangena Technologies,

entered the picture.<sup>78</sup> Ferreira was the owner of Cape Town-based Vasco da Gama soccer club, which he renamed Stellenbosch FC in 2016 and sold to South African billionaire Johan Rupert in 2017.<sup>79</sup>

Ferreira had a history at Siemens. An affidavit by a businessman who worked with Ferreira in the 1990s—sourced from Paul O'Sullivan's *Forensics for Justice*—alleges that Ferreira was looking for 'East African agents' who would be rewarded handsomely for helping Siemens secure lucrative government contracts in Kenya and Tanzania in the late 1990s and early 2000s. This businessman alleged that Ferreira set up a front company to orchestrate fake contracts for the Bank of Tanzania 'to enable payments made by Siemens to persons' under the fake contracts. Ferreira left Siemens in around 2004.<sup>80</sup>

In January 2010, Ferreira approached Prasa and met with consultants on the integrated security systems project. Following the meeting, his company, Siyangena Technologies, submitted an unsolicited proposal for the supply and installation of access gates.<sup>81</sup>

Similar to how Prasa's procurement process was bypassed in the Swifambo locomotive case, the initial SARCC specification for the security systems project was suddenly altered. There was an increase in the scope of work, and references to specific brands used by Siyangena were added. This is an age-old trick in procurement corruption, which was also used to great effect by fixers and corporations in the 1999 Arms Deal case. In 2010, Prasa CEO Lucky Montana approved the appointment of Siyangena to expand the costly station security upgrades to more stations across South Africa. However, no actual contract was signed, and there was no budget for the contracted work.<sup>82</sup> This became the blueprint for continuous contract extensions, which would end up ballooning the price of the contracts to more than R4.5 billion over the period from 2009 to 2014.

Ferreira and Montana met privately in February 2010, according to evidence submitted by Siyangena in the civil court case that set aside the contract. No party in the case disputed this evidence. Though there is no official Prasa record of the meeting, the North Gauteng High Court, in its later judgement setting aside the Siyangena contract, noted: 'In the course of those discussions, the respondent, Siyangena, solicited a commitment to be given further work.'<sup>83</sup>

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## THE COVER-UP

Concerns were raised by Prasa employees about the lack of a procurement process for contracting Siyangena as a service provider. A Prasa executive, Piet Sebola, raised issues about the absence of a budget, the high costs, and the lack of necessary approvals from committees and persons required to evaluate bids. When requested by Montana to approve Siyangena's recommendation report, Khulu Mchuba, the general manager of supply chain management, refused and instead raised concerns about Montana's authority, the requirement of board approval, and the absence of a budget.<sup>84</sup> As the North Gauteng High Court noted: "The [motivation] report was amended to substitute Mr Montana for Mr Mchuba as a signatory, and the reference to the request from Mr Montana was removed. In this way dissenting voices were silenced."<sup>85</sup>

Despite the absence of a budget, or a prior assessment or procurement process, as well as concerns about the suitability of the access gates, Montana directed Chief Procurement Officer Luyando Gantsho to contract with Siyangena. However, in February 2010, Gantsho reported that when compared with access gates installed in other parts of the world, Siyangena's proposed gates were 'not suitable', as they were 'too... high end in terms of our current operations' and 'fully imported [from Yugoslavia] and very expensive'.<sup>86</sup> Gantsho argued that the gates were available from local suppliers for less and further that there was no budget for the proposed work by Siyangena.<sup>87</sup> However, overriding Gantsho's concerns, Montana directed him to approach Siyangena and get the gates installed for more World Cup stations.<sup>88</sup>

The contents of internal documents were manipulated to justify the directive, to conceal the prior commitments to Siyangena, and to provide a basis for further expanding on the scope of the work to include CCTV systems. The wording in Gantsho's first report, which raised concerns about Siyangena's gates, was suspiciously changed, with words such as 'not suitable' and 'very expensive' removed and replaced with positive sentiments, while reasons for excluding the other suppliers were inserted. Montana used the sense of urgency around preparations for the FIFA World Cup as a pretext to exclude other suppliers.<sup>89</sup>

In Siyangena's final quote, the company expanded on the scope of the work, reduced the actual functionality and quality of the originally proposed security upgrades, and increased the price of the quote from R62 million to R90 million. The reduction in functionality and quality meant that the automated access gates that were installed—at Prasa's expense—could not be integrated with the rail agency's existing access systems. Thus, they had to be operated manually, just the same as the previous gates had been, effectively rendering the upgrade useless. Yet the cost of the work rose to R225 million. The final change in the functionality of the gates system meant that the gates that Siyangena installed did not operate on Prasa's existing station access systems, making them effectively useless.<sup>90</sup>

**The North Gauteng High Court judgement found that 'the gates did not function as an automated fare collection system', as promised by Montana and Siyangena, and they 'served no purpose and constituted a safety hazard'.<sup>91</sup>**

## NEVER-ENDING EXTENSIONS

The modernisation of Prasa's security and communication systems was only planned for the FIFA World Cup stations, which were close to stadiums, urban centres, and access points. There was no plan or budget for further expansion of the systems to include more stations.<sup>92</sup> However, Prasa proceeded with the expansion of the project, despite there being no request for proposals, needs and specifications assessment, or input from a cross-functional sourcing committee.

Mario Ferreira sent an email to Luyando Gantsho, in which he submitted an unsolicited proposal for designing two stations and a bill of quantities. He requested a meeting to 'discuss if we could extend the current contract to include these stations'.<sup>93</sup> The North Gauteng High Court found that by then there was 'a perception that there was no need to comply with the procurement policy in regard to an extension of the work, and the appointment of the respondent was established. Mr Gantsho instead managed the procurement process'.<sup>94</sup>

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The failure to consider the nature and extent of the work, along with the absence of any procurement process, resulted in confusion that saw different bid requirements being presented to potential bidders. Even the documents provided to the bidders 'selectively included and manipulated the contents of the broader, more general SARCC specification to the exclusive benefit of the respondent [Siyangena]',<sup>95</sup> according to the North Gauteng High Court in its judgement.<sup>96</sup>

**There was a clear pattern of manipulation and obscuration of the procurement process in order to approve these contracts: internal documents and recommendation reports were altered, while committees and individuals who questioned the validity of the contracts were simply bypassed.**

The bids were evaluated 'on the basis of a points system that was unlawful. ... mandatory requirements were unfairly applied, and points were misallocated' to favour Siyangena.<sup>97</sup> The Bid Evaluation Committee recommended Siyangena's bid, despite it being over 60 per cent more expensive than the competing bid. In early 2011, the tender was put before the Corporate Tender and Procurement Committee (CTPC), which is tasked with considering the procedure followed by other committees, departments, and persons involved in the procurement process and with considering substance and value for money. The CTPC rejected the Bid Evaluation Committee's recommendation. It raised concerns about the absence of a list of stations and the high cost, period of completion, and budget, as well as about possible contraventions of the 1999 Public Finance Management Act (PFMA). There was again a concerted effort to manipulate documents to conceal the CTPC's decision and the irregularities it had flagged. The CTPC meeting minutes were altered to reflect that the committee 'recommended a clean-up of the following matters' but '[c]oncurred with the recommendation to award business to ...[Siyangena] in an amount of [R1.1 bn]'.<sup>98</sup>

Instead of responding to the concerns raised by the CTPC, Lucky Montana and Chris Mbatha simply bypassed the

committee and placed the tender before the Finance, Capital Investment, and Procurement Committee (FCIP) despite it containing inaccurate and misleading information. The FCIP was established to assist the board in procurement decisions, by considering previous recommendations, value for money, and Prasa's budget. The report submitted to the FCIP increased the cost of the access control project to R1.95 billion,<sup>99</sup> based on the argument that the expansion of the project would be a sound investment because the project would improve 'control and revenue protection in the rail system' and decrease fare evasion.<sup>100</sup> Several other details were deleted or manipulated in the documents presented to the FCIP.<sup>101</sup> The FCIP recommended the appointment of Siyangena at a cost of R1.95 billion.<sup>102</sup>

However, when the board met to consider the bid, it approved a budget of only R317 million for the project, as part of Prasa's modernisation mission, with Siyangena as the preferred bidder. There was no mention of the R1.7 billion funding shortfall. After this, Siyangena was informed that it was the 'preferred bidder', but no price was included. The resolution signed a month later inserted the amount of R1.95 billion. The contract was signed by Montana in March 2011, despite him not having the authority to do so, as he was only authorised to sign contracts under R100 million.<sup>103</sup> There was no explanation provided for the massive difference in amount from the initial quote or for the lack of a budget.

With each extension, Siyangena's bid price for the equipment and station upgrades increased dramatically from the cost of previous work: the average cost per station in the first upgrades was R2.5 million, which increased to R12.5 million in the next extension. However, in the next phase of security upgrades in 2011, the average cost per station ballooned to an outrageous R31 million—nearly ten times more than the cost of the first upgrades.<sup>104</sup> Further, the lack of a procurement process and oversight meant that Siyangena could invoice claims for huge payments without providing supporting documents because of the lack of internal checks and controls.

By now it was clear that public procurement requirements were not being applied to Siyangena, so Ferreira again sent an unsolicited bid to Prasa, in 2013, for the expansion

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of the existing security and access systems to additional stations at a cost of R2.53 billion—this was referred to as Phase 2 of the contract.<sup>105</sup> Prasa proceeded to initiate a procurement process that again blatantly favoured Siyangena, essentially using Ferreira's unsolicited bid—which included specific brands of equipment used by Siyangena—as the request for proposals. This meant that Siyangena scored 87 per cent while its closest competitor got a measly 25 per cent in the evaluation. Montana signed the R2.53 billion agreement on 1 July 2014, adding an additional maintenance allowance of R900 million in an addendum a month later.<sup>106</sup>

The capture of Prasa's procurement process required key allies throughout the hierarchy of the organisation.

**Montana used his influence to make sure that key decision-makers for major contracts were always aligned to his agenda. In this way, the actual needs of the public entity were sidelined in favour of the interests of an elite who only cared for profit, rather than the SOE's essential mandate of transporting over 2 million South Africans daily.**

### PROPERTY MOGUL OR CORRUPT CEO?

Like it had done with the Swifambo locomotive contract, in February 2016, Prasa's new board under Popo Molefe launched an application to set aside the Siyangena security systems contract. The board also hired the legal firm of Werksmans to conduct extensive investigations into the contract, the findings of which were used in court proceedings. During their investigations, Werksmans discovered several red flags in the contracting process that pointed to major corruption at Prasa.<sup>107</sup>

The investigators found that in 2011, Luyando Gantsho—the chief procurement officer who 'managed' the procurement process for Siyangena—had approached a real-estate agent for the purchase of a R3 million property in Durban. When it came to payment, Gantsho told the estate agent that he was not the purchaser of the property, but that a

### SECURITY DEGRADES. COSTS BALLOON

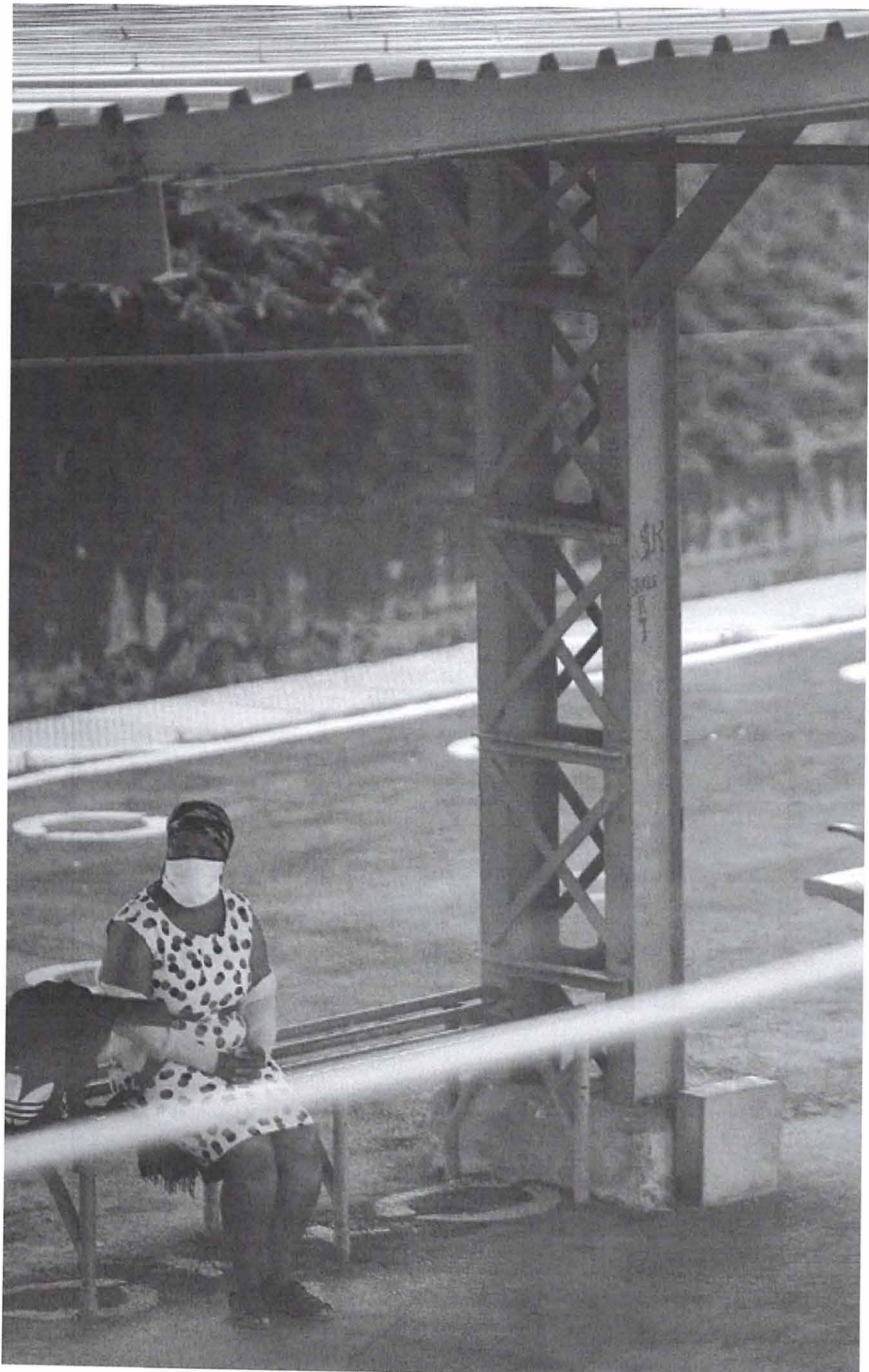
In 2011, the average cost per station ballooned to an outrageous R31 million—nearly ten times more than the cost of the first upgrades.



man named Jan Adriaan van der Walt would arrange payment.<sup>108</sup> Soon after this, van der Walt contacted the agent, informing him that the purchaser was Grand Tower Trade and Invest. Mario Ferreira has close links to van der Walt, who acts as an attorney for the soccer-boss regularly, according to Werksmans.<sup>109</sup> Gantsho—who was initially opposed to the Siyangena contract—admitted to the investigators that in 2011, he had had a discussion with Siyangena employees, who told him that the company would purchase the unit and hold it for him until he could afford it.<sup>110</sup>

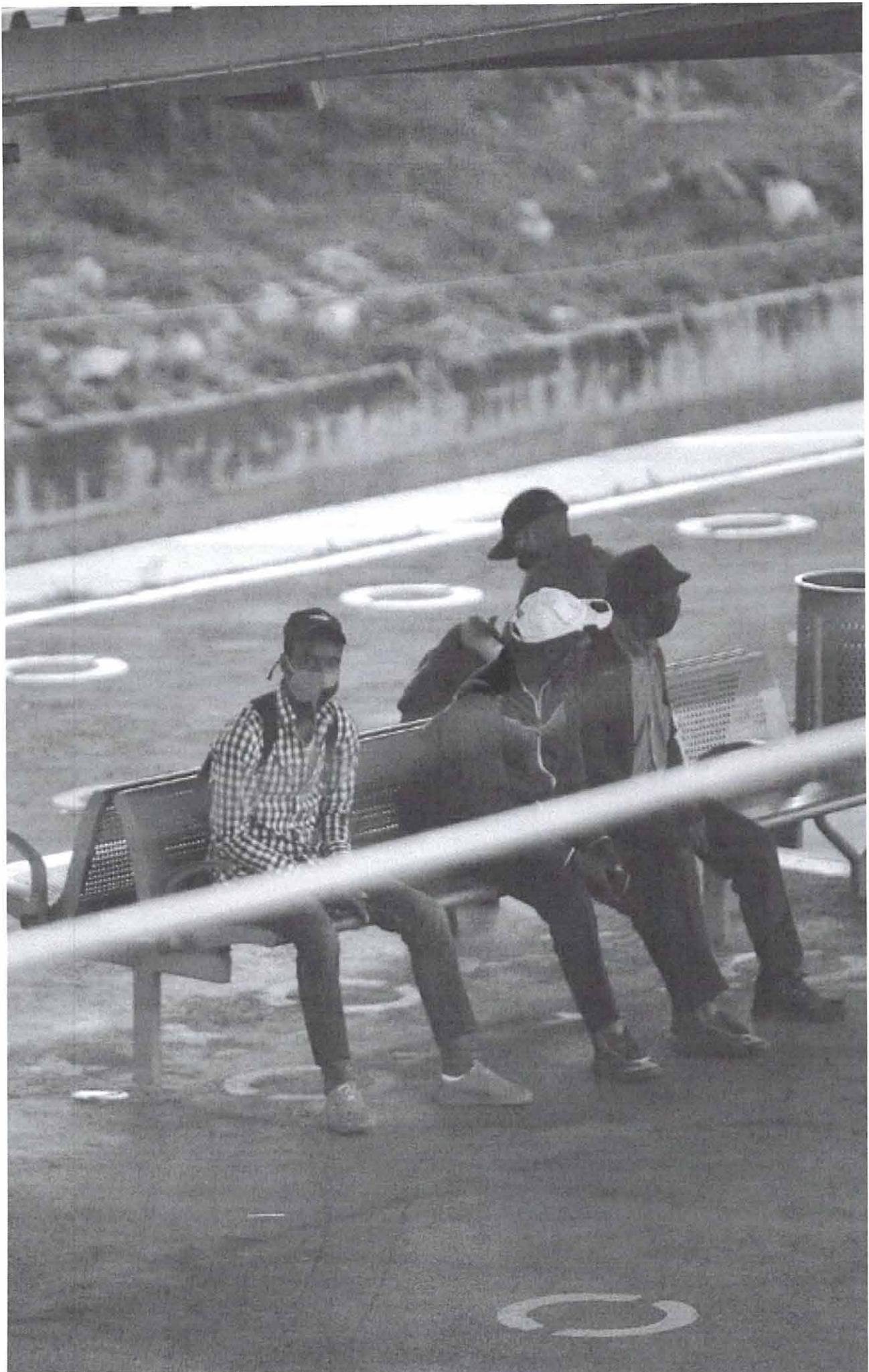
The Werksmans' report also revealed four suspicious property transactions worth R45 million involving Lucky Montana and entities linked to Siyangena. First, in 2013, Montana sold his property in Parkwood, Johannesburg, for R6.8 million, which was double the market value.<sup>111</sup> The property was bought by a company called Precise Trade and Invest. This company's sole director is van der Walt, the lawyer linked to Ferreira and involved in the Gantsho property transaction.<sup>112</sup> At this time, Prasa was

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'adjudicating' the R2.5 billion security systems tender which would be awarded to Siyangena. Bank statements filed at the Zondo Commission indicate that the money used to buy Montana's house came from TMM Holdings, Siyangena's parent company.<sup>113</sup>

The second transaction involved a property in Waterkloof, Pretoria, and took place in September 2014. Montana named Precise Trade and Invest as the purchaser, and the company paid the R3.5 million deposit for the property. The remaining balance of R7.5 million was paid by van der Walt—the real-estate agent referred to him as Montana's lawyer—with money that again came from TMM Holdings.<sup>114</sup> Despite the property having been bought in the name of Precise Trade and Invest, it was Montana who picked up the keys and indicated that he was moving in, according to the real-estate agent.<sup>115</sup>

The next property transaction came just a month later in October 2014, when the Prasa CEO met a Johannesburg based real estate agent. Montana submitted a bid for a

property in Sandhurst for R13.9 million.<sup>116</sup> Soon after Precise deposited R5 million into the transfer attorney's account. Written messages between van der Walt and the real-estate agent make references to the 'TL Montana transaction'. The property was again registered in the name of Precise Trade and Invest.

In March 2015, Montana made an offer for a Hurlingham house, in Sandton, for R13.5 million, which was to be registered in his own name. Precise deposited R2 million for the property. The remaining R11 million was paid in May 2015 by a businessman named Andre Wagner who is linked to Ferreira and TMM Holdings. A *News24* investigation into the Hurlingham house transaction that interviewed Wagner alleged that he had recently sold shares of a company to TMM Holdings, Siyangena's parent company, and had 're-invested' these shares (R11m) in Montana's property.<sup>117</sup> Wagner defended it as an 'investment in property development'.<sup>118</sup> The real estate agent testified at the Zondo Commission that Montana later changed his mind about the property being registered in his name, asking them to change it to Precise Invest and Trade, like in the previous transactions. However, the attorneys refused, leading Montana to become the legal owner of a house he did not pay a cent for.<sup>119</sup>

In his testimony at the Zondo Commission, Montana vehemently defended his history at Prasa, stating that van der Walt and he were business partners in property ventures.<sup>120</sup>

These are some of the clearest examples of corruption involving the former CEO of a state-owned enterprise. They show that Montana was consistently rewarded for making decisions that prioritised greedy private interests over the interests of South African commuters. And six years later, in 2022, Montana is still enjoying the fruits of his property-shopping spree—one funded by a major Prasa contractor. Where are the Hawks? Where is the NPA? Where is the NPA's Asset Forfeiture Unit (AFU)?

## LOOTED FOR LUXURY

Lucky Montana was implicated in four suspicious property transactions between 2013 and 2014. A Werksmans investigation revealed how Montana and entities linked to Siyangena had been involved in selling and buying properties worth R45 million.



**R6.8 million**  
PARKWOOD, JO'BURG



**R11 million**  
WATERKLOOF, PRETORIA



**R13.9 million**  
SANDHURST, JO'BURG



**R13.5 million**  
SANDTON, JO'BURG

## TEN YEARS LATER, LOOTERS LIVE IN LUXURY

The Siyangena and Swifambo contracts are among the largest and most outrageous

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cases of corruption at Prasa. However, the Public Protector's report in 2015 and subsequent National Treasury and Werksmans investigations in 2016 and 2017 respectively revealed that Prasa's procurement process was captured from 2009 through to 2015 under the watch of CEO Lucky Montana, key executives such as Daniel Mthimkhulu and Luyando Gantsho, and the board chaired by Sfiso Buthelezi. In 2015 and 2016, under the leadership of Board Chairperson Popo Molefe, Prasa lodged a number of criminal complaints with the Hawks, most of them in relation to the Swifambo and Siyangena contracts. However, the Hawks officer investigating the Prasa cases, Major General Alfred Khana, has dismally failed to finalise

these cases of blatant corruption despite the mountain of evidence. We expand on Khana's conduct in the Prasa case in the second report of this two-part report series, in which we detail how law enforcement agencies were captured. Prasa successfully took the Hawks to court, in 2017, to compel them to conduct the investigation.<sup>121</sup> However, nearly four years on, not a single case of corruption at Prasa has seen a courtroom. This lack of accountability is coupled with the social cost of the rapid degradation of South Africa's public railway system, forcing commuters to choose between using an unsafe and unreliable service, and finding a different, more expensive mode of transport. Most have had to do the latter to keep their jobs.<sup>122</sup>

**Not a single case of corruption at Prasa has seen a courtroom. This lack of accountability is coupled with the social cost of the rapid degradation of South Africa's public railway system, forcing commuters to choose between using an unsafe and unreliable service, and finding a different, more expensive mode of transport. Most have had to do the latter to keep their jobs.<sup>122</sup>**

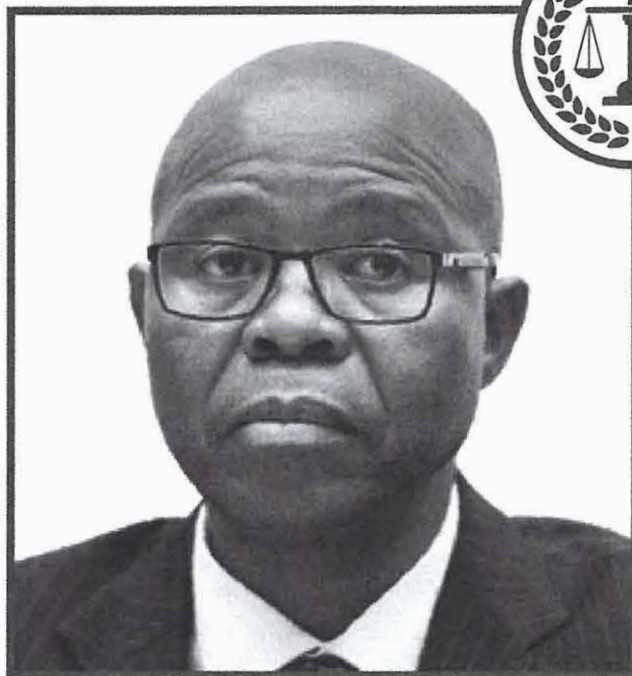
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# PRASA'S LOW-HANGING FRUIT: THE PEOPLE AND CORPORATIONS WHO CAPTURED THE PUBLIC PASSENGER RAIL INDUSTRY

The Hawks and the NPA have failed to act on Prasa. But, as we have made clear, there is no shortage of evidence implicating senior officials at the public entity of derailing the country's train system. It was once envisioned that trains would help South Africans, particularly poorer, black people, access more economic opportunities by allowing easier and more affordable access to urban

centres. That dream is burning down, even as the people and the companies who captured and looted Prasa continue to be free and to live in comfort, despite the shocking findings of various investigations against them. Yet there is action that law enforcement agencies can take to bring them to account for their actions.

## WANTED



**Sfiso Buthelezi**

Former employer: Prasa

Former position: Board chairperson

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REPUBLIC OF ACCOUNTABILITY



CHARGE SHEET

Summons No.....853  
Case No.....351

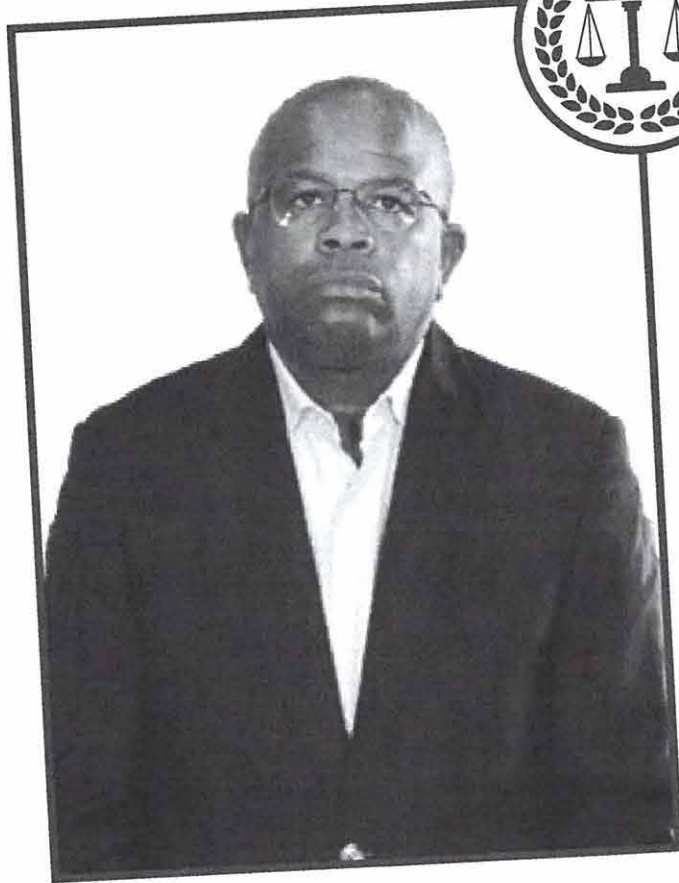
Magistrate's Court

Accused: <i>Sfiso Buthelezi</i>		
District:	Regional division:	
Court:	Held at:	Date of trial:
<p>Particulars of charge(s):</p> <p>During his tenure as chairperson of the Prasa board, Sfiso Buthelezi was accused of having numerous conflicts of interest. The most significant conflict involved Makana Investment's stake in Sebenza Forwarding and Shipping—a beneficiary of multiple Prasa contracts. Buthelezi was still a director of Makana when Prasa and Swifambo were using Sebenza for shipping and logistics, Buthelezi and the board were also the accounting authority when the rail agency's procurement process was captured and its coffers drained. Yet he has faced no accountability for his list of transgressions.</p>		
<p>Where is he now?</p> <p>Sfiso Buthelezi left Prasa in 2014. He remains an ANC Member of Parliament (MP) and serves as chairperson of the Standing Committee on Appropriations in Parliament.</p>		
<p>The charge sheet we think should be brought against him:</p> <ul style="list-style-type: none"> <li>• Buthelezi violated Prasa's Board Charter—which regulates the board's conduct—while he was chairperson. Notably, he failed to disclose his interest in Sebenza Forwarding and Shipping, violating paragraph 8 of the Board Charter which calls for members to declare conflicts of interest relating to contracts.<sup>1</sup> Buthelezi must face internal investigations and disciplinary hearings at the parastatal for violating Prasa's Board Charter.</li> <li>• As the accounting authority, Buthelezi and the board violated sections 50 and 51 of the Public Finance Management Act in relation to dozens of contracts that they oversaw, according to the findings of investigations conducted by the Public Protector and independent forensic companies commissioned by the National Treasury.<sup>2</sup> He should, therefore, face criminal charges and investigations in terms of the PFMA.</li> </ul>		

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# WANTED



**Lucky Montana**

Former employer: Prasa

Former position: Chief executive officer

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a



REPUBLIC OF ACCOUNTABILITY



CHARGE SHEET

Summons No.....4385  
Case No.....234

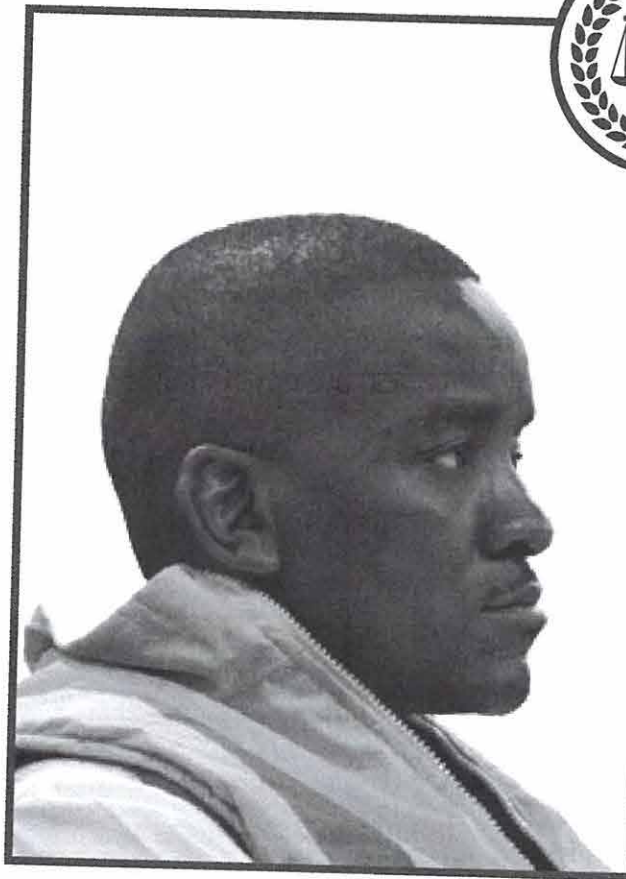
Magistrate's Court

Accused: <i>Lucky Montana</i>		
District:	Regional division:	
Court:	Held at:	Date of trial:
<p>Particulars of charge(s):</p> <p>Lucky Montana was appointed Prasa's first CEO in 2009, a position he held until 2015.<sup>3</sup> Montana enabled the capture of the rail agency's procurement process by politically connected businessmen, such as Makhensa Mabunda, as seen in the evidence presented to the Zondo Commission, in various court cases, and in forensic investigations into corruption at Prasa.</p>		
<p>Where is he now?</p> <p>Lucky Montana spends most of his time ferociously defending his legacy at Prasa on Twitter—and more recently, at the Zondo Commission—by attacking those accusing him of corruption in long rants.</p>		
<p>The charge sheet we think should be brought against him:</p> <ul style="list-style-type: none"> <li>• Montana violated section 4(a) of the 1998 Prevention and Combating of Corrupt Activities Act (PRECCA) by accepting payments for property in relation to the Siyangena security systems contract.<sup>4</sup> The Hawks and the NPA must act to charge and investigate Montana.</li> <li>• Multiple forensic investigations commissioned by the National Treasury have recommended Montana be criminally charged under section 34 of PRECCA, which speaks to the duty of those in authority to report suspected corrupt transactions. The Hawks and NPA must act to investigate and charge Montana.</li> <li>• As the CEO and signatory on dozens of contracts declared corrupt by various forensic investigations, Montana violated countless provisions of the Public Finance Management Act. The Hawks and NPA must act to investigate and charge Montana.</li> <li>• The Public Protector's report, as well as the testimony of Prasa executives at the Zondo Commission,<sup>5</sup> revealed that Montana was guilty of whistle-blower victimisation and unfair dismissals which constituted maladministration, as well as possible violations of the PFMA. Montana should be investigated and charged in relation to acts of whistle-blower victimisation.</li> </ul>		

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# WANTED



**Daniel Mthimkhulu**

Former employer: Prasa

Former position: Executive manager: Engineering services

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a.



REPUBLIC OF ACCOUNTABILITY



**CHARGE SHEET**

Summons No.....847  
Case No.....828

Magistrate's Court

Accused: <i>Daniel Mthimkhulu</i>		
District:	Regional division:	
Court:	Held at:	Date of trial:
<p><b>Particulars of charge(s):</b></p> <p>Daniel Mthimkhulu was appointed executive manager of engineering services at Prasa in 2010. After just five months in his position, Mthimkhulu provided Prasa with a fake employment offer letter from a German entity, which was used to justify a salary raise to R2.8 million per annum as the rail agency's chief engineer. Mthimkhulu was instrumental in bypassing the procurement process for the Swifambo locomotive contract, by tailoring the specifications to Vossloh's locomotives. He was a close ally of Lucky Montana, who referred to him as one of the best rail engineers in the country.<sup>6</sup></p>		
<p><b>Where is he now?</b></p> <p>In 2019, the South Gauteng High Court found that Daniel Mthimkhulu had fraudulently misrepresented his qualifications and ordered him to pay Prasa R5.7 million.<sup>7</sup> It is unclear if he has paid the money to Prasa, or where he is working after being fired from the parastatal in 2015. Perhaps he has enrolled for an engineering degree.</p>		
<p><b>The charge sheet we think should be brought against him:</b></p> <ul style="list-style-type: none"> <li>• Mthimkhulu violated both the Preferential Procurement Policy Framework Act and Prasa's own supply chain management policy by bypassing a fair and transparent procurement process when he tailored the specification for the locomotive contract to favour Swifambo's highly irregular bid. This warrants an internal Prasa investigation as well as action by the Hawks and the NPA.</li> <li>• Mthimkhulu's conduct violated multiple provisions of the Public Finance Management Act, most notably section 45, which identifies a public official's responsibility for ensuring the 'efficient, economical and transparent use of financial and other resources within that official's area of responsibility'.<sup>8</sup> There is sufficient evidence in numerous reports and findings that the NPA has at its disposal for it to bring charges against Mthimkhulu.</li> </ul>		

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# WANTED



Dr. Thomas Triska  
Position: CEO/CFO



Vossloh AG  
Address: Vosslohstr. 4  
58791, Werdohl, Germany

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REPUBLIC OF ACCOUNTABILITY



## CHARGE SHEET

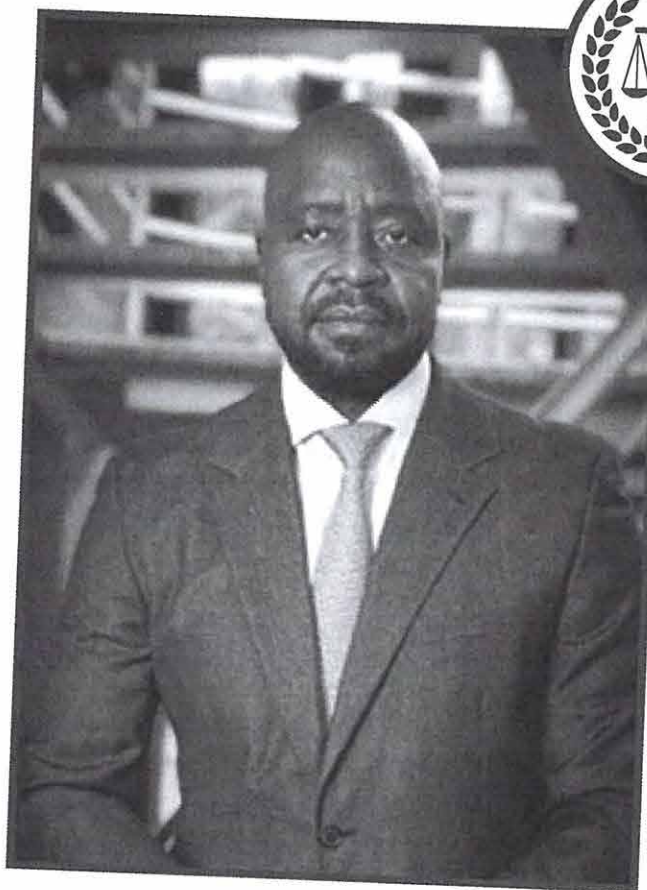
Summons No.....5454  
Case No.....355

Magistrate's Court

Accused: <i>Vossloh AG</i>		
District:	Regional division:	
Court:	Held at:	Date of trial:
<p>Particulars of charge(s):</p> <p>Vossloh AG is one of Europe's leading railway technology and infrastructure companies. Vossloh and its subsidiaries targeted the South African market in the late 2000s, and through middleman Makhensa Mabunda, managed to secure several overpriced, irregular contracts at Prasa. Most notably, they secured the locomotive contract under which Vossloh España was paid R1.7 billion by a local front company, Swifambo Rail Leasing, for the manufacture of locomotives for the rail agency. Also, Vossloh Kiepe was involved in another highly irregular Prasa contract for air-conditioning systems, which was pushed through by Daniel Mthimkhulu—in a similar manner to the locomotive contract—under Lucky Montana's watch.</p>		
<p>Where are they now?</p> <p>Vossloh remains one of the leading rail multinationals in the world.</p>		
<p>The charge sheet we think should be brought against them:</p> <ul style="list-style-type: none"> <li>• Vossloh España used Swifambo Rail Leasing as a front to secure a contract for which it could not bid itself under local procurement law. This violated section 130 of the Broad-Based Black Economic Empowerment Act, which identifies knowingly engaging in fronting as an offence.<sup>9</sup> The NPA should take prosecutorial action, given the evidence that exists to show Vossloh España's corrupt relationship with Swifambo.</li> <li>• Vossloh España and Vossloh Kiepe must be investigated for possible violations of the Prevention and Combating of Corrupt Activities Act. This is based on the Horwath report, which includes documentary evidence suggesting that Vossloh España and Vossloh Kiepe paid kickbacks to Makhensa Mabunda for setting up the corrupt locomotive and air-conditioning contracts by using his connection to Lucky Montana.<sup>10</sup> The NPA must prosecute Vossloh España, Vossloh Kiepe, and those connected with these two overpriced contracts.</li> </ul>		

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# WANTED



**Auswell Mashaba**

Former employer: Swifambo Rail Leasing  
Former position: Director

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## REPUBLIC OF ACCOUNTABILITY



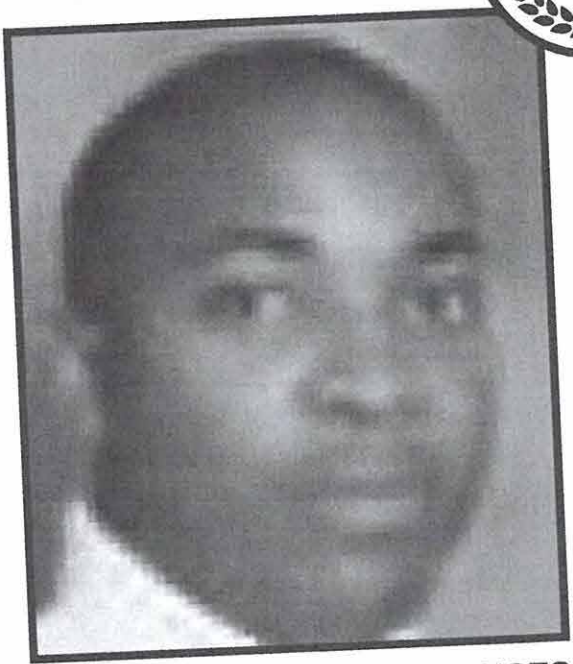
## CHARGE SHEET

 Summons No.....336  
 Case No.....744

Magistrate's Court

Accused: <i>Auswell Mashaba / Swifambo Rail Leasing</i>		
District:	Regional division:	
Court:	Held at:	Date of trial:
<p>Particulars of charge(s):</p> <p>Auswell Mashaba is the businessman behind the front company Swifambo Rail Leasing, which was irregularly awarded the R3.5 billion tender by Prasa for the supply of diesel-electric locomotives in 2013. In February 2021, Mashaba was due to appear at the Zondo Commission to explain his role in the locomotive contract; however, at the last minute, he sent a letter to the inquiry stating that 'he does not recognise that the summons issued against him is legally binding'. Mashaba, like Jacob Zuma, refused to cooperate with the commission or to face any accountability.<sup>11</sup></p>		
<p>Where is he now?</p> <p>Although Swifambo went into voluntary liquidation in 2019, Auswell Mashaba continues to enjoy the fruits of Prasa's monies. He owns the luxurious AM guesthouse in Limpopo, which charges R33,000 a night for a stay in its luxury villa, a suspected helicopter, and countless other valuable assets bought with public funds.<sup>12</sup></p>		
<p>The charge sheet we think should be brought against him:</p> <ul style="list-style-type: none"> <li>• Swifambo's contract with Prasa was set aside by the South Gauteng High Court because the contract was corrupt. Mashaba should be investigated by the Hawks for his role in orchestrating the deal.</li> <li>• Mashaba's conduct in relation to the locomotive contract violated the Prevention and Combating of Corrupt Activities Act and the Prevention of Organised Crime Act (POCA), as he illicitly expended R500 million from the contract, laundering the money to entities linked to himself and Makhensa Mabunda and spending it on property, jewellery, and sports cars.<sup>13</sup> The NPA's Asset Forfeiture Unit should seize Mashaba's assets as proceeds of crime and the prosecuting authority should charge Mashaba for violating both PRECCA and POCA.</li> <li>• Swifambo was found to be a front company—one with no actual business operations or employees—for Spanish locomotive manufacturer Vossloh España by the South Gauteng High Court. Mashaba's role in violating section 130 of the Broad-Based Black Economic Empowerment Act must be investigated and prosecuted.</li> <li>• Mashaba violated the Public Finance Management Act, as the Swifambo locomotive contract contravened countless provisions of the PFMA.</li> <li>• Mashaba violated the Commission Act, when he refused, in February 2021, to testify at the Zondo Commission where he was due to give evidence in relation to the Swifambo contract. The Zondo Commission should pursue legal action in relation to this violation.</li> </ul>		

# WANTED



NO RECENT PHOTO

**Makhensa Mabunda**  
Former employer: S Group  
Former position: Board chairperson

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REPUBLIC OF ACCOUNTABILITY



CHARGE SHEET

Summons No.....434  
Case No.....984

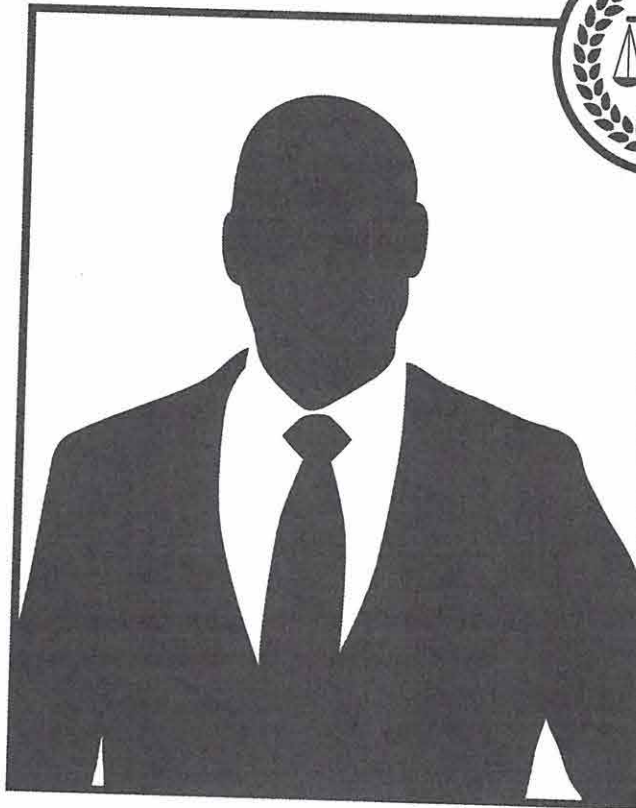
Magistrate's Court

Accused: <i>Makhensa Mabunda</i>		
District:	Regional division:	
Court:	Held at:	Date of trial:
<p>Particulars of charge(s):</p> <p>Makhensa Mabunda is the mastermind who set up the corrupt locomotive contract and extracted over R200 million in illicit payments from Swifambo and Vossloh for his role in setting up the contract. He also received R89 million in suspected kickbacks from Vossloh for setting up the locomotive and air-conditioning contracts with Vossloh and its South African partners. Besides the Swifambo contract, Mabunda secured billions of rands worth of irregular contracts through his Siyaya companies, most of them on confinement (when there is no competitive procurement process). He is one of the arch-capturers of Prasa, having held extensive influence and insight into the operations of the rail agency under Lucky Montana and Sfiso Buthelezi's leadership.<sup>14</sup></p>		
<p>Where is he now?</p> <p>Makhensa Mabunda is the chairman of S-Group, a network of his Siyaya companies that has secured billions in Prasa contracts. He continues to enjoy the fruits of his ill-gotten millions from the corrupt Swifambo locomotive contract; including an Italian kitchen installed in his Pretoria mansion, paid for by Swifambo with Prasa funds.</p>		
<p>The charge sheet we think should be brought against him:</p> <ul style="list-style-type: none"> <li>• Mabunda was the mastermind behind the corrupt locomotive contract. He received over R100 million from Swifambo and R89 million from Vossloh Espana and Vossloh Kiepe in suspected kickbacks for his role in setting up the locomotive and air-conditioning contracts. His role in these irregular contracts violated the Prevention of Organised Crime Act and the Prevention and Combating of Corrupt Activities Act.<sup>15</sup> The NPA must prosecute him on these grounds.</li> <li>• Mabunda cost Prasa billions in overpriced fuel contracts, which his Siyaya companies irregularly won for the supply of fuel on confinement.<sup>16</sup> These contracts should be investigated by the Hawks.</li> </ul>		

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# WANTED



NO RECENT PHOTO

**Luyando Gantsho**

Former employer: Prasa

Former position: Chief procurement officer

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REPUBLIC OF ACCOUNTABILITY



CHARGE SHEET

Summons No..... 242  
Case No..... 774

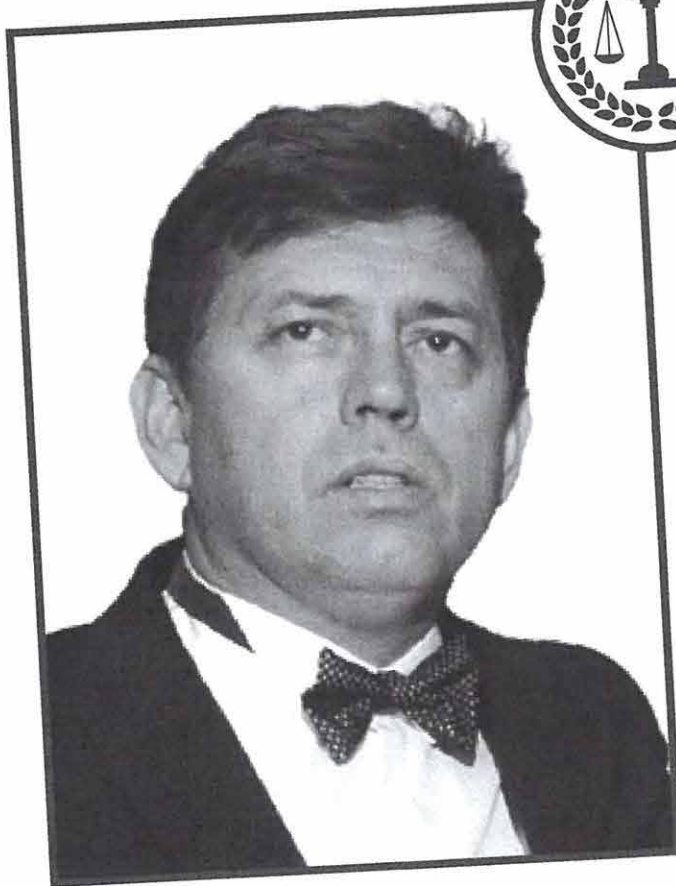
Magistrate's Court

Accused: <i>Luyando Gantsho</i>		
District:	Regional division:	
Court:	Held at:	Date of trial:
<p>Particulars of charge(s):</p> <p>Luyando Gantsho was Prasa's chief procurement officer and managed the procurement process for the corrupt Siyangena contract. Although most of his actions were taken under the instruction of Lucky Montana, Gantsho played a major role in bypassing the procurement process for the Siyangena contract. Despite initially having serious questions about the legality of the contract, Gantsho mysteriously became a major advocate for Siyangena's overpriced security system.<sup>17</sup> This could have had something to do with the apartment that a lawyer close to Siyangena purchased for Gantsho in 2011, while the 'procurement process' was ongoing.</p>		
<p>Where is he now?</p> <p>Although Luyando Gantsho was fired from Prasa in 2015, he has never been charged for his role in the corrupt Siyangena contract, despite multiple investigations and court documents revealing potentially serious acts of maladministration and corruption in relation to his conduct at the rail agency.</p>		
<p>The charge sheet we think should be brought against him:</p> <ul style="list-style-type: none"> <li>• Gantsho, alongside Montana, played a central role in bypassing the procurement process and supply chain management process at Prasa, violating sections 45 and 57 of the Public Finance Management Act, which speak to the financial responsibilities of officials that are not accounting officers for public entities like Prasa. Legal action should be taken against Gantsho on these charges.</li> <li>• Gantsho, according to Werksmans' evidence, likely violated section 1(a) of part 2 of the Prevention and Combating of Corrupt Activities Act because he allegedly received property from a lawyer linked to Siyangena, in what investigators viewed as likely kickbacks for his role in pushing forward the corrupt Siyangena contract.<sup>18</sup> The Hawks should investigate the allegations against Gantsho contained in the Werksmans report.</li> </ul>		

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**Mario Ferreira**

Former employer: Siyangena Technologies  
Former position: Director

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REPUBLIC OF ACCOUNTABILITY



CHARGE SHEET

Summons No.....373  
Case No.....446

Magistrate's Court

Accused: <i>Mario Ferreira</i>		
District:	Regional division:	
Court:	Held at:	Date of trial:
<p>Particulars of charge(s):</p> <p>Mario Ferreira was the director of Siyangena Technologies. He is deeply implicated in numerous allegations of corruption, bribery, and money laundering relating to the company's corrupt security systems contract with Prasa from 2011 to 2014. In the late 2000s, Ferreira moved his focus to South Africa with the formation of Siyangena Technologies, which won a contract to supply Prasa with outrageously priced access gates and security systems in 2011; this contract was extended multiple times without any procurement process. The North Gauteng High Court, which set aside the contract, found that the technology Siyangena installed was a useless, safety hazard that could not be integrated into Prasa's existing systems.</p>		
<p>Where is he now?</p> <p>Little is known about the whereabouts of Mario Ferreira since he sold his newly created soccer team, Stellenbosch FC, to Johan Rupert in 2017. However, what is clear is that he continues to enjoy the fruits of one of the most egregious cases of corruption at Prasa.</p>		
<p>The charge sheet we think should be brought against him:</p> <ul style="list-style-type: none"> <li>• Ferreira—and more broadly Siyangena—stands accused of violating the Prevention and Combating of Corrupt Activities Act by paying suspected kickbacks in the form of property to Lucky Montana and Luyando Gantsho at Prasa to secure the security systems contract, and its many extensions.<sup>19</sup> These allegations must be investigated by the Hawks.</li> <li>• Evidence suggests that Ferreira and Siyangena violated the Prevention of Organised Crime Act in moving large amounts of money obtained from the corrupt Siyangena contract.</li> <li>• Siyangena's contract with Prasa violated section 51 of the Public Finance Management Act and Prasa's supply chain management policy as the contracts were anti-competitive, highly irregular, and overpriced; resulting in billions in irregular expenditure on useless access gates that constituted a safety hazard to passengers. The evidence around these irregularities is extensively documented, justifying prosecution by the NPA.</li> </ul>		

*W.*

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**25 July 2022**

The National Director of Public  
Prosecutions

The National Prosecuting Authority  
123 Westlake Street, Silverton  
Pretoria, 0184

Per email: [sbatohi@npa.gov.za](mailto:sbatohi@npa.gov.za)

**Re: Open Secrets' Wanted: The State Capture Conspirators**

To: Adv Shamila Batohi,

1. Open Secrets is a registered civil society organisation with a focus on economic crime and related human rights abuse with links to South Africa. We undertake evidence-based investigations, use the law, and collaborate with partner organisations to achieve systemic change.
2. Over the last 18 months, Open Secrets has conducted independent investigations into the networks of capture and corruption at the Passenger Rail Agency of South Africa, South African Airways, Denel SOC Ltd and the South African Revenue Service. The investigations culminated in the publication of an investigative report titled **Wanted: The State Capture Conspirators, the urgent cases we can act on now!**
3. The NPA's 10 May 2022 presentation to the Justice and Correctional Services Committee indicates the NPA's eagerness and willingness to begin the prosecutions as recommended by Chief Justice Raymond Zondo in his reports into the Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State.

- 4. We believe that this investigative report can assist the National Prosecuting Authority to identify the looters and those implicated and complicit in the capture of the aforementioned state-owned entities.
- 5. The report is available on our website at the following link: [https://www.opensecrets.org.za/wanted-the-conspirators/#dearflip-df\\_7393/1/](https://www.opensecrets.org.za/wanted-the-conspirators/#dearflip-df_7393/1/)
- 6. Our investigative team is willing and available to engage your various teams tasked with the aforementioned state-owned entities should you deem it necessary. In addition, should you have challenges accessing the contents of the report we are happy to arrange a copy that can be made available to your teams.
- 7. Open Secrets is committed to undertaking work that serves the public interest and holds the powerful to account. We hope that the National Prosecuting Authority will consider using this investigative report to achieve systemic change by ensuring that the individuals and corporations implicated in economic crime and other wrongdoing are held to account.
- 8. Should you have any questions or queries please feel free to contact our team.

Sincerely,



Hennie van Vuuren  
 Director: Open Secrets  
 Email: [vanvuuren@opensecrets.org.za](mailto:vanvuuren@opensecrets.org.za)

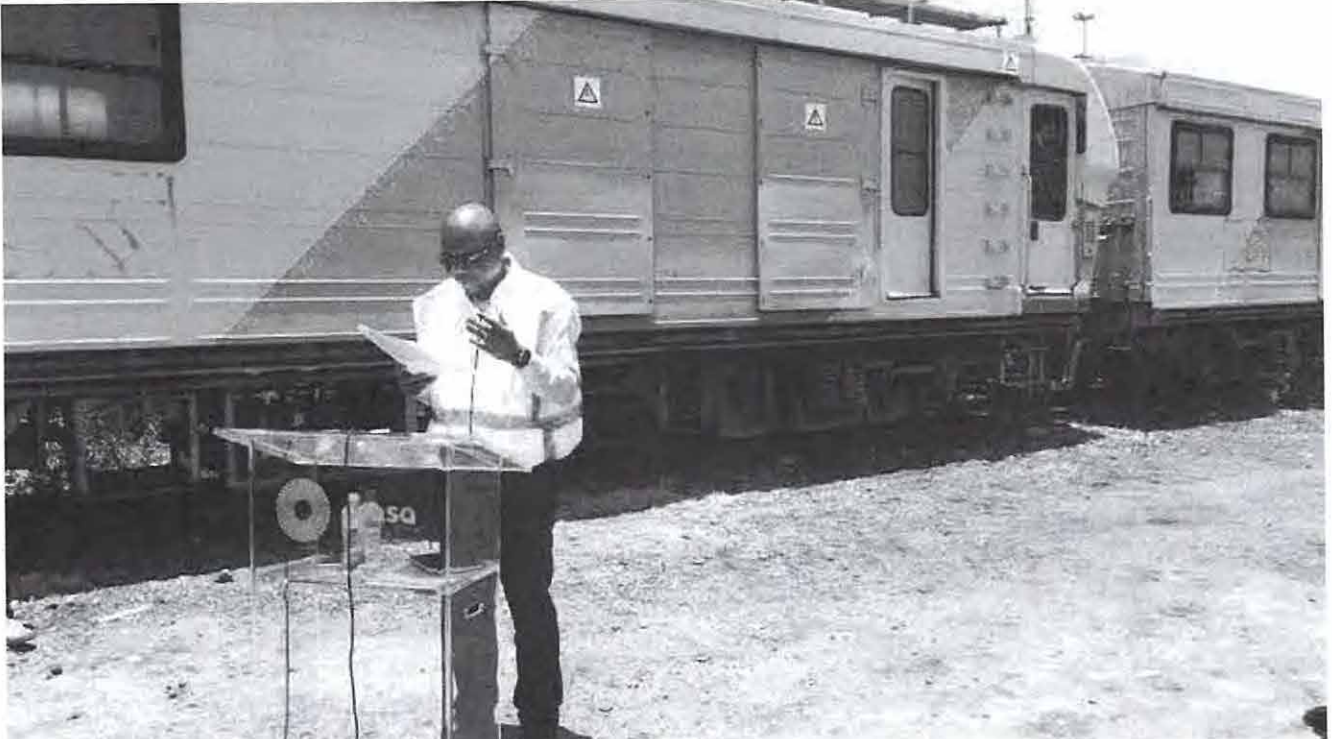


# PRASA boss offers new turnaround strategy

"We have heard this all before, a nightmarish sense of *déjà vu*" says #UniteBehind

15 January 2020 | By Zoë Postman (/author/286/)

News (/category/news/) | South Africa (/region/South%20Africa)



(/media/uploads/images/photographers/Zoe%20Postman/Mpondo-ZoePostman-20200115.jpeg)

Bongisizwe Mpondo, administrator of PRASA, has promised a turnaround for the agency. Photo: Zoë Postman

Newly-appointed administrator of the Passenger Rail Agency of South Africa's (PRASA), Bongisizwe Mpondo, says he plans to reopen the Central Line in Cape Town — which has been closed since October 2019 due to vandalism — within six months.

Mpondo was speaking at a PRASA press briefing at the Braamfontein depot in Johannesburg on Wednesday morning. The plan to reopen the Central Line is part of his turnaround strategy for the train service in the next year.

"We're developing an integrated plan where we are going to fully upgrade that area ... The track, as well as the fencing needs to be looked into," said Mpondo.

He said the same would apply for the Pretoria to Mabopane line which was closed in January 2019 following a train crash that claimed three lives. In the meantime, PRASA would find alternative transport for people who previously used the trains, he said.

”

## PRASA was a breeding ground for non-performers and wrongdoers

In the past month of working as the administrator, Mpondo said he had found that PRASA was a "breeding ground for non-performers and wrongdoers". He made an example of the previous interim board which had cancelled the security contracts without a contingency plan. This, he said, had made the railway lines susceptible to a spate of arson and vandalism in 2019.

He said a lack of planning had caused a major delay in the overhaul programme which meant the trains due for overhaul had to be parked, also putting them at risk of vandalism. This meant fewer trains were able to operate.

For the 2019/2020 financial year, Mpondo said only 10% of the capital budget of R12.5 billion had been used which meant plans were not being implemented.

Mpondo said there was no consequence management in PRASA. Files needed for internal investigations suddenly went missing.

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His turnaround strategy was broken down into three phases. In the first phase, titled "stability and order" which is to be completed in the first three months of the year, Mpondo plans to enter into new security contracts; source uniforms for security guards; conduct lifestyle audits on all employees in finance and supply chain management and on the top 300 management employees; and conclude vetting of executives and crucial departments among others.

In the second "execution" phase, to be implemented over six months, Mpondo said he plans to implement a cashless ticketing system; integrate bus and rail services; create a more predictable time table, construct modern control rooms; and implement security measures such as fencing at hotspot lines.

He also said new services would be rolled out from Pretoria to Ring Rail and Cape Town to Heathfield within the next six months.

The long term strategy, to be implemented over the next 12 months, includes finalising the security tender; improving cleanliness and availability of toilets and ticket offices; rehabilitating infrastructure; and finalising signalling programmes for Gauteng, the Western Cape and KwaZulu-Natal.

Activist organisation #UniteBehind said in a statement released on Wednesday that Mpondo's turnaround strategy did not include alternative transport for thousands of commuters who could no longer use the railway line.

"In short, we have heard this all before, a nightmarish sense of *déjà vu*. We heard the same from Minister [Fikile] Mbalula when he first took office, and the same from Dr [Blade] Nzimande when he took office. Likewise from the parade of acting CEOs and interim boards that have been in charge of PRASA since Jacob Zuma's presidency was brought to an end," read the statement.




The organisation said Mpondo's appointment was "a recipe for failure" because one person could not be responsible for both oversight and management at the same time.



#UniteBehind called for a national disaster to be declared and the appointment of a permanent board.

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Subject=I%20recommend%20an%20article%20published%20on%20GroundUp&Body=Here%20is%20an%20article%20on%20boss-promises-new-turnaround-strategy/)  (/article-print/prasa-boss-promises-new-turnaround-strategy/)  (/copy\_article/prasa-boss-promises-new-turnaround-strategy/)

TOPIC: [Prasa / Metrorail \(/Topic/Metrorail/\)](#)

Next: [Parents of child who died on Makana playground want compensation from municipality \(/article/parents-child-who-died-makana-playground-demand-compensation-municipality/\)](#)

Previous: [Nine hundred Upington learners start school without any toilets at all \(/article/nine-hundred-upington-learners-start-school-without-toilets/\)](#)

WRITE A LETTER IN RESPONSE TO THIS ARTICLE (/LETTER/8321/)

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How can I get a permanent disability grant? I have not been able to work since 2018. (/qanda/1061/)

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# 'No hope for Prasa' after extensive pillaging of infrastructure



By Siphso Mabena  
Premium Journalist  
11 Sep 2020 | 05:00 am

*It will take years to repair the damage done to the country's rail infrastructure in recent months, with earth-moving equipment allegedly having been used to dig up railway lines and other infrastructure, while costly security services are nowhere to be seen.*



Picture for illustrative purposes. The remains of train tracks are seen near the old Benrose Station, 10 September 2020, in Johannesburg. Picture: Michel Bega

The pillaging and destruction of the country's rail infrastructure is so extensive that there is little hope of full recovery, with the Passenger Rail Agency of South Africa (Prasa) conceding

escalated during the lockdown.



“During lockdown we had a situation where criminals took their time to take what they want. In some cases it was clear that large earth moving equipment was used to dig out cables from the ground. It was systemic, brazen and these people knew what they wanted and where to find it,” a security manager at Prasa said.

The manager, part of a Prasa team that visited various stations recently, said the extent of the damage was horrifying.

The official said Cape Town's Central line, the busiest line serving the poor townships such as Bonteheuwel, Khayelitsha, Nyanga and Mitchells Plain, has been stripped of everything, with overhead cables, ground copper cables and other equipment ripped off.

✓**READ MORE** Workers move in to finally clear 'eyesore' plot in central Dundee

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it after lockdown but the damage is so extensive that it is hopeless," the senior official said.

**No faith in Fikile**

Transport Minister Fikile Mbalula is expected to make an announcement on the plan for the repair, security of the rail infrastructure, and recovery of train services next week but unions are cynical as previous interventions have failed.

The United National Transport Union (Untu) is adamant that there is no hope for Prasa as there is no political will to rescue the agency, with bold plans but no action.

"(Mbalula) constantly makes announcements about plans but there is no implementation. First, Prasa has no money and there is nothing you can implement without money. Secondly there is just no interest in protecting the rail assets," Sonja Carstens, Untu deputy general-secretary, said.

She said the mandate of the Rapid Rail National Response Team established within the SA Police Service was to safeguard the rail infrastructure, visible policing and crime prevention but said they were nowhere to be seen.

✓ "You only find them in Pretoria and Johannesburg station, sitting in the offices. Why are they not visible, doing crime prevention and guarding the infrastructure as per their mandate?"

"That is how systematic this has been," Carstens said.

**Damage would take years to repair**

Lubabalo Tinzi, Passenger Rail Coordinator for the SA Transport and Allied Workers Union (Satawu), said even if the destroyed infrastructure was to be repaired, it would take years, and might never regain its previous status.

He said the extent of vandalism and pillaging of the rail infrastructure during lockdown was unprecedented, saying their members in the security services were sending pictures of the damage to stations.

"Prasa is on its knees. Nothing is left to salvage and the destruction was such that now offices are targeted, with steel cabinets damaged and files destroyed especially during lockdown," Tinzi said.

He said there was nothing that Mbalula could say that will save Prasa, saying the pillaging continued with impunity despite the so-called war room that Mbalula said would rescue Prasa.

"Only four local lines are operational across the country. The biggest, busiest lines like Pretoria and Johannesburg, which are supposed to be Prasa's cash cows, are not operational. What has the war room achieved? They must stop playing with our feelings," Tinzi said.

**PRASA SAYS...**

Prasa has conceded that the destruction of its rail infrastructure was extensive but said the situation was not as bad as it was made out to be.

Gauteng was the worst affected, the agency's spokesperson, Makhosini Mgitywa, said on Thursday, but said in lines where overhead electricity cables were missing, they were rolling out diesel locomotives.

He said the diesel locomotives have enabled Prasa to open the line between Park Station and Naledi, saying this demonstrated that the situation was not as bad.

"Bad as it is and I must concede the situation is bad... Infrastructure has been vandalised but in situations where we can use diesel locomotives even though overhead traction cable are missing, but where the rail infrastructure is still sound we use diesel locomotives and we are rolling out the service in many other lines..." Mgitywa said.

He told the SABC that they still needed to assess the extent of the damage in the affected stations negatively but assured the public that the worst had passed as they had employed

✓ 3 100 security officers

over R1 billion worth of damage for three years up to 2019 though they were paying private security companies.

"The contracts were not designed to protect Prasa or to protect the infrastructure of Prasa. They were designed to benefit those security companies and people working with them inside Prasa. That situation is being corrected and we are optimistic..." he said.

According to Mgitywa, their infrastructure was porous and vulnerable, pleading with communities to look after the infrastructure as their own because damage to the infrastructure affected mostly the poor people, low income earners and Job seekers using the train to hunt for jobs. He said the minister will detail a plan on the plan to secure the agency's assets and would also outline the plan for the recovery of train services.

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GROUNDUP

Mbalula rails against Prasa management over CT Central Line repairs, security issues



Raymond Maseko, Prasa regional engineering manager, shows Transport Minister Fikile Mbalula (right) progress on repairs to the line between Pinelands and Langa. (Photo: Tariro Washinyira)

DIVE DEEPER (4 MIN)

Washinyira-  
for-  
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By Tariro Washinyira (https://www.dailymaverick.co.za/author/tariro-washinyira-for-groundup/) Follow (https://www.dailymaverick.co.za/sign-in)

'Our biggest problem is management negligence', minister claims.

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Cape Town's Central railway line will be functional by December, Minister of Transport Fikile Mbalula has promised.

During an oversight visit on Friday, Mbalula said in July there would be a limited service from Cape Town to Langa, Pinelands and Bonteheuwel. The line that connects at Bonteheuwel to Khayelitsha, Nyanga, Philippi and Mitchells Plain would open in December, he said.

The Central Line, which is the busiest line serving the poorest communities, including Khayelitsha, Mitchells Plain, Nyanga and Bonteheuwel has been suspended, except for a brief interval, since 2018 (<https://www.groundup.org.za/article/trains-cape-towns-central-line-suspended-again/>). Since then, families have set up informal settlements on the track in Langa, Philippi and Khayelitsha.

Mbalula sharply rebuked management of the Passenger Rail Agency of South Africa (Prasa) for problems with the line. "Our biggest problem here is not only people who built shacks on the railway tracks, our biggest problem here is management negligence," he said. "What are you running here, because you are employed to run trains?" he said to Prasa acting group CEO David Mphelo, regional manager Kaparo Molefi, regional engineering manager Raymond Maseko and engineer Emily Malatji.

"There is management negligence here and as the general CEO you need to charge people here about their responsibilities. What is the head of security in the management of Prasa in Cape Town saying when you meet, what do your records of minutes say? Don't you think that there is a problem here? What are you managing?"

"We can no longer allow people to earn big salaries and all that they know is to give inadequate answers and yet they are managers. You can't be a manager, managing a railway system and you don't have a plan. Every day you come to work, what do you say you are doing when everything is just falling apart?"

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During the visit, Mbalula was shown overhead track installations between Pinelands and Langa train stations, temporary fencing to secure the railway reserve from Langa informal settlement, work at Bonteheuwel and an informal settlement at Nonkqubela Train Station in Khayelitsha. The visit ended with a meeting at the Brown's Farm Swimming Pool in Philippi.

Some community members expressed scepticism that the line would be re-opened in December. At Bonteheuwel the damage to the tracks was severe and clips had been stolen. Malatji said the clips would be replaced with anti-vandal clips.

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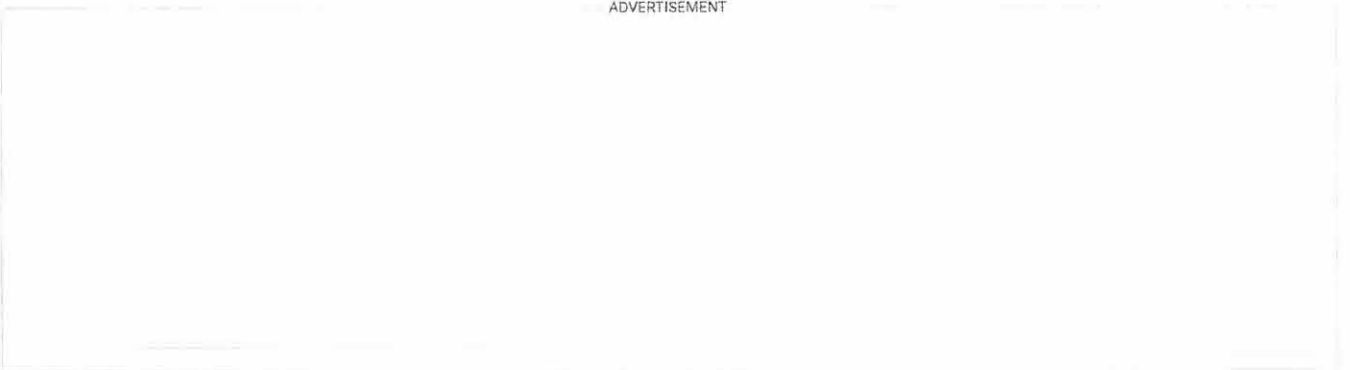
Workers repairing the rail tracks on Friday. (Photo: Tariro Washinjira)

Mphelo said that Parow station, on the Northern Line, would start operating in December, but no date had been set for the return of the service as far as Wellington. “Wellington is not currently in the top priority in the terms of extension. We want to recover the Central Line, we focus there at the moment. It is a resource issue.”

He said it would cost R2.1-billion to fully repair the Central Line, of which R1.9-billion had already been spent.

Mbalula said the security issues had now been resolved after a period of negligence. “Prasa security at the present moment is totally different. The fact that during the lockdown when we stopped the trains people stole even the frames of the stations shows negligence. The Prasa board decision that was taken to stop security contracts without a contingency plan has affected the security plans at Prasa. That is why we witnessed massive vandalism throughout the country.”

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Speaking to the Prasa management team, he said: “When I come back I don’t want to hear that rail reserves that have been recovered are now not protected.

“You have got a clear mandate to increase security capacity,” Mbalula said. “We need to protect what we have already done and recovered.”

**Mbalula blames others but what is his role?**

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In January 2022, Mbalula promised (<http://https://www.news24.com/news24/southafrica/news/metrorails-central-line-in-cape-town-to-be-fully-operational-by-end-of-july-says-mbalula-20220117>) that the Central Line would be working by the end of July.

On 5 March 2020, the then Administrator of Prasa, Bongisizwe Mpondo, promised (<https://www.groundup.org.za/article/cape-town-central-line-will-return-service-september-says-prasa-administrator/>) that the Central Line would be restored by September 2020. Mpondo also promised an 80-strong bus fleet to carry inconvenienced commuters, which never materialised.

Mbalula lays the blame for the devastating loss of infrastructure to theft at the door of the interim board, led by Khanyisile Kweyama. This decision was made by the acting CEO Nkosinathi Sishi in August 2019.

In November 2019, the Western Cape high court ruled against the decision (<https://www.groundup.org.za/article/high-court-rules-prasa-must-create-safety-plan-interim-railway-security/>) to cancel the contracts, and ordered that Prasa must continue the security contracts until the new tender was finalised, or until alternative measures were in place. Mbalula called Judge John Hlophe a “Mickey Mouse (<https://www.iol.co.za/news/politics/da-demands-mbalula-apologises-to-judge-john-hlophe-over-mickey-mouse-remark-38162226>)” judge for this ruling.

The board was dissolved by the Minister in December 2019. Mbalula then appointed Mpondo as Administrator in contravention of the law (<https://www.groundup.org.za/article/mbalula-acted-unlawfully-and-has-60-days-appoint-prasa-board-judge-rules/>).

Mpondo did not restore security. Instead, Prasa refused to abide (<https://www.groundup.org.za/article/prasa-ordered-pay-security-companies-plus-punitive-costs/>) by high court rulings to restore the security companies while a contingency plan could be worked out.

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Mbalula cannot claim that he was ignorant of the issue — he was attached to an application (<https://www.groundup.org.za/article/prasa-fails-implement-adequate-security-plan-court-ordered/>) to restore security to Prasa in March 2020 by commuter activist organisation #UniteBehind.

Mbalula became Minister of Transport three years ago, on 30 May 2019. Prasa has never been worse.  
**DM**

First published by GroundUp (<https://www.groundup.org.za/article/mbalula-tears-prasa-management/>).

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- Bongisizwe Mpondo ([https://www.dailymaverick.co.za/article\\_tag/bongisizwe-mpondo/](https://www.dailymaverick.co.za/article_tag/bongisizwe-mpondo/))
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CAPE TOWN CENTRAL LINE

# Prasa's Leonard Ramatlakane joins commuters on the first train in 471 days to leave Langa station



Prasa's airperson Leonard Ramatlakane addresses journalists at Cape Town station after completing the first trip between Langa and Cape Town on 15 February. (Photo: Suné Payne, Daily Maverick)

DIPE DEEPER (2 MIN)



By Suné Payne (https://www.dailymaverick.co.za/author/sune-payne/)

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The first train in just over a year and three months finally moved along the central line in Cape Town on Monday morning – a line damaged by vandalism, theft and arson.

There were few commuters on the train from Langa at 6.20am on Monday. This was the first train out of the station in 471 days.

Leonard Ramatlakane, chairperson of the board of the Passenger Rail Agency of South Africa (Prasa), joined commuters on this trip and was accompanied by Prasa security and journalists.

Trains were last operational on 3 November, when Metrorail, a subsidiary of the rail agency, closed down services on the embattled line due to repeated theft, vandalism and arson. Last week, Prasa announced it would be resuming operations on the central line.

*Read in Daily Maverick: [One year later, questions are still being asked about Ramaphosa's promise to fix Cape Town's Central Line](https://www.dailymaverick.co.za/article/2021-02-10-one-year-later-questions-are-still-being-asked-about-ramaphosa-s-promise-to-fix-cape-town-s-central-line/) (<https://www.dailymaverick.co.za/article/2021-02-10-one-year-later-questions-are-still-being-asked-about-ramaphosa-s-promise-to-fix-cape-town-s-central-line/>)*

Now, a limited weekday service will operate between Langa and Cape Town.

Metrorail said in a [statement](https://capetowntrains.sitelio.me/latest%20news/cape-town-to-linga-train-service-resumes) (<https://capetowntrains.sitelio.me/latest%20news/cape-town-to-linga-train-service-resumes>) that trains will only be allowed to operate at 70% capacity, with 333 seated passengers and 1,303 standing.

This reporter saw physical distancing markers on the train and heard several announcements of Covid-19 hygiene protocols.

Metrorail has said that single rather than monthly tickets will be issued. "In some sections, manual/electronic authorisation continues leading to trains having to stop in sections for short periods – the trains are monitored to ensure they proceed as soon as possible," said Metrorail on 12 February.

On Monday, commuters were scarce at Langa and four other stations, most likely due to Prasa only announcing at the weekend that services would resume on the route.

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One passenger, Lloyd Dika, who works in Camps Bay on the Atlantic seaboard, said he would usually fork out R500 a week to get to work using two taxis.

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The first train out of Langa station in 471 days was sanitised between stops on 15 February. (Photo: Suné Payne, Daily Maverick)

He described the ride as “nice” but said there was a delay of 12 minutes, which caused the train to arrive in Cape Town just after 7am. This delay was due to manual authorisation.

With the resumption of the rail service on the central line, Dika says he will be able to save money around R250 a week.

Ramatlakane said that commuters previously spent 40% of their income on transportation.



The first train to leave Langa station in months arrives for a trip to Cape Town on Monday morning. (Photo: Suné Payne, Daily Maverick)

“The central line had been stripped – electrical wires, fibres, everything – so it has been hampering the functioning of the trains and now we are resuming,” Ramatlakane told journalists.

Ramatlakane told *Daily Maverick* there were plans in place for services to resume on the second phase of the central line, from Langa to Phillipi, which extends to Mitchell’s Plain (Kapteinskclip) and Khayelitsha (Chris Hani). Prasa hopes to resume services to these areas sometime between September and December this year. **DM**

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[Central Line \(https://www.dailymaverick.co.za/article\\_tag/central-line/\)](https://www.dailymaverick.co.za/article_tag/central-line/)

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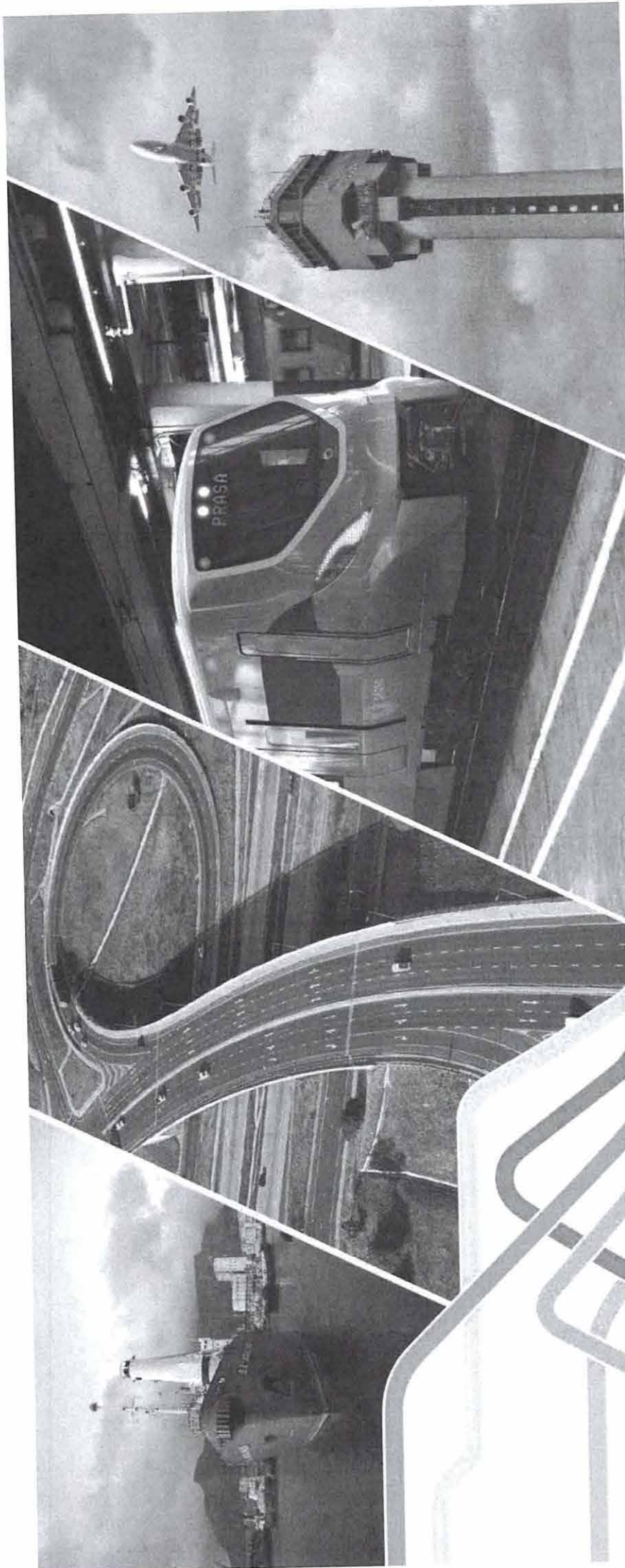
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"FA29"

Theme: Confronting the Challenges facing the timely Delivery of viable Public Infrastructure Projects to Communities

Event: Ministerial Briefing Session on Public Infrastructure

Date: 10 September 2024

Presenter: Ms B.D Creecy, MP  
Minister of Transport

Theme:

Event:

Date:

Presenter



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# Presentation Overview

1. Vision, Mission and Values of the Department of Transport
2. Rail transport
3. Road transport



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# Department of Transport

## Vision

“Transport, the Heartbeat of South Africa’s Economic Growth and Social Development.”

## Mission

The Department of Transport aims to lead the development of an efficient integrated transport systems by creating a framework of sustainable policies and regulations; and implementable models to support government strategies for socio-economic development.

## Values

As the central custodian of the nation’s transport resources, services and products, the Department of Transport acknowledges the obligation it has to the citizens of the Republic of South Africa; and will adopt the following core values to advance its commitment to achieve policy and legislative mandates as set out for the sector:

- Maintain **fairness and equity** in all our operations
- Strive for **quality and affordable** transport for all
- Stimulate **innovation** in the transport sector
- Ensure **transparency, accountability and monitoring** of all operations
- Ensure **sustainability, financial affordability, accessibility** as well as upholding of the **Batho Pele** principles



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# RAIL TRANSPORT



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## RAIL TRANSPORT

### **BACKGROUND**

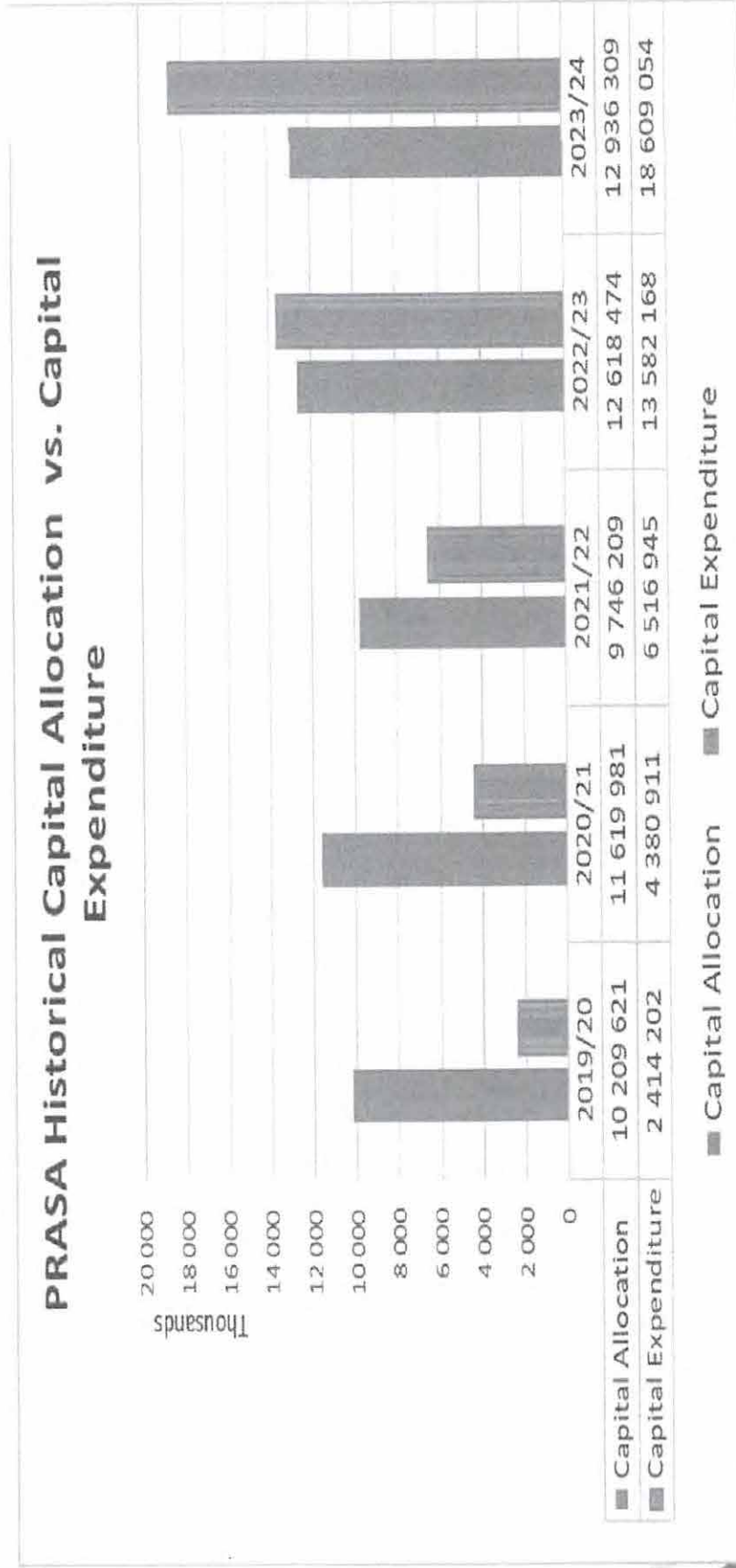
- PRASA owns 2 280 Kilometres of South Africa's rail network, operating 585 trains in the metropolitan areas in Eastern Cape, Western Cape, KwaZulu-Natal and Gauteng.
- Most (>95%) of the infrastructure was damaged prior to 2020 through theft and vandalism.
- Recovery of infrastructure commenced in 2020/21 - lines are recovered in full or partially depending on the status of the infrastructure.
- Services are resumed as soon as the basic infrastructure (perway, contact wires, stations) are reconstructed:
- Limited services are operated (30-minute to 1-hour intervals) [peak/off-peak].



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## Capital Allocation & Expenditure over the past 5 years

Capital expenditure ramped over the last five years, with the recovery of service lines and rail infrastructure:



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## STATUS OF INFRASTRUCTURE RECOVERY

- A total of 34 service lines have been resumed to date:
  - 23 services resumed along the full extent of a line
  - 11 services resumed partially (section of a line)
- A total of 4 services have been resumed along TRANSNET owned lines.
- The lines that are partially complete will be finalised over the MTEF period.
- The signaling infrastructure is at its early stages of recovery. Only 6 of the lines have signaling substantially restored.
- The table overleaf provides a summary of the resumption status of services.



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# STATUS OF INFRASTRUCTURE RECOVERY

	PRIORITY LINES	SECONDARY LINES	LOW BUSINESS LINES
1	Mabopane - Pretoria	Kelso - Durban	De Wildt - Belle-Ombre
2	Piensaarspoort - Pretoria	Catoridge - Durban	Germiston - Vereeniging
3	Saulsville - Pretoria	Cape Town - Bellville	Cape Town - Malmesbury
4	Cape Town - Simon's Town (Wynberg)	Cape Town - Kraaifontein	Durban - Sianger
5	Cape Town - Retreat (Athlone)	Cape Town - Wellington	Pinetown - Durban
6	Cape Town - Bellville (Sarepta)	East London - Berlin	Johannesburg - Nasrec
7	Leralla - Johannesburg	Port Elizabeth - Uitenhage	Cape Town - Worcester
8	Naledi - Johannesburg	Cape Town - Strand	Nigel - Springs
9	Durban - Umlazi	Crossmoor - Durban	Eerste Rivier - Muldersvlei
10	Durban - (KwaMashu + Bridge City)	Springs - Johannesburg	Johannesburg - Oberholzer
11	Pretoria - Kaalfontein	Randfontein - Johannesburg	Germiston - New Canada (Booyesen)
12	Cape Town - Khayelitsha/Chris Hani		West - Durban
13	Cape Town - Kaaptainsklip		Mabopane - Piensaarspoort (via Capital Park)
14	Daveyton - Dunswart - Germiston		
15	Vereeniging - George Goch		
16	Kwesine - Germiston		
	<b>16</b>	<b>11</b>	<b>13</b>
		<b>40</b>	

## Key

p PRASA Line

T Transnet Line

P/T PRASA & Transnet Line

Service resumed in full along a service line 23

Service resumed in sections along a service line 11

**Sub-Total** 34



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## Capital allocation over the MTEF:

<b>2024/25 allocation</b>	<b>11,577,544,000</b>
2025/26 allocation	12,104,752,000
2026/27 allocation	12,659,521,000
<b>TOTAL ALLOCATION</b>	<b>36,341,817,000</b>

### For 2024/25 Financial year Quarter 1

- Expenditure was R2.77 billion and above allocation of R1.73 billion.
- Q1 Expenditure is higher than the budget and the trend may be similar and the following quarters.

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## Challenges faced during infrastructure delivery

Amongst others, the following is a list of key challenges faced during the implementation of the infrastructure programme.

1. Further theft and vandalism of infrastructure.
2. Disruptions by the so-called "business forums."
3. Capacity of the industry to deliver very large fast-tracked programmes.
4. Global supply chain disruptions.



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## Mitigation measures

Briefly, the following is a list of key measures that have been initiated to confront the challenges experienced in the programme.

### 1. Development and implementation of an integrated security strategy and plan.

- a. *The strategic deployment of protection service personnel and collaboration with other security cluster agencies.*
- b. *Use of technologies (seismic detection and drones) to assist personnel deployment.*

*The strategy has resulted in a significant reduction in the number of theft and vandalism incidences.*

### 2. Robust Stakeholder Management Processes

*Through robust stakeholder (e.g. local communities, government, commuter forums, and businesses) management and partnerships, the theft and vandalism incidences are proactively managed and minimised.*

## Mitigation measures

### 3. Industry Collaboration

- a. *Through proactively engaging with the contractors and suppliers, the capacity and capabilities are assessed on a regular basis to pre-empt implementation risks.*
- b. *In certain instances, meetings with appointed contractors are held on a weekly basis to assess progress and risks.*

### 4. Global Supply Chain Management

- a. *The rail infrastructure has a significant portion of imported components (e.g. sub-stations, contact wire, and signalling equipment).*
- b. *Overseas-based suppliers are visited regularly to ensure that PRASA infrastructure components are prioritised and that the quality of materials meets the minimum specifications.*



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## Conclusion

1. At the end of 2023/24 Financial year, approximately 40 million passenger trips were achieved through the resumption of services.
2. With the progressive improvements in the signaling infrastructure, it is estimated that 60 million and 150 million passenger trips will be achieved at the end of 2024/25 and 2025/26 respectively.
3. The following socio-economic benefits were realised:
  - a. 12,539 jobs were created and sustained through various projects.
  - b. The full recovery and modernisation of PRASA are expected to contribute an estimated R34 billion to the Gross Domestic Product (GDP).



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# 1. REPORT OF THE STANDING COMMITTEE ON APPROPRIATIONS ON ITS OVERSIGHT VISIT TO TRANSNET SOC LIMITED AND THE PASSENGER RAIL AGENCY SOUTH AFRICA FROM 27 TO 31 MARCH 2023, DATED 13 JUNE 2023

The Standing Committee on Appropriations, having undertaken an oversight visit to the Transnet SOC Limited and the Passenger Rail Agency South Africa from 27 to 31 March 2023, reports as follows:

## 1. Introduction

The Standing Committee on Appropriations (the Committee) is established in terms of section 4(3) of the Money Bills Amendment Procedure and Related Matters Act, No.9 of 2009. The Act requires the Committee to consider and report on:

- Spending issues;
- Amendments to the Division of Revenue Bill, the Appropriation Bill, Supplementary Appropriation Bill and the Adjusted Appropriation Bill;
- Recommendations of the Financial and Fiscal Commission (FFC), including those referred to in the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997);
- Reports on actual expenditure published by the National Treasury (section 32 reports); and
- Any other related matters.

The Committee undertook an oversight visit to the KwaZulu-Natal and Gauteng Provinces in order to visit the Transnet SOC Limited and the Passenger Rail Agency of South Africa respectively. In order to engage with the leadership, organised labour and various other stakeholder on various matters affecting these state-owned companies.

In cognisance of the current difficult fiscal environment and limited government financial resources in South Africa, all programmes, projects and activities of government with Parliament's appropriated funding should be rolled out in an effective and efficient manner, and must be in compliance with the relevant laws and regulations governing the financial resources of state. Therefore, all organs of state must take active steps to improve operational efficiencies, accelerate the effectiveness of service delivery, and attain value for money. The financial and

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operational performance of major state-owned companies (SOEs) has steadily deteriorated over time due, in large part, to weak corporate governance, archaic business models and burdensome cost structures.

Transnet SOC Limited is a major player in the transport and logistics sector and is vital to South Africa's development, economic growth and sustainability of public finances. Due to financial under performance, Transnet received a capital injection of R2.9 billion during the 2022 Adjustments Budget. The Passenger Rail Agency South Africa also plays a critical role in the functioning of the economy through its mandate to move people to economic hubs. The Committee noted during its recent engagements with National Treasury and other stakeholders, concerns that have been raised around PRASA's implementation of its capital programme.

In light of the above, the Standing Committee on Appropriations, herein after referred to as the Committee, undertook an oversight visit to Transnet in KwaZulu-Natal province and PRASA in the Gauteng province from 27 to 31 March 2023.

## 2. Delegation

The Parliamentary delegation was as follows: Mr S Buthelezi (Chairperson), Mr XS Qayiso (ANC), Mr Z Mlenzana (ANC), Mr OM Mathafa (ANC), Mr HMZ Mmemezi (ANC), Mr EJ Marais (DA), Mr AM Shaik Emam (NFP), and Mr NLS Kwankwa. The delegation was accompanied by the following parliamentary officials: Mr D Arends (Committee Secretary), Mr S Magagula (Content Advisor), Mr M Zamisa (Committee Researcher), Ms N Magazi (Committee Researcher), Ms N Chaso (Committee Assistant), and Mr J Majozi (Parliamentary Communications Officer).

The Committee met with the following stakeholders at the various sites and stakeholder meetings during the oversight visit:

**Department of Public Enterprises:** Mr L Nthampe (Transport Economist)

**National Treasury:** Mr R Rajlal (Chief Director: Sectoral Oversight); Mr T Masenya Mr I Kurusha, Ms L Modiba, Ms U Britton (Chief Director), Ms CO Ubogu (Director)

**Transnet SOC Limited:** Ms Y Kani (Chief Business Development), Mr A Motala (Executive Manager: North Corridor), Mr SG Mkhize (Executive Manager); Mr HM Zondi (General Manager (GM): Transnet Engineering), Mr T Mpikheleli (General Manager: Long-term Financial Planning), Ms S Kubheka (GM: Loss Control Office), Ms B Duiker (GM: Supply Chain Management governance and compliance), Mr R Mthembu (Acting Executive Manager), Mr DS Mqadi (Richards Bay Port Manager), Ms N Ben-Mazwi (Acting Executive Manager: Eastern Region), Mr MK Sibisi (Senior Manager: Sales and key Account Management), Mr S Mhlakula (Managing Executive: Central Region), Mr NM Ndlovu (Richards Bay Terminal Manager), Mr TN Sithole (Programme Director), Mr R Lekala (Chief Harbour Master), Mr LM Billings (Chief Financial Officer), Mr L Mushayanyama (Senior Manager: Regional Stakeholders), Ms A Nkosi (Manager: Secretariat), Mr NM Molefe (Acting Corporate Affairs Manager: Eastern Region), Mr JL de la Rey (General Manager: Capital Assurance), Ms V Mangu (Parliamentary Liaison Officer), and Dr B Gasa (Portfolio Director: Durban Logistics Hub).

**Auditor General South Africa:** Ms M Singo (Business Unit Leader), Ms T Masia (Acting Deputy Business Unit Leader), Ms ME Skosana (Acting Deputy Business Leader), Ms I Dippenaar (Senior Manager), and Ms M Griffiths (Parliamentary Liaison Officer),

**South African Transport and Allied Workers Union:** Mr N Mhlubulwana (President), Mr J Mazibuko (Secretary General), Mr R Goba (Union Representative), Ms S Dlamini (Union Representative), Mr S Rivimbi (National Representative), Mr Z Mogwaca (National Representative), Mr SA Dlamini (National Representative), Mr T Mofokeng (Gauteng Provincial Chairperson),

**United National Transport Union:** Mr D Khumalo (Deputy General Secretary) Mr CL Damons (National Representative), Ms M English (Union Representative), Mr T Mashige (National Representative), and Mr N Fingita (National Representative).

**Department of Transport:** Ms D Tselapedi (Operations), Mr N Makaepa (Deputy Director-General): Rail Transport and PRASA Board Member)

**Passenger Rail Agency South Africa:** Mr L Ramatlakane (Board Chairperson), Ms S Luthuli (Non- Executive Director: PRASA Board), Ms N Macamo (Director: PRASA Board), Ms TN

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Npye (Director: PRASA Board), Mr M Mukhuba (Director), Mr H Emeran (Chief Executive Officer [CEO]), Ms AS Lindeque (Acting CEO for Corporate Real Estate), Mr BG Alexander (Acting Chief Financial Officer), Mr TN Malefane (Acting CEO: Rail), Mr N Roesch (CEO: Autopax), Mr M Marutla (Acting CEO: Technical), Ms LV Mthayise (Group Company Secretary), Ms K Moleme (Senior Manager: Stakeholder Management),

**Gibela Rail Consortium:** Mr H Danisa (CEO), Mr R Boqo (Chief Financial Officer), Ms V Mlomsane (Maintenance Services Executive), Ms C Yende (Procurement Operations Executive), Mr T Mathiba (Head of EHS), Mr K Thabiso (Rolling Stock Operations Executive), Mr CT Meintjies (Company Secretary), Ms S McCann (Project Executive), Ms VB Mnyandu (Communications Manager),

**Alstom South Africa:** Mr B Poille (CEO)

**Umbano Rail:** Mr N Ntiyane (Director)

### 3. Background and objectives of the oversight visit

#### 3.1 Transnet SOC Limited

Transnet SOC Limited, herein after referred to as Transnet, is a major stakeholder in the transport and logistics sector and is vital to South Africa's development, economic growth and sustainability of public finances. Constraints in the logistics sector across South Africa have negatively affected economic growth and employment. More than 25 per cent of long-distance freight traffic has shifted to roads in the past five years, to the detriment of roads infrastructure network, as a result of severe deterioration in the freight rail network. The deterioration in the network has constrained the capability of South Africa to exploit the recent commodity price boom to the fullest. Recent estimates on the export revenue lost, according to the Minerals Council of South Africa, amounts to approximately R50 billion owing to inadequate rail and ports capacity across South Africa. The financial and operational performance of major state-owned companies (SOEs) has steadily deteriorated due, in large part, to weak corporate governance, corruption, archaic business models and burdensome cost structures. Consequently, this has seen Transnet receiving a capital injection of R2.9 billion in the 2022 Adjustments Budget. This was the first capital injection by government since 1994.

In order for South Africa to have a reliable, cost-effective and safe freight system, port and rail infrastructure requires large-scale investment from government. During 2021, SOEs raised R38.9 billion in debt, 40 per cent of which was attributable to Transnet. However, this has proven to be insufficient to reverse historical underinvestment in infrastructure as capital investment by the entity declined by 16.8 per cent to R13.2 billion in the 2021/22 financial year due to lack of funding.

In light of the above, the Committee decided to conduct an oversight visit to Transnet in order to gain deeper understanding and come up with sustainable interventions. The following sections outline key objectives of the oversight visit.

### 3.1.1 Key objectives of the oversight visit to Transnet

The overall objective of the oversight visit to Transnet was to have extensive engagement with Transnet and other key stakeholders on the finances and operations of Transnet. The Committee aimed at holding meetings with the Transnet Executives and other key stakeholders for extensive discussions and comprehensive reporting on the following areas:

- The current state of refurbishment and repairs of infrastructure, especially that damaged by April 2022 floods in KwaZulu-Natal province;
- Progress on the piloting of private sector participation in the freight rail network;
- Interventions undertaken to improve access and efficiency of the different business units, especially Transnet Freight Rail, as well as the types of backlogs at the ports and the mitigating measures introduced;
- The economic and financial impact of Transnet not operating at an optimal level in Rand value;
- Interventions undertaken to improve revenue (including plans to reintroduce the inoperable locomotives) and infrastructure investment; and
- Detailed, practical and measurable plans, and time frames to address all the critical areas of concern as identified and reported by the Auditor General of South Africa (AGSA) to Parliament on the 2021/22 financial statements of Transnet.

Based on the above objectives, the Committee also held a preparatory meeting on 27 March 2023 in Durban with the representatives from the AGSA and National Treasury to discuss the key financial matters of Transnet over the past five financial years. The Committee also held a series of meetings with Transnet's Group Executives and the labour representatives at the Employee Care Centre, Ventura Road, Port of Richards Bay on 28 and 29 March 2023.

**3.2 Passenger Rail Agency South Africa**

The Passenger Rail Agency South Africa (PRASA) plays a critical role in the functioning of the economy through its mandate to move people, mainly commuters, to and from work. However, over years, the implementation of the entity's capital programme and resultant expenditure of allocated funds have declined significantly. PRASA's expenditure on its capital infrastructure has declined significantly in recent years with the entity only spending 24 per cent in 2021/22, 33 per cent on 2020/21, and 24 per cent in 2019/20 on infrastructure/capital budget. Consequently, out of 40 Metrorail lines, only 18 offer a limited service at present. This is due to the non-availability of infrastructure, rolling stock, operational stations and some of the depots having been severely affected by theft and vandalism. All these challenges have led to a decline in planned passenger trips with the current performance indicating that the Metrorail transported only 69 million fare paying passenger trips (~278 000 weekday passenger trips) in 2021/22 compared to the Metrorail transporting 543 million fare paying passenger trips (~2.2 million weekday passenger trips) in 2013/14. The astronomical decline in the number of commuters is, to a large extent, the result of rolling stock failures. This does not only have a dire consequence on economic growth and job creation, but also adversely impacted on poor and vulnerable households who are forced to seek alternative modes of transportation which are often more expensive than rail, further negatively impacting on their livelihoods. Furthermore, these challenges put more burden to poor households whose livelihoods are already impacted by the apartheid spatial planning wherein the poor black majority reside far from key economic nodes and have to travel long distance to their places of employment and key economic nodal points of South Africa.

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### 3.2.1 Key objectives of the oversight visit to PRASA

The overall objective of the oversight visit to PRASA was to have extensive engagement with PRASA and other key stakeholders on the finances and operations of PRASA. The Committee aimed at holding meetings with the PRASA Board and Executives and other key stakeholders for extensive discussions and comprehensive reporting on the following areas:

- Progress made since the Committee's last engagement with PRASA in September 2022 regarding the repositioning of PRASA to be able to spend its capital budget (capex) and conditional grants, particularly on the rolling stock, rail expansion, and signalling, as well as depot modernization.
- Interventions undertaken to improve spending on repairs, refurbishment and maintenance of infrastructure;
- Concrete actions that have been taken to address the continued underspending on capital projects by PRASA and results thus far (including the state of train stations – how many destroyed and refurbished against pre-determined targets, and progress made regarding the construction of depots for new trains);
- Status and the future of the South Africa's rail network considering the current challenges of infrastructure theft and vandalism;
- Update on the progress made to resuscitate and return service lines to full operation including progress on signalling and its impact on services and revenue generated;
- Overview of the suspension of PRASA officials accused of wrongdoing, including the suspension period and associated costs;
- The impact of load shedding on the operations and revenue of the entity as well as the mitigation measures introduced;
- Deliverables by Gibela Rail Consortium versus the promises made in terms of the signed performance contract;
- Follow up on issues previously raised by SCOA including the resuscitation of the Metrorail Express service, and the integration of women of youth across PRASA's business value chain.

Based on the above objectives, the Committee also held a series of meetings with the PRASA Board of Directors and Executive Management as well as the recognised labour unions at the PRASA Umjantshi House in Braamfontein, Johannesburg on 30 March 2023. The Committee

also conducted a site visit to the Gibela Train Manufacturing Plant in Dunnotar, Nigel on 31 March 2023.

**4 Engagements with invited stakeholders**

Committee had a preparatory meeting with the Auditor General South Africa and National Treasury on 27 March 2023 focusing on the key financial aspects and audit outcomes of Transnet and PRASA. These invited stakeholders were requested to make presentations followed by questions of clarification by the Committee. The main observations and findings stemming from these discussions forms part of section 7 of the report.

**5 Engagements with organised labour**

The Committee engaged with the South African Transport and Allied Workers Union (SATAWU) and the United National Transport Union (UNTU) on 28 and 30 March 2023 respectively. The Committee discussed the labour related challenges facing Transnet and PRASA. The sections below provide a summary of the submissions made by the unions.

**5.1 South African Transport and Allied Workers Unions**

**5.1.1 Transnet**

SATAWU commended the Department of Transport (DoT) for its critical diagnosis of the state of rail in South Africa. However, it did not support the prescription provided by DoT, as these aimed to advance a market-fundamentalist agenda, which has been to the detriment of SOEs, following government resolution to corporatize state-owned entities (SOEs). Through the corporatisation of SOEs, such as Transnet, according to SATAWU these institutions failed to deliver public services to a majority of South African citizens.

SATAWU submitted that the future of SOEs seemed bleak as government believed that Private Sector Partnerships (PSP) through strategies such as concessions, devolution, and introduction of Special Purpose Vehicles (SPVs) was essential for the transformation of the rail sector as per the objectives of the National Transport Masterplan (NATMAP) 2050, and the United Nations Climate Change Goals of the same year. SATAWU submitted that such strategies have, in many countries with similar economic status and socio-economic issues to that of South Africa, been met with consistent failure.

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Reference was made to the 2022 White paper on National Rail Policy which stressed the importance of reducing carbon emissions and making a just transition into low carbon, green economy. Whilst agreeing with the concept of a Just Transition, SATAWU cautioned that this had the potential of further encouraging PSPs in the form of outsourcing skills needed to operate various climate change technologies. Therefore, it was paramount that the local skills be produced and enhanced, such that citizens can be enabled to participate meaningfully in the Just Transition for climate change.

### 5.1.2 Passenger Rail Agency Limited

SATAWU highlighted the following during its engagement with the Committee:

- Low staff morale and despondency were serious challenges due to a failure by PRASA to honour the wage agreements between labour and management, reportedly due to an insufficient operational budget. Some of the cash-flow challenges were self-inflicted, for instance due to termination of security contracts without any contingency plans which resulted in substantial theft and vandalism of PRASA's assets. These damaged infrastructures across South Africa needed to be replaced at the expense of the employees, including management.
- The PRASA Board of Directors and Executive Management needed to build a sound relationship with the entity's employees and organised labour as this will assist with lifting the current low employee morale throughout the entity. Furthermore, the Board of Directors needed to be held accountable for their decisions.
- The misalignment between PRASA's capital and operational budget allocations was concerning as there were insufficient funds for important operational activities such as maintenance of assets and payment for goods and services. This was compounded by the numerous litigations and subsequent court rulings against PRASA, resulting in the entity owing close to R4.5 billion to security companies and other service providers, some of whom were seeking to attach some assets of the entity.
- PRASA lacked proper leadership as well as an effective marketing strategy and therefore failed to build good relationships with the communities wherein it operated and where its assets are situated. A healthy relationship with these communities would also assist with the security issue plaguing the entity.

- An effective model for the vetting of Executive Managers and Board of Directors was needed as many of them have business interests which often resulted in conflicts of interests with that of the entity, leading to court actions in some instances. This was a contributing factor to wasteful expenditure in the entity.
- The number of people acting in senior management positions was a cause for serious concern and needed to be addressed urgently. The high number of acting persons impacted negatively on the finances and operational efficiency of the entity.
- Considerations should be given to incorporating Autopax, a fully owned subsidiary of the entity, into PRASA. Furthermore, National Treasury should consider providing PRASA with a cash injection through moving funds from the capital budget to the operational budget.
- The Procurement Policy needed to be reviewed as it was laden with flaws resulting in substantial losses to the entity. These flaws resulted in wasteful expenditure.

## 5.2 United National Transport Union

### 5.2.1 Transnet

The United National Transport Union (UNTU) submitted that Transnet was in the process of consulting with an international company. The purpose of this consultation was to convert the waterside ship-to-shore cranes as well as rubber-tyre gantry cranes in Durban's Pier 1 Container Terminal and Cape Town Container Terminal from manual operation to automation. These cranes would be operated remotely from offices instead of being manually operated by employees. UNTU submitted that will result in hundreds of employees being redundant and ultimately being retrenched. The automation of ship-to-shore cranes was a huge project and would create opportunities for possible corruption.

UNTU submitted that organised labour was strongly opposed automation of ship-to-shore cranes as it was not in the best interest of Transnet and its employees. UNTU suggested that alternative solutions should be sought in this regard. The mandate of the SOE's was to reduce unemployment and create sustainable jobs and grow the economy, however, this mooted project of automation would do the opposite as it would reduce the current workforce thus increasing unemployment in South Africa.

UNTU proposed that an international benchmarking exercise be undertaken by a Task Team comprising of management and labour in one of the top 10 most efficient terminals in the world. The learning from this benchmarking exercise should be used improve the efficiencies at Transnet's terminals.

**5.2.2 PRASA**

UNTU highlighted the following main issues during its engagements with the Committee:

- Effective security of PRASA's assets remained a cause for serious concern resulting in substantial losses for the entity due to theft and vandalism across South Africa.
- The lack of communication and employee engagement by the Executive Management resulted in low staff morale within the entity.
- There is a leadership vacuum in the business of PRASA due to a high number senior management positions being vacant and this negatively affected the operations of PRASA due to delays in decision-making.
- Delays in the supply chain management (SCM) processes of PRASA were concerning as this impacted on the operations, especially the delays in procurement of signalling equipment which negatively affected the train operations and also have safety implications.
- The financial challenges facing PRASA impacted on the morale of staff as they have not received salary increments over the past three financial years. UNTU proposed that consideration be given to providing a cash injection to PRASA in order to assist in this regard.
- Concerns were expressed at the amount of resources being allocated to the old train fleet, while the entity was in the process of introducing a new fleet. UNTU submitted that old fleet needed to be phased out and a comprehensive induction processes needed to be undertaken with employees regarding the migration system into the new fleet of trains.
- The primary objective of PRASA was to transport the poor and vulnerable however the Executive Leadership seemed to lose focus of its vision as an entity. This was due to a lack of adequate and requisite skills at senior management level who lack the in-depth knowledge of the value chain of operations across the entity. Furthermore, some senior managers have reached the saturation point and were thus not adding any value, therefore there was a need to revitalise the management of PRASA.

## 6 Engagements with Transnet Group Executives and Senior Managers

The Committee met with the Group Executives for Transnet's different business units i.e. National Ports Authority (TNPA), Port Terminals (TPT), Engineering (TE), Freight Rail (TFR), and Property (TP). Presentations were made by these different business units followed by in-depth discussions between the Committee and invited stakeholders. The main observations and findings emanating from these discussions will form part of section 7 of the report.

## 7 Overall Committee Observations and Findings

The observations and findings which were highlighted by the Committee during the deliberations with the various stakeholders and subsequent site visits are outlined below in different thematic areas for the oversight:

### 7.1 Audit Opinions

#### Transnet's Audit Opinion

7.1.1 The Committee notes the improvement in the audit outcomes of Transnet for the 2021/22 financial year wherein the entity received that Transnet received an unqualified audit opinion, with findings on compliance legislation. This is an improvement from four years of qualified audit opinions since the 2017/18 to 2020/21 financial year. However, the Committee is concerned that this seemingly improved audit outcomes might not be a true reflection of how Transnet operates, particularly in the finance environment.

7.1.2 The Committee notes with concerns that the improvement in the audit opinion on Transnet by the AGSA is mainly due to it receiving exemption from section 55(2)(b)(i)(ii) and (iii) of the Public Finance Management Act, No. of 1999 (PFMA) that was granted by the Minister of Finance. The said exemption was granted on 31 March 2022 for a period of three financial years from 31 March 2022 to 31 March 2024. The Committee is concerned by the lack of transparency in granting these exemptions by the Minister of Finance, particularly lack of or inadequate consultations. The Committee is strongly of the view that Parliament, as elected representative of the people, tasked by the Constitution to maintain oversight over the

Executive, should play a pivotal role when decisions to exempt SOEs on any financial reporting requirement are taken.

- 7.1.3 The Committee notes with concerns the report from AGSA that had it not been for the exemption, Transnet would have received a modified audit opinion in 2021/22 as instances of material non-compliance relating to procurement and disclosure of irregular and fruitless and wasteful expenditure were identified.
- 7.1.4 The Committee notes with concern that the most prevalent areas of non-compliance by Transnet related to procurement and contract management, expenditure management, consequence management and material errors in the financial statements submitted for audit. These were mainly due to weaknesses in the control environment where preventative as well as detection controls over procurement and contract management were inadequate when compared to previous years. Furthermore, compliance with legislation was not adequately monitored, while progress with investigations and follow-through on consequence management proceedings was slow.
- 7.1.5 In terms of non-financial performance, the Committee notes with serious concern that Transnet only managed to achieve 39 per cent of its annual targets as reported in its annual performance report for the 2021/22 financial year. Furthermore, over a period of five years, Transnet's average performance was 40 per cent, with the highest performance being 60 per cent in 2018 and the lowest being 10 per cent in 2021 mainly due to the impact of Covid-19. This was particularly concerning due to Transnet being a critical role player in the rail transport environment. Furthermore, its mandate was closely aligned with the government's 2020-2025 Medium Term Strategic Framework (MTSF) priorities 1 and 2 which seek to ensure a capable, ethical and development state and economic transformation and job creation.

7.1.6 The Committee notes with serious concerns that PRASA received a disclaimed audit opinion from the 2018/19 to 2021/22 financial years, regressing from a qualified audit opinion in 2017/18 financial year. The Committee is concerned that this is due to four material and pervasive areas that remained unaddressed in 2021/22, namely; property, plant and equipment (assets) and related line items depreciation; impairment; losses on the disposal of assets and prior year error corrections related to assets, completeness of irregular expenditure, completeness of fruitless and wasteful expenditure, and commitments.

7.1.7 In terms of non-financial performance, PRASA only managed to achieve three or 19 per cent out of the total 16 predetermined performance indicators across all objectives for the 2021-22 financial year. This is a cause for serious concern by the Committee given the fact that PRASA plays an important function in transporting the most vulnerable people in South Africa.

**7.2 Finances**

**Transnet's finances**

7.2.1 The Committee notes the submission by the AGSA that Transnet has to date been able raise funding without government support and guarantees. Furthermore, the Committee notes that the liquidity and financial health of the entity still required close monitoring in light of the operational challenges which continued to impact its ability to generate cash flows that would sustain the business going forward. These operational challenges, which are evident in the substantial reduction of dry bulk rail volumes to the Richards Bay Coal Terminal (RBCT) from a high of 77 million tons in 2017, to 50.9 million tons in 2022.

7.2.2 The Committee notes the report from Transnet that, should the impasse with the CRCC be addressed, the outlook for the export of coal would be 74.70 tonnes in 2023/24, 77.00 tonnes in 2024/25, and 81.00 tonnes in 2025/26. Based on the aforementioned coal exports outlook, it is very important for the impasse between Transnet and the CRCC be addressed as a matter of urgency. The Committee is of the view that the implication of Transnet not operating optimally, has negative effects on others organs of the state such as the South African National Roads Agency Limited due to as increased maintenance costs. The Committee is also of the view that the agency should

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also look at in-house resources within the Transnet Engineering Business Unit to maintain the locomotives.

- 7.2.3 The Committee notes with serious concerns the report from AGSA that Transnet was not generating sufficient cash flows from operations that would enable it to settle capital loans/bond repayments. Consequently, it has to rely heavily on additional external loans/bonds to re-finance significant portions of their maturing loans. The Committee is concerned about the possibility of government having to recapitalise Transnet in the future in order to assist the entity to pay its external principal debt and interests to prevent the entity from defaulting on its debt repayment.

#### **PRASA's finances**

- 7.2.4 The Committee notes with concerns the report from AGSA on the significant underspending of PRASA's capital budgets, which according to the AGSA, has a negative impact on the delivery of infrastructure and ultimately affects service delivery and negatively impacts the citizens of the country. The Committee is concerned that only 35 per cent or R6.5 billion of the allocated R18.4 billion of PRASA's capital budget was spent at the end of the 2021/22 financial year, mainly due to procurement challenges within the entity. The Committee is concerned that despite its numerous engagements with the National Treasury, the Department of Transport and PRASA on issues of capital expenditure related matters over the years, there seems to be no end in sight of this reported under expenditure, despite many promises and plans presented to the Committee.
- 7.2.5 The Committee notes with caution PRASA's projections that it will be able to spend the entire capital budget allocation at the end of the 2022/23 financial year. Even though the Committee is encouraged by this commitment from PRASA, the Committee feels that it is still early to celebrate this projection given the myriad of issues raised by the AGSA and the recent failures by PRASA to spend their appropriated capital budget.
- 7.2.6 The Committee notes with concerns the report by organised labour that PRASA employees' salaries were paid through the interest generated from the capital budget. This was corroborated by PRASA's Board and Executives who reported that salaries would have had to be reduced by 25 per cent if the interest on the capital budget

allocation had not been utilised. The Committee is therefore of the view that over and above the challenges that inhibit the entity from spending on its capital allocations, there might be some elements of a deliberate move by the PRASA's executive not to spend its capital allocation to allow it to generate interest to pay employees' salaries.

7.2.7 The Committee notes and welcomes the report from PRASA that 16 corridors would have been recovered by the end of the 2022/23 financial year with a further 12 to be recovered in the 2023/24 financial year. The Committee is of the view that the recovering of corridors will further strengthen the entity's revenue generating capacity and this will go a long in alleviating some of the operational budget challenges faced by the entity.

7.2.8 The Committee notes that PRASA owed its operational creditors (Transnet and other creditors) a total of R3.921 billion, while the entity only had R163 million in operational cash available ,thus having a shortfall of R3.758 billion at the time of the oversight visit. The Committee further notes the historical debt owed to Transnet amounting to R2.114 billion and the Committee is of the view that PRASA through the Department of Transport should accelerate engagement with Transnet through the Department of Public Enterprises in order to address this matter with the required urgency. The Committee is concerned by the possible legal action that Transnet want to institute against PRASA and the Committee is firmly of the view that government institutions can use available government resolution and mediation mechanisms when disputes arise, instead of taking each other to court, where the ultimate losers are the taxpayers.

**7.3 Transnet's infrastructure**

7.3.1 The Committee notes with concerns about the reported number of locomotives that are not operational, thus impacting the capacity of the entity to move volumes due to legal proceedings which commenced in March 2021 between Transnet and four Original Equipment Manufacturers (OEMs) due to alleged procurement irregularities. These legal proceedings resulted in the suspension of the four contracts and led to OEMs not supplying Transnet with spare parts to maintain locomotives. Consequently, Transnet has a number of locomotives that are not operational and thus impacting their capacity to move volumes.

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## MEDIA STATEMENT

**SCOPA URGES GOVERNMENT TO RESOLVE R220 BILLION CAPITAL FUNDING SHORTFALL AT SAA, PRASA AND TRANSNET**

**Parliament, Tuesday, 22 October 2024** – Following its meeting with the Minister of Transport, Ms. Barbara Creecy the Standing Committee on Public Accounts (SCOPA) has urged the government to speedily resolve capital funding shortfalls at South African Airways (SAA), Passenger Rail Agency of South Africa (PRASA) and Transnet. These amount to between R220 billion and R240 billion for Transnet and PRASA alone.

The capital injection is needed so that they can reach pre-COVID-19 levels of performance and fulfil their mandate in terms of servicing the economy so it can grow. Rail and other logistics challenges have repeatedly been cited by the South African Reserve Bank and economists as a significant obstacle to economic growth.

The committee today received a briefing from the Minister of Transport, Ms Barbara Creecy, on the governance, performance, financial sustainability, potential policy and legislative changes at SAA, PRASA and Transnet. PRASA currently requires a R120 billion cash injection to get back to the pre-COVID-19 levels of operation. The Minister has indicated that some of this money will come from government grants and the rest from other forms of investments such as private-public partnerships.

Similarly, Transnet needs between a R100 billion and R120 billion cash investment to reach a healthy financial level. Transnet will get some of the funds from investments in third party operators and the rest is expected from the government.

The committee was informed that SAA is now debt-free and will not be requesting additional funding from government, however, the airline requires a cash injection investment through an equity share partner to reach a healthy financial state.

On the funding model of the Road Accident Fund (RAF) which relies mostly on the fuel levy, the Minister has informed the committee that the Department of Transport is monitoring the work of the Cabinet committee that is responsible for moderating fuel price increases. Also, the Minister is currently assessing whether the Road Accident Benefits Scheme Bill should be tabled again in Parliament to address the legislative reforms that are required to respond to the challenges experienced by RAF.

"The impact of funding challenges is profound. For PRASA commuters it means far fewer trains can run on the same line because there is no electronic signalling equipment, which can double the time it takes to complete each journey. Transnet's problems mean tonnages have dropped precipitously, leading to penalties, delays at ports and extensive damage to the road network resulting from increasing trucking volumes. The government needs to respond and act with urgency, and ensure the funding is available," said SCOPA Chairperson, Songezo Zibi.

Members of Parliament also urged the Minister to fast-track the development of a new funding solution for the RAF through legislation and policy changes to ensure it is financially sustainable in the future. The RAF is underfunded and perpetually insolvent as a result.

**ISSUED BY THE PARLIAMENTARY COMMUNICATION SERVICES ON BEHALF OF THE CHAIRPERSON OF THE STANDING COMMITTEE ON PUBLIC ACCOUNTS, MR SONGEZO ZIBI.**

For media enquiries, please contact the committee's Media Officer:

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21 September 2023

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National Prosecuting Authority  
Email: ndpp@npa.gov.za

Dear General Lebeya and Ms Batohi

***Failure of the Hawks and the NPA to hold accountable those responsible for Corruption at the Passenger Rail Agency of South Africa (PRASA): Swifambo Hillbrow CAS 405/08/2015 and Siyangena Brooklyn CAS 278/09/2015***

**INTRODUCTION**

1. Open Secrets is an organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations. We write this letter to express our concern regarding the apparent inaction on the part of the DPCI and NPA in investigating and prosecuting the individuals responsible for having procured and/or facilitated the corrupt procurement of goods on behalf of the *Passenger Rail Agency of South Africa* (PRASA).
2. Open Secrets, along with other civil society organisations, have maintained a sustained focus over the years on addressing corruption at PRASA given the direct and disproportionate impact its continued mismanagement has on the lives of poor and

working-class people. We attach to this letter a list of the investigative pieces we have released documenting the role of the politicians, board members and institutions that facilitated the systemic corrupt dealings at PRASA. We have marked this as Annexure A.

3. Given our organisation's objectives in respect of economic crime, particularly in relation to corporate actors, we have an interest, as does the public, in seeing perpetrators held to account.

### A HISTORY OF WRONGDOINGS

4. The history of corruption during the tenure of former GCEO of PRASA Lucky Montana is well documented by government bodies and private bodies alike. The former Public Protector's report *Derailed* demonstrates well the maladministration relating to financial mismanagement, tender irregularities and appointment irregularities at PRASA. The report concluded, as do all other investigations into the tenders awarded to Swifambo Rail Leasing (Pty) Ltd ("Swifambo") and Siyangena Technologies (Pty) Ltd ("Siyangena"), that there were systemic failures to comply with the Public Finance Management Act, 1999. The result is that an estimated R3.5 billion was spent illegally with devastating cost to ordinary South Africans, South Africa's public transport capabilities, national revenue and South Africa's status under the Financial Action Task Team.
5. Other investigations into PRASA include the Auditor-General's report dated 25 September 2014, subsequent investigations by Treasury, the Crowe Forensics report dated 20 April 2017 commissioned by the DPCI itself, forensic reports produced by the liquidator of Swifambo and finally the State Capture Commission Report issued in June 2022.
6. The culmination of all this is an overwhelming body of evidence which identifies the following individuals as having benefitted from and/or orchestrated corruption at PRASA detailed in the above listed reports and investigations:
  - 6.1. Lucky Montana (former GCEO at PRASA);
  - 6.2. Sifiso Buthelezi (former Chairperson of the Prasa Board);
  - 6.3. Dr Bridget Gasa (former board member);
  - 6.4. Nkosinathi Khena (former board member);
  - 6.5. Marissa Moore (former board member);

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- 6.6. Ntebo Nkoenyane (former board member);
  - 6.7. Mfanyana Salanje (former board member);
  - 6.8. Auswell Mashaba (former CEO of Swifambo);
  - 6.9. Makhensa Mabunda (third party contact between Swifambo and Vossloh);
  - 6.10. Daniel Mthimkhulu (former Executive Manager of Engineering Services at PRASA); and;
  - 6.11. Vossloh AG (the foreign supplier of the too-tall trains in the Swifambo contract).
7. Several legal proceedings have been instituted pursuant to accountability and yet none of the implicated parties have been charged. The tender awards to Swifambo and Siyangena were set aside by the High Court and confirmed by the Supreme Court of Appeal.<sup>1</sup> Additionally criminal complaints were filed by an employee of PRASA, Philemon Makgatlela Mamabolo ("Mamabolo"), with the South African Police Service under case number CAS405/07/2015 in relation to the Swifambo contract and by Paul O'Sullivan under CAS278/09/2015 in collaboration with Mamabolo who submitted a statement supporting the complaint on behalf of PRASA in relation to the Siyangena Contract.
8. Presently, the most relevant to us is the litigation instituted on 29 May 2017 by former board chairperson of PRASA Dr Popo Molefe in PRASA's name (with the Organisation Undoing Tax Abuse ("OUTA") as an intervening party) against the NPA and the DPCI for various failures to complete criminal investigations against PRASA's tender awards to Swifambo and Siyangena under Hillbrow CAS 405/08/2015 and Brooklyn CAS 278/09/2015.
9. The application was not opposed by the NPA and we are aware from the papers that have been filed thus far that there was contestation between the Hawks and PRASA as to the reason for the delay. The litigation between these parties does not appear to have progressed.

**A DELAY IN THE INVESTIGATION AND RELATED LITIGATION**

10. On 23 August 2021 Lt Gen Lebeya testified before the State Capture Commission that investigations into the Swifambo and Siyangena Contracts were 90% and 75%

<sup>1</sup> *Swifambo Rail Leasing v PRASA* (1030/2017) [2018] ZASCA 167 (30 November 2018); *Siyangena Technologies (Pty) Ltd v PRASA and Others* (487/2021) [2022] ZASCA 149 (1 November 2022).

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complete respectively but we are unaware as to why the investigations have not been concluded two years later.

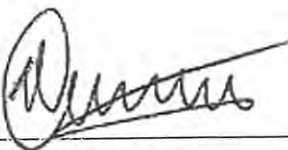
11. As such we request a response to the following questions:

- 11.1. What is the cause for the delay in completing the investigations and instituting criminal proceedings;
- 11.2. To what extent are the NPA and the Hawks co-operating to ensure that the investigations are completed considering the significant effluxion of time;
- 11.3. Who is the current lead investigator and prosecutor managing the investigations;
- 11.4. Are the NPA and Hawks able to provide timeframes for when the investigations will be completed; and
- 11.5. What is the status of the litigation against the NPA and the Hawks instituted by PRASA?

12. Kindly provide us with a response within two weeks on receipt of this correspondence.

We look forward to hearing from you.

Yours faithfully



Hennie Van Vuuren  
Director: Open Secrets



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**ANNEXURE A**

1. Unaccountable 00023-26: The PRASA files: a repository for all the documents cited in the Unaccountable series focussing on the corruption at state owned enterprise, PRASA, available at  
<https://www.opensecrets.org.za/unaccountable-00023-case-file-prasa-looted-and-left-for-scrap/>
2. "Wanted: The State Capture Conspirators - The urgent cases we can act on now!" Open Secrets, June 2002, available at:  
<https://www.opensecrets.org.za/wanted-the-conspirators/>
3. "Bad Cops, Bad Lawyers: The officials at the NPA and the Hawks delaying justice for State Capture" Open Secrets, August 2022, available at:  
<https://www.opensecrets.org.za/investigation-bad-cops-bad-lawyers/>
4. "The Enablers: The Bankers, Accountants and Lawyers that cashed in on state capture" Open Secrets, February 2020, available at  
[https://www.opensecrets.org.za/wp-content/uploads/TheEnablers\\_web.pdf](https://www.opensecrets.org.za/wp-content/uploads/TheEnablers_web.pdf)

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0001, South Africa



Enquiries: [repsadmin@npa.gov.za](mailto:repsadmin@npa.gov.za)  
Ref: 10/2/12/3 -420/2021

Director: Open Secrets  
Mr H van Vuuren

Per email: [cballard@opensecrets.org.za](mailto:cballard@opensecrets.org.za)

## SUBJECT: OPEN SECRET LETTER TO DPCI AND NPA RE PRASA INVESTIGATIONS

- (a) Your communication to the National Director of Public Prosecutions (NDPP) and the Head of Directorate for Priority Crime Investigations (DPCI) dated 21/09/2023 refers.
- (b) Please be informed that the NDPP has delegated the authority to decide on matters such as this to the Head of the National Prosecution Service (NPS) of the National Prosecuting Authority (NPA), thus this response from my office.
- (c) I have taken note of your enquiry relating to the PRASA matter, and as it is still under investigations by the DPCI, the NPA will defer to the DPCI to respond thereto. The Head of the DPCI has been duly informed hereof.
- (d) Regarding the questions to be informed of the prosecutor dealing with the matter, the NPA has decided not to disclose this information as the matter is still under investigations, and thus resorts under the DPCI.

Kind Regards

**ADV R J DE KOCK**  
**DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**  
**HEAD: NATIONAL PROSECUTIONS SERVICE**  
DATE: 5/10/2023

*Handwritten initials 'u' and 'a'*



Private Bag X1500, 0127

Reference: 14/7/11/1(2)  
Enquiries: Lieutenant General SG Lebeya  
Telephone: 012 846 4101  
Email: [MakinyaneM@saps.gov.za](mailto:MakinyaneM@saps.gov.za)

NATIONAL HEAD  
DIRECTORATE FOR PRIORITY CRIME  
INVESTIGATION  
SOUTH AFRICAN POLICE SERVICE

2023 -11- 07

The Director  
Open Secrets  
Second Floor, Community House  
No. 41 Salt River Road  
**CAPE TOWN**  
**7925**

Dear Mr Van Vuuren

**FAILURE OF THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI) AND THE NATIONAL PROSECUTING AUTHORITY (NPA) TO HOLD ACCOUNTABLE THOSE RESPONSIBLE FOR CORRUPTION AT THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA): SWIFAMBO HILLBROW CAS 405/08/2015 AND SIYANGENA BROOKLYN CAS 278/09/2015**

This office acknowledges receipt of your letter dated 21 September 2023 regarding the above matter, and its content has been noted.

The two matters are investigated by a team of investigators in the Directorate for Priority Crime Investigation (DPCI).

Due to the complexity of the matter, the DPCI may not be able to provide timeframes for when the investigation will be completed, however, the matter is being prioritised. The investigating team is continuously engaging with the team of prosecutors from the National Prosecuting Authority (NPA) that are guiding the investigations, and there is cooperation between the two organisations.

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FAILURE OF THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI) AND THE NATIONAL PROSECUTING AUTHORITY (NPA) TO HOLD ACCOUNTABLE THOSE RESPONSIBLE FOR CORRUPTION AT THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA): SWIFAMBO HILLBROW CAS 405/08/2015 AND SIYANGENA BROOKLYN CAS 278/09/2015

This office advise that the status of the litigation instituted by PRASA, as stated in your letter, against the NPA and the DPCI, may be requested from PRASA.

Yours faithfully.

  
LIEUTENANT GENERAL  
NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
(DR/ADV) SG LEBEYA (SOEG)

Date: 2023 -11- 07



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Date: 14 December 2023

Your ref: --

Our ref: PLOS-202304

**TO: DIRECTOR OF PRIORITY CRIME INVESTIGATION**  
C/o Lieutenant General Godfrey Lebeya  
E-mail: [lebeya@saps.gov.za](mailto:lebeya@saps.gov.za) | [mulaudzi@saps.gov.za](mailto:mulaudzi@saps.gov.za) | [mbamboNP@saps.gov.za](mailto:mbamboNP@saps.gov.za)

**TO: NATIONAL PROSECUTING AUTHORITY**  
C/o Advocate Shamila Batohi  
E-mail: [ndpp@npa.gov.za](mailto:ndpp@npa.gov.za)

**TO: NATIONAL PROSECUTIONS SERVICE**  
C/o Advocate RJ de Kock  
Email: [rjdekock@npa.gov.za](mailto:rjdekock@npa.gov.za)

Dear General Lebeya, Advocate Batohi and Advocate De Kock

**REQUEST FOR REASONS: FAILURE OF HAWKS TO COMPLETE INVESTIGATION INTO CORRUPTION AT PRASA AND FAILURE OF NPA TO DECIDE WHETHER TO PROSECUTE**

1. We act on behalf of Open Secrets NPC ("OS").
2. OS wrote to the National Head of the Director of Priority Crime Investigation ("Hawks") and to National Director of Public Prosecutions on 21 September 2023.
3. In its letter, OS sought information about—

**Director:** MJ Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** T Davis B.A. (RU), LL.B. (UCT), S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.), T Power B.A., LL.B., LL.M. (Wits) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Technologist:** K Nwana | **Office Manager:** J Rashid. Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

\* **Cape Town Office:** Unit 403, 5 St Georges Mall, Cape Town, South Africa, 8001. \*\* **Name Change:** Please note that on 10 May 2023 our name changed from Power Singh Inc. to Power & Associates.

- 3.1. the delay in the Hawk's completion of its investigation into two criminal cases against former board members and CEO of the Passenger Rail Agency of South Africa ("**PRASA**"); and
- 3.2. the failure by the National Prosecuting Authority ("**NPA**") to decide whether to prosecute those individuals.
4. These are the references for the criminal cases:
  - 4.1. **CAS 405/08/205**, registered at Hillbrow SAPS following a complaint by PRASA's Mr PM Mamabolo to the South African Police Service ("**SAPS**") on 8 July 2012 and supplemented on 28 September 2015.
  - 4.2. It covered 37 complaints to the Public Protector about alleged corruption at PRASA and its irregular tender award for the Swifambo contract.
  - 4.3. **CAS 278/9/2015**, opened and registered at Brooklyn SAPS, following a complaint by Mr Paul O'Sullivan to SAPS on 27 March 2016. It relates to PRASA's irregular tender award for the Siyangena contract.
  - 4.4. For convenience, we refer to them as the '**criminal charges**'.
5. The current state of the investigation into the criminal charges and of the NPA's readiness to decide whether to prosecute is unknown.
6. Enquiries by the various Portfolio Committees of the National Assembly appear not to have elicited clear responses from the Hawks or the NPA, nor have they accelerated matters.
7. PRASA's pending court application to the Gauteng Division of the High Court, launched on 29 May 2017, and the evidence presented to the Zondo Commission have given the public some insight into causes of the slow pace of the investigation and its impact on possible prosecution. But since then, little to no information about the ripeness of the investigation and of possible prosecution has been publicly available.
8. OS conducted its own investigation into the Swifambo and Siyangena tenders, producing a report in 2022 entitled *Wanted: The State Capture Conspirators*. The *Wanted* report analysed evidence in the public domain about eight individuals, connected to PRASA, and related corporations. The *Wanted* report expressed OS's view that, on its analysis, criminal prosecutions should follow.
9. On 25 July 2022, OS gave the Hawks and NPA the *Wanted* report, to help the investigative and prosecutorial process, which seemed to have ground to a halt. OS received no response.

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- 10. As mentioned at the outset, on 21 September 2023, OS sent correspondence to the Hawks and the NPA.
- 11. Adv De Kock of the NPA replied, on behalf of the National Prosecutions Service (“NPS”), on 5 October 2023 —
  - 11.1. He explained that the NPA had delegated the authority to decide whether to prosecute the charges to his office.
  - 11.2. He advised simply that the Hawks had not yet completed their investigation. This, presumably, was the response to OS’s question as to the NPA’s failure to decide whether to prosecute.
  - 11.3. Lastly, he informed OS that he had informed the Head of the Hawks of OS’s request for information about the investigation. He deferred to the Hawks to respond on that score.
- 12. Lt Gen Lebeya replied, on behalf of the Hawks, on 7 November 2023. He advised that—
  - 12.1. a team of investigators in the Hawks was investigating the criminal charges;
  - 12.2. he could provide no information about timeframes due to the complexity of the matters, except that they were being ‘*prioritised*’; and
  - 12.3. the Hawks’ investigating team were co-operating with the NPA in the investigation, which was being guided by a team of prosecutors.
- 13. Adv De Kock’s letter offers no substantive explanation for the ongoing delay in bringing the criminal charges to a head. Nor does it disclose any initiative on the part of the NPA or NPS to advance matters, eight years on. It amounts to no explanation at all.
- 14. Lt Gen Lebeya’s response is unhelpfully vague. That the matters were being prioritised is directly relevant to the anticipated timeframes of the investigations. OS, in any event, sought no information about the substance of the investigation, only about how long the process was expected to take.
- 15. Further, there is a tension between the response from the NPS and the Hawks: Adv De Kock’s letter seems to lay the reason for the delay at the Hawks’ doorstep, whereas the Lt Gen Lebeya states that the investigation was being guided by a team of NPA prosecutors.
- 16. Both the absence of meaningful reasons and the apparent shifting of responsibility for the cause of the delay does little to advance transparency and accountability. It also casts doubt on the effectiveness and soundness of the investigative and prosecutorial strategy.

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17. PRASA's affidavit in its court application confirms Lt Gen Leheya's version that the prosecutors from the NPA and officials from the Asset Forfeiture Unit have been involved in the investigation to date.
18. OS, therefore, has instructed us to make a formal request for reasons for—
  - 18.1. the failure by the NPA and NPS to decide whether to prosecute any of the implicated individuals identified in the criminal charges; and
  - 18.2. the failure by the Hawks to conclude its investigation into the criminal charges.

***Basis of the request for reasons***

19. As you are aware, OS is a non-profit organisation, whose central object is to expose private sector economic crimes through investigative research and to build accountability through advocacy and the law.
20. Several courts have recognised OS's standing to litigate in the public interest.
21. The NPA is the single national prosecuting authority, contemplated in section 179 of the Constitution. Under section 179(2), the NPA *'has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.'*
22. The NPA's prosecutorial functions amount to exercises of public power, which are subject to the rule of law and principle of legality. They must be exercised rationally and in terms of law.
23. The Hawks form part of the single police force, contemplated in sections 199(1) and 205 to 208 of the Constitution. Under section 205(3), the objects of the SAPS (which includes the Hawks, *'are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.'*
24. The Hawks' mandate is more focussed, in terms of chapter 6A of the South African Police Service Act, 1995, which is national legislation contemplated in section 205(1) of the Constitution: it must *'prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption.'*
25. The functions of the Hawks also amount to exercises of public power, which are subject to the rule of law and the principle of legality. They too must be exercised rationally and in terms of law.
26. The NPA and Hawks are organs of state. They bear duties to the public to respect, protect, promote and to fulfil the rights in the Bill of Rights, in terms of section 7(2) of the

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Constitution. They must also discharge their duties '*diligently and without delay*' under section 237 of the Constitution.

27. The independence and resultant effectiveness of the Hawks in investigating and combatting corruption stems from the Constitution and the empowering legislation. Similarly, the NPA's prosecutorial mandate also stems from the Constitution and empowering legislation. The duty to investigate and combat corruption and to prosecute crimes diligently and without delay attaches to the Hawks' and NPA's respective functions.
28. The right to reasons for exercises of public power—or a failure to exercise a public power, where there is a duty to do so—avails a requester with a sufficient interest in the object of the exercise.
29. Here, as a public interest organisation that strives to promote accountability in combatting private sector crimes, OS has an interest in the effective investigation and possible prosecution of the criminal charges.
30. Given the eight-year period since the criminal charges were laid, the absence of any visible progress of the Hawk's investigation, and the NPS's deference to the Hawk's completion of its investigation (seemingly) to start considering whether to prosecute, one is driven to infer an irrational failure to fulfil the constitutional and legislative obligations on those organs of state.
31. Adequate reasons are thus necessary to rebut that inference being confirmed through lack of transparency and apparent inertness. A statement of the obvious, as was given, fails the legality standard.

***Nature of the request for reasons***

32. OS is sensitive to the fact that the Hawks and NPA, in responding to OS's request for reasons, would be chary of sharing details that might prejudice the state in conducting a future trial.
33. But OS's request is not aimed at extracting exhaustive detail that could jeopardise the process, if disclosed. All it seeks are adequate and informative reasons about the process and not the content of the investigations and possible prosecution.
34. Adequate and informative reasons should, at least, place OS in a position to determine whether the *prima facie* inference of irrational failure to fulfil the constitutional obligations on the Hawks and NPA has substance or is unfounded. They should place OS in a position to determine whether there are sufficient grounds for judicial review.
35. Please, therefore, provide us with reasons for—

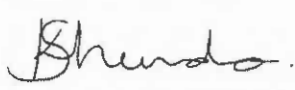
- 35.1. the failure by the NPA and NPS to decide whether to prosecute any of the individuals implicated in the criminal charges; and
  - 35.2. the failure by the Hawks, in cooperation with the NPA or NPS, to conclude its investigation into the criminal charges.
36. OS believes that the reasons, at the very least, should answer these questions:
- 36.1. Do the Hawks have an investigation plan? If not, why not?
  - 36.2. Do the Hawks and NPA or NPS have a joint investigation plan? If not, why not?
  - 36.3. How are the Hawks coordinating their investigation with the NPA or NPS? What policy underlies that coordination?
  - 36.4. Please could the Hawks, NPA or NPS, or both provide OS with an outline of the investigation plan referred to in paragraph 36.1 and 36.2 above?
  - 36.5. Has the NPA or NPS delegated any portion of the investigative work to any of its Directorates?
  - 36.6. If an investigation plan is in place, how far along in the plan are the Hawks, NPA or NPS, or both?
  - 36.7. What proportion of the investigative work remains outstanding, who is responsible for it (more specifically, which Directorates and prosecutors are involved), and what are the anticipated timeframes for completion?
  - 36.8. Has the investigation been streamed into components or phases? If so, are certain components or phases of the investigation complete?
  - 36.9. How have the Hawks overcome the obstacles to the investigation, identified in the affidavit of General Khana of 11 May 2018? What challenges, if any, remain? How has the NPA or NPS assisted in that regard?
  - 36.10. Have the investigators and guiding prosecutors gathered evidence from PRASA beyond that used in support of the two court applications concerning the Swifambo and Siyangena contracts?
  - 36.11. Since the hearings at the Zondo Commission, what proportion of the outstanding investigative work remains?

- 36.12. Have any new challenges arisen in obtaining PRASA’s cooperation with the investigation? If so, have the Hawks or NPA or NPS used the power of subpoena? If not, why not?
- 36.13. Does the NPA or NPS have a prosecution plan? If not, why not?
- 36.14. If so, how does the prosecution plan synchronise with the investigation plan? Has provision been made for the plans to be implemented concurrently or sequentially, and why?
- 36.15. To what extent have the challenges to the Hawks’ ability, under the guidance of the prosecutors, to gather evidence impacted on the prosecution plan? What steps have the NPA or NPS taken to address the challenges encountered in the investigation?
- 36.16. Has the NPA or NPS prepared draft charges arising out of the completion of components of the investigation plan, referred to in paragraph 36.7 above?
- 36.17. What are the NPA or NSA’s target deadlines for deciding whether to prosecute? Is the NPA in a position to take that decision, at least in respect of some individuals, now? If so, why has it not?
- 36.18. Is it intended that a possible prosecution will be governed by the National Prosecuting Authority Amendment Bill [B29—2023]?

***Deadline for response to request for reasons***

- 37. OS appreciates that the request for reasons may require internal consultations within the NPA and Hawks, to formulate an adequate and informative reply that meets the legality threshold.
- 38. We are, therefore, instructed to request that you each provide your reasons within 60 days, by 7 March 2024. Should you require an extension, please advise us accordingly in writing.

With kind regards,



**POWER & ASSOCIATES**

Per: S'lindile Khumalo and Tara Davis | *Senior Associates*  
 E-mail: [slindile.khumalo@powerlaw.africa](mailto:slindile.khumalo@powerlaw.africa) and [tara.davis@powerlaw.africa](mailto:tara.davis@powerlaw.africa)

ENDS.



**"FA36"**

National Prosecuting Authority  
South Africa

**OFFICE OF THE NATIONAL DIRECTOR  
OF PUBLIC PROSECUTIONS**

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Your ref: PLOS-202304

Ms S'lindile Khumalo  
Senior Associate  
Power & Associates  
20 Baker Street  
Rosebank, Johannesburg

Per email: [slindile.khumalo@powerlaw.africa](mailto:slindile.khumalo@powerlaw.africa) and  
[tara.davis@powerlaw.africa](mailto:tara.davis@powerlaw.africa)

Dear Ms Khumalo

**REQUEST FOR REASONS: FAILURE OF HAWKS TO COMPLETE INVESTIGATION INTO  
CORRUPTION AT PRASA AND FAILURE OF NPA TO DECIDE WHETHER TO  
PROSECUTE**

Receipt of your correspondence dated 14 December 2023 is hereby acknowledged and the contents thereof noted.

Your request is receiving our attention we will provide you with a substantive response as soon as is possible.

Kind regards

**Adv. A. du Plessis**

**Acting National Director of Public Prosecutions**

**Date:** 19 December 2023



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Date: 14 February 2024

Your ref: --

Our ref: PLOS-202304

**TO: DIRECTOR OF PRIORITY CRIME INVESTIGATION**

C/o Lieutenant General Godfrey Lebeya

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**TO: NATIONAL PROSECUTING AUTHORITY**

C/o Advocate Shamila Batohi

E-mail: [ndpp@npa.gov.za](mailto:ndpp@npa.gov.za)

**TO: NATIONAL PROSECUTIONS SERVICE**

C/o Advocate RJ de Kock

Email: [rjdekock@npa.gov.za](mailto:rjdekock@npa.gov.za)

Dear General Lebeya, Advocate Batohi and Advocate De Kock,

**FOLLOW-UP: REQUEST FOR REASONS: FAILURE OF HAWKS TO COMPLETE INVESTIGATION INTO CORRUPTION AT PRASA AND FAILURE OF NPA TO DECIDE WHETHER TO PROSECUTE**

1. As you know, we act on behalf of Open Secrets NPC ("OS").
2. We refer to our correspondence dated 14 December 2023, which is attached for ease of reference.
3. We note the acknowledgment of receipt sent to us on 19 December 2023 by the Acting National Director of Public Prosecutions, Advocate du Plessis.

**Director:** MJ Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** T Davis B.A. (RU), LL.B. (UCT), S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.), T Power B.A., LL.B., LL.M. (Wits) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Technologist:** K Nwana | **Office Manager:** J Rashid. Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

\* **Cape Town Office:** Unit 403, 5 St Georges Mall, Cape Town, South Africa, 8001. \*\* **Name Change:** Please note that on 10 May 2023 our name changed from Power Singh Inc. to Power & Associates.

- 4. We note that in terms of our correspondence, we anticipate a substantive response on or before 7 March 2024.
- 5. Our client's rights are reserved.

With kind regards,



**POWER & ASSOCIATES**

Per: S'lindile Khumalo and Tara Davis | *Senior Associates*

E-mail: [slindile.khumalo@powerlaw.africa](mailto:slindile.khumalo@powerlaw.africa) and [tara.davis@powerlaw.africa](mailto:tara.davis@powerlaw.africa)

ENDS.



**"FA38"**

**POWER AND ASSOCIATES**  
PUBLIC INTEREST LAW | AFRICA



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**Date: 11 October 2024**

Your ref: 14/7/11/1(2)

Our ref: PLOS-202304

**TO: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

C/o Lieutenant General Godfrey Lebeya

E-mail: [lebeya@saps.gov.za](mailto:lebeya@saps.gov.za) | [mulaudzi@saps.gov.za](mailto:mulaudzi@saps.gov.za) | [mbambonp@saps.gov.za](mailto:mbambonp@saps.gov.za)

Dear Lieutenant General Lebeya,

**FAILURE BY THE HAWKS AND NPA TO COMPLETE INVESTIGATION INTO CORRUPT ACTIVITIES AT PRASA IN RELATION TO SWIFAMBO AND SIYANGENA CONTRACTS**

1. As you are aware, we act for Open Secrets, a non-profit organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations.
2. We refer to your correspondence of 7 November 2023 and to our correspondence of 14 December 2023 and 14 February 2024, to which we have not received a reply.
3. Our correspondence of 14 December 2023 was a formal request for reasons for the Hawks and NPA's joint failure to complete the investigation into the irregularly and corruptly concluded contracts between (i) PRASA and Swifambo Rail Leasing (Pty) Ltd and (ii) PRASA and Siyangena Technologies (Pty) Ltd.
4. Despite your failure to respond to our correspondence of 14 December 2023, our client would still welcome your response to the questions set out therein.
5. In your affidavit to the Zondo Commission, dated 23 August 2021, you advised that the investigation into the Swifambo contract was 90% complete and the investigation into the

**Director:** M] Power B.A., LL.B., LL.M. (Wits) | **Associate Director:** T Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Researcher:** W Trott B.A (UGA), M.A. (Sciences Po Paris) | **Technologist:** K Nwana | **Office Manager:** J Rashid | **Office Support:** S Mncube | Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

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Siyangena contract was 75% complete. Of the 18 investigations that, at the time, were underway, four had been finalised, while 14 were still under investigation.

6. In the fourth quarterly report on the 2023/2024 financial year, on 28 June 2024, you advised:

"The State Capture National Investigation Task Team is focussing on conducting comprehensive investigations. The team prioritises investigations and transforms inquiries into case dockets. Two thousand, two hundred and forty-one (2 241) statements have been obtained in fifty three (53) cases which were addressing State Capture recommendations. Twenty seven (27) suspects (19 natural and 8 juristic persons) have been arrested by the Hawks. Over and above, the DPCI had already arrested six suspects in BOSASA before the cases were taken over by the ID making the total arrest thirty three (33) by the DPCI. The team recovered over R400 million, promptly deposited into the Criminal Asset Recovery Account (CARA)."

7. We are instructed to once again request your cooperation, in the interests of accountability and transparency, by answering a few questions in the light of your public statements.
8. Our client does not seek information that may compromise the integrity of the investigations in any way. Its aim, as a civil society organisation engaged in activism against economic crimes and related human rights violations, is merely to ascertain how much progress the Hawks, under the guidance of prosecutors from the NPA, have made in the investigation in the public interest.
9. Kindly assist us by answering the following questions:
- 9.1. Do the 53 cases, referred to in your fourth quarterly statement for the 2023/2024 financial year include the 18 cases referred to in your affidavit of 23 August 2021 (at paragraph 1814)?
- 9.2. Of the 14 uncompleted investigations into the Swifambo and Siyangena contracts as of 23 August 2021, mentioned in your affidavit (at paragraph 1814), how many have since been completed or are near completion?
- 9.3. Have new cases been added to the 18 that relate to the Swifambo and Siyangena contracts? If so, how far are those investigations to completion?
- 9.4. Have any of the completed investigations, including the four completed investigations referred to in your affidavit of 23 August 2021 (at paragraph 1814), been handed over to the NPA for a decision on whether to prosecute?
- 9.5. As to the difficulties in securing witness interviews mentioned in your affidavit of 23 August 2021, have the Hawks—

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- 9.5.1. used section 17D(3) of the SAPS Act, 1995 to ask the NPA to use its powers of subpoena under section 28 of the NPA Act, 1998?
- 9.5.2. used section 205 of the Criminal Procedure Act, 1977 for a judicial officer to take the testimony of a witness?

10. We look forward to hearing from you by **close of business on 1 November 2024.**

11. Notwithstanding your response to this correspondence or to our previous correspondence of 14 December 2023, should our client find your answers unsatisfactory, we are instructed to proceed with litigation for relief in the public interest.

With kind regards,



**POWER & ASSOCIATES**

Per: S'lindile Khumalo | *Senior Associate*  
 E-mail: [slindile.khumalo@powerlaw.africa](mailto:slindile.khumalo@powerlaw.africa)

**COPIED TO: NATIONAL PROSECUTING AUTHORITY**  
 C/o Advocate Shamila Batohi  
 E-mail: [ndpp@npa.gov.za](mailto:ndpp@npa.gov.za)

**COPIED TO: NATIONAL PROSECUTIONS SERVICE**  
 C/o Advocate RJ de Kock  
 E-mail: [rjdekock@npa.gov.za](mailto:rjdekock@npa.gov.za)

ENDS.



"FA39"

**POWER AND ASSOCIATES**  
PUBLIC INTEREST LAW | AFRICA



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Date: 11 October 2024

Your ref: 10/2/12/3-420/2021

Our ref: PLOS-202304

**TO: NATIONAL PROSECUTING AUTHORITY**

C/o Advocate Shamila Batohi

E-mail: [ndpp@npa.gov.za](mailto:ndpp@npa.gov.za)

**TO: NATIONAL PROSECUTIONS SERVICE**

C/o Advocate RJ de Kock

E-mail: [rjdekokk@npa.gov.za](mailto:rjdekokk@npa.gov.za)

Dear Advocate Batohi and Advocate de Kock

**FAILURE BY THE HAWKS AND NPA TO COMPLETE INVESTIGATION INTO CORRUPT ACTIVITIES AT PRASA IN RELATION TO SWIFAMBO AND SIYANGENA CONTRACTS**

1. As you are aware, we act for Open Secrets, a non-profit organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations.
2. We refer to our client's correspondence of 21 September 2023, your response dated 5 October 2023, and our subsequent correspondence of 14 December 2023 and 14 February 2024, to which we have not received a reply.
3. As you are aware, our correspondence of 14 December 2023 was a formal request for reasons for the Hawks and NPA's joint failure to complete the investigation into the irregularly and corruptly concluded contracts between (i) PRASA and Swifambo Raib Leasing (Pty) Ltd and (ii) PRASA and Siyangena Technologies (Pty) Ltd.

**Director:** MJ Power B.A., LL.B., LL.M. (Wits) | **Associate Director:** T Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Researcher:** W Trott B.A (UGA), M.A. (Sciences Po Paris) | **Technologist:** K Nwana | **Office Manager:** J Rashid | **Office Support:** S Mncube | Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

- 4. Despite your failure to respond to our correspondence of 14 December 2023, our client would still welcome your response to the questions set out therein.
- 5. In Lieutenant General Lebeya's affidavit to the Zondo Commission, dated 23 August 2021, he advised that the investigation into the Swifambo contract was 90% complete and the investigation into the Siyangena contract was 75% complete. Of the 18 investigations that, at the time, were underway, four had been finalised, while 14 were still under investigation. We presume that the investigations are being conducted under the guidance of prosecutors in the NPA.
- 6. In the Hawks' fourth quarterly report on the 2023/2024 financial year, on 28 June 2024, Lieutenant General Lebeya advised:

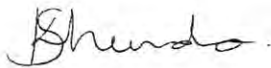
"The State Capture National Investigation Task Team is focussing on conducting comprehensive investigations. The team prioritizes investigations and transforms inquiries into case dockets. Two thousand, two hundred and forty-one (2 241) statements have been obtained in fifty three (53) cases which were addressing State Capture recommendations. Twenty seven (27) suspects (19 natural and 8 juristic persons) have been arrested by the Hawks. Over and above, the DPCI had already arrested six suspects in Bosasa before the cases were taken over by the ID making the total arrest thirty three (33) by the DPCI. The team recovered over R400 million, promptly deposited into the Criminal Asset Recovery Account (CARA)."

- 7. We are instructed to once again request your cooperation, in the interests of accountability and transparency, by answering a few questions in the light of the above-detailed public statements.
- 8. Our client does not seek information that may compromise the integrity of the investigations in any way. Its aim, as a civil society organisation engaged in activism against economic crimes and related human rights violations, is merely to ascertain how much progress the NPA has made in the investigation in the public interest.
- 9. Kindly assist us by answering the following questions:
  - 9.1. Do the 53 cases referred to in the Hawks' fourth quarterly statement for the 2023/2024 financial year include the 18 cases referred to in Lieutenant General Lebeya's affidavit of 23 August 2021 (at paragraph 1814), and do these cases align with cases currently being investigated by the NPA?
  - 9.2. Of the 14 uncompleted investigations into the Swifambo and Siyangena contracts as of 23 August 2021, mentioned in Lieutenant General Lebeya's affidavit (at paragraph 1814):

*Handwritten signature*

- 9.2.1. Have any been handed over to the NPA for a decision on whether to prosecute?
  - 9.2.2. If so, what decision/s has the NPA taken in that regard?
  - 9.3. Have any additional investigations by the Hawks been handed over to the NPA in relation to the Siyangena and Swifambo contracts?
  - 9.4. As to the difficulties in rebuilding the NPA,<sup>1</sup> to what have extent have recently allocated resources and assistance been earmarked for expediting the finalisation of investigations into Prasa officials?<sup>2</sup>
10. We look forward to hearing from you by **close of business on 1 November 2024.**
11. Notwithstanding your response to this correspondence, should our client find your answers unsatisfactory, we are instructed to proceed with litigation for relief in the public interest.

With kind regards,



**POWER & ASSOCIATES**

Per: S'lindile Khumalo | *Senior Associate*  
E-mail: [slindile.khumalo@powerlaw.africa](mailto:slindile.khumalo@powerlaw.africa)

**COPIED TO: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**  
C/o Lieutenant General Godfrey Lebeya  
E-mail: [lebeya@saps.gov.za](mailto:lebeya@saps.gov.za) | [mulaudzi@saps.gov.za](mailto:mulaudzi@saps.gov.za) | [mbambonp@saps.gov.za](mailto:mbambonp@saps.gov.za)

ENDS.

<sup>1</sup> As per Advocate Batohi's statement in a media briefing on 24 April 2024 saying that, "...a decade of state capture severely hampered the NPA's growth trajectory." (accessible [here](#)).

<sup>2</sup> See, for example, BusinessTech 'NPA asks for private sector help and good news for South Africa's rails and ports' (15 August 2024) (accessible [here](#)) and News24 'Zondo Commission's Paul Pretorius, Matthew Chaskalson join NPA as fight against graft intensifies' (dated 8 August 2024) (accessible [here](#)).



"FA40"

South African Police Service



South African Police Service

Private Bag X1500, SILVERTON

Email: [MakinyaneM@saps.gov.za](mailto:MakinyaneM@saps.gov.za)

Reference: 14/7/11/1(2)  
Enquiries: Major General RM Makinyane  
Brigadier BS Trollip  
Telephone: 012 846 4101

NATIONAL HEAD  
DIRECTORATE FOR PRIORITY CRIME  
INVESTIGATION  
SILVERTON  
0127

2024-11-25

Power and Associates  
20 Baker Street  
Rosebank  
**JOHANNESBURG**

Dear Slindile Khumalo

**FAILURE BY THE HAWKS AND THE NPA TO COMPLETE INVESTIGATION INTO CORRUPT ACTIVITIES AT THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) RELATING TO SWIFAMBO AND SIYANGENA CONTRACTS**

This office acknowledges receipt of your letter dated 2024-11-25 regarding the above matter, and its content has been noted.

The two matters are investigated by a team of investigators in the Directorate for Priority Crime Investigation (DPCI).

Due to the complexity of the matter, the DPCI may not be able to provide timeframes for when the investigation will be completed, however, the matter is being prioritised. The investigating team is continuously engaging with the team of prosecutors that are guiding the investigations.

Yours sincerely

**LIEUTENANT GENERAL  
NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
(DR/ADV) SG LEBEYA (SOEG)**

Date: 2024-12-06

"FA41"

Fw: Re: Right of Reply: Prasa corruption investigations

Delete  
 Block  
 Report  
 Reply  
 Reply all  
 Forward Meeting  
 Share to Teams  
 Zoom  
 Sweep Rules  
 Read / Categorized Unread  
 Flag  
 Policy  
 Print  
 Immersive reader

**Fw: Re: Right of Reply: Prasa corruption investigations**

**From:** Rateesa Pather <rpather@opensecrets.org.za>  
**Sent:** 06 April 2023 15:09  
**To:** Andiswa Makanda <Andiswa.Makanda@prasa.com>  
**Cc:** Researcher <researcher@opensecrets.org.za>  
**Subject:** Right of Reply: Prasa corruption investigations

**WARNING - This email originates from OUTSIDE YOUR ORGANIZATION. Do not click any link and do not open attachments unless you can confirm the sender. PLEASE REPORT SUSPICIOUS EMAILS TO: PRASA SERVICE DESK**

Dear Andiswa,

I trust you are well.

I work as a senior investigator for Open Secrets, a South African civil society organisation which focuses on economic crime and related human rights abuses.

We are publishing an article on the Hawks' failure to finalise investigations into corruption allegations at Prasa. These allegations primarily relate to the unlawful Swifambo and Siyangena contracts.

In 2017, Prasa approached the Pretoria High Court seeking an order to compel the Hawks to investigate these cases. The court matter is still ongoing.

Please see attached for our right of reply questions and kindly respond by **Friday, 14 April 2023**.

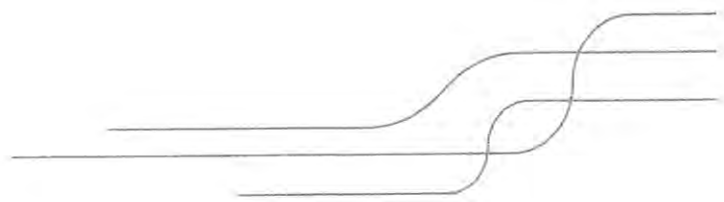
Best wishes,

**Open Secrets: Right of Reply  
Questions to Prasa**

1. What is the status of the settlement agreement between Prasa and Swifambo Rail Leasing?
2. Has Prasa recovered any funds in relation to its corrupt contract with Swifambo?
3. Has Prasa made any attempts to recover funds from Vossloh for its role in the corrupt contract? If not, why not?
4. Has Prasa made any attempts to recover funds from Auswell Mashaba and/or Makhensa Mabunda in relation to their role in the contract? If not, why not?
5. What is the status of the unusable Afro4000 locomotives and where are they currently?
6. Has Prasa made any attempt to follow up with the NPA and Hawks on the status of law enforcement investigations into Swifambo investigation? If not, why not?
7. What is Prasa's reaction to the recent extension of the Special Investigating Unit's mandate to investigate and recover funds linked to the Swifambo contract?
8. If Prasa has failed to recover any funds or follow up with law enforcement agencies, this is arguably a failure of the Prasa board to act on crimes of corruption within Prasa. The High Court and the Supreme Court of Appeal found that the Swifambo contract was corrupt, yet no entity or individual has been held to account. This is particularly significant as commuters across the country are still struggling to access reliable and affordable rail services. Trains are still not yet fully operational in the aftermath of this corruption. Why is Prasa not taking more action and how does it respond to claims that it has not done enough to fight for accountability and the improvement of rail services?

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### MEDIA QUERY FROM OPEN SECRETS:

Dear Andiswa,

I work as a senior investigator for Open Secrets, a South African civil society organisation which focuses on economic crime and related human rights abuses.

We are publishing an article on the Hawks' failure to finalise investigations into corruption allegations at Prasa. These allegations primarily relate to the unlawful Swifambo and Siyangena contracts.

In 2017, Prasa approached the Pretoria High Court seeking an order to compel the Hawks to investigate these cases. The court matter is still ongoing.

#### Questions:

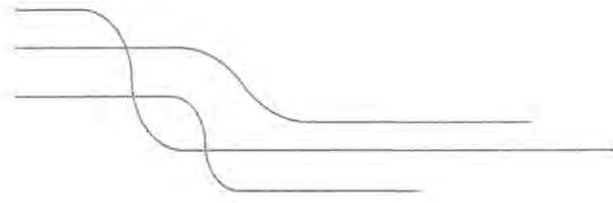
1. When was the last time the current Prasa board or a representative of the board met with the Hawks to discuss the status of the Swifambo and Siyangena investigations?
2. Has the current Prasa board made any attempt to progress the high court case to compel the Hawks to act? If so, please state what steps the board has taken. If no action has been taken, please explain why.
3. In an affidavit to the Zondo Commission in 2021, Head of the Hawks Lieutenant General Lebeya blamed Prasa for delays in their investigations. How does Prasa respond to this?
4. Does the Prasa board have any other comments on the delay by law enforcement agencies in prosecuting those implicated in criminality at Prasa?

### RESPONSE TO OPEN SECRETS

The PRASA Board of Control is aware that the Directorate of Priority Crime Investigation have prioritized investigations of various corruption matters at PRASA, including the Siyangena and Swifambo contracts.

Executives implicated in the abovementioned contracts are going through disciplinary processes that are at various stages, while others resigned from the organization before disciplinary proceedings.

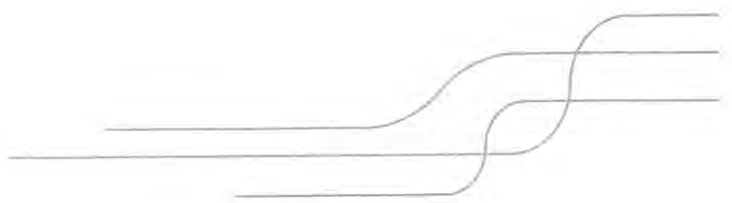
PRASA is cooperating with law enforcement agencies involved in the investigations. The Board is encouraged by the investigative work



Media Contact Person  
 Name: Andiswa Makanda  
 Contact Details:  
 Email: andiswa.makanda@prasa.com

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Private Bag #101  
 Braamfontein 2107  
 +27 11 013 1667



of law enforcement agencies, and, therefore, would like to allow space for the agencies to conduct their work without any fear, favor or prejudice.

Rooting out corruption at PRASA is a key priority of this current Board, and this work is moving ahead in earnest. The Board is confident that those implicated in wrongdoing will be held accountable.

[ENDS]

Issued by PRASA

# The European company that profited from corruption at PRASA

Vossloh made R1.8-billion from a dodgy deal and has not paid back a cent

14 March 2024 | Ra'eesa Pather and Qiqi Nkomo for Open Secrets  
Analysis (/category/analysis/) | South Africa (/region/South%20Africa)



South Africa's commuter rail system declined because of corruption involving PRASA and a Spanish company. Archive photo: Ashraf Hendricks

This article is the first in a series of articles on corruption in PRASA's dealings with a front company called Swifambo Rail Leasing. It focuses on Vossloh, a European rail technology company, which made billions of rands through a dubious partnership with Swifambo.

In 2012, a deal was struck that contributed to the near collapse of the Passenger Rail Agency of South Africa (PRASA). The Swifambo deal for 70 locomotives led to billions of rands in losses for PRASA and accelerated the decline of passenger rail services in South Africa.

Swifambo, a front company set up shortly before the deal, partnered with Vossloh España — the Spanish subsidiary of Swiss railway stock manufacturing firm Stadler — to supply the locomotives. Stadler acquired Vossloh España in 2016 from German headquartered rail technology company, Vossloh AG. Vossloh España was owned by Vossloh AG at the time it partnered with Swifambo on the PRASA deal which was worth R3.5-billion.

In 2018, the Supreme Court of Appeal upheld a decision by the Johannesburg High Court declaring the contract corrupt. The court said that Swifambo had acted as nothing but a front for Vossloh in the deal.

The locomotives supplied by Vossloh, known as the Afro4000, were meant to improve long distance passenger services between South African cities, but were revealed to be too tall for South African railways. Yet PRASA ended up paying Swifambo R2.7-billion for the trains.

Swifambo went into voluntary liquidation in 2018. The trains are now being auctioned by Swifambo's liquidators, Tshwane Trust, to recover amounts owed to PRASA.

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Vossloh received R1.8-billion of the R2.7-billion Swifambo was paid by PRASA. According to the draft report of a 2017 investigation by forensic auditor Ryan Sacks, commissioned by the Hawks, and a separate investigative report by forensic auditor Jan Dekker, commissioned by the liquidators, Vossloh made the most money from the corrupt contract — even more than Swifambo's director, Auswell Mashaba (<https://www.dailymaverick.co.za/article/2021-04-20-auswell-tall-trains-mashaba-the-middleman-who-derailed-prasa/>).

Yet Vossloh has not paid back a single cent.

Vossloh's records show just how profitable the corruption at PRASA was for its European business. Before the locomotive contract, Vossloh had already scored a major cash injection from PRASA, when its German subsidiary, Vossloh Kiepe, shipped 272 air conditioning units to PRASA in 2012 worth €80-million in a deal where there were "significant irregularities", according to Sacks's draft report.

That same year, Vossloh opened its South African headquarters, Vossloh Southern Africa Holding Company, in Midrand, Gauteng. A year later, in 2013, it landed the "megacontract" for the locomotives for PRASA through its front company, Swifambo. At the time Vossloh España agreed to partner with Swifambo to provide the trains, Vossloh AG's profit was declining. The company's annual report for the year ending 2011/2012 showed a 5.7% decline in sales. Then, in 2013, orders rose by more than 37% to €453-million. South Africa's order of 70 locomotives made up more than half the value of orders Vossloh received in 2013.

The deal was set up to benefit a few at the expense of PRASA and South African commuters.

# +2BN LOST TO PRASA

Between 2013 and 2017, front company Swifambo made suspicious and irregular payments to companies and individuals using money diverted from Prasa. These are the beneficiaries of Swifambo's corruption with Prasa.

Vossloh is a German headquartered company. Its Spanish subsidiary, Vossloh España, supplied the too tall trains that didn't fit South African rails. Vossloh España was acquired by Swiss rail company, Stadler, in 2016.

# 1.8 BILLION TO VOSSLÖH



Between 2011 and 2015, Vossloh made ten payments totalling R88.9-million to companies owned by Makhensa Mabunda, a well-connected businessman who is believed to have set up the Swifambo/Vossloh deal with PRASA. Popo Molefe, then chairman of the PRASA board, has revealed in court papers that Swifambo director Mashaba identified Mabunda as the businessman who engineered the PRASA deal by inviting Mashaba's company to submit a proposal for the tender.

The payments to Mabunda were flagged as suspicious in a report by the Reserve Bank in 2017, according to the Sacks report.

News24 first revealed the payments (<https://www.news24.com/news24/exclusive-prasas-spanish-supplier-paid-r75m-consulting-fees-to-montanas-friend-20180114>) made by Vossloh to Mabunda in 2018, and Open Secrets referred to them in an article in its Unaccountable series (<https://www.dailymaverick.co.za/article/2021-06-23-vossloh-the-german-railway-giant-that-derailed-prasa/>) on Vossloh in 2021. After the News24 story was published, Vossloh AG confirmed that it paid (<https://www.news24.com/news24/SouthAfrica/News/prasa-european-rail-companies-at-odds-over-payments-to-montanas-friend-20180207>) Mabunda and his company S-Investments about R90-million as an "independent sales representative" who simply acted as a middleman to bring "Vossloh España, the supplier, together with its customer Swifambo". But there is more to it than that.

As Open Secrets reported in 2021, Sacks found that Vossloh had paid the startup costs of Swifambo in 2011 and 2012 — more than a year before Swifambo scored the PRASA contract and partnered with Vossloh España. And Mabunda's companies continued to receive money from Vossloh three years after the startup costs were paid.

Vossloh had no legitimate reason to pay Mabunda, but so far nothing has come from the Reserve Bank's report. There does not appear to have been any further investigation into whether these payments were potential kickbacks for Mabunda's role in securing the billion rand contract.

And little action has seemingly been taken by PRASA to recover the funds that are so vital to improve services for commuters. Molefe, as PRASA chairman, filed papers in court in 2017 to compel the Hawks to investigate corruption at PRASA. But so far, the Hawks have made no progress in their investigation into the PRASA and Swifambo corruption case, and there has been no judgment in the court action to compel the Hawks to investigate these matters.

Swifambo's liquidators have numerous ongoing civil claims to recover funds from Swifambo with regard to its contract with PRASA. So far the liquidators have auctioned 8 of the 13 locomotives Vossloh delivered for just under R100-million, but this is only a fraction of the R1.8-billion Vossloh made from the deal.

Nearly three years ago the Hawks told the Zondo Commission ([https://www.statecapture.org.za/site/files/announcements/668/OCR\\_version\\_-\\_State\\_Capture\\_Commission\\_Report\\_Part\\_V\\_Vol\\_II\\_-\\_SABC,Waterkloof,Prasa.pdf](https://www.statecapture.org.za/site/files/announcements/668/OCR_version_-_State_Capture_Commission_Report_Part_V_Vol_II_-_SABC,Waterkloof,Prasa.pdf)) that the Swifambo investigation was "90% complete". But responding to questions by Open Secrets in March, the National Prosecuting Authority said the case was "still under investigation" and no prosecutions can take place until the Hawks finalise the police work. Deputy Head of Public Prosecutions Rodney de Kock said other law enforcement agencies were collaborating on the case.

However, PRASA's spokesperson Andiswa Makanda has told Open Secrets that the agency believes the Hawks are prioritising the case and the agency is "cooperating with law enforcement agencies involved in the investigations". And the Special Investigating Unit (SIU), which investigates matters referred to it by the Presidency, announced in February 2024 that its eye was now on the Swifambo contract, and investigations into Mashaba and PRASA are underway.

Spanish authorities in 2022 submitted a Mutual Legal Assistance (MLA) request to South Africa in relation to an investigation into Vossloh España and others involved in the deal. Makhensa Mabunda is one of the individuals named in the Spanish MLA request. The NPA declined to comment to Open Secrets on the status of the MLA request.

Vossloh España's parent company, Stadler, also declined to comment on the allegations of its involvement in corruption with Swifambo, saying the matter is before the courts in South Africa.

The Reserve Bank told Open Secrets that it "does not comment on ongoing investigations" and did not "have further details that can be provided at this time".

Mabunda was the inside man behind the Swifambo deal, and bank records show just how much he gained from being well-connected. Our next article in this series focuses on the man who made the Swifambo deal possible, and who is complicit in creating the access to transport struggles faced by South African commuters today.

*Additional reporting by Khwezi Matangana.*

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- Makhubele decision shows the best and the worst of South Africa (/article/groundview-makhubele-decision-shows-the-best-and-the-worst-of-sa/) 15 January 2025
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- I tried to register my son a month after her turned 18 for an SRD grant but the website says his ID and grant is already active. What can we do? (/qanda/1038/)

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Where can I as a pensioner go with my disabled grandchildren now that we have been evicted? (/qanda/1031/)

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To: **N Nokwe-Macamo**  
Chairperson of the Board of Control  
Passenger Rail Agency of South Africa  
[nosizwe@raiseafrica.co.za](mailto:nosizwe@raiseafrica.co.za)

Care of: **C Maseng**  
[chantel.maseng@prassa.com](mailto:chantel.maseng@prassa.com)

And to: **H Emeran**  
Chief Executive Officer  
Passenger Rail Agency of South Africa  
[hemeran@prasa.com](mailto:hemeran@prasa.com)

14 October 2024

Dear Ms Nokwe-Macamo and Mr Emeran

## FAILURE BY THE HAWKS AND NPA TO COMPLETE INVESTIGATION INTO CORRUPT ACTIVITIES AT PRASA IN RELATION TO SWIFAMBO AND SIYANGENA CONTRACTS

1. Open Secrets is a civil society organisation and non-profit company committed to work for social justice. We undertake investigative research that informs activism on key issues, including economic crimes and related human rights violations.
2. Open Secrets has been closely following, and engaging in public discourse on, the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (the Zondo Commission), whose final report was delivered in 2022 (the Zondo Report). In this regard Open Secrets convenes the Civil Society Working Group on State Capture.
3. As you are aware, the Zondo Commission found that Prasa was mired in corruption under the governance of the Board of Control (Prasa Board), chaired at the time by Mr Buthelezi. The Zondo Report also censured the former Prasa CEO, Mr Montana for his role in corrupt activities.

4. We note from the Auditor-General's report, published in Prasa's most recent Annual Report,<sup>1</sup> that the Directorate for Priority Crime Investigation (the Hawks) has not completed its investigation into the criminal complaints flowing from the now-reviewed and -set aside Siyangena and Swifambo contracts . This is despite Prasa employees having laid these complaints with the SAPS over eight years ago.<sup>2</sup>
5. We write to you to express our shared desire for the completion of that investigation and for possible prosecutions of those implicated in corruption, in line with the recommendations in the Zondo Report, and to offer support to that end.
6. The inertia that has taken hold of the investigation undermines state accountability. For as long as the investigation remains unfinished, the former members of the Prasa Board and former CEO, against whom the Zondo Commission made adverse findings, will be neither exculpated nor brought to book. And the cloud of corruption will continue to linger over Prasa.
7. That the Hawks blame Prasa for the investigation's stalling deeply concerns Open Secrets. This attempt to pass the buck does not align with Prasa's own attempt to spur the Hawks and National Prosecuting Authority (NPA) into action through the courts; it hinders Prasa's efforts to shirk the stigma left by the former Prasa Board and former CEO; and, as the Zondo Commission observed, it suggests an unwillingness to expose potential corruption at higher levels of government.
8. Open Secrets seeks to foster a climate of public confidence in state institutions that play pivotal roles in the economy, like Prasa. To that end—
  - 8.1. Open Secrets undertook its own analysis of the evidence presented to the Zondo Commission and compiled a report entitled *Wanted*. The chapter on Prasa focuses on two contracts, both of which courts have found were corrupt

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<sup>1</sup> Prasa's Annual Report 2022/2023, accessible at <https://www.prasa.com/Annual%20Reports/Prasa%20Annual%20Report%202022-23.pdf> (accessed on 3 August 2024)

<sup>2</sup> Prasa's Annual Report 2022/2023 at p 9, para 123: 'The Directorate for Priority Crime Investigation (DPCI) is currently investigating cases reported by PRASA in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (Precca). The investigation has been ongoing since 2016 and has not been finalised.'

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8.1.1. The first is the contract concluded with Swifambo Rails Leasing (Pty) Ltd, for the purchase of train locomotives that were patently unsuitable (Swifambo contract).

8.1.2. The second is the contract concluded with Siyangena Technologies (Pty) Ltd for the supply and maintenance of integrated security access management systems at various train stations (Siyangena contract).

8.2. Open Secrets tried over several months to engage the Hawks and the NPA about the delay in finalising the investigation.

9. As to our efforts at engagement, we were met with unedifying responses at best, or none at all. Our formal request for reasons from both the Hawks and the NPA—as prosecutors from the NPA are, in fact, guiding the investigation—occasioned no substantive reply.

10. These are the only responses we were favoured with during late 2023:

10.1. Adv de Kock, the Deputy National Director of Public Prosecutions and Head of the National Prosecution Service, simply said that the criminal complaints are *'still under investigations (sic) by the DPCI, and the NPA will defer to the DPCI to respond'* to our enquiry.

10.2. Lt Gen Lebeya, the National Head of the Hawks, told us—

*'[d]ue to the complexity of the matter, the DPCI may not be able to provide timeframes for when the investigation will be completed, however, the matter is being prioritised. The investigating team is continuously engaging with the team of prosecutors from the National Prosecuting Authority (NPA) that are guiding the investigations, and there is cooperation between the two organisations.'*

11. It is against this backdrop that we write to you—

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or

- 11.1. to advise that Open Secrets intends to take legal action against the Hawks and the NPA for their failure to: complete the investigation, and for the NPA to decide whether to prosecute former members of the Prasa Board and its former CEO;
  - 11.2. to apprise you of our interactions with the Hawks and NPA to date;
  - 11.3. to request your help by confirming or clarifying certain facts that would assist our intended court challenge, or which may render court proceedings unnecessary; and
  - 11.4. to correct any inaccuracies in the public accounts given by the Hawks at the Zondo Commission and in the litigation that Prasa instituted under case number 36337/17 in the High Court, Gauteng Division (Pretoria).
12. For the intended litigation, Open Secrets intends to focus on the Swifambo contract and the Siyangena contract. In this regard, we would greatly appreciate your response to these questions:

12.1. Lt Gen Lebeya assured the Zondo Commission in his affidavit, dated 23 August 2021, that the Hawks' investigation into the Swifambo contract was 90% complete and the Siyangena contract was 75% complete. The hold up, he said, was Prasa's lack of cooperation in securing witness interviews.

**Have the Hawks and NPA interviewed Prasa employees or former employees since 23 August 2021?**

12.1.1. **If so, kindly provide us with the details (including the dates of interviews, names of employees or former employees if public, thereof.**

12.1.2. **If not, has Prasa or its employees received any communications from the Hawks or the NPA in this regard?**

12.2. Maj Gen Khana said in his affidavit opposing Prasa's court application that the Hawks have had to use the subpoena mechanism under section 205 of the

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Criminal Procedure Act, 1977. Under this provision, a judge, regional court magistrate or magistrate may take the evidence of a witness.

**Have the Hawks or the NPA subpoenaed any Prasa employees or former employees, including Mr Mamabolo, under section 205? If so, kindly provide us with the details of those subpoenas.**

- 12.3. The President set up the Investigating Directorate of the NPA (ID) in March 2019 to investigate corruption-related crimes that were unearthed by the Zondo Commission. The ID has its own powers to subpoena witnesses under section 28 of the National Prosecuting Authority Act, 1998.

**Has the NPA subpoenaed any Prasa employees or former employees, including Mr Mamabolo, under section 28? If so, kindly provide us with the details of those subpoenas.**

- 12.4. The investigation plan was disclosed in the confidential version of Maj Gen Khana's affidavit in Prasa's court application. We do not request a copy of that document, but simply Prasa's view in respect of: **Have the Hawks and the NPA adhered to the plan and, if so, how far along is the investigation in terms of the plan?**

- 12.5. At the time of deposing to his affidavit in August 2021, Lt Gen Lebeya said that there were 18 cases under investigation and, of those, four were complete. **Is Prasa aware of how many of the remaining 14 cases are yet to be completed?**

- 12.6. **Is Prasa aware of new cases being added in relation to the Swifambo contract or Siyangena contract, which might explain the delay in finalising the investigation overall?**

- 12.7. **Is there any other relevant information that Prasa would like to bring to our attention, to hold the Hawks and NPA to account for their failure to finalise the investigation into the Swifambo contract and Siyangena contract?**

*Handwritten initials*

- 12.8. **Is Prasa able to disclose the reasons why Prasa's court application has not been pursued further by either Prasa as the applicant or the respondents?**
  
- 13. If there has been progress in the investigation, we would be obliged if you would share sufficient information with us to gauge how much has been done and how close to completion it might be.
  
- 14. We sincerely hope that you will welcome our invitation as an opportunity to partner with civil society for a common purpose and to promote Prasa's democratic hygiene.
  
- 15. We trust the above is in order, and look forward to hearing from you.

Yours sincerely



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Michael Marchant  
Acting Director  
Open Secrets



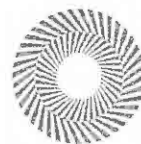
# Passenger Rail Agency of South Africa



## ANNUAL REPORT 2022 | 23

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Be moved



**prasa**

PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

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received a final written warning and the remaining official having been dismissed.

121. I considered the representations made and the substantiating documents provided and have concluded that appropriate actions have been taken to address the material irregularity.

### Other reports

122. In addition to the investigations relating to material irregularities, I draw attention to the following engagements conducted by various parties. These reports did not form part of my opinion on the consolidated and separate financial statements or my findings on the reported performance information or compliance with legislation.

123. The Directorate for Priority Crime Investigation (DPCI) is currently investigating cases reported by PRASA in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (Precca). The investigation has been ongoing since 2016 and has not been finalised.

124. The SIU, under proclamation no. R51 of 2019, is investigating the alleged serious maladministration, improper and unlawful conduct by PRASA officials and unlawful appropriation or expenditure of public money or property which took place between 1 January 2010 and the date of the proclamation, 30 August 2019. This investigation is ongoing and the SIU has not yet issued a final report in this regard.

125. PRASA procured the services of an independent digital forensic service provider to assist with an investigation into alleged fraudulent activity, following an alleged cyber breach during the financial year under review. This investigation was concluded on 31 May 2023 and pointed to critical weaknesses in the PRASA cybersecurity environment. Management is in the process of addressing the findings of the report as part of its ITC project plan, to be fully implemented by 31 March 2024.

126. PRASA appointed independent forensic companies during the year under review to probe the following areas of concern:

- Finance, including the SAP system and standard operating procedures as well as loading of payments. This investigation aims to address processing of

payments, security risks around the lack of encryption of files, incorrect payments to service providers and potential fraud.

- Supply Chain Management, including delays in the procurement value chain, potential syndication, multiple irregular appointments due to flawed processes, multiple non-awards and potential collusion.

These investigations were in progress at the time of this report.

*Auditor-General*

Pretoria

8 December 2023



AUDITOR - GENERAL  
SOUTH AFRICA

*Auditing to build public confidence*

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**prasa**

PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

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**Mr. Michael Marchant**

Acting Director

Open Secrets

Ariella Scher

Head of Legal

[ascher@opensecrets.org.za](mailto:ascher@opensecrets.org.za)

**RE: FAILURE BY THE HAWKS AND NPA TO COMPLETE INVESTIGATION INTO CORRUPT ACTIVITIES AT PRASA IN RELATION TO SWIFAMBO AND SIYANGENA CONTRACTS**

1. We confirm receipt of your letter dated the 14<sup>th</sup> of October 2024.
2. We have reviewed your letter under reply and have considered the questions posed to PRASA.
3. PRASA is of the strong view that, that the questions posed to PRASA are misdirected. It is common cause that PRASA has pursued civil claims against Siyangena and Swifambo respectively by bringing court applications to review and set aside those two contracts.
4. PRASA was successful in the review applications and further proceeded to discipline and dismiss employees implicated in wrongdoing regarding the procurement of those two contracts.
5. In relation to the criminal investigations, PRASA is not legally competent to answer your questions in this regard. PRASA can only assume that the investigations are ongoing given that law enforcement officers (Hawks, SAPS and NPA) are constantly requesting information and supporting documents from various departments within PRASA.
6. Officials within PRASA are constantly being interviewed by law enforcement officials in relation to the Swifambo and Siyangena contracts. Even more so now

**Directors** (Chairperson) N. Nokwe-Macamo, Adv. S. Sethene,  
L. Joel, G. Maluleke, M. Mukhuba, TN. Mpye,  
Dr. R. Kgoroadira, Prof. J. Havenga,  
H. Ralinala, B.J. Nobunga

**Group CEO**  
H. Emeran

**Company Secretary**  
L. Mthayise

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that, these two contracts are a subject of investigation by the Special Investigating Unit (SIU) under Proclamation 153 of 2024 which empowers the SIU to probe offences that were committed against the Prevention and Combating of Corrupt Activities Act of 2004 in connection with the affairs of PRASA in relation to the award of the tenders to Swifambo and Siyangena Technologies.

- 7. PRASA would not be privy to the exact details of any investigation, nor the extent of such investigations. PRASA would also not be privy to information related to subpoena issued in this regard.
- 8. It would therefore be prudent for Open Secrets to direct that line of questioning to the law enforcement entities directly, as PRASA would not be privy to that information.
- 9. Finally, there exists no legal obligation for PRASA employees to report when they have been subpoenaed, therefore this is not information that PRASA would have access to.
- 10. We trust that you will find the above information in order.

Yours sincerely



Ms. N. P Phasha

Acting Group Executive: Legal, Compliance and Risk

Passenger Rail Agency of South Africa

Date: 25 November 2024



10/04/2025, 12:43

Fw: RE: RE. PRASA RESPONSE LETTER - S'indile Khumalo - Outlook

Date: On Wednesday, 27 November 2024 at 09:15  
Subject: RE: RE. PRASA RESPONSE LETTER  
To: Ariella Scher <ascher@opensecrets.org.za>  
CC: Luthando Vilakazi <lvilakazi@opensecrets.org.za>

"FA47"

Dear Ariella

Thank you for your email below.

PRASA will certainly update you on any developments regarding the two matters.

Kind regards

**From:** Ariella Scher <ascher@opensecrets.org.za>  
**Sent:** Tuesday, November 26, 2024 11:55 AM  
**To:** Nompumelelo Phasha <Nompumelelo.Phasha@prasa.com>  
**Cc:** Luthando Vilakazi <lvilakazi@opensecrets.org.za>  
**Subject:** Re: RE. PRASA RESPONSE LETTER

**WARNING** - This email originate from OUTSIDE YOUR ORGANIZATION. Do not click any link and do not open attachments unless you can confirm the sender.  
PLEASE REPORT SUSPICIOUS EMAILS TO: PRASA SERVICE DESK

Dear Nompumelelo Phasha

We refer to the correspondence below, and confirm receipt of your letter dated 25 November 2024.

Kindly be advised that we have indeed, through our lawyers, written to each of the NPA and the Hawks with various questions relevant to the investigation and prosecution of wrongdoing related to the Siyangena and Swifambo contracts. We have not yet received any response to either of those letters.

We would appreciate if Prasa could continue to update us on any new information that comes to its attention in the regard.

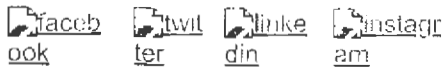
Many thanks

*Are you missing a pronoun or title (Mr/Ms) in this email? Open Secrets prefers gender neutrality in all our communication.*

**Ariella Scher**

Head of Legal

Legal Unit | Open Secrets



mobilePhone +27 21 447 2701 | +27 83 390 4480

emailAddress [ascher@opensecrets.org.za](mailto:ascher@opensecrets.org.za)

website [opensecrets.org.za](http://opensecrets.org.za)

On Monday, 25 November 2024 at 12:23, Nompumelelo Phasha <[Nompumelelo.Phasha@prasa.com](mailto:Nompumelelo.Phasha@prasa.com)> wrote:

Dear Sirs,

The above subject matter refers.

Please find attached hereto a letter in response to your letter dated the 14th of October 2024.

We trust that you will find the above in order.

Kind regards

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Handwritten signature in black ink, consisting of a stylized 'u' followed by a period and a flourish.