Judicial Commission of Inquiry into State Capture Report: Part III

Vol. 4: BOSASA

Report of the Judicial Commission of Inquiry into State Capture: Part III: Vol. 4

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

Chairperson: Justice RMM Zondo

Acting Chief Justice of the Republic of South Africa

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Judicial Commission

of

Inquiry into Allegations

of

State Capture, Corruption and Fraud in the Public Sector Including Organs of State

Report: Part 3

Vol 4: BOSASA

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

PART G: EVALUATION OF THE EVIDENCE, FINDINGS

AND

RECOMMENDATIONS

Implicated persons issued with notices in terms of rule 3.3 or regulation 10(6) directives

1671. Rule 3.3 of the Commission Rules provides that, if the Commission's legal team intends to present a witness, whose evidence implicates or may implicate another person, it must notify that implicated person that s/he is implicated by the witness' evidence, in what way s/he is implicated and that, if s/he so wishes, s/he may, on application in terms of rule 3.4, give evidence her/himself; call any witness to give evidence on her/his behalf or to cross-examine the witness.

1672. Some 257 notices were issued to persons implicated in the so-called Bosasa evidence during the period 22 January 2019 to 21 September 2020 as is evident from the table attached to this part of the report marked Appendix 1. Only eight of these individuals have responded to the rule 3.3. notices with a rule 3.4 application and five individuals responded to the rule 3.3 notice through correspondence and / or a written statement, as is evident from the table attached to this part of the report marked Appendix 2.

1673. In addition, certain individuals implicated in the evidence presented by the Bosasa witnesses were issued with directives in terms of regulation 10(6). These directives directed the recipient to submit an affidavit or affirmed declaration or to appear before

the Commission to give evidence. The individuals issued with 10(6) directives and those that have responded are listed in Appendix 3 to this part of the report.

1674. For purposes of the analysis, the following approach was adopted to individuals or categories of individuals in respect of whom rule 3.3 notices and 10(6) directives were issued:

Implicated persons who have delivered applications in terms of rule 3.4 and/or have responded to regulation 10(6) directives

1675. The key areas of the evidence disputed in response to rule 3.3 notices by the implicated persons referred to above have been canvassed in the summary of evidence in Part F.

1676. The same approach has been adopted in the summary of evidence in respect of the evidence disputed by persons listed above that have responded to regulation 10(6) directives.

Implicated persons who have failed to respond to rule 3.3 notices or regulation 10(6) directives

1677. In respect of those implicated persons who have failed to respond to the rule 3.3 notices or regulation 10(6) directives the approach adopted was to consider the evidence and, unless it seemed not credible or probable even on its own, it was accepted. If it was not credible or not probable, it was not accepted even though it was not disputed. The reasons proffered by some of the people who did not respond to Rule 3.3. notices for not responding are dealt with below. None was found to be well-founded.

Implicated persons who have refused to comply with the regulation 10(6) directives

1678. This category of persons includes Messrs Mti, Leshabane, Seopela and Gumede, who have provided reasons seeking to justify their refusal to cooperate with the Commission.

1679. Mr Mti

1679.1. Mr Mti was issued with five notices in terms of rule 3.3 on 27 February, 27 March, 9 May 2019, 30 June and 3 July 2020. He was also issued with a regulation 10.6 directive.

1679.2. In response, Mr Mti's attorney addressed a letter to the Commission on 26 August 2019 in which he referred to pending proceedings against his client in the Specialised Commercial Crimes Court and averred that -

1679.2.1. the enforcement of regulation 10(6) "seemed to be unconstitutional" and in breach of his constitutional rights;

1679.2.2. the "immunity created by the regulations" (seemingly referring to regulation 8(2)) was "non-effective for purposes of protecting his rights";

1679.2.3. the demand that a statement be furnished was in breach of his client's right to remain silent and his right to a fair trial in terms of section 35 of the Constitution;

1679.2.4. his client also had the right not to divulge his defence at any stage prior to giving evidence in the criminal trial;

1679.2.5. persistence with the demand for an affidavit or statement would result in his applying to court for appropriate relief; and

1679.2.6. he has refused to comply with the directive primarily because he alleges that it infringes his right to remain silent and his right to a fair trial.

1679.3. The Commission alerted Mr Mti to the provisions of regulation 8(2) which provides that "a self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act." However, there has been no change in Mr Mti's stance.

1679.4. The question which then arises is whether Mr Mti's stance is justified. In *Ferreira* Chaskalson P court noted that "[a]s long as incriminating evidence is not admissible at the criminal trial and the use of 'derivative evidence' at such trial is made dependent on such use being subject to fair criminal trial standards, the rule against self-incrimination is adequately protected."[2815]

1679.5. In *Secretary, Judicial Commission of Inquiry into Allegations of State Capture*, the Constitutional Court dealt specifically with the obligations arising from regulation 10(6):[2816]

> "The regulation enables the Chairperson, acting on his or her own accord, to call any witnesses he considers necessary to give evidence or call upon such witness to submit a sworn statement or produce any document that has a

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[2815] *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC) at para 185.

[2816] *Secretary, Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma* at para 27.

> bearing on a matter under investigation by the Commission. It bears emphasis that the process regulated by regulation 10(6) differs from that which is governed by section 3 of the Commissions Act. The regulation 10(6) process does not require a summons to be issued but a direction only. Failure to comply with that direction may, in appropriate circumstances, constitute an offence.[2817]
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> ...
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> [86] The summons was not the only process from the Commission which was ignored by the respondent. In August and September 2020, the Chairperson issued two notices under regulation 10(6) of the Commission's regulations. These notices required the respondent to file affidavits with the Commission within specified periods. To date the respondent has failed to comply with those directions. It is remarkable that the respondent would flout regulations made by him whilst he was still President of the Republic.
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> [87] The respondent's conduct in defying the process lawfully issued under the authority of the law is antithetical to our constitutional order. We must remember that this is a Republic of laws where the Constitution is supreme. Disobeying its laws amounts to a direct breach of the rule of law, one of the values underlying the Constitution and which forms part of the supreme law. In our system, no one is above the law. Even those who had the privilege of making laws are bound to respect and comply with those laws. For as long as they are in force, laws must be obeyed.
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> [88] In these circumstances, I am satisfied that the claim for compelling the respondent to obey process from the Commission and testify before it, has been established."

1679.6. It is clear from the Constitutional Court's judgment that directions in terms of regulation 10(6) constitute binding process of the Commission and have to be obeyed. Failure to do so is unlawful and constitutes an offence. Moreover, as pointed out earlier, the Constitutional Court held that witnesses subject to a directive in terms of regulation 10(6) do not have a right to remain silent. They had to appear before the Commission if summonsed or directed in terms of regulation 10(6) to do so and respond to all questions put to them.[2818]

[2817] The Court is here referring to regulation 12(2), which provides -

"Any person who wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10 is guilty of an offence."

[2818] Secretary, Judicial Commission of Inquiry into Allegations of State Capture at para 93.

1679.7. The only exception to this obligation is that provided by section 3(4) of the Commission's Act[2819] which affords witnesses before the Commission the rights enjoyed by witnesses in a criminal trial, including the laws relating to privilege.[2820] That includes the privilege against self-incrimination. However, a party seeking to rely on the privilege against self-incrimination *"must raise the question of privilege with the chairperson of the Commission and must demonstrate how an answer to the question in issue would breach the privilege. If the Chairperson is persuaded, he or she may permit the witness not to answer the question. Privilege against self- incrimination is not there for the taking by witnesses. There must be sufficient grounds that in answering a question, the witness will incriminate himself or herself in the commission of a specified crime."*

1679.8. In reaching this conclusion, the Constitutional Court recognised that the Commissions Act authorises serious limitations of fundamental rights, requiring interpretation in a manner that promotes the rights and freedoms safeguarded by the Bill of Rights.[2821]

1679.9. There has been no attempt by Mr Mti to seek the setting aside of the directive.

1679.10. Taking this into account and having regard to these judgments of the highest court, the bases for Mr Mti's refusal to respond to the regulation 10(6) directive

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2819 Section 3(4) provides -

"Any person who has been summoned to attend any sitting of a commission as a witness or who has given evidence before a commission shall be entitled to the same witness fees from public funds, as if he had been summoned to attend or had given evidence at a criminal trial in a superior court held at the place of such sitting, and in connection with the giving of any evidence or the production of any book or document before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court, shall apply."

2820 In this regard, regulation 12(1) provides:

"No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947."

2821 Secretary, Judicial Commission of Inquiry into Allegations of State Capture at para 15.

as set out in his attorney's letter, do not withstand scrutiny. He relies primarily on the right to remain silent. The Constitutional Court had confirmed that a witness has no such right before the Commission. Nowhere does his attorney place any reliance on the privilege against self-incrimination, nor does he set out any grounds for reliance on the privilege.

1679.11. Mr Mti's refusal to comply with the regulation 10.6 directive was not justifiable in the circumstances. The evidence against him must therefore be assessed on the basis that he has failed to rebut it in circumstances where he was given a fair opportunity to do so. Adverse findings are permissible on the basis of the evidence, unless there are reasons to reject it based on a lack of inherent cogency or irreconcilability with other evidence given.[2822]

1680. Mr Leshabane and Mr Gumede

1680.1. On 2 September 2019, regulation 10(6) directives were issued to Mr Leshabane and Mr Gumede. They were also issued with various rule 3.3 notices, detailed in Appendix 1. On 20 September 2019, their attorneys addressed a letter to the Commission -

1680.1.1. complaining of various forms of alleged prejudicial conduct on the part of the Commission and myself;

1680.1.2. alleging that in issuing the regulation 10(6) directives, I had exercised my powers in a manner so unreasonable that no reasonable person would have done and setting out various grounds for its contention; and

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[2822] A similar approach can be taken in criminal proceedings, for example, see Osman and Another v Attorney-General, Transvaal 1998 (4) SA 1224 (CC) at para 22.

1680.1.3. asserting that Mr Leshabane and Mr Gumede had *"a 'reasonable excuse' within the jurisprudence relating to the issuance of notices, directives, subpoenas, summonses and the like before Commissions and inquiries for ignoring the Directives and they will be doing so."*

1680.2. Notwithstanding these assertions, in the absence of a legal challenge to the validity of the regulation 10(6) directives, they remained valid and binding on Mr Leshabane and Mr Gumede. It was not open to them simply to choose to ignore the directives on the grounds alleged. Nor was there any claim of the legal privilege against self-incrimination, as contemplated in section 3(4) of the Commissions Act.

1680.3. Accordingly, the evidence against Mr Leshabane and Mr Gumede will be treated in the same manner as that outlined above in respect of Mr Mti.

1681. Mr Seopela

1681.1. On 26 September 2019, a regulation 10(6) directive was issued to Mr Seopela. He approached the same firm of attorneys as Mr Leshabane and Mr Gumede. They addressed a letter to the Commission on his behalf saying that Mr Seopela's stance was the same as that of their other two clients as set out in the letter of 20 September 2019. The evidence against Mr Seopela will be treated in the same was as that against the other three witnesses.

Implicated individuals not issued with rule 3.3 notices or regulation 10(6) directives

1682. Certain individuals implicated in the evidence were not issued with a notice in terms of rule 3.3. A list of these individuals is attached as Appendix 5.

1683. In respect of these persons, adverse findings are not conclusively made against them, but, where appropriate, the matter may be considered for further investigation by an appropriate law enforcement agency, government department or regulator.

Hearsay evidence

1684. Given the flexibility granted to the Commission in determining whether to admit evidence, section 3[2823] of the Law of Evidence Amendment Act 45 of 1998 does not apply to the Commission's proceedings. The nature of the allegations being investigated by the Commission make it unavoidable that some element of hearsay makes up a component of the factual matrix. The Commission has, nevertheless,

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[2823] 3. Hearsay evidence

(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless—

(a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;

(b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or

(c) the court, having regard to—

(i) the nature of the proceedings;

(ii) the nature of the evidence;

(iii) the purpose for which the evidence is tendered;

(iv) the probative value of the evidence;

(v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;

(vi) any prejudice to a party which the admission of such evidence might entail; and

(vii) any other factor which should in the opinion of the court be taken into account,

is of the opinion that such evidence should be admitted in the interests of justice.

(2) The provisions of subsection (1) shall not render admissible any evidence which is inadmissible on any ground other than that such evidence is hearsay evidence.

(3) Hearsay evidence may be provisionally admitted in terms of subsection (1)(b) if the court is informed that the person upon whose credibility the probative value of such evidence depends, will himself testify in such proceedings: Provided that if such person does not later testify in such proceedings, the hearsay evidence shall be left out of account unless the hearsay evidence is admitted in terms of paragraph (a) of subsection (1) or is admitted by the court in terms of paragraph (c) of that subsection.

(4) For the purposes of this section—

"hearsay evidence" means evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence;

"party" means the accused or party against whom hearsay evidence is to be adduced, including the prosecution.

treated such evidence with caution and has considered the extent to which the hearsay evidence is corroborated by other evidence led during the proceedings.

1685. The possibility of prejudice in admitting the hearsay evidence is sufficiently ameliorated by the issuing of notices in terms of rule 3.3 to persons implicated by the evidence. Where hearsay evidence is relied upon, the persons implicated by the hearsay evidence have been afforded the opportunity to testify to contradict the evidence and to apply for leave to cross-examine the relevant witness.

Relevant terms of reference

Term of Reference 1.1

1686. Term of Reference 1.1 ("TOR 1.1") is subject to the opening paragraph and reads as follows:

> "whether, and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive (including Deputy Ministers), office bearers and/or functionaries employed by or office bearers of any state institution or organ of state or directors of the boards of SOE's."

1687. The balance of this Term of Reference then deals specifically with the veracity of a particular allegation that is not relevant to the Bosasa-related evidence.

1688. The focus of the enquiry required by TOR 1.1 is on attempts to influence the President, Cabinet Ministers, Deputy Ministers and functionaries employed by any state institution or organ of state or directors of Board of SOEs through:

1688.1. any form of inducement; or

1688.2. for any gain of whatsoever nature.

1689. The breadth of the words "any form of" and "of whatsoever nature" suggest that inducement or gain would include -

1689.1. any of the forms of "gratification" listed in the definition of that term in PRECCA;[2824]

1689.2. the various forms of "property" contemplated in the definition of that term in POCA;[2825]

1689.3. benefits which include but are not confined to money.

1690. It is also important to note that it would fall within this Term of Reference if there was an attempt at influence, regardless of whether the attempt succeeded in influencing the recipient of the inducement or gain. The Standard Dictionary of the English Language includes as a definition of the verb "influence" -

> "1. To affect, modify, or act upon physically, especially in some gentle, subtle, or gradual way.
>
> 2. To exert or maintain a mental or moral power upon or over; affect or sway by motives, as the feelings or conduct: sometimes as a euphemism for bribe."

and the noun "influence" -

> "2. Ability to sway the will of another; the exercise of a moral or a secret control over the actions of others; controlling or directing power based not on authority, but on social, moral or other ascendency; sometimes, power of privately controlling the acts of those in authority."

1691. A wide range of public office-bearers and state functionaries are indentified as the potential recipients of inducement or gain, including -

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2824 See para 65 of Appendix 1.

2825 See para 80.1 of Appendix 1.

1691.1. the President, Deputy President and Cabinet Ministers;

1691.2. Deputy Ministers;

1691.3. Office-bearers, functionaries, officials or employees employed by any state institution or organ of state;

1691.4. Office-bearers of any state institution or organ of state;

1691.5. directors of the boards of state-owned entities.

1692. In short, the questions raised by TOR 1.1 are -

1692.1. whether there were attempts to influence the categories of public office bearers concerned through any form of inducements or gain;

1692.2. if so, to what extent there were such attempts at influence; and

1692.3. by whom the attempts at influence were made.

1693. Further, having regard to the requirement in the introductory paragraph 1 to "inquire into, make findings, report on and make recommendations concerning" each term of reference, it would be remiss of the Commission not to consider also, where appropriate, whether there is evidence of malfeasance on the part of the persons targeted.

Term of Reference 1.4

1694. Term of Reference 1.4 ("TOR 1.4") is subject to the opening paragraph and reads as follows:

> "whether the President or any member of the present or previous members of his National Executive (including Deputy Ministers) or public official or employee of any state-owned entities (SOE's) breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOE's or any organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government or any organ of state".

1695. The focus of the enquiry required by TOR 1.4 is on the facilitation of the unlawful awarding of tenders by SOE's or organs of state. "Facilitate" is defined in the Standard Dictionary of the English Language as -

> "To make more easy or less difficult; free more or less completely from obstruction or hindrance; lessen the labour of."

1696. The range of potential facilitators in respect of whom the inquiry must be made include-

1696.1. the President and Deputy President;

1696.2. Cabinet Ministers and Deputy Ministers;

1696.3. public officials; or

1696.4. employees of SOEs.

1697. The range of potential beneficiaries of the facilitation include -

1697.1. families (the Gupta family is not relevant to this part of the report);

1697.2. individuals; or

1697.3. corporate entities,

doing business with government or any organ of state.

1698. Organ of state is defined in section 239 of the Constitution as -

"(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution -

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation."

1699. In short, the questions asked by TOR 1.4 are -

1699.1. whether any of the identified public office-bearers and state functionaries and employees facilitated the unlawful award of tenders in any government department or state-owned entity or organs of state;;

1699.2. whether he or she thereby breached the Constitution, any relevant ethical code or legislation; and, if so

1699.3. whether they did so in order to benefit any family, individual or corporate entity doing business with government or any organ of state.

1700. In relation to the last point, a question arises as to whether the words *"doing business with government or any organ of state"* qualify all of the words *"family, individual or corporate entity"* or only the words *"corporate entity"*. To interpret the provision narrowly so that only facilitators of unlawful tenders who aim to benefit families and individuals that are doing business with government or an organ of state, would seem to be an unduly strained reading of TOR 1.4. Facilitators of corruption who aim to benefit themselves as individuals, for example, ought to be included within the meaning of TOR 1.4, even though they themselves might not be doing business with government or an organ of state. It would not be consistent with the context and purpose outlined above, which would include the need to have the broadest possible enquiry into corruption in South Africa. An unintended consequence of the narrow

interpretation would mean that a family involved in corruption could avoid scrutiny on the basis that they were not doing business with government or an organ of state, because they worked exclusively through juristic persons. The qualifying words must therefore be read as applying only to corporate entities as well.

Term of Reference 1.5

1701. Term of Reference 1.5 ("TOR 1.5") is subject to the opening paragraph and reads as follows:

> "the nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organisations by public entities listed under Schedule 2 of the Public Finance Management Act No. 1 of 1999 as amended."

1702. The focus of the enquiry required by TOR 1.5 is on corruption in the award of contracts and tenders by a particular category of public entities, being those listed in Schedule 2 to the PFMA. These are the "major public entities".[2826]

1703. Guidance on the meaning of corruption can, in the context of the terms of reference, be obtained from the description of the offence of corruption in section 3 of PRECCA. It is quoted in Appendix 1.[2827] The general offence of corruption is the unlawful and intentional accepting or giving of any gratification in order for the recipient to act in one of a range of inappropriate ways involving abuse of authority, breach of trust or violation of a legal duty. These are set out in subparagraphs (i) to (iv) of section 3. Provided it has that end, the offence is committed by -

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2826 They include Airports Company, Air Traffic and Navigation Services Company, Alexkor Limited, Armaments Corporation of South Africa, Broadband Infraco (Pty) Ltd, Broadband Infraco Limited, CEF (Pty) Ltd, DENEL, Development Bank of Southern Africa, ESKOM, Independent Development Trust, Industrial Development Corporation of South Africa Limited, Land and Agricultural Bank of South Africa, SA Broadcasting Corporation Limited, SA Forestry Company Limited, SA Nuclear Energy Corporation, SA Post Office Limited, South African Airways Limited, South African Express (Proprietary) Limited, Telkom SA Limited, Trans-Caledon Tunnel Authority, Transnet Limited.

2827 The relevant part of section 3 is quoted in para 62 and discussed in paras 63 to 71 of Appendix 1.

1703.1. accepting, or agreeing or offering to accept, any gratification; or

1703.2. giving or agreeing to give or offering to give, any gratification.

1704. Sections 12 and 13 of PRECCA deal with corruption in the specific context of contracts and tenders respectively and also constitute a helpful guide. They provide as follows:

> **"12 Offences in respect of corrupt activities relating to contracts**
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> (1) Any person who, directly or indirectly-
>
> *(a)* accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or
>
> *(b)* gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person-
>
> (i) in order to improperly influence, in any way-
>
> *(aa)* the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or
>
> *(bb)* the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or
>
> (ii) as a reward for acting as contemplated in paragraph *(a)*,
>
> is guilty of the offence of corrupt activities relating to contracts.
>
> (2) Any person who, in order to obtain or retain a contract with a public body or as a term of such contract, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person-
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> *(a)* for the purpose of promoting, in any way, the election of a candidate or a category or party of candidates to the legislative authority; or
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> *(b)* with the intent to influence or affect, in any way, the result of an election conducted for the purpose of electing persons to serve as members of the legislative authority,
>
> is guilty of an offence.
>
> **13 Offences in respect of corrupt activities relating to procuring and withdrawal of tenders**
>
> (1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as-
>
> *(a)* an inducement to, personally or by influencing any other person so to act-

(i) award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

(ii) upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderee to accept a particular tender; or

(iii) withdraw a tender made by him or her for such contract; or

(b) a reward for acting as contemplated in paragraph *(a)* (i), (ii) or (iii),

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.

(2) Any person who, directly or indirectly-

(a) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or the benefit of another person, as-

(i) an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

(ii) a reward for acting as contemplated in subparagraph (i); or

(b) with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agrees or offers to give any gratification to any person who has made a tender in relation to that contract, whether for the benefit of that tenderer or for the benefit of any other person, as-

(i) an inducement to withdraw the tender; or

(ii) a reward for withdrawing or having withdrawn the tender,

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders."

1705. In short, the questions asked by TOR 1.5 are -

1705.1. whether there was corruption in the award of contracts and tenders by any of the major public entities listed in schedule 2; and, if so,

1705.2. what the nature of the corruption was; and

1705.3. what the extent of the corruption was.

Term of Reference 1.9

1706. Term of Reference 1.9 ("TOR 1.9") is subject to the opening paragraph and reads as follows:

> "the nature and extent of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organisations by Government Departments, agencies and entities. In particular, whether any member of the National Executive (including the President), public official, functionary of any organ of state influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest."

1707. The focus of the enquiry required by TOR 1.9 is on corruption in the award of tenders by government departments, agencies and entities. In its first part it is more or less identical to TOR 1.5, but applies to contracts and tenders awarded by government departments, agencies and entities, rather than the entities in schedule 2 to the PFMA.

1708. However, TOR 1.9 has an additional enquiry attached to it and that is whether certain categories of public office bearers influenced the award of tenders in order to benefit themselves, their families or entities in which they held a personal interest. The categories are -

1708.1. members of the National Executive, including the President;

1708.2. public officials; and

1708.3. functionaries of organs of state.

1709. In short, the questions asked by TOR 1.9 are -

1709.1. whether there was corruption in the award of contracts and tenders by Government Departments, agencies and entities; and, if so,

1709.2. what the nature of the corruption was; and

1709.3. what the extent of the corruption was; and

1709.4. whether the corruption involved office bearers in the listed categories seeking to benefit themselves, their family members or entities in which they held a personal interest.

Term of reference 7

1710. Term of Reference 7 ("TOR 7") provides that the Commission shall, where appropriate, refer any matter for prosecution, further investigation or the convening of a separate enquiry to the appropriate law enforcement agency, government department or regulator regarding the conduct of a certain person(s).

1711. The Secretary of the Commission (who is in a position akin to that of Chief Executive Officer) must report knowledge or suspicion of an offence under Part 1, 2, 3 or 4, or section 20 or 21 of PRECCA, or the offence of theft, fraud, extortion, forgery or uttering a forged document, to the DPCI in terms of section 34 of PRECCA.[2828] The making of a report in terms of section 34 is not a substitute for laying a charge with the SAPS.

1712. In addition, any offences or unlawful activities relating to serious, high profile or complex corruption cases arising from the work of the Commission should be reported to the Investigating Directorate of the NPA.[2829]

1713. On this basis, all referrals for further investigation or prosecution are made to the SAPS, the DPCI and the Investigating Directorate, whether or not this is expressly

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[2828] See in this regard the discussion of section 34 in Appendix 1: Detailed Legal Framework at paragraphs 75-76 of that Appendix.

stated below. Referrals for prosecution are only made in instances where the evidence reveals a prima facie case for a successful prosecution. Express reference is made to prosecution where this forms part of the referral. All other matters that are referred, are referred for further investigation.

1714. Where a matter is referred for prosecution in this Part, it is recognised that the discretion in relation to the decision to prosecute will remain vested in the NPA. It must make its own assessment as to whether there is sufficient evidence to justify prosecution. They will also determine which crimes should form the basis of the charges. There are potential offences additional to those referred to below, which will need to be considered. The focus here has been on PRECCA, because of its being directly related to prosecutions for corruption.

1715. In some instances, where evidence is limited, neither referrals for prosecution, nor referrals for investigation have been recommended. However, such evidence as there is, is summarised in Part F and, in most instances, analysed in this Part G and will be available to the relevant authorities to launch their own investigations if they so wish.

Analysis of the evidence against the terms of reference

1717. In the next section, the Bosasa-related evidence presented before the Commission is analysed against the relevant terms of reference. The evidence is analysed with reference to the questions raised by each Term of Reference identified above.

1718. The questions do not provide for hermetically sealed analysis, with evidence sometimes being relevant to more than one Term of Reference. The evidence is analysed on the basis of where it fits most comfortably.

1719. In the course of the analysis, consideration is also given to TOR 7 and what referrals are recommended on the basis of the findings made. The analysis is either made together with the discussion of a particular individual or at the end of the analysis with reference to each of TOR 1.1, 1.4, 1.5 and 1.9.

Analysis, findings and recommendations with reference to TOR 1.1

Introduction

1720. The four questions raised by TOR 1.1 are -

1720.1. whether there were attempts to influence the categories of public office bearers and functionaries and employees concerned through any form of inducements or gain;

1720.2. if so, to what extent there were such attempts at influence; and

1720.3. by whom the attempts at influence were made; and

1720.4. was there malfeasance on the part of persons targeted with such attempts.

1721. The initial question as to whether there were attempts at influence is considered solely with reference to the evidence of Mr Agrizzi.

1722. The extent of the attempts is then considered.

1723. By whom the attempts were made is then considered.

1724. Finally, individual instances of particular persons, natural or juristic, are then discussed, in relation to whether or not they targeted, or were targeted with, attempts at influence and whether or not they fall under TOR 1.1. These individual instances are then also assessed from the perspective of whether there was malfeasance on the part of the persons targeted.

Whether there were attempts to influence public office bearers, functionaries or employees: the evidence of Mr Agrizzi.

1725. The evidence of Mr Agrizzi provides the primary basis for an answer to this question. If his evidence is to be accepted, then the answer is a resounding yes. However, can it be accepted?

1726. One must immediately acknowledge that a number of criticisms may be made in respect of Mr Agrizzi as a witness.

1726.1. His evidence was contradictory in certain instances. Examples include the following:

1726.1.1. he was clear in his initial affidavit that Siza Thanda was head of security and Thele Moema was head of risk for ACSA.[2830] When he gave oral

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2830 Mr Agrizzi's Initial Affidavit, p 21 para 11.4.

evidence, he had difficulty recalling which positions they each occupied, acknowledging that he would need to clarify this.[2831]

1726.1.2. on one occasion, Mr Agrizzi referred to Ms Lepinka as "Jay" and on another to Adv Mrwebi as "Jay".[2832]

1726.1.3. Mr Agrizzi to some extent contradicted himself as to whether his complaint regarding the investment on Ms Mokonyane was that it was not delivering returns for the Bosasa Group or whether his complaint was that it was not an appropriate and ethical way to do business.[2833]

1726.1.4. Mr Agrizzi testified that "more favourable terms" were included in the extended Lindela contract for Bosasa. He testified that Mr Wakeford explained these terms to him which included making it "more feasible" for contract price increases.[2834] However, in his evidence during the section 417 enquiry in the liquidation of African Global Operations, he conceded that the renegotiation of the Lindela contract was aimed at introducing cost savings for the DHA.[2835] He later revised his position to explain that the "more favourable contract terms" he claimed had been negotiated for Bosasa lay in the five-year extension and avoiding a tender process.[2836]

2831 Transcript, day 34, p 113.

2832 Transcript, day 40, p 44. Note that elsewhere in his evidence, Mr Agrizzi testified that Adv Mrwebi was referred to as "Jay", although he immediately acknowledged that he had made a mistake. Transcript, day 75, p 144.

2833 Transcript, day 37, pp 29-44; Mr Agrizzi's Initial Affidavit, p 39 at paras 22.12-22.13.

2834 Transcript, day 41, pp 106-107.

2835 Exhibit T33, p 1176.

2836 Exhibit T33, p 1178; transcript, day 41, p 603.

1726.1.5. There are other examples of contradictory evidence on his part, as noted in the relevant places in the summary of evidence in Part F.

1726.2. His evidence was fallible in relation to detail. Examples include the following:

1726.2.1. He wrongly named a senior DCS official, Ms Jabulile Sishuba, as having received corrupt payments. To his credit, however, when challenged in this regard in her application for leave to cross-examine him, he readily acknowledged his error and made a public withdrawal and apology in the proceedings of the Commission.[2837]

1726.2.2. When cross-examined by Mr Wakeford's Counsel as to whether he stood by his evidence relating to Mr Wakeford, Mr Radhakrishna and Mr Papadakis, Mr Agrizzi acknowledged that there might well have been mistakes in relation to dates and times, although he insisted that his evidence was correct insofar as it pertained to corrupt relationships.[2838] However, it is to his credit that he accepted that he may have made some mistakes in his evidence. The evidence he gave was extensive and related to events that had happened over a number of years. For that reason, it was natural that he would make a number of mistakes.

1726.2.3. When asked to comment on the specific amounts paid by Bosasa to RTC, a cement supplier, Mr Agrizzi did not deal with the details put to him and instead stood by a generalised statement that cement, paid for by Bosasa, was delivered to Mr Papadakis as gratification.[2839] In this

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2837 Transcript, day 40, p 78; p 80; annexure Q7 to Mr Agrizzi's Initial Affidavit, p 414 paragraph 4. The withdrawal and apology followed Ms Sishuba's application for leave to cross-examine Mr Agrizzi in this regard (transcript, day 223, pp 2-5).

2838 Transcript, day 416, pp 180-182.

2839 Transcript, day 416, pp 278-280.

regard I have to bear in mind that he was sick when he gave evidence and was cross-examined by Mr Wakeford's Counsel. His health condition was such that it would have been understandable if he had asked for a postponement of his cross-examination but he did not.

1726.2.4. Mr Agrizzi could not provide detail on which "major SARS investigation" Mr Wakeford approached Mr Watson about,[2840] nor could he recall which of the "big companies" was under investigation.[2841]

1726.3. He estimated that there were about eight walk-in vaults at the Bosasa premises.[2842] Mr le Roux testified that there were only four.[2843]

1726.4. His evidence was less convincing where he tried to portray a less corrupt version of himself. Examples include the following:

1726.4.1. Mr Agrizzi tried to suggest that when Mr van Zyl approached him to change the methodology for securing large cash amounts without raising suspicion, he *"did not want to get involved at first"* and *"kind of shunned the idea"*, because he was *"getting a bit fed up of all this"* and told Mr Watson *"look I really do not want to know"*.[2844]

1726.4.2. At one point, Mr Agrizzi claimed that, despite being Group COO, *"my influence [in Bosasa] is very limited, in actual fact."*[2845]

2840 Mr Agrizzi considered the "big companies" to be Bosasa Operations, Supply Chain Management, Kgwerano Fleet Management Services and Bosasa Security, Sondolo IT, and Phezulu Fencing – transcript, day 416, pp 236-238.

2841 Transcript, day 416, p 239-249.

2842 Transcript, day 35, p 15.

2843 Transcript, day 44, p 11.

2844 Transcript, day 36, p 70.

2845 Transcript, day 75, p 173.

1726.5. His motives in revealing the extensive corruption to which he testified may have been mixed ones, rather than exclusively public-spirited ones. The disclosures followed a breakdown in relations between him and Mr Watson and, if he could somehow avoid prosecution, might have advanced his own business ambitions.

1727. Notwithstanding these observations, on the main pillars of Mr Agrizzi's evidence, there was substantial corroboration. This included that the investigations of the SIU reflected in their report and amplified in the testimony of Mr Oellermann; the evidence of other witnesses who were previously employed at Bosasa and were willing to incriminate themselves in their testimony; the video evidence put up, particularly that of the vault and safes where the cash was stored and distributed, with the handling of cash underway; and, in several instances, the admissions and concessions of the persons implicated in his evidence. More detail of the corroborative evidence is provided below. As pointed out earlier, one must also take into account that Mr Agrizzi implicated himself widely and extensively in the criminal conduct to which he testified. Whilst he may sometimes have sought to lessen his role to some degree, he was, on his own evidence, guilty of criminal conduct on a substantial scale. Taking this into account, along with the extensive corroborative evidence, it may be accepted that Mr Agrizzi was in the main a truthful witness, the above criticisms notwithstanding.

1728. To the extent that he may have underplayed his role in the corruption and has sought to shift a greater share of the blame for the corrupt activities to Mr Watson, it does not detract from the fact that, with reference to the first question asked by TOR 1.1, there is overwhelming evidence that there were indeed attempts through various forms of inducement and gain, to influence members of the National Executive, and office bearers, functionaries, officials and employees in state institutions and organs of state. This is particularly so when the evidence is looked at as a whole or as a mosaic.

1729. In fairness to Mr Agrizzi, whatever the true distribution of corrupt activities as between him and Mr Watson, the evidence of Mr Watson's involvement in corrupt activities is overwhelming. That conclusion is reached mindful of the fact that he is not able to defend himself on the evidence against him, having passed on while the Commission was continuing with the hearing of oral evidence.[2846] It is significant in this regard that -

1729.1. by the time of his death Mr Watson had not sought the opportunity to testify in the Commission to defend himself against the allegations made against him by Mr Agrizzi nor had he applied for leave to cross-examine Mr Agrizzi and other witnesses who had implicated him in serious corruption;

1729.2. by the time of his death, Mr Watson had not responded to the rule 3.3 notice calling upon him to file an affidavit in response to the allegations and evidence implicating him in the Commission;[2847]

1729.3. none of Mr Watson's siblings, who were to a lesser degree also implicated in the corrupt activities of Bosasa, have stepped forward to respond to the allegations against themselves or those made against their deceased sibling, by volunteering testimony in the Commission or responding appropriately to the rule 3.3 notices issued to them.[2848]

1730. To conclude on the question whether Mr Agrizzi's evidence can be accepted, it must be answered in the affirmative, save where indicated otherwise in any particular instance. Taken cumulatively, there is clear and convincing evidence pertaining to

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[2846] As reported in the press, Mr Watson died in a car accident early on the morning of 26 August 2019 when the company Toyota Corolla he was driving struck a pillar on an approach road leading to O. R. Tambo International Airport in Johannesburg.

[2847] Transcript, day 151 at p 3.

[2848] Mr Daniel John Watson filed an affidavit dated 5 August 2020 in which he confirmed the correctness of Mr Frolick's affidavit (exhibit T14) insofar as it related to him.

Bosasa of attempts to influence persons in the categories of office–bearers, functionaries and officials listed in TOR 1.1.

What was the extent of the attempts to influence public office bearers?

1731. Bosasa's primary mechanism for attempting to influence public office bearers was the payment of cash bribes. The amounts paid tended to be commensurate with the degree of influence that could be exercised by the official concerned. The system involved seeking to do so, in most instances, on an ongoing basis. This was no doubt aimed at developing a corrupt form of loyalty to Bosasa, through the dependence on the regular payments that would develop. By spreading the benefits relatively widely, it also sought simultaneously to maximise its corrupt influence, but also to decrease the likelihood of whistle-blowers coming forward to expose particular corrupted public office-bearers.

1732. However, the attempts at influence through inducement or gain were not confined to cash payments. Bosasa also built houses, provided various furnishings for homes, installed several home security systems, purchased motor vehicles, bought gifts (from premium luxury gifts such as pens and jewellery to food and grocery items) and paid for travel and accommodation.

1733. Perhaps the best sense of the extent and scale of the attempts at influence is that to be derived from an examination of the various mechanisms that Bosasa established to generate, store and distribute sufficient cash to sustain the payments used to make the attempts at influencing the public office bearers concerned.

1734. The evidence establishes that various mechanisms were used by Bosasa and its associates to generate cash for these purposes. Mr Agrizzi and Mr van Tonder testified that Mr Watson and Bosasa required a substantial amount of cash every month, which

necessitated establishing these illegal mechanisms. The various illegal methods used to generate cash included:[2849]

1734.1. the creation of fraudulent documentation and fake invoices by Bosasa;

1734.2. utilising Metropolitan Death Benefit Fund documentation as source documents for cash cheques - symptomatic of the level of depravity of the corrupt activities of Bosasa and those of its directors and employees involved in the bribery;

1734.3. service providers supplying false invoices to Bosasa for goods and services, where, in truth, cash rather than goods and services were delivered. Examples include the false invoices submitted to Bosasa by F&R Phakisa and Jumbo Liquor Wholesalers. Another example is Mr Lawrence's confirmation of the scheme of procuring cash from Equal Trade. Mr Lawrence's evidence was supported by photographs of the consignments of cash he delivered to Bosasa as well as videos of the person to whom he handed the cash at Bosasa. Mr Lawrence also provided copies of false purchase orders for non-vatable food items purportedly supplied by Equal Trade to Bosasa for various Department of Correctional Services facilities;[2850]

1734.4. fictitious transactions between Bosasa and government departments for the supply by Bosasa of, for example, software programmes;

1734.5. cash sales at Lindela that were not accounted for as income from Lindela, but rather shifted to the vaults at Bosasa;

[2849] See in general the section titled "Money laundering, cash generation and the payment of bribes" from p 89above.

[2850] Mr Lawrence's affidavit, pp 23 to 56.

1734.6. cash bars and canteens at various mine hostels administered by Bosasa, that were similarly not accounted for as income, but rather shifted to the vaults at Bosasa;

1734.7. payments to ghost employees; and

1734.8. over-invoicing for goods supplied by AA Wholesalers where the difference between the goods supplied and the total invoice would be delivered in cash to Bosasa.

1735. Mr van Tonder testified that Bosasa had also used various attorneys' trust accounts to hold Bosasa monies to mitigate against the risk of Bosasa running out of funds in the event that its bank accounts were ever frozen. When Bosasa required cash, requests would be made to withdraw the funds. As an example, Mr van Tonder referred to an email sent by Mr Agrizzi to Mr Biebuyck and himself where Mr Agrizzi requested that R25m be transferred to Bosasa from the trust account.[2851]

1736. Mr Agrizzi, Mr van Tonder and Mr le Roux testified to the cash stored at Bosasa's premises.[2852] Mr Agrizzi testified that the amount of cash stored in a walk-in vault behind the main boardroom would range from R2m to approximately R6.5m, which amount would be exceeded over the December period. The amount of cash stored would depend on the amount requested weekly by Mr Watson and members of Bosasa's board or management, who would ask for money to be paid out as bribes. Mr Agrizzi and Mr van Tonder testified that employees involved in the administrative process of arranging the cash would also be paid monthly "bonuses" from the cash as a means of retaining their loyalty and buying their silence.

2851 Annexure AT8 to Mr van Tonder's affidavit.

2852 See in general the section titled "Mr Watson's vaults and safes" from p 107above.

1737. A video filmed by Mr van Tonder on 28 March 2017 at Bosasa's office supports the evidence regarding the cash stored at the premises. The video shows and records -

1737.1. a box being taken by Mr van Tonder from a vault at the office of the company secretary to a vault behind the main boardroom;

1737.2. Messrs Watson, Gumede and Leshabane present inside the vault;

1737.3. Mr Leshabane holding two bags of cash;

1737.4. Mr Gumede on the phone, who requests an extra R10,000 from Mr Watson;

1737.5. cash being counted out by Mr van Tonder and Mr Watson to the value of R1m;

1737.6. Mr van Tonder handed cash by Mr Watson (his monthly "bonus"); and

1737.7. a discussion between Mr Watson and Mr van Tonder where reference is made to Mr Gillingham and the monthly payment of R110,000 that would be made to him.

1738. Mr Agrizzi testified that he was tasked specifically with the handling of cash, which included getting the cash, counting it out and delivering the cash for making the attempts at influence.[2853] Mr Agrizzi often made up cash bundles himself to be paid to government officials, as he was instructed to do by Bosasa's board of directors.

1739. Mr Agrizzi also gave evidence regarding the system that was implemented for the handling of cash. Mr Agrizzi and Mr Watson would meet on a monthly basis with the board who would give instructions on what needed to be paid to whom. After Mr

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[2853] See, for example, the section titled "Mr Agrizzi's role and cash payments" from p 124 above.

Watson had approved a list compiled by Mr Agrizzi, Mr Agrizzi would encode the list and the cash would be packed per code-identified recipient. Mr Agrizzi would then hand grey sealable bags with the money to the member of senior management who would deliver the money to the relevant officials. Some of the senior managers included Mr Dikane, Mr Dlamini, Mr Gumede, Ms Makoko and Mr Leshabane. Mr Agrizzi explained his system of assigning codes to the bribery money and attached some of the lists that he had compiled in early 2016 to his Initial Affidavit.[2854] Later on, Mr Agrizzi started to record the various codes in what he referred to as his black book.[2855] The code would contain information of the person to receive the bribe, the amount and the name of the person delivering the bribe to them. Senior managers mentioned in Mr Agrizzi's testimony and whose names appear in the black book include Mr Dikane, Mr Gumede, Mr Mathenjwa, Mr Leshabane, and Ms Makoko.[2856]

1740. Some of the discrepancies in the codes used by Mr Agrizzi were pointed out to him. Mr Agrizzi explained that the codes changed when he and Mr Gumede realised that Mr van Zyl was able to decipher the standard codes and also that he varied the codes to avoid them becoming a trail. Mr Agrizzi acknowledged that there were errors in some of the codes where he had made mistakes.

1741. Mr Agrizzi testified that an estimated amount of R4m to R6m in bribes was being paid monthly at the time he left Bosasa. He also testified that Bosasa gave gifts to individuals other than cash payments, although less frequently. According to Mr Agrizzi, the most important criterion to determine whether a person should receive a payment would be that they would be supportive of Bosasa and, in particular, that they

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2854 Attached as annexure P1 to P4 to Mr Agrizzi's Initial Affidavit. Annexure HH to Mr Agrizzi's Supplementary Affidavit sets out extracts of importance, according to Mr Agrizzi, from Annexure P, listing codes used for packaging of bribe monies.

2855 Extracts of a black book were attached to Mr Agrizzi's Initial Affidavit as annexure T1 to T11.

2856 See annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 86 – 91.

would ensure that a tender would be awarded to, or retained by, Bosasa. Mr Agrizzi estimated that the total number of persons who would be paid by Bosasa monthly was in the region of 80 and he recalled a list of 38 government officials and employees who received bribes on a regular basis.

1742. Mr Agrizzi confirmed that various emails between him and Mr van Zyl from early to the middle of 2011, where reference is made to arranging "loaves" of bread and "breadroll requirements", were references to money bribes.[2857] Mr Agrizzi also explained that reference in an email between him and Mr van Zyl to a DoJ&CD management fee was code for bribe money that was paid in cash to Mr Seopela (who would then hand over the money to officials in the DCS).[2858] Other emails exchanged between Mr van Zyl and Mr Agrizzi show the references to codes where payments were to be made, including payments to Reuben Pillay (security manager at ACSA) authorised by Mr Gumede and payments to Ms Makoko, including R100,000 for a funeral in Rustenburg and a R5,000 donation for Zukiswa Jamela.[2859]

1743. Mr Agrizzi estimated in his evidence that the aggregate value of contracts awarded to the Bosasa Group of Companies by various public departments and entities between 2000 and 2016 to be at least R2,371,500,000.00. Mr Agrizzi estimated that approximately R75,700,000 was paid out in bribes.[2860] The breakdown of the various contracts within the Bosasa Group and an estimated value that was paid out in bribes annually, per contract, is provided at paragraphs 396 to 423 above. These values do not include the value of houses built, fixtures and fittings, security systems, furnishings, motor vehicles purchased and travel expenses incurred.

2857 See annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 99 – 100, p 113.

2858 See annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 101 – 102, 113.

2859 See annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 103 – 112.

2860 Mr Agrizzi's Supplementary Affidavit, p 10, paras 12, 13.

1744. The evidence thus reveals that the attempts at influence by Bosasa and its leadership were carried out at what may fairly be characterised as an industrial scale, requiring, and evidenced by, mechanisms to secure an ongoing generation and delivery of cash in quantities that were not feasible through normal trading operations, particularly where the nature of Bosasa's business was not inherently cash-based. Payments pursuant to the catering and security tenders that it was awarded by government departments, municipalities and SOEs would have been effected by electronic funds transfers. Cash generating activities, such as the canteen at Lindela, were not the main source of income for Bosasa. Hence the need for the illicit mechanisms for large-scale cash generation and the need for substantial vaults at the Bosasa offices where the cash could be stored and processed.

1745. Even if one accepts that Mr Agrizzi was not always accurate in his estimations, judged purely by the quantum of evidence placed before the Commission, the attempts at gaining influence through inducement or gain by Bosasa and persons associated with it were central to its business model and operated at a very substantial scale.

<u>By whom were the attempts at influence made?</u>

1746. The evidence was that the following individuals and entities were involved in providing inducements and gain, in the form of cash payments or other material benefits, to various functionaries or office bearers employed by state institutions or organs of State:

1746.1. Mr Watson made cash payments to Siviwe Mapisa (head of security at SAPO) and Maanda Manyatshe (CEO at SAPO).

1746.2. Mr Agrizzi and Mr Gumede purchased premium gifts for Siviwe Mapisa and Maanda Manyatshe. These were provided by Bosasa in exchange for a

security contract at SAPO.[2861] There was similar evidence against Johnson Vovo, but no rule 3.3 notice was issued to him and accordingly, no adverse findings are made against him.

1746.3. Mr Agrizzi testified to having, together with Mr Gumede, made cash payments to various officials at ACSA, including Thele Moema (head of risk), Siza Thanda (head of security), Reuben Pillay and Johannes Serobe. Thele Moema, Reuben Pillay and Johannes Serobe did not respond to rule 3.3 notices and the evidence may be taken as established in respect of the payment of bribes to them. Bongi Mpungose, Jason Tshabalala and Mohammed Bashir were also named as having received corrupt payments.[2862] However, these three persons have not been provided with rule 3.3 notices and accordingly adverse findings are not made against them.

1746.4. Messrs Watson, Agrizzi, Taverner, Mansell and Vorster were involved in making cash payments and providing fittings and furnishings to the private residences of Mr Gillingham and Mr Mti in exchange for information regarding DCS tenders, permitting corrupt involvement by Bosasa officials in the development of tender specifications and generally enabling Bosasa to secure and retain the contracts flowing from the tenders.[2863] Mr Venter corroborated the evidence that cash payments were made to Mr Gillingham.[2864] Various travel expenses, including international travel and flights, were paid for by Bosasa for Mr Mti and Mr Gillingham.[2865] Bosasa paid for the studies of two of

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2861 Transcript, day 34, pp 103-195.

2862 Annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 86, 87, 88.

2863 See the sub-section titled "Interactions with the various officials of the DCS" from p 185 above.

2864 Transcript, day 74, pp 40-46.

2865 Transcript, day 75, p 103; transcript, day 38, p 79.

Mr Mti's children and for security guards to be placed at Mr Mti's house.[2866] Mr Gumede paid cash to an official at a court to make a drunk driving charge against Mr Mti disappear.[2867] Bosasa also paid Mr Gillingham a 'salary' through BEE Foods after his resignation from DCS.[2868] Mr L van Tonder testified that he attended to various computer repair issues for Mr Gillingham and Mr Mti, on instruction from Mr Watson, on numerous occasions from 2008.[2869]

1746.5. Mr Watson, Mr Vorster, Mr van Tonder, Dr Smith and Mr Bonifacio were involved in the purchase of motor vehicles for Mr Gillingham and his family members, including his wife, son and daughter.[2870] Mr Agrizzi, Mr Vorster and Mr van Tonder gave corroborating evidence in this regard. Mr Agrizzi and Mr Vorster's evidence differed on whether an amount of R180,000 (or R150,000) paid towards a Mercedes Benz E320 was paid to Mr Bonifacio and then transferred between other accounts before being paid to Mr Gillingham, or whether it was paid to Mr Bonifacio who then paid it to the motor vehicle dealership. It is apparent from the evidence that fake documents were drawn up and that the money was paid between different individuals and accounts to conceal or disguise the true nature of the transactions.[2871] Mr Vorster testified that he was instructed to procure a motor vehicle for Mr Mti in 2005 and that

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2866 Transcript, day 38, pp 79-81.

2867 Transcript, day 38, pp 81-82.

2868 Transcript, day 75, p 121.

2869 Transcript, day 44, p 123.

2870 Transcript, day 43, pp 83-84, 106-111; transcript, day 38, p 105.

2871 See, for example, the credit agreement attached to Vorster's statement from p FHSV 009.

he presumed that the vehicle was paid for by Bosasa.[2872] Mr Agrizzi testified that Mr Mti's children also benefitted from flight tickets and cars.[2873]

1746.6. Mr Agrizzi and Mr van Tonder testified that Bosasa, through Mr Watson and Mr Hoeksma, paid for the building of Mr Gillingham's house in Midstream Estate and Mr Mti's house in Savannah Hills.[2874] Bosasa paid for the cost of the construction of the houses via companies that Mr Mansell had set up to handle these transactions – Grande Four and L&J Civils. False invoices were submitted with the costs of the construction being accounted for as a legitimate business expense in Bosasa's books. Mr le Roux testified that he had been instructed by Mr Agrizzi and Mr Watson to install security systems at Mr Mti's homes to the value of R350,000.[2875] The total approximate cost of the equipment, vehicle, travel and labour for work done at Mr Mti's residences in the Eastern Cape was R417,980.19, which excludes miscellaneous costs Mr le Roux purchased on his credit card in the Eastern Cape.[2876]

1746.7. Mr Agrizzi and Mr van Tonder testified that Bosasa had paid for Mr Gillingham's legal fees during the SIU investigation, through a company called Syncho Prop.[2877] Bosasa also paid for Mr Gillingham's legal fees related to his divorce as well as R2.2m in settlement to Gillingham's wife.[2878] Bosasa paid for the legal fees related to Mr Gillingham's son's labour dispute with Bakwena, as well as for the payment of R700,000 owed to Bakwena. A

2872 Transcript, day 43, pp 124-125.

2873 Exhibit T18, paras 44-49, pp 20-21.

2874 Transcript, day 38, p 61; transcript, day 43, p 122.

2875 Transcript, day 44, p 85.

2876 Exhibit T21 paras 68-79 pp 14-17.

2877 Transcript, day 75, pp 110, 114; transcript, day 76, p 132.

2878 Transcript, day 75, p 129.

fictitious loan agreement was drawn up between Mr Gillingham and Mr Agrizzi's erstwhile in-laws.[2879]

1746.8. Bosasa paid a "consultancy fee" of R5m to Mr Sekgota's company to secure an extension of the third catering contract at DCS, pending its renewal.[2880] Mr Agrizzi's evidence was that the third catering contract was granted using the same corruptly prepared specifications drafted for the first catering contract and that he was instructed by Mr Watson to work closely with Mr Nkabinde and Mr Sekgota to ensure that Bosasa retained the catering contract. On the probabilities, the monies paid to Mr Sekgota and Mr Nkabinde were, in part, used for the payment of inducements or gains, for them to be able to secure the tender awards. Mr Agrizzi gave evidence suggesting that Mr Nkabinde and Mr Sekgota had the ability to facilitate the award of the catering contract to Bosasa, despite not being officials of the DCS –

1746.8.1. Mr Nkabinde had a copy of the tender before it had been issued.

1746.8.2. Mr Sekgota required a R5m fee to be paid to his consultancy company to secure a six-month extension of the contract which would then give them time to iron out details for obtaining the new tender. This amount was paid by Bosasa.

1746.8.3. Mr Sekgota required payment of R10m to secure a renewal of the catering contract. When this was not paid, Bosasa was unable to retain

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2879 Mr Agrizzi's Supplementary Affidavit, p 25 at para 20.9.

2880 Transcript, day 41, pp 110-114.

40% of the catering contract, but retained the remaining 60% of the contract that had been irregularly awarded.[2881]

1746.8.4. Despite being issued with rule 3.3 notices, neither Mr Nkabinde nor Mr Sekgota applied for leave to cross-examine Mr Agrizzi or present evidence in contradiction of his version. Mr Agrizzi's evidence in this regard therefore stands undisputed.

1746.9. Bosasa made monthly payments of R1m (later R700,000) to Mr Sithole, 'Sbu' and Mr Nxele, in exchange for undue pressure being placed on the DCS and Mr Petersen, through the unions, to get Mr Petersen to agree to work with Bosasa.[2882]

1746.10. Mr Agrizzi testified that Bosasa made payments to officials in the DCS, through Mr Seopela, including to Mr Moyane when he was National Commissioner.[2883]

1746.11. Mr Leshabane, Mr Watson and Mr Agrizzi paid cash to Mr Modise, who Mr Agrizzi testified was receiving monthly payments from Bosasa.[2884]

1746.12. Mr le Roux testified that Bosasa paid for the maintenance and installation of a security system at Mr Makwetla's residence, which included the total approximate cost of the equipment, vehicle travel and labour to the approximate value of R308,754.24.[2885] The approximate cost excluded a 40

2881 Transcript, day 41, p 112.

2882 Transcript, day 38, p 95.

2883 Transcript, day 37, p 57.

2884 Transcript, day 40, pp 11-15.

2885 Exhibit T21 paras 53-67 pp 12-14.

and 28 inch plasma screen, infrared sensors and miscellaneous costs.[2886] Save in respect of the approximate value of the installation, Mr Makwetla testified that Mr le Roux's version, generally, about the security installation that was done by Bosasa at his residence, was accurate.[2887] There is little doubt that from the perspective of Bosasa, the security system was provided as an attempted inducement. This is discussed in more detail below.

1746.13. Sondolo IT paid 2.5% of all money received through the DoJ&CD secure systems contract, to individuals within the Department as lobbying fees or bribes.[2888] Bosasa also paid for the repair of vehicles, for the purchase of furniture and it paid cash amounts to officials in the DoJ&CD.[2889]

1746.14. Bosasa, through Mr Gumede, paid monthly cash amounts to Ms Nyambuse (R40,000) and Mr Thobane (R30,000). Mr Agrizzi was present on a few occasions when money was handed over to them by Mr Gumede.[2890] Both names also appear in Mr Agrizzi's black book.[2891] Mr Agrizzi testified that he was present on one occasion when money was paid over to Ms Masha around 2013/2014. Bosasa (Sondolo IT) also paid Mr Seopela R1.9m as a 'fee' for arranging the DoJ&CD security upgrades contract at the SALU building.[2892] However Ms Nyambuse and Mr Thobane have not been provided with rule 3.3 notices and accordingly adverse findings are not made against them. Although no adverse finding is made against them, the law enforcement agencies

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2886 Exhibit T21 para 64 p 13.

2887 Transcript, day 364, p 264.

2888 Transcript, day 76, p 103.

2889 Transcript, day 41, p 37.

2890 Transcript, day 41, p 37; see also annexure HH to Mr Agrizzi's Supplementary Affidavit p 88.

2891 Annexure P3 to Mr Agrizzi's Initial Affidavit, p 363 read with annexure HH to Mr Agrizzi's Supplementary Affidavit, p 88.

2892 Transcript, day 41, pp 45-46.

should investigate the allegations against them which must include obtaining their side of the story.

1746.15. Mr Agrizzi testified that Mr Mathenjwa facilitated payments for Bheki Gina's sister at the Department of Education to secure the contract for the provision of CCTV and access control systems. On the one hand, Mr Agrizzi testified that approximately R1.25m was paid as bribe money to this individual, but on the other hand, he stated that he was "out of the loop" on this tender.[2893] Given this contradiction, no finding may be made in this regard, although it would be appropriate for the matter to be investigated further by the appropriate authority. Mr Mathenjwa denied that he facilitated payments to secure a contract.[2894]

1746.16. Mr Agrizzi testified that Mr Mzazi facilitated and secured, through his contacts at USAASSA (procurement personnel and the accounting officer), that portions of a tender would be allocated to Sondolo IT. In order to secure this undertaking, Mr Mzazi paid an illegal inducement in a sum of R500,000 in cash. According to Mr Agrizzi, at a meeting with Mr Watson and Mr Agrizzi, the accounting officer agreed to work with Bosasa.[2895] Whilst the procurement personnel and the accounting officer have neither been identified, nor served with rule 3.3 notices, and are accordingly not the subject matter of adverse findings, Mr Mzazi failed to respond to a rule 3.3 notice and it may therefore be accepted that he provided inducements or gain to unidentified persons in an attempt to influence them.

2893 Transcript, day 76, p 107.

2894 Mr Mathenjwa's affidavit, para 33, pp 17-19.

2895 Transcript, day 76, p 115.

1746.17. Mr Agrizzi testified that payments were made to a certain "Mlungise" at the Department of Transport for the award of the contract for fleet management to Kgwerano. This evidence is hearsay as Mr Agrizzi relied on the version purportedly conveyed to him by Mr Leshabane. Mr Agrizzi also testified that when Avis bought Bosasa's shares in the joint venture, Phavisworld, for R23.5m, an amount was included therein to be paid to Mr Seopela and Mr Leshabane in order to pay officials at the Department of Transport to secure an extension of the fleet management contract.[2896]

1746.18. "Mlungise", if a person exists or existed by that name in the Department of Transport, has not received a rule 3.3 notice, with the result that adverse findings are not made in respect of him. However, the stance of Mr Seopela and Mr Leshabane, explained above, has the consequence that the evidence against them stands uncontradicted. Mr Seopela and Mr Leshabane sought to influence the award and the extension of the contract for fleet management through unlawful inducements and gain, as contemplated in TOR 1.1. On Mr Agrizzi's version, Clive Els may have participated in, or at least had knowledge of, the unlawful inducements and gain. However, no rule 3.3 notice was issued to him and no adverse finding is therefore made against him.

1746.19. Mr Agrizzi and Mr Vorster testified that Mr Gumede instructed that Mr Netshishivhe's Isuzu motor vehicle be serviced, which was approved by Mr Watson.[2897] Mr Netshishivhe was a member of the Mpumalanga Department of Health's security cluster and is alleged to have had influence over the award of contracts. Mr Netshishivhe has not received a rule 3.3 notice, so no adverse finding is made against him, but having regard to Mr Gumede's stance, the

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[2896] Mr Agrizzi's Supplementary Affidavit, p 42 at para 117.

[2897] Transcript, day 43, p 159; transcript, day 76, p 126.

evidence against him is undisputed and it may be accepted for purposes of TOR 1.1, that he attempted to influence unidentified persons in the Department of Health, Mpumalanga, through unlawful inducements or gain.

1746.20. Mr Agrizzi testified that he, Mr Watson and Mr Mti were involved in making monthly cash payments to Mr Mti who was meant to be passed on to Adv Jiba, Adv Mrwebi and Ms Lepinka at the NPA to provide Bosasa with information regarding ongoing investigations into Bosasa and to interfere with the investigation and possible future prosecutions.[2898] Although Mr Agrizzi was not present when the deliveries were allegedly made by Mr Mti to Adv Jiba, Adv Mrwebi and Ms Lepinka, he made the deliveries of the cash to Mr Mti and recorded them in his black book.[2899] This evidence is explored further in a dedicated section of the report below.

1746.21. Mr Mlambo and Mr le Roux testified to security upgrades being undertaken by Bosasa at two properties owned by Mr Mti, located in the Eastern Cape and KwaZulu-Natal.[2900] That evidence stands uncontradicted for the reasons given above.

1746.22. Mr Venter testified that Miotto Trading was used by Mr Watson as a vehicle to disguise that he and / or Bosasa were the source of payments. These payments were made by Mr Venter through Miotto Trading on the instruction of Mr Watson.[2901] Mr Venter said that he was instructed by Mr Watson to make payments to Mr Motsoeneng, Moroka Consultants and a trust established by

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2898 Transcript, day 40, pp 39-57.

2899 Transcript, day 40, p 45. See also annexure P2 to Mr Agrizzi's Initial Affidavit, p 361 read with annexure HH to Mr Agrizzi's Supplementary Affidavit, p 87.

2900 Transcript, day 44, pp 83, 84.

2901 Transcript, day 74, pp 111-112.

Andile Ramaphosa. No findings are made against Mr Andile Ramaphosa, Mr Motsoeneng or Moroka Consultants in this regard as no rule 3.3 notices were issued to them. The only issue in respect of which Mr Andile Ramaphosa received a rule 3.3 notice was in relation to the alleged meeting with the representative of Dahua, discussed elsewhere. Miotto Trading did not respond to the rule 3.3 notice, but it would be prejudicial to the other parties referred to in this paragraph if a finding were to be made against it.

1746.23. In addition to those persons already named, Mr Agrizzi recorded in his black book that the following individuals employed by or associated with Bosasa were involved in making unlawful payments to various state officials and functionaries as forms of inducement or gain as contemplated in TOR 1.1:

1746.23.1. Syvion Dlamini;

1746.23.2. Ryno Roode; and

1746.23.3. Patrick Littler.

1746.24. Mr Dlamini filed an affidavit in response to a 10(6) directive in which he denied ever taking money to or from any person.[2902] Given that Mr Roode and Mr Littler have not responded to rule 3.3 notices, the evidence may be taken as established against them. This matter should also be the subject of further investigation.

[2902] Mr Dlamini's affidavit, para 23, p 5.

1747. The above evidence in relation to the persons and entities by whom inducements or gain as contemplated in TOR 1.1 was provided, may be taken as established save where an implicated party -

1747.1. has not received a rule 3.3 notice; or

1747.2. has responded to a rule 3.3 notice or regulation 10(6) directive in a manner that precludes an adverse finding.

Messrs Wakeford and Radhakrishna

1748. Mr Agrizzi testified that he was advised by Mr Radhakrishna that Mr Watson and Mr Wakeford had agreed to pay him R7m for facilitating the renegotiation and extension of the Lindela contract on favourable terms and without following any tender process.[2903] Mr Wakeford denied being party to any such agreement and further denied being aware of any discussion regarding payment to Mr Radhakrishna.[2904] Mr Agrizzi said that Mr Watson refused to pay the R7m, but did agree to monthly payments to Mr Radhakrishna, disguised by being made through a company with a name along the lines of "the Wine Merchant company".[2905] There are the following difficulties with Mr Agrizzi's version in this regard:

1748.1. Central to Mr Agrizzi's version regarding the payments to Mr Radhakrishna being corrupt, was that Mr Radhakrishna ensured that the contract was extended for another five years without any tender process. Both Mr

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2903 Transcript, day 41, p 105.

2904 Mr Wakeford's application to cross-examine, p 36 at para 114 and 115.

2905 Transcript, day 41, pp 105-106.

Wakeford and Mr Radhakrishna disputed this.[2906] Their evidence was that clauses 4.3 and 4.4 of the third addendum provided for a three-year extension at the sole discretion of the DHA, a discretion that was ultimately never exercised in Bosasa's favour.[2907] Mr Agrizzi was unable successfully to refute this when it was put to him in cross-examination[2908] and the contract largely bears Messrs Radhakrishna and Wakeford out in this regard.[2909] Why offer R7m, later R75,000 per month, for contract terms that give no guarantee whatsoever of an extension?

1748.2. Mr Agrizzi's oral evidence on the allegation that a fee of R7m was claimed by Mr Radhakrishna from Bosasa for renegotiating the extension of the Lindela contract was contradictory. Initially, Mr Agrizzi said that he approached Mr Watson believing that Mr Radhakrishna should not be entitled to any payment, and that Mr Watson told him that Mr Radhakrishna should not be paid R7m, but could instead be paid on a monthly basis.[2910] Subsequently Mr Agrizzi said that he in fact proposed to Mr Watson that Mr Radhakrishna be paid monthly.[2911]

1748.3. There are also problems with Mr Agrizzi's version in relation to timing and the role he played. Mr Agrizzi testified that, at the time that the monthly payments to Mr Radhakrishna were agreed, he had not yet examined the revised Lindela

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2906 Transcript, day 390, p 100-103. Exhibit T33, p 717 at para 6.

2907 Exhibit T33, pp 720 and 723,

2908 Transcript, day 416, pp 316-319.

2909 Exhibit T33, p 1219. The discretionary extension provides for a five year extension, but then gives the end date of the extension period as 31 October 2018, which is an extension of only three years. Exhibit T33, p 723.

2910 Transcript, day 41, p 106.

2911 Exhibit T33, pp 724-725.

contract in detail and was not aware of its favourable terms.[2912] This was why he had questioned why Mr Radhakrishna should be entitled to any payment at all. Mr Agrizzi himself signed both the second and third addenda on 18 February 2008[2913] and 13 March 2009[2914] respectively. By then he must surely have been aware of at least their main terms. However, the monthly payments to Mr Radhakrishna (through the "wine merchant company" which turned out to be Distinctive Choice Wines) only commenced in July 2011.[2915] Mr Agrizzi's evidence does not hang logically together:

1748.3.1. if the payments started in July 2011, one would expect that the conversation between Mr Agrizzi and Mr Radhakrishna took place reasonably close to that time – yet by then Mr Agrizzi would have been aware of the terms of the addenda;

1748.3.2. it is also improbable that a *quid pro quo* would be provided more than two years after the conduct benefitting Bosasa;

1748.3.3. the commencement date of the payments tends to support Mr Radhakrishna's version that they were made in respect of other work done for Bosasa;

1748.3.4. if his lack of knowledge of the revised contract terms means that the conversation took place before the third addendum was concluded on 13 March 2009, why was the first payment only made in July 2011?

2912 Mr Agrizzi's Initial Affidavit, pp 89-91.

2913 Exhibit T33, p1216.

2914 Exhibit T33, p1223.

2915 Exhibit T33, pp 725-729, 740. See also Mr Wakeford's evidence, transcript, day 390, pp 113 and 215.

1748.4. Mr Radhakrishna was frank in his acceptance of the fact that he received payment from Bosasa through the bank account of Distinctive Choice Wines. He proffered an explanation for this – the fees from Bosasa were received for work performed in his personal capacity (he said it was for consulting work performed relating to introducing Bosasa to opportunities in the oil and gas industry, consulting work on e-learning projects for the Gauteng Department of Education and introducing Bosasa to opportunities in e-health[2916]) and he did not wish his Akhile co-directors to share in the fees earned.[2917]

1748.5. Mr Radhakrishna stated that there was no logical basis for the version that he sought to disguise that the payments were from Bosasa, given that Akhile had already received consulting fees from Bosasa in November 2009, i.e. 20 months before Distinctive Choice Wines ever received any payments from it and only a few months after the third addendum was concluded.[2918] Further, Akhile still received funds from Bosasa in August 2011, subsequent to Distinctive Choice Wines receiving fees in July 2011.[2919] Again, this evidence was not challenged by Mr Agrizzi in any meaningful way, nor was he able to present any evidence to contradict the version of Mr Radhakrishna.

1748.6. Based on the foregoing, no findings can reasonably be made against Mr Radhakrishna in this respect. It may or may not be that his diversion of fees to himself through Distinctive Choice Wines instead of Akhile was open to question as between them, but that is not conduct falling within the Commission's terms of reference.

2916 Exhibit T33, p 728.

2917 Exhibit T33, pp 725-727.

2918 Exhibit T33, p 726 and 727. See also the evidence of Mr Wakeford, transcript, day 390, pp 113 and 215.

2919 Exhibit T33, p 726 and 727.

1748.7. It follows that it cannot be said that either Bosasa or Mr Wakeford sought to influence any of the categories of officials listed in TOR 1.1 through the payments to Mr Radhakrishna via Distinctive Choice Wines.

Messrs Wakeford and Papadakis

1749. Mr Agrizzi testified that Mr Wakeford approached Mr Watson when Bosasa was undergoing "a major SARS investigation" with the recommendation that Mr Papadakis be brought on board to help resolve Bosasa's "issues" with SARS. Bosasa, and some of its leadership were being "constantly hounded" by SARS with audits. At the time, Mr Papadakis was an official at SARS and the idea was to make representations in relation to the ongoing investigation against Bosasa to him.[2920] Mr Agrizzi also testified that Mr Wakeford arranged for Bosasa to provide wet and dry cement to a property in Meyersdal owned by Mr Papadakis.[2921] In return for procuring Mr Papadakis' assistance in the particular investigation and other ongoing SARS investigations, Mr Wakeford received payment of a fee of "about R100,000 a month" from Bosasa.

1750. Messrs Wakeford and Papadakis denied the evidence and that there was any malfeasance on their part, as stated by Mr Agrizzi. In support of his denial, Mr Wakeford explained that he secured a consultancy contract through his company Wakeford Investment Enterprises CC with Bosasa in 2006. This consultancy arrangement was as a result of Mr Valence Watson's intervention during a time that Mr Wakeford was "unemployable". Mr Wakeford testified that he received R50,000 per month (plus VAT) to provide on-going consultancy services to Bosasa.[2922]

2920 Transcript, day 41, p 100

2921 Transcript, day 41, pp 101 - 102.

2922 Transcript, day 390, pp 24-26. Mr Wakeford application to cross-examine, p 25 at para 69 and 71.

1751. Mr Wakeford stated that the only months he received R100,000 from Bosasa was as a result of arrear payments or catch-up payments due in terms of his consultancy agreement with Bosasa.[2923] This version was substantiated by documentary evidence in the form of schedules of invoices and an independent audit report.[2924]

1752. Mr Agrizzi was not able to dispute that Mr Wakeford was engaged by Bosasa as a consultant during the period 2006 to April 2015.[2925] Mr Agrizzi could furthermore not dispute that Mr Wakeford was paid a fee of R50,000 per month plus VAT in total and, in some months, there were additional expenses. Mr Agrizzi initially accepted that the invoices issued by Mr Wakeford were in the amount R50,000 plus VAT.[2926] However, subsequently in his evidence he sought to walk back on this concession[2927] and ultimately refused to concede that there was no evidence to demonstrate that Mr Wakeford was paid R100,000 to manage Mr Papadakis.[2928]

1753. During the section 417 inquiry, Mr van Tonder testified that the payments to Mr Wakeford did not start only during the SARS investigation. He confirmed that it was not unusual for Mr Wakeford to receive monthly payments; however the amounts were sporadic – in some months it was R50,000 and in others R100,000.[2929] His evidence furthermore confirmed Mr Wakeford's version that Mr Agrizzi was opposed to the

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2923 Transcript, day 390, p 92. See Exhibit T33, Annexure EA224, p 1163.

2924 Transcript, day 390, p 9. See also Exhibit T33, Annexure EA222, p 1161. In conducting this review, FullServe Chartered Accountants reviewed Mr Wakeford's close corporation's bank statements between 2009 and April 2015 (being when his services to Bosasa concluded), Bosasa's general ledger payments to Mr Wakeford's close corporation from 2007 to April 2015 and Mr Wakeford's invoices and ledger of receipts of payment during that period.

2925 Transcript, day 416, p 291.

2926 Transcript, day 416, p 292.

2927 Transcript, day 416, pp 293-310.

2928 Transcript, day 416, p 310.

2929 Exhibit T33, Annexure EA48, p 991.

payments to Mr Wakeford and, at times, payment to Mr Wakeford was late as a result, "and then it was … double up".[2930]

1754. Weighing the contrasting versions on this issue, that of Mr Wakeford regarding the nature and amount of the monthly payments to him is largely to be preferred and there is insufficient evidence to support a finding that the payments to Wakeford were exclusively for corruptly "managing" Papadakis in relation to the "major SARS investigation". Indeed, other evidence of Agrizzi himself points to a substantially wider role of Mr Wakeford as consultant to Bosasa. Accordingly, it cannot be said that the payments to Wakeford were made exclusively in order to influence Mr Papadakis as an office bearer of SARS as a state institution.

1755. That finding does not, however, mean that the role of Mr Wakeford as consultant, in relation to Mr Papadakis should not be scrutinised.

1756. Mr Wakeford testified that Mr Papadakis could never have assisted Bosasa in resolving any major investigation at SARS before 26 February 2009 as no SARS investigation existed before 23 March 2011, given that there was no notice of an initiation of an investigation until the end of 2010.[2931] Instead, the first notification of an impending audit from SARS was issued on 18 August 2010.[2932] Mr Wakeford testified further that he would only ask Mr Papadakis for guidance from an administrative or administrative justice perspective from time to time.[2933]

2930 Exhibit T33, Annexure EA48, pp 992-993; 995, 997.

2931 Transcript, day 390, p 151.

2932 Mr Wakeford application to cross-examine, p 31 at para 92. Transcript, day 390, p 18.

2933 Transcript, day 390, pp 116-117.

1757. Mr Papadakis declined to respond to Mr Agrizzi's evidence because he said that it would constitute a violation of section 69(1) of the Tax Administration Act ("TAA")[2934] and he had requested "an undertaking from the Commission" which request had not, by the time of deposing to his affidavit, been responded to by the Commission.[2935]

1758. Despite the inability of Mr Agrizzi to recall precisely what SARS matters Mr Papadakis' assistance was purportedly procured for, documentary evidence revealed that email communications between Mr Wakeford and Mr Papadakis were conducted through Mr Papadakis' wife, Ms Engelbrecht.[2936]

1759. Ms Engelbrecht explained that, from her understanding, the association between Messrs Papadakis and Wakeford commenced in approximately 2002 when they were involved in the commission of inquiry into the rapid depreciation of the exchange rate and related matters. It was Mr Wakeford who had introduced Mr Papadakis to the Watsons.

1760. Mr Wakeford referred to Mr Papadakis in the emails addressed to Ms Engelbrecht as either "advisor" or "George".[2937] Examples include the following:

2934 In terms of section 69(1) of the TAA, a person who is a current or former SARS official must preserve the secrecy of taxpayer information and may not disclose taxpayer information to a person who is not a SARS official. In terms of section 69(2), this requirement does not prohibit the disclosure of taxpayer information by a person who is a current or former SARS official in the course of performance of duties under a tax Act or customs and excise legislation, such as to (i) the SAPS or the NPA, if the information relates to, and constitutes material information for the proving of, a tax offence; (ii) as a witness in civil or criminal proceedings under a tax Act; or (iii) the taxpayer information necessary to enable a person to provide such information as may be required by SARS from that person; (iv) under any other Act which expressly provides for the disclosure of the information despite the provisions in this Chapter of the TAA; (v) by order of a High Court; or (vi) if the information is public information.

2935 Exhibit T33, p 689. Mr Papadakis claimed not have received an undertaking from the Commission on this issue.

2936 Transcript, day 390, pp 165-167.

2937 Exhibit T33, p 620 at par 19 and 20; Exhibit T33, annexure "KW0048", p 630; Exhibit T33, p 654.

1760.1. An email dated 25 July 2011 is addressed by Mr Wakeford to Mr Agrizzi, "bigjohn" and Ms Engelbrecht under the subject line "Food Supply Opportunities" saying "Meeting postponed as suggested by George".

1760.2. An email was sent by Mr Wakeford on 10 October 2012 to Ms Engelbrecht with the subject line "Letter", referring to advice that was needed "on this matter". On the same day she responded "Advisor in CTown until Friday, 19 October so don't expect response before then? Ok?"

1760.3. An email was sent by Mr Wakeford on 21 February 2013 to Ms Engelbrecht incorporating a draft letter intended to be placed on Bosasa's auditors' letterhead and seemingly to be addressed to SARS regarding a tax audit, complaining about the tax treatment of certain expenses and complaining that "our client feels that it has been overly subject to audits". The source of the draft letter is Mr Agrizzi. Above the draft letter is the request "Please see below and ask advisor to comment." Ms Engelbrecht responded, saying "Will ask advisor tonight only if that's ok?"

1760.4. An email was sent by Mr Wakeford on 17 May 2013 to Ms Engelbrecht saying "See attached re discussion!" and forwarding an email from Mr Bonifacio with the subject line "Tax Audits in the Spotlight", attaching a newspaper article on the subject.

1760.5. An email was addressed by Mr Wakeford on 30 September 2013 to Ms Engelbrecht under the subject line "Tomorrow's meeting". It read -

> "I will be meeting George tomorrow at 2pm. Please cancel your driver's collection at my office as I will give him the Fidentia file personally.
> In addition, I will drop off 75% of the Biltong and Dried Wors for him, Nick and Athos.

I attach a document that he needs to peruse before I meet him."

and attached a draft letter addressed to SARS complaining about tax audits conducted against the Bosasa Group of companies, alleging breach of an agreement reached with a SARS official not to raise further queries and threatening possible review proceedings in this regard.

1760.6. An email was addressed by Mr Wakeford on 5 December 2013 to Ms Engelbrecht under the subject line "Letter of findings" and reads "Please ask advisor to have a look." Attached was a document from SARS setting out certain "Audit Findings".

1761. Ms Engelbrecht referred to information obtained from SARS dated 3 April 2020[2938] which recorded that Mr Papadakis' first day of employment with SARS was 10 March 2008 and that on 1 July 2012 he occupied the position of Executive: Specialised Auditor. This position was on a fixed term basis from 1 July 2012 until 31 July 2015. However, Mr Papadakis submitted a resignation letter on 3 June 2013 and the SARS personnel system shows that his employment was terminated on 14 September 2013. Based on this, Ms Engelbrecht confirmed that Mr Papadakis was employed by SARS over the period 2008 to 2013, i.e. the period during which the emails referred to above were sent, save for the emails dated 30 September 2013 and 5 December 2013.[2939]

1762. The email communications between Mr Wakeford and Mr Papadakis raise several queries:

[2938] Exhibit T33, p 682.

[2939] Exhibit T33, p 621.

1762.1. When asked why he referred to Mr Papadakis in some of the emails as "advisor", Mr Wakeford stated that they were friends and that Mr Papadakis' nickname was "my Advisor"[2940] and that he "called him Advisor because of his head space and his knowledge". Mr Wakeford also pointed out that he continued to use the nickname after Mr Papadakis terminated his employment with SARS. Nevertheless, the innocent use of such a nickname does not ring true and the emails postdating his employment with SARS continued to deal with matters raised during his employment which he plainly ought not to have been involved in. As explained below, the duties of SARS officials not to disclose confidential information continue after termination of employment.

1762.2. If there was nothing untoward about the correspondence, why did Mr Wakeford elect to correspond with Mr Papadakis through Ms Engelbrecht on her work email as opposed to with Mr Papadakis directly? The explanation proffered by Mr Wakeford, that it was because Mr Papadakis was "running around all the time", is unconvincing.[2941] Accessing email on the go is part of modern life and has been for many years now. Ms Engelbrecht also referred to having received calls from Mr Wakeford on her private cell phone for Mr Papadakis, some of which were made by Mr Wakeford on his wife's[2942] phone. Tracking down Mr Papadakis via his wife may be understandable, but why would Mr Wakeford call him from his wife's cell phone?

1762.3. In respect of the email dated 25 July 2011, addressed by Mr Wakeford to Mr Agrizzi, "bigjohn" and Ms Engelbrecht, it is not properly explained what the food supply opportunities referred to were or why Mr Papadakis, then

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2940 Exhibit T33, Annexure EA 271, p 1210. Transcript, day 390, p 171

2941 Transcript, day 390, pp 165-167.

2942 Exhibit T33, p 619, para 14.

employed by SARS, would have had anything to do with food supply opportunities.

1762.4. The email sent by Mr Wakeford on 21 February 2013 is particularly telling. In it, Mr Papadakis comment is sought on a draft letter to SARS complaining about Bosasa's treatment in relation to tax audits and a meeting recently held with a Ms Herbst of SARS in this regard – this in circumstances where Mr Papadakis held the position with SARS of Executive: Specialised Auditor:

1762.4.1. This gives the lie to Mr Wakeford's assertion that Mr Papadakis only assisted with tax matters from an administrative or administrative justice perspective;[2943]

1762.4.2. Mr Papadakis was acting in conflict with his employer's best interests in the field of tax audits, in circumstances where he was employed to protect SARS' interests;

1762.4.3. The draft letter refers to the fact that the matter was being taken up with Bosasa's "relevant consultative tax experts, as well as the legal team". This demonstrates that Mr Wakeford saw Mr Papadakis' advice as being of value, notwithstanding the availability to Bosasa of leading tax experts.[2944] This undermines Mr Wakeford's assertion on this basis that there would have been no reason to seek tax advice from Mr Papadakis.

1762.4.4. If Mr Papadakis' was not involved in conduct that was untoward, the natural response to such an email would have been to say to Mr Wakeford in no uncertain terms that he could not involve himself in

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[2943] Transcript, day 390, p116.

[2944] Ibid.

providing any such advice, because it conflicted with his contractual and, possibly, statutory obligations towards SARS. He could not have done so, because on 17 May 2013 Mr Wakeford felt free to forward to Mr Papadakis (via Ms Engelbrecht) a newspaper article about tax audits and to comment "See attached re discussion!".[2945] Nor is there any suggestion in Mr Papadakis' affidavit that he raised a red flag.

1762.4.5. Further, the provision by Mr Papadakis of advice in these circumstances may have constituted a breach of section 68 of the TAA insofar as it prohibits disclosure by a current or former SARS official of various categories of confidential information related to SARS, including "information relating to the … audit selection procedure or method used by SARS, the disclosure of which could reasonably be expected to jeopardise the effectiveness thereof".[2946]

1763. The evidence emanating from the emails does not support Mr Agrizzi's assertion that the assistance took the form of Mr Papadakis actually receiving representations from Bosasa and making decisions on behalf of SARS favouring Bosasa in relation to the tax audits. Rather, the evidence points to Mr Papadakis being influenced by Mr Wakeford to provide advice to Bosasa in relation to both tax administration matters and tax audits, using the knowledge, information and expertise that he had by virtue of the position that he occupied in SARS. That is sufficient to constitute influence as contemplated in TOR 1.1, and it was the consequence of -

1763.1. direct successful attempts by Mr Wakeford; and

[2945] Exhibit T33, p 659.

[2946] Section 68(1)(k). Other paragraphs of section 68(1), such as paragraphs (e) and (g) may also be relevant in this regard. Breach of section 68(2), containing the prohibition on disclosure, is a criminal offence in terms of section 236 of the TAA.

1763.2. indirect successful attempts by Bosasa, through Mr Wakeford,

1763.3. to influence Mr Papadakis to provide the advice. Mr Papadakis, in turn, was an office-bearer or functionary or official or employee in SARS, which constitutes both a state institution and an organ of state, as contemplated in TOR 1.1.

1764. The question which must then be asked is whether any inducements or gain were paid or provided to Mr Wakeford or Mr Papadakis or both in order to influence the latter to provide the said advice. The emails suggest that Mr Wakeford's work as the person who liaised with Mr Papadakis was an important component of the consultancy services that he provided to Bosasa in return for his fee of R50,000 plus VAT per month. The payment of that fee, in part for purposes of getting Mr Wakeford to solicit advice from Mr Papadakis, falls within the concept of "any gain of whatsoever nature" in TOR 1.1. Therefore, from the perspective of the attempts at influence through Mr Wakeford, there was conduct by Bosasa as contemplated in TOR 1.1.

1765. That leaves unanswered the question whether there was "any form of inducement or ... any gain of whatsoever nature" paid or provided to Mr Papadakis. Mr Agrizzi testified that Mr Wakeford arranged for Bosasa to provide wet and dry cement to a property in Meyersdal owned by Mr Papadakis where he was building a house, for no charge.[2947] This was disputed by Mr Wakeford and Mr Papadakis.[2948]

1766. However, during his evidence before the Commission, Mr Wakeford accepted that he was instrumental in securing Bosasa's assistance for Mr Papadakis in 2008/2009 when Mr Papadakis was building a house and there was a shortage of cement.[2949] It

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[2947] Transcript, day 41, pp 101 - 102.

[2948] Mr Wakeford application to cross-examine, p 31 at para 92.

[2949] Transcript, day 390, pp 114-116.

is uncontentious that Mr Papadakis was employed by SARS during this time. However, Mr Wakeford asserted that the cement was paid for and was therefore a legitimate transaction.

1767. Mr Agrizzi's evidence that Mr Wakeford arranged for Bosasa to provide wet and dry cement to a property in Meyersdal owned by Mr Papadakis was corroborated by the evidence of Mr Vorster. According to Mr Vorster, during late 2009, Mr Watson called him and informed him that Mr Wakeford would instruct him to buy and deliver wet and dry cement.[2950] Wet cement was purchased from WG Wearne in Randfontein and the dry cement was purchased from RTC.

1768. Mr Vorster testified that Mr Wakeford instructed him to deliver the cement to an address at Meyer Park Eco Estate in Meyerton.[2951] According to Mr Vorster, the value of the cement purchased was "roundabout" R600,000.[2952] Mr Vorster understood the cement was intended for Mr Papadakis.[2953]

1769. There appears to be no real dispute that the cement was in fact delivered to Mr Papadakis. What is contentious is the quantity and value of the cement, who assumed responsibility for payment of the cement and the timing of the deliveries.

1770. As to who assumed responsibility for the payment of the cement, Mr Wakeford's evidence was contradictory. He initially said in his oral evidence that "he [i.e. Mr Papadakis] paid for the cement. It was done above board."[2954] Later in his oral

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2950 Transcript, day 43, p 134.

2951 Transcript, day 43, p 134. From independent research, it is possible that Mr Vorster got the name of the estate incorrect and it is actually Meyersdal Eco Estate which is broadly similar to the area referenced by Mr Agrizzi.

2952 Transcript, day 43, p 136.

2953 Transcript, day 43, p 135.

2954 Transcript, day 390, p 115.

evidence, Mr Wakeford said that much smaller quantities of cement than was claimed, were involved and that "there was some assistance and as far as I understand there was payment for it from Mr Papadakis's builder."[2955] Under re-examination, Mr Wakeford said:

> "I do remember him [i.e. Mr Papadakis] contacting me Chair and saying I have settled. I have paid this thing, because he was worried if I recall that he didn't want to be fingered for being naughty".[2956]

1771. Mr Papadakis asserted that "the purchases of material for the wet works at Eco Estate, the cement and other building material was in the main ordered by the contractor .... Purchases were either settled by him or directly with his suppliers".[2957] Mr Papadakis stated that he was "fully employed" during the period of construction and "as such the building activities were attended to by my contractors, including the ordering of supplies". Mr Papadakis later stated, vaguely, that "toward the latter part of 2009 I was provided an amount that needed to be settled, which was settled."[2958] He did not say what the amount was, how it was calculated, who provided him with the information about the amount, whether he was provided with this information verbally or in a document, if in a document, what the nature of the document was, or who precisely it was that settled the amount. If it was he who made the payment, it would have been a relatively simple matter to demonstrate with reference to a bank statement that he had done so. If not, he could have explained this and why it was not possible to verify the payment. After all, he is a chartered accountant with experience in auditing.

2955 Transcript, day 390, p155.

2956 Transcript, day 390, p 218.

2957 Exhibit T33, pp 687-688, paragraphs 4.5-4.6. Transcript, day 390, pp 217-220.

2958 Exhibit T33, p 687.

1772. The contradictions in the evidence of Mr Wakeford regarding payment and the failure of Mr Papadakis to deal fully and squarely with the assertion that the cement was provided by Bosasa free of charge as a quid pro quo, are matters of concern and inevitably arouse suspicion.

1773. Mr Papadakis focussed on challenging the allegations regarding the total quantity and value of the cement delivered, and its timing. As to the quantities of the cement, Mr Papadakis' provided a reasonably convincing analysis of the documentary evidence to challenge the veracity of the allegation that approximately R600,000 worth of cement was delivered to his properties.[2959] As to the quantities of dry cement, the documentary evidence, he pointed out, could not be linked specifically to the address where he was building the house. As regards wet cement, his analysis suggested that only an amount valued at R204,734.26 was delivered.[2960] On this basis he contended that "the empirical evidence conclusively proves the fallaciousness of Mr Agrizzi and Mr Vorster's allegations."[2961]

1774. This analysis notwithstanding, it was not in dispute that wet and dry cement was indeed provided, albeit of a considerably lower value than contended for by Mr Agrizzi and Mr Vorster.

1775. In respect of the timing of the deliveries, Mr Papadakis was able to demonstrate with reference to the Wearne documentation that no deliveries of wet cement were made subsequent to 10 July 2009.[2962] He also pointed to a Google Earth image dated 27 December 2009 that demonstrated that by that date there was already a roof on the

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2959 Exhibit T33, p 697, para 7.14; p 810 para 7.15 and 8; p 89 para 43.5; exhibit T33 at p 699, para 7.18.3; para 9 pp 702-703 para 9.2; pp704-708, paras 12.1-12.3; pp 705-711 para 12; p 712, para 17.

2960 Exhibit T33, p 712, para 15

2961 Exhibit T33, p 711, para 12.4.8.

2962 Exhibit T33, pp 687-688, paras 4.5-4.6. Transcript, day 390, pp 217-220.

house under construction, thereby confirming that there would not have been any need by then for the delivery of further wet cement.[2963] He juxtaposed these dates with the date of August 2010,[2964] which appears to be the earliest reference to a SARS tax audit on a Bosasa entity, and the date of the 21 February 2013 email discussed above.[2965]

1776. This line of thinking takes as its premise that a *quid pro quo* would only have been forthcoming in return for advice given by Mr Papadakis in response to a major SARS investigation or tax audit. Certainly, that is a factor to be considered in assessing the evidence and the probabilities. However, it is not in conflict with the probabilities that Bosasa, with the assistance of Mr Wakeford, may have wished to get Mr Papadakis onside at an early stage of Mr Wakeford's consultancy, before any services had been provided by him (Mr Papadakis). By the time of Mr Papadakis' appointment at SARS, Mr Wakeford's consultancy agreement with Bosasa was already in place. That remained the position until the termination of Mr Papadakis' employment with SARS in 2013 and covers the period of the cement deliveries, payment for which has not been satisfactorily explained.

1777. Nor is there any attempt by either Mr Papadakis or Mr Wakeford to explain what the basis was upon which he was providing advice during the period when Bosasa was facing successive tax audits. Why not volunteer this information to assist the Commission? It is improbable that this advice was being provided for free, particularly given the risk that Mr Papadakis' breach of his employment contract with SARS (and possibly breaches of the TAA) would be uncovered. The email correspondence with Mr Papadakis under the subject line "food supply opportunities"[2966] and the reference

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2963 Exhibit T33, p 700, para 8.2.

2964 Exhibit T33, p693, para 7.7.

2965 Exhibit T33, p696, para 7.11.

2966 Exhibit T33, p 630.

in Mr Wakeford's email to his intention to "drop off 75% of the Biltong and Dried Wors", also arouse suspicion.

1778. Although arising in a different context not pertaining to Mr Papadakis, the emails of 16 and 20 June 2011 addressed by Mr Wakeford to Mr Agrizzi under the subject lines "Smarties" and "Smarties confirmed" and referring to "confectionery" are similarly suspicious and point to the use of food items as a form of code.[2967] Mr Wakeford's attempt to explain the emails away on the bases of a challenge to their authenticity, that he had such a good relationship with the then Minister of Correctional Services that he did not need to provide gratification to her adviser to have access to her, and that Bosasa were involved in catering and tended to spoil their guests, are not sufficiently compelling to warrant ignoring these emails. Moreover, Mr Agrizzi in his evidence confirmed the use of food items as code words for money.[2968]

1779. Based on the foregoing analysis, with reference to TOR 7, there are reasonable grounds for suspecting that -

1779.1. gratification as defined in section 1 of PRECCA, whether in the form of free cement deliveries or otherwise, was offered by Messrs Watson, Agrizzi and Wakeford on behalf of Bosasa, and accepted by Mr Papadakis, as contemplated in section 3(a) of PRECCA, dealing with the general offence of corruption; and

1779.2. that this was done in order to influence Mr Papadakis to act in a manner that amounted to the misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of his powers, duties and

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[2967] Exhibit T33, p 151 and Annexures KW-035 and KW-036, pp 221 and 222.

[2968] Transcript, day 75, pp 160 – 165 and exhibit T33, p 151.

functions arising out of his contractual and statutory obligations to SARS and the abuse of his position of authority at SARS, as contemplated in section 3(i)(bb) and 3(ii)(aa) of PRECCA.

1780. In the circumstances, there is a reasonable prospect that further investigation will uncover a *prima facie* case against Messrs Wakeford and Papadakis in respect of the offence of corruption in terms of section 3 of PRECCA, and the matter is referred for investigation accordingly. Section 4 is also of potential application because Mr Papadakis would have fallen within the definition of a public officer in terms of the definition of that term in section 1 of PRECCA, by virtue of his position in SARS. To the extent that Mr Wakeford may have still wished to say anything further to the Commission to prove anything concerning Mr Agrizzi's evidence, he can put that before the law enforcement agencies when they begin their investigations and, obviously, they will not take the investigation further if they believe that further investigation will not yield anything. However, having heard the evidence that it has heard including – Mr Wakeford's own evidence, the Commission believes that there are reasonable grounds to justify that law enforcement agencies take the investigation further.

1781. Insofar as Mr Wakeford is concerned, the email correspondence of 16 and 20 June 2011, alleged to pertain to a corrupt payment to the advisor to the then Minister of Correctional Services, must also be taken into account in the investigation. No findings are made in respect of the said advisor as no rule 3.3 notice was issued to him.

Mr Mantashe

1782. Mr Mlambo[2969] and Mr le Roux testified to security upgrades being undertaken by Bosasa at three of Mr Mantashe's-properties in Elliot and Cala, Eastern Cape and in Boksburg, Gauteng. Mr Mlambo corroborated Mr le Roux's evidence regarding the location of the cameras and CCTV monitors and obtained invoices of the lodge where the Special Projects team was accommodated while undertaking the work, booked by Blake's Travel. Mr Mlambo also testified to visiting Mr Mantashe's property in Cala, where he observed mounted cameras and LED perimeter lights, which Mr le Roux indicated were installed by Bosasa. Mr Mantashe admits that the security upgrades were installed at his properties but -

1782.1. disputed that there was anything untoward about the installations, which were arranged as between his security adviser and Mr Leshabane;

1782.2. contended that it was not done on any basis to solicit favours from him;

1782.3. disputed that the evidence pertaining to him falls within the terms of reference as he was Secretary-General of the ANC at the relevant times and did not hold any position in any component of the State contemplated in the terms of reference;

1782.4. disputed that he was in any position to influence any office-bearer in any such position;

1782.5. disputed the value attributed to the installations.[2970]

[2969] Transcript, day 78, pp 13-44.

[2970] Transcript, day 364, pp 174, 177, 226-230, 232-236, 246.

1783. At the time of the security installations at his homes Mr Mantashe himself clearly fell outside of the list of public office bearers in TOR 1.1, 1.4 and 1.9. Nor was he an office bearer in, or associated with, any entity contemplated in TOR 1.5. His position clearly placed him beyond the reach of TOR 1.4, 1.5 and 1.9 (as well as TOR 1.2, 1.3, 1.6. 1.7, 1.8). Does this, in effect, mean that the consideration of the evidence pertaining to Mr Mantashe fell outside the ambit of the Commission's terms of reference?

1784. The only term of reference which requires consideration in relation to Mr Mantashe is TOR 1.1. Two questions are raised:

1784.1. does it include within its ambit an attempt through inducement or gain to influence the list of office bearers indirectly through another person who does not fall within that list?

1784.2. if so, does the term of reference require that the office bearer sought to be influenced be specifically identified?

1785. In relation to the first of these two questions, having regard to the broad purpose of the Commission being to unearth corruption (as Mr Mantashe recognised in his evidence) it would represent far too narrow a reading if the Commission was forced to turn a blind eye to attempts at corrupt influence of State office bearers through the agency of a third person. The answer to the first question posed must therefore be in the affirmative.

1786. Turning to the second question, answering this in the affirmative would require the Commission to turn a blind eye to a corrupt attempt at influence through the agency of a third person, if the attempt was based only on that person's perceived potential to influence unspecified or unnamed office bearers or functionaries falling within the list in TOR 1.1. Again, this seems to be in conflict with the purpose of the Commission

and its terms of reference. It also fails to take into consideration the inclusiveness of the wording of TOR 1.1, which brings within its ambit both influence and attempts at influence; describes the concept of inducement broadly; does not require that the influence had any positive result; and spreads the net wide in terms of the public office-bearers that might be influenced. The second question must therefore be answered in the negative, so as to include attempts to influence unspecified or unnamed public office bearers or state functionaries on the list. Accordingly, the terms of reference do not preclude a consideration of the evidence pertaining to Mr Mantashe.

1787. The matter must first be viewed from the perspective of Bosasa and Mr Leshabane. A finding that they were guilty of conduct as contemplated in TOR 1.1 does not automatically translate into guilty conduct or knowledge on the part of Mr Mantashe.

1788. There can be no doubt that the provision of security installations for no charge amounts to "gain of whatsoever nature" as contemplated in TOR 1.1. Whilst the value of the installations may be in dispute, the fact of the installations, and the fact that they were not paid for by Mr Mantashe, is common cause. The provision of free security installations was manifestly part of the corrupt *modus operandi* of Bosasa and its directors, including Mr Leshabane himself. Mr Leshabane has not come forward to testify that this arrangement was different from the others and was an altruistic attempt on his part at assisting a family friend.

1789. The next question from Bosasa, Mr Watson and Mr Leshabane's perspectives is whether they sought, through the political party funding of the ANC as well as free installations for Mr Mantashe, to influence the listed office bearers. In this regard, there is no evidence of a particular, named office bearer they sought to influence through Mr Mantashe. However, the evidence that stands is that Mr Mantashe was seen by the leadership of Bosasa as a "brilliant connection". Objectively, this is borne

out. The majority party, through its majority in Parliament, wields very substantial constitutional power. Mr Mantashe was at the relevant times the Secretary-General of the majority party and a member of its National Executive Committee ("the NEC"). On Mr Mantashe's own version, whilst the President of the Republic of South Africa appoints Ministers, he must consult with the NEC before doing so. In terms of the constitution of the ANC, the secretary-general -

1789.1. may have delegated to him or her any of the powers of the NEC;[2971]

1789.2. is a member of the National Working Committee, which carries out the decisions of the NEC and the ongoing work of the ANC;[2972]

1789.3. is the chief administrative officer of the ANC;[2973]

1789.4. acts as president of the ANC in the absence of the president and deputy-president of the ANC.[2974]

1790. Bosasa was a business organisation that was heavily invested in securing tenders from particular government departments and organs of state. It sought to be able, through Mr Mantashe and the inducements and gain provided to him, to influence the leadership of those departments and organs of state, a leadership drawn almost exclusively from the ranks of the ANC and falling within the categories of public office bearers listed in TOR1.1. That is conduct sufficient to fall within TOR 1.1.

1791. What then of the position from Mr Mantashe's perspective? He did not dispute the provision of the three installations; nor did he dispute that he received them for free.

2971 See the Constitution of the ANC at https://www.anc1912.org.za/constitution-anc, clause 12.2.19.

2972 Clause 13.2.

2973 Clause 16.6.

2974 Clause 16.7.

However, he contends that his receipt was an entirely innocent one, borne of arrangements made between his security person, Mr Nyakaza, and a family friend, Mr Leshabane. He also downplayed his capacity for influence as secretary-general, characterising the position as "secretary-general of an NGO called the ANC".[2975] His version however faces the following difficulties:

1791.1. his characterisation of the ANC as a mere "NGO" does not withstand scrutiny. It is the majority party in Parliament, with the levers of legislative and executive power at its disposal through its elected Members of Parliament and the persons it deploys to positions of executive leadership.

1791.2. his characterisation of the position of Secretary-General of the ANC is inaccurate - it is a powerful position with scope for influence over the listed persons, for the reasons given above - and the term of reference does not require an enquiry into whether or not the influence sought was in fact achieved. To be clear, there is no evidence that Mr Mantashe did act in the way that Bosasa and Mr Leshabane would have intended.

1791.3. even though the evidence of the value of the installations was unsatisfactory, it was uncontested that this was on a significant scale - three separate homes were provided with security installations and two of them required the installation to be done a long way from Bosasa's headquarters in Johannesburg, which carried with it significant additional expenses.

1791.4. Mr Mantashe's characterisation of the security installations as being a manifestation of traditional intra-family support or a traditional project, akin to

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[2975] Transcript day 364, p 233.

contributions for a traditional wedding ceremony, is not convincing and is undermined by -

1791.4.1. the scale of the generosity.

1791.4.2. once he had arrived at the scene of an installation at one of his Eastern Cape homes, his knowledge of the additional parties involved.

1791.4.3. his failure to offer to make any contribution whatsoever of his own towards the costs - if it was a project based on a traditional sharing of costs one would have expected him at least to make a contribution commensurate with his means.

1791.5. With each additional installation, the improbability of his having no knowledge about who exactly was responsible and at what cost, increases.

1791.5.1. Mr Mantashe's attempt to characterise the installation of security equipment at his three houses as a traditional project, similar to a traditional wedding, where family members or friends voluntarily contributed to the cost, was not convincing;[2976]

1791.5.2. he initially denied knowledge of Mr Watson's clan name, but later gave it;[2977]

1791.5.3. his response to the question whether he knew that Mr Leshabane was working for Bosasa, was that this was immaterial - this is not an adequate response when, to his knowledge, the organisation was led by

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[2976] Transcript, day 364, p 195.

[2977] Transcript, day 364, pp 215, 220-222.

Mr Watson whom he knew to have been involved in earlier bribery in relation to contracts for catering at mine hostels;[2978]

1791.5.4. his testimony that all he knew of Bosasa was of their contract in relation to the West Rand Youth Centre was unconvincing, given the widely reported allegations in the press of corruption on the part of Bosasa emanating from the SIU investigation and his knowing Mr Watson well enough to know his clan name and his bribery in relation to hostel catering contracts;[2979]

1791.5.5. his evidence that he could not remember whether or not he had a red Toyota Land Cruiser, was improbable - this is the type of thing that every person would remember;[2980]

1792. In the circumstances, it may be concluded that there is a reasonable suspicion that Mr Mantashe received the free installations, knowing that Mr Leshabane sought through him to influence unspecified or unnamed office bearers in the categories listed in TOR 1.1 that lead departments that Bosasa did, or sought to do, business with.

1793. With reference to TOR 7, it has already been pointed out above that there is no evidence that, as Secretary-General of the ANC, Mr Mantashe acted upon the inducement provided to him in order to influence public office bearers in the listed categories. However, the question arises whether the presumption in section 24 of PRECCA could nevertheless be applied to him so as to justify an investigation or prosecution.

[2978] Transcript, day 364, pp 202-204.

[2979] Transcript, day 364, p 204.

[2980] Transcript, day 364, p 219.

1794. Section 24(1) of PRECCA creates a presumption facilitating the task of the state in proving that the gratification was received in order to achieve one or more of the aims as set out in the Act. These aims have also been characterised as the "*quid pro quo*".[2981] The presumption provides that, if it is proved that the gratification was accepted from another person who sought to obtain a contract, licence etc., it is presumed that the gratification was accepted in order to achieve one or more of the aims set out in the definition of the crime, provided:

(i) the state can show that despite having taken reasonable steps, it was not able with reasonable certainty to link the acceptance of the gratification to any lawful authority or excuse on the part of the person charged; and

(ii) there is no evidence to the contrary which raises reasonable doubt.

1795. Applying section 24(1), there are reasonable grounds for suspecting that Mr Mantashe accepted or agreed to accept gratification[2982] as contemplated in section 24(1)(a).

1796. With reference to section 24(1)(b)(i), there are reasonable grounds for suspecting that he did so from a person who sought to obtain contracts from public bodies. However, section 24(1)(b)(i) requires that the person charged was serving in one or more of the public bodies concerned, so it would not apply to Mr Mantashe.

1797. With reference to section 24(1)(b)(ii), there are reasonable grounds for suspecting that he received the gratification from a person concerned in business transacted by various public bodies, but Mr Mantashe did not serve in any of them. Section 24(1)(b)(ii) however also includes as the provider of the gratification a person who "is

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2981 S v Selebi 2012 (1) SA 487 (SCA) at para 32.

2982 As defined in section 1 of PRECCA.

concerned ... in any proceedings or business transacted before or by ... the ... political party ... in which the person charged was serving as an official". Mr Vorster testified that in 2014 (this is while Mr Mantashe was serving as Secretary-General of the ANC) he was instructed by Mr Leshabane, amongst others, to set up the vacant half of the Kgwerano call centre for the ANC to run its war room prior to and during the national elections and that all related expenses were covered by Kgwerano.

1798. It was accepted by President Ramaphosa in his evidence that war rooms had been provided for the ANC by Bosasa. The question is whether this conduct falls within the quoted part of section 24(1)(b)(ii). "Business" is defined in section 1 of PRECCA as "any business, trade, occupation, profession, calling, industry or undertaking of any kind, or any other activity carried on for gain or profit by any person within the Republic". The provision of the war rooms falls within the meaning of "any other activity". Mr Leshabane in his capacity as director of Bosasa did so in order to derive profit and gain for Bosasa in its contracts with various Departments and organs of State. The word "proceedings" is not defined. However, setting up and operating a monitoring facility for elections would seem to fall within the meaning of the term "proceedings".

1799. That provides a sufficient statutory platform for the presumption to be engaged. It would then be incumbent upon the State in terms of the second part of section 24(1) to "take reasonable steps" to see whether or not it is "able with reasonable certainty to link the acceptance of ... the gratification to any lawful authority or excuse on the part of the person charged." On the basis of the earlier analysis, the Commission was not able to find a lawful authority or excuse for the security installations for Mr Mantashe. If the State's steps give rise to a similar conclusion, then proof of receipt of the gratification (in the form of the security installations) in terms of paragraphs (a) and (b) of section 24(1) becomes, in the absence of evidence raising a reasonable doubt as

to the absence of lawful authority or excuse, proof of a quid pro quo on the basis set out in paragraphs (aa) to (dd) of section 24(1).

1800. Section 25 of PRECCA is also of relevance in assessing the possible referral of the matter. It provides -

> 25 Defences
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> Whenever an accused person is charged with an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2, it is not a valid defence for that accused person to contend that he or she-
>
> *(a)* did not have the power, right or opportunity to perform or not to perform the act in relation to which the gratification was given, accepted or offered;
>
> *(b)* accepted or agreed or offered to accept, or gave or agreed or offered to give the gratification without intending to perform or not to perform the act in relation to which the gratification was given, accepted or offered; or
>
> *(c)* failed to perform or not to perform the act in relation to which the gratification was given, accepted or offered."

1801. In the circumstances, there is a reasonable prospect that further investigation will uncover a *prima facie* case against Mr Mantashe in respect of the offence of corruption in terms of section 3 of PRECCA, and the matter is referred for investigation accordingly.

The African National Congress

1802. Similar to Mr Mantashe, the ANC as a political party falls beyond the reach of TOR 1.4, 1.5 and 1.9 (as well as TOR 1.2, 1.3, 1.6. 1.7, 1.8).

1803. However, TOR 1.1 requires consideration in relation to the ANC. For the reasons set out above in relation to the evidence of, and pertaining to, Mr Mantashe, the terms of reference do not preclude a consideration of the evidence pertaining to the ANC, on the basis that influence of the public office bearers listed in TOR 1.1 may in principle be achieved through the ANC because, for as long as it was the majority party, through its members elected to the legislature and the persons deployed to executive leadership positions, it would indirectly wield legislative and executive power. The capacity to influence the ANC as a juristic person or organisation, necessarily means the ability to influence persons in those positions.

1804. The matter must first be viewed from the perspective of Bosasa and its directors. What requires particular consideration here is the provision of the "war room" facilities. The provision to the ANC of the "war room" facilities, according to Mr Agrizzi, at a cost of millions to Bosasa and at no cost to the ANC, amounts to "gain of whatsoever nature" as contemplated in TOR 1.1. Mr Agrizzi may have exaggerated the expenditure, but it is clear from the sophistication of the equipment and facilities, and the time period over which they were provided (three months in respect of the 2014 elections and two months in respect of the Mangaung conference) that the value was substantial. Ms Mokonyane did not dispute that such assistance had been provided by Bosasa to the ANC at no charge. President Ramaphosa testified that, whilst he visited the facility, it never occurred to him that Bosasa were bank rolling the "war room" facilities. However

"the Treasurer General as well as colleagues or comrades who ran the elections knew."[2983]

1805. The question from the perspective of Bosasa and its directors, is whether they sought through the provision of the "war room" facilities to the ANC at no charge, indirectly to influence the public office-bearers, functionaries and employees listed in TOR 1.1.

1806. There is no evidence to suggest that the provision of the facilities was a *bona fide* contribution by Mr Watson personally based on his long-standing relationship with the ANC. Instead the evidence is that it was provided by Bosasa as a business organisation at its office park, at the instance of its directors, Mr Watson, Mr Gumede and Mr Leshabane. Moreover, the evidence of Mr Watson's abuse of his ANC connections for his own ends shows on the probabilities that this was not so.

1807. Bosasa was a business organisation that was heavily invested in securing tenders from government departments and organs of state. Against the backdrop of all the evidence received by the Commission in connection with Bosasa, and the extent to which its business model was based on its ability to influence public office bearers, one need merely consider the potentially catastrophic consequences for Bosasa if the ANC were to be voted out of power, to understand how important the provision of the "war room" facilities to the ANC was, in order for Bosasa to be able to achieve its business objectives.

1808. On a conspectus of the evidence about Bosasa and its corrupt *modus operandi*, and viewed from the perspective of Bosasa, the provision of the "war room" facilities was aimed at ensuring that -

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[2983] Transcript, day 385, p 93.

1808.1. the ANC would remain the majority party and thus in a position to appoint to positions of public office, persons whom Bosasa was able to influence or would seek to influence, and

1808.2. members of the ANC deployed to senior positions in state institutions, organs of state and SOEs would remain well-disposed towards Bosasa, in its business dealings, which included tendering for and retaining contracts with such State institutions.

1809. It follows that the availing by Bosasa of the "war room" facilities constituted a form of inducement and gain aimed at achieving influence as contemplated in TOR 1.1.

1810. The matter must next be viewed from the perspective of the ANC. Whilst President Ramaphosa testified that it never occurred to him that the "war room" facilities were being provided entirely at the expense of Bosasa, he confirmed that the "Treasury-General" as well as those ANC officials involved in running the elections did know this. Although he testified that the ANC would not knowingly and intentionally accept donations from companies or donors who had been involved in criminal activity, and pointed out that the allegations of corruption against Bosasa had taken place a number of years beforehand, President Ramaphosa appropriately accepted that there was a "major lapse" on the part of the party in accepting this assistance from Bosasa.[2984]

1811. President Ramaphosa also appropriately conceded that it is difficult to avoid the conclusion on the facts that the ANC received this and other forms of assistance from Bosasa -

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[2984] Transcript, day 385, p 93.

1811.1. in breach of its rule that it would not knowingly receive donations from donors involved in criminal activities; and

1811.2. while key ANC officials, including the President of the time, must have been aware of the earlier serious allegations of corruption against Bosasa.[2985]

1812. In the circumstances, there are reasonable grounds for suspecting that the "war room" facilities were received by the ANC as a juristic person with knowledge on the part of the ANC officials directly involved in the election campaigns, that Bosasa and its directors, including Mr Watson, sought through the ANC to influence unspecified or unnamed office bearers in the categories listed in TOR 1.1 in the departments and organs of State with which it did or sought to do business.

1813. With reference to TOR 7, the evidence in this regard establishes a *prima facie* case of corruption in relation to contracts in terms of section 12(2) of PRECCA against Messrs Gumede, Leshabane and Louis Vorster. In respect of them, the matter is referred for further investigation and prosecution. Section 12(2) provides as follows:

> "(2) Any person who, in order to obtain or retain a contract with a public body or as a term of such contract, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person-
>
> *(a)* for the purpose of promoting, in any way, the election of a candidate or a category or party of candidates to the legislative authority; or
>
> *(b)* with the intent to influence or affect, in any way, the result of an election conducted for the purpose of electing persons to serve as members of the legislative authority,
>
> is guilty of an offence."

[2985] Transcript, day 385, p 94.

and section 21 of PRECCA provides as follows:

> "**21 Attempt, conspiracy and inducing another person to commit offence**
>
> Any person who -
>
> (a) attempts;
>
> (b) conspires with any other person; or
>
> (c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person,
>
> to commit an offence in terms of this Act, is guilty of an offence."

1814. Having regard to section 21, the investigation should include the identification of the officials of the ANC that were involved in arranging the war room and further investigation of their conduct. There is a reasonable prospect that further investigation in that regard will uncover a *prima facie* case and the matter is referred for further investigation accordingly.

1815. \[2986] President Ramaphosa gave some evidence regarding donations to the so-called CR17 election campaign. However, this is a matter which was the subject of the investigation by the Public Protector and thereafter the subject matter of court proceedings. It is also not a matter which was investigated by the Commission in any serious way because the Public Protector dealt with it. Accordingly, this Commission will not make any findings on it.

Mr Nair

1816. The evidence of Mr Le Roux, Mr Baijoo and Mr Van der Merwe is that Sondolo IT installed new cameras and related hardware, along with repairs to an existing electric

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2986 President of the Republic of South Africa and another v Public Protector and others (Information Regulator as amicus curiae) 2020 (5) BCLR 513 (GP); Public Protector and others v President of the Republic of South Africa and others (Freedom under Law as amicus curiae) 2021 (9) BCLR 929 (CC).

fence and alarm system at Mr Nair's home, as part of the work of the Special Projects team. However, Mr Nair in his affidavit and oral evidence insisted that this was the result of a private, oral agreement with Mr Baijoo in his personal capacity. He denies any involvement in corruption or State Capture. Any involvement of Messrs Le Roux, Mathenjwa or Agrizzi, or of Sondolo IT or Bosasa, or the Special Projects team, was without his knowledge. Nor was he acquainted with them.

1817. Mr le Roux, gave evidence that he was instructed by Mr Mathenjwa to install the security system at Mr Nair's residence and carried out this instruction. On Mr Nair's version, Mr Baijoo did the installation but never complied with his contractual obligations in terms of their oral agreement, as the CCTV camera system was so unsatisfactory that it amounted to a breach of contract.[2987] On the basis of the *exceptio non adimpleti contractus*, because of Mr Baijoo's failure to perform he (Mr Nair) was excused from his performance in the form of payment.

1818. Mr Nair set out his assessment of the evidence of Mr le Roux, which in his view militates against a finding that he was a beneficiary of Bosasa's Special Projects team. Mr Nair asserted that Mr le Roux did not know who he (Mr Nair) was; that Sondolo IT branded vehicles and employees in uniform came to his premises on one occasion, contrary to evidence that unbranded vehicles would be used for special projects; no project name was assigned to the installation at Mr Nair's residence; and that no direct link was established between Bosasa and Mr Nair. Mr Nair also said that there was a lack of corroboration of Mr le Roux's evidence. He pointed out that, in any event, there was no evidence whatsoever that he corruptly provided anything in return for the installation.[2988]

[2987] Transcript, day 421, pp39-40.

[2988] Mr Nair's affidavit, paras 5-6, pp 5-7.

1819. Does the evidence pertaining to Mr Nair fall within the scope of the terms of reference? None of TOR 1.2 to 1.9 come into play. Does TOR 1.1 apply?

1820. There can be little doubt that from the perspective of Bosasa and its subsidiary, Sondolo IT, the installation of the security system for no charge was an attempt at inducement. Whatever Mr Nair's ability to influence the outcome of tenders, his perceived influential position as Chief Magistrate would have made him an appropriate target for inducement in circumstances where Bosasa and Sondolo IT wished to retain their security service contracts with the Department of Justice. This is so notwithstanding Mr Nair's evidence distancing himself from procurement activities at the court. On his own version, the court manager would seek out his opinion on operational matters of this nature, even though it is the court manager who had the final say. One can also see an advantage for Bosasa in having a senior member of the magistracy "onside", in case Bosasa's activities ever resulted in one of its office bearers or employees being prosecuted.

1821. However, with reference to the wording of TOR 1.1, a magistrate would not fall under "members of the National Executive" or "directors of boards of SOE's". Nor would a magistrate be considered a "functionary". Would he be "an office bearer of any state institution or organ of state"? The definition of "organ of state" in the Constitution expressly excludes "a court or a judicial officer". The only possible basis for inclusion in the terms of reference is if a magistrate is an "office bearer of any state institution". Baxter says the following in relation to the term "state":

> "Despite its common use in general political discourse, 'the state' has never had a universal meaning."
>
> and
>
> "It is important to appreciate that the precise meaning of 'the state' always depends on the context within which it is used. The courts have consistently refused, rightly it is submitted, to accord the concept any inherent characteristics of its own."[2989]

1822. Applying the purposive approach advocated above to the interpretation of the terms of reference, it would be surprising if a broad enquiry into the phenomena of state capture and corruption would have contemplated the exclusion of a member of the judiciary. It was more likely that corrupt office bearers within all institutions exercising public power under the Constitution, were to be subject to scrutiny. Textually, the recognition of a magistrate as "an office bearer of [a] state institution", does not give rise to any dissonance. A magistrate therefore falls within the reach of TOR 1.1. Mr Nair's version, that the installation was the fruit of a legitimate private contract with Mr Baijoo must therefore be considered.

1823. There are a number of aspects of Mr Nair's version that present difficulties for its acceptance:

1823.1. Whilst it would reflect questionable judgement in the first place to contract privately with an employee of a court security contractor, one would have expected that Mr Nair, as a seasoned magistrate and acting judge, would take deliberate steps and great care to ensure that there was no misunderstanding as to whether it was Sondolo IT or Mr Baijoo himself who was to do the installation. He gave no evidence that he took such steps and care.

[2989] Baxter *Administrative Law* Juta 1984 pp 94-95.

1823.2. If the work was to be done by Mr Baijoo other than in his capacity as a Sondolo IT employee, one would expect it to have been done after hours, but on Mr Nair's own version, the work began on 4 October 2016, which was a Tuesday.[2990]

1823.3. It would be surprising if a person doing work on the basis of an oral, private agreement with an acquaintance, would advance significant amounts of money for new equipment for the installation, without expecting any form of deposit or assistance with purchasing the equipment.

1823.4. Mr Nair failed to provide an adequate explanation for the SMS/text messages that he exchanged with Mr le Roux. These run counter to his assertion that he did not know him. His suggestion that it might have been because Mr Baijoo referred him to Mr le Roux as a technician, does not align with his assertion that Mr Baijoo did the work himself, privately.

1823.5. His explanation for not returning the equipment defectively installed - that he thought Mr Baijoo was going to return to address the problems - loses force when Mr Nair also says that he reached a point where he gave up on this ever happening.[2991]

1823.6. Mr Baijoo does not corroborate Mr Nair's version as to a private, oral agreement. Instead he confirmed the involvement of Mr le Roux and the Special Projects team.[2992]

2990 Transcript, day 421, p 10.

2991 Transcript, day 421, pp 39-40, 184.

2992 Mr Baijoo's affidavit dated 16 August 2019.

1823.7. It is incongruous that, on his own version, when Mr Nair next saw Mr Baijoo at court after his alleged fundamental breach of their oral agreement, said to be a source of considerable frustration for him, Mr Nair said nothing to him about it.[2993]

1824. None of these improbabilities were satisfactorily explained by Mr Nair in his oral evidence. Mr Nair was critical of the case against him in various respects. These do not however significantly undermine it. The request to cross-examine Mr le Roux was dropped and no significant weaknesses in his version were pointed out by Mr Nair. Inaccuracy, if there was any, in Mr le Roux's estimates of the value of the work, is not a sufficient reason to disbelieve him on the main fact of his having been responsible for the installation as a special project. He had no motive falsely to implicate Mr Nair. It is not correct that Mr Baijoo's affidavits failed to mention the meeting at the Pretoria Magistrate's Court with himself, Mr Mathenjwa and Mr Nair. One did not. One did. This was not a sufficient basis to prefer Mr Nair's version.

1825. Mr Nair is quite correct in pointing out that there is no evidence that he corruptly provided anything in return for the installation. However, this is not a component or requirement of TOR 1.1.

1826. With reference to TOR 7, the question arises whether the presumption in section 24 of PRECCA could nevertheless be applied to Mr Nair so as to justify an investigation or prosecution.

1827. In that regard there is a reasonable basis for suspecting that Mr Nair accepted or agreed to accept gratification[2994] as contemplated in section 24(1)(a).

[2993] Transcript, day 421, p 184.

[2994] As defined in section 1 of PRECCA.

1828. With reference to section 24(1)(b)(i), there is a reasonable basis for suspecting that he received the gratification from a person, Sondolo IT, who holds a contract from a public body or institution, the Department of Justice. However, section 24(1)(b)(i) has a further requirement that the person charged was serving as an official in the public body or institution - here the Department of Justice. Does a magistrate serve as an official in the Department of Justice? As appears from the obiter remarks of Wallis JA in *Reinecke*,[2995] that is not a simple question. It is not necessary for that determination to be made here. If referral for further investigation is appropriate, that aspect could be part of the investigation.

1829. That provides a sufficient statutory platform for the presumption to be engaged. It would then be incumbent upon the State in terms of the second part of section 24(1) to "take reasonable steps" to see whether or not it is "able with reasonable certainty to link the acceptance of ... the gratification to any lawful authority or excuse on the part of the person charged." On the basis of the earlier analysis, the Commission was not able to find a lawful authority or excuse for the security installations for Mr Nair. If the State's steps give rise to a similar conclusion, then proof of receipt of the gratification (in the form of the security installations) in terms of paragraphs (a) and (b) of section 24(1) becomes, in the absence of evidence raising a reasonable doubt as to the absence of lawful authority or excuse, proof of a *quid pro quo* on the basis set out in paragraphs (aa) to (dd) of section 24(1).

1830. Section 25 of PRECCA is also of relevance in assessing the possible referral of the matter.[2996]

[2995] President of the Republic of South Africa v Reinecke 2014 (3) SA 205 (SCA) at paras 5-16.

[2996] See above.

1831. In the circumstances, there is a reasonable prospect that further investigation will uncover a *prima facie* case against Mr Nair in respect of the offence of corruption in terms of section 3 of 8 of PRECCA, and the matter is referred for investigation accordingly.

1832. There is no need for the matter to be referred to the Magistrates Commission for investigation or any other steps as these are already underway.[2997] However it is important that those responsible for the taking of any steps pursuant to this report draw the attention of the Magistrates Commission to its content insofar as it pertains to Mr Nair.

Dr De Wee

1833. In the event that Mr Agrizzi's evidence pertaining to Dr De Wee were to be accepted, the circumstances pertaining to Dr De Wee would fall squarely within TOR1.1. Dr De Wee was an office bearer employed in the DoJ&CD which is both a state institution and an organ of state. He was directly involved in the decision-making processes in relation to tenders in which Bosasa's subsidiary Sondolo IT was involved. As chair of the Bid Evaluation Committee ("BEC"), and also at one point, Acting Director-General, he was clearly in a position to influence the outcome of decision-making in relation to these tenders. Cash payments to him by Bosasa through Mr Seopola would clearly have amounted to attempts through a form of inducement to influence Dr De Wee.

1834. The difficulty however is that the evidence of the cash payments was pure hearsay and Dr De Wee has appeared in person before the Commission to dispute it. There

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[2997] See the proceedings of the Security and Justice Committee of the National Council of Provinces reported as *Suspension of magistrates: Magistrates Commission briefing & Committee report* by the Parliamentary Monitoring Group at https://pmg.org.za/committee-meeting/30042/ 13 March 2020.

was no corroborating evidence. Dr De Wee's name did not feature in the black books to which Mr Agrizzi made reference or in any other documentary evidence.

1835. Notwithstanding the unreliable nature of the evidence against him, it is appropriate to consider the evidence put up by Dr De Wee in his defence. Speaking generally, it can unfortunately not be said that his evidence laid to rest any concern regarding malfeasance in the DoJ&CD under his watch or on his part. There were a number of aspects of his evidence which were less than satisfactory.

1836. He initially explained the origin of the two opinions as being in relation to the appointment of a consultant to draw up the specifications for the security contract. However, in explaining the need for the opinions he shifted to the need for the opinions arising from only a single bidder having scored above the 65% cut-off point. This evidence however manifestly pertained to the bid for the security contract itself, not the drawing up of the specification.[2998] Later in his evidence he reverted to the position that the two opinions were obtained for purposes of the drawing up of the specification.[2999]

1837. Dr De Wee's evidence in relation to the complaint that the Bid Adjudication Committee ("BAC") was not informed about the Treasury opinion was not satisfactory. He asserted that the minute of the BAC meeting of 24 April 2008 demonstrated that the committee was alerted to the existence of the two opinions and he suspected that

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[2998] This much is apparent from the minutes of the BAC meeting that took place on 24 April 2008. They read in relevant part as follows:

"• Approved

- A consultant was appointed to draft a specification and bid was advertised.
- 18 bids were received and based on the benchmark of 65%, only one bidder qualified."

It is clear from this sequence that the 18 bids were received in response to a specification that was already in place. The relevant portion of the minutes is quoted at para 4.21 of the Grant Thornton Report, Exhibit T35, p 433.

[2999] Transcript, day 425, p 96.

they had been provided with copies. The relevant portion of the minute of the meeting records as follows:

> "• Since it was one bidder who met the requirements, the Department requested advise [sic] from the National Treasury and the State Law Advisor.
> • The advise [sic] obtained was:
> - to re-advertise and lower threshold from 65% to 50% - but then it will prejudice the company that met the threshold.
> - the conclusion was to invite a bid for phase 1 only from the qualifying bidder.
> - new bids will be invited for phase 2."

1838. The following comments are apposite in this regard:

1838.1. There was no reference to the fact that there were separate written opinions (only a reference to a request for "advice").

1838.2. There was no reference to the fact that the written opinions were divergent.

1838.3. On the contrary, the minute suggests that the BAC was led to believe that the advice from National Treasury and the State Law Advisor was unanimous and as set out in the three sub-bullet points.

1838.4. No clear reference is made to the content of the divergent advice emanating from the written opinion from National Treasury.

1838.5. The internal departmental opinion seems, misleadingly, to have been ascribed to the State Law Advisor.

1839. The bid process in question took place in 2008. Dr De Wee sought to justify preferring the internal opinion on the basis of the urgency created by the crime problem in courts. He justified this with reference to a memorandum which made reference to the

problem. However, that memorandum is dated 8 February 2015, more than six years later than the time of the tender.[3000]

1840. On the face of it, clauses 2.2 and 2.3 of the Service Level Agreement with the Contractor are troubling. The clauses read as follows:

> "2.2 The Bid was awarded to the Contractor in the amount of R601 863 308.80 in respect of 127 Facilities, however, in order for the Principal and the Contractor to ensure an economic, effective and efficient services is rendered, the Parties agree that negotiation may take place in terms of the Change Control Policy with regards to either the Bid Price, the number of Facilities or the specifications of the Services.
>
> 2.3 The following Faculties / Sites have been identified as the Pilot Sites for this project:
>
> Magistrate Court: Johannesburg
>
> Magistrate Court: Kempton Park
>
> Magistrate Court: Pretoria
>
> Magistrate Court: Pretoria North
>
> High Court: Johannesburg
>
> High Court: Pretoria
>
> 2.3.1 Due to the incomplete Service specifications in the Bid document, the Parties have agreed that the Contractor will conduct a comprehensive audit at the Pilot Sites to establish the Principal's security requirements in general. The parties recognise that this will result in additional costs to both parties and in this regard the parties have agreed that the Principal will be liable for the costs of any additional Equipment that may be required, but that the Contractor will forfeit any labour costs relating to the installation of the additional Equipment. A PDR[3001] will be completed for each Pilot Site and the Contractor will not proceed with any additional work at the Pilot Sites, unless the PDR has been signed off by both parties.
>
> 2.3.2 The purpose of the Pilot Sites is to identify a complete solution to be adopted and used during the roll out of the remaining Facilities."[3002] (emphasis added)

1841. Clause 2.2 essentially permits the parties, outside of the tender process, completely to renegotiate the central terms of the agreement, namely bid price, the number of facilities and the specifications for the services. In this regard it should also be borne

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3000 Exhibit T35, pp 241-242.

3001 Presumably a Preliminary Design Review.

3002 Transcript, day 425, pp 96-98, Exhibit T35 p 484.

in mind that there had already been a tender process for the drawing up of a proper specification for the contract. Why should there be any need to renegotiate it?

1842. Clause 2.3 compounds the problem. It permits the Contractor, Bosasa, to conduct an audit of the selected pilot sites "to establish the Principal's security requirements in general". Clause 2.3.2 then goes on to provide that "the purpose of the pilot sites is to identify what will then be rolled out at the remaining facilities." The combined effect of these provisions is to allow Bosasa to completely rewrite the specification. Having rewritten the specification, in terms of clause 2.3.1, the Department is automatically liable for the costs of "any additional equipment that may be required" albeit with the Contractor purporting to forfeit labour costs. However, with Bosasa or Sondolo IT supplying the equipment, with no competitive process for that supply, it would be a simple matter to build a labour cost into the price of the equipment.

1843. In the absence of any proper explanation, these provisions appear to create fertile ground for undermining the entire procurement process and to create real opportunities for corruption.

1844. In the context of this clause, it is significant that what then proceeded to happen is that 32 of the 127 sites where Bosasa was bound under the tender to install security equipment and services, were dropped from the contract. Yet the Department was billed an amount only just short of the original contract price of R601 million. Grant Thornton estimated that the net effect of this was an unauthorised overpayment of some R177 million. Although Dr De Wee referred to other provisions in the contract providing for variations, and the role of the operational steering committee in this regard,[3003] he never provided a direct answer to the evidence leader's question as to

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[3003] See, in particular, schedule 1 and schedule 2 exhibit T35 pp 504-508.

whether the excess expenditure of R177 million was ever properly authorised and certainly pointed to no documentary evidence in this regard.

1845. A further matter of considerable concern is the evidence that, in a memorandum of February 2015, Dr De Wee recommended the conclusion of a further maintenance contract with Bosasa. This was after he and other departmental officials had been confronted by the Portfolio Committee on Justice about tenders to Bosasa in circumstances where it was facing allegations of corruption. In this regard it is necessary to mention that, according to the evidence heard from Mr Vincent Smith and other witnesses, already at the end of 2009 or in 2010 the Portfolio Committee on Correctional Services or SCOPA had already been given the SIU Report on corruption involving BOSASA and the Department of Correctional Services and members of that Committee had been shocked by the allegations of Corruption involving BOSASA. Dr De Wee sought to justify his recommendation in favour of BOSASA on the basis of there was no sufficient evidence against Bosasa's directors. It is difficult to understand this justification. The fact of the matter is that over a long period of time there were reports of serious allegations of corruption against BOSASA and he and other Government officials ought to have been concerned about continuing to give business to BOSASA when there must have been other business with no such allegations against them which could do the same job. However, there was no suggestion on his part that he made any effort whatsoever to inquire what the nature and outcome of the SIU investigation of Bosasa entailed. Surely, his senior position in the DOJ&CD would have given him the opportunity at least to attempt to obtain the information.

1846. Dr De Wee displayed a worrying tendency to avoid giving direct answers to questions, sometimes under the guise of offering to "deal with this thing in full" or expressing a

desire to assist the Chairperson[3004] or alleging that the investigators had confused the evidence leader.[3005]

1847. In fairness to Dr De Wee, the hearing of his evidence was a hurried affair. Further investigation of the matters about which he testified is clearly called for. Moreover, it is not possible on the basis of the evidence available at this stage to apply the presumption in section 24 of PRECCA against him, because the evidence of gratification is uncorroborated hearsay, which he has contradicted.

1848. However, if the prosecution authorities were able to obtain admissible evidence of the gratification alleged by Mr Agrizzi to have been received by Dr De Wee, then there was, forthcoming from the documents referred to in the course of his oral testimony, evidence of his having acted in a manner that may amount to the illegal, dishonest, unauthorised, incomplete or biased exercise and carrying out of his powers, duties and functions arising out of a constitutional, statutory or contractual legal obligation. In plain language, there is some evidence of his possibly having provided a *quid pro quo*. This is so having regard *inter alia* to his having *prima facie* failed to alert the Bid Adjudication Committee to the two legal opinions, his involvement in the conclusion of a problematic contract with Bosasa or Sondolo IT that undermined its underlying tender process, and his involvement in continuing to transact with them after he had been confronted with their corruption by the relevant Parliamentary portfolio committee.

1849. In the circumstances, there is a reasonable prospect that further investigation will uncover a *prima facie* case against Dr De Wee in respect of the offences in sections

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[3004] Transcript, day 425, p 68-69, 94-95, 99-100, 107, 119, 143.

[3005] Transcript, day 425, p 94.

3, 4, 12 and 13 of PRECCA, and the matter is referred for further investigation accordingly.

Adv Jiba, Adv Mrwebi and Ms Lepinka

1850. As pointed out above, Mr Agrizzi testified that he and Mr Watson made monthly payments to Mr Mti which included Mr Mti's own payment and payments that he was supposed to, and, he undertook to, pass on to Adv Jiba, Adv Mrwebi and Ms Lepinka at the NPA in return for which Bosasa was provided with documents and information regarding ongoing investigations into Bosasa and interfered with the investigation and possible future prosecutions.[3006] Although Mr Agrizzi was not present when the deliveries of the bribes were allegedly made by Mr Mti to Adv Jiba, Adv Mrwebi and Ms Lepinka, he made the deliveries of the cash to Mr Mti and recorded them in his black book, together with the code names devised together with Mr Mti for the three of them.[3007] Adv Jiba denies ever receiving bribes from Mr Mti or anyone else.[3008] She also denied having supplied the documents to Mr Mti or to any Bosasa official.[3009] Likewise Ms Lepinka.[3010] Adv Mrwebi dissociated himself from an affidavit supporting a purported application by him for leave to cross-examine Mr Agrizzi.[3011] This affidavit had contained a similar denial.[3012]

1851. Mr Agrizzi testified to a series of meetings with Mr Mti in connection with the NPA's ongoing investigations against Bosasa. At these meetings, Mr Mti produced copies of

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3006 Transcript, day 40, pp 39-57.

3007 Transcript, day 40, p 45. See also annexure P2 to Mr Agrizzi's Initial Affidavit, p 361 read with annexure HH to Mr Agrizzi's Supplementary Affidavit, p 87.

3008 Adv Jiba's affidavit, p 8 at para 22.

3009 Paras 888-889.

3010 Ms Lepinka's affidavit, paras 6-8, p 2.

3011 Transcript. day 409, p 48.

3012 Transcript. day 409, p 48.

secret documents, minutes of meetings, reports and other documents and information internal to the NPA in relation to the Bosasa investigations.[3013]

1852. Mr Agrizzi attached twelve documents to his Initial Affidavit, which he alleges were given to him or Mr Watson by Mr Mti, who informed Mr Agrizzi that he had received the documents from Adv Jiba and persons within the NPA.[3014] Mr Oellermann was of the view that the persons who leaked the documents to Bosasa must have known that the information would harm the prosecution.[3015]

1853. Adv de Kock confirmed that six of the twelve documents were in fact what they purported to be and were all confidential NPA documents which she had marked as confidential to ensure that the relevant information security provisions were applicable. She was of the opinion that the leaks were not random and that any person within the NPA would have been aware that to leak the documents would be unlawful, as possession of the documents by an implicated person would harm the investigation.[3016] Mr Oellermann testified that throughout the course of the SIU investigation, there were regular incidents which occurred where it seemed that Bosasa had a very good idea or knowledge of the progress of the investigation.[3017]

1854. Mr Agrizzi's evidence with regard to the alleged payment of bribes to, and the provision of confidential documents and information by, Adv Jiba, Adv Mrwebi and Ms Lepinka is hearsay. Adv Jiba resolved not to persist with her application to cross-examine and her request to give evidence before the Commission on this basis.[3018] However, as pointed out earlier, hearsay evidence is admissible before the

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3013 Adv Jiba's affidavit, p 7 at para 20.

3014 Transcript, day 40, pp 59-60.

3015 Transcript, day 77, pp 52, 62.

3016 Transcript, day 78, p 190.

3017 Transcript, day 77, p 86.

3018 Transcript, day 414, pp 42-48.

Commission and this should have been taken into account by these witnesses in electing not to testify before the Commission.

1855. There are certain aspects of Adv Jiba's and Ms Lepinka's versions that are of concern to the Commission:

1855.1. one of the documents provided to Mr Agrizzi by Mr Mti was an email addressed by Ms Lepinka dated 22 November 2012[3019] in which she speaks on behalf of the "ANDPP", who at that point would have been Adv Jiba. She conveys the ANDPP's complaint that reports submitted to her in connection with a number of listed cases, including the Bosasa, "were not in line with what she requested". In respect of these cases, fresh reports containing specified information were called for, with a view to meeting with the responsible prosecutors to discuss progress.

1855.2. She went on to single out the Bosasa investigation and said the following:

> "In terms of the Bosasa case, please be advised that this matter needs to be finalised ASAP as the matter has been investigated for many years and from the submitted reports it is clear that there is no evidence and or prospect of a successful prosecution. This had been confirmed by both Lt Gen Dramat and Adv De Kock the lead prosecutor."

1855.3. The assertions in this regard are not true. Consideration of the content of the reports, dealt with in detail in Part F, demonstrates that there was substantial evidence to support a successful prosecution and that the investigation and preparations for a prosecution were progressing. The reports, along with Adv De Kock's evidence before the Commission, demonstrate that she certainly did not confirm anything to the contrary. In those circumstances, the email

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[3019] Transcript, day 40, pp 100-101; Mr Agrizzi's Initial Affidavit, Annexure Q11, p 474.

points to wrongful attempts to close down the Bosasa investigation and prosecutions.

1855.4. Another aspect of Adv Jiba's affidavit is her reference to Ms Lepinka's history as an employee of the NPA, going back as far as the time of Adv Pikoli, who was NDPP between 2005 and 2007.[3020]. Ms Lepinka confirmed in her affidavit that she had in fact previously been employed as Mr Mti's secretary from September 2001 until November 2006. This points to the existence of a prior working relationship between Ms Lepinka and Mr Mti which could have been open to exploitation.

1855.5. Further, the evidence of Adv De Kock establishes quite clearly that confidential NPA documents were indeed being leaked to Bosasa on a regular and significant scale.

1856. This evidence tends to provide some corroboration of Mr Agrizzi's hearsay evidence. It does not take it to the level of proof on a balance of probabilities, but is sufficient to establish reasonable grounds for suspecting that the conduct occurred. These elements of corroboration are confined to Adv Jiba and Ms Lepinka. They do not apply to Adv Mrwebi. Indeed certain of the evidence pointed to his having acted in a manner supportive of the investigation into Bosasa when he informed Mr Biebuyck that an application to a magistrate for the issuance of a subpoena was well-considered and that the activities related to a lawful investigative process, when declining his request to withdraw the subpoenas.[3021]

[3020] https://en.wikipedia.org/wiki/Vusi_Pikoli.

[3021] Transcript, day 78, p 137; (Exhibit S12, Annexure MDK2, p 65).

1857. With reference to TOR 7, section 9 of PRECCA creates "offences in respect of corrupt activities relating to members of prosecuting authority". In relation to this offence, the requirement of receipt of gratification is not established for purposes of a criminal prosecution, due to the hearsay nature of the evidence. However, there is a reasonable prospect that further investigation may address this shortcoming. The evidence of provision of a *quid pro quo* is more substantial.

1858. There is also a reasonable prospect that further investigation may uncover a *prima facie* case of -

1858.1. defeating or obstructing the ends of justice; and other possible breaches of the National Prosecuting Authority Act

1859. The matter is referred for further investigation to establish the person or persons within the NPA who leaked to persons outside of the NPA confidential documents relating to the investigation involving BOSASA. There is not enough evidence to direct the investigation to any particular person or official but it is important to establish the person or persons who leaked the confidential documents.

1860. There was evidence suggesting that Adv Simelane may wrongfully have assisted in closing down the investigation into Bosasa. Adv Simelane was not issued with a rule 3.3 notice. No finding is in these circumstances made against him. it is up to the investigating authorities to decide whether or not they take the matter further, and no referral is recommended in this regard.

Mr Gingcana

1861. Mr Agrizzi testified that he was aware of an access control contract with PRASA (through Sondolo IT) but that he did not know the contract value.[3022] Mr Agrizzi said that he had received reliable information that bribes had been paid but was waiting for tested information to provide to the Commission's investigators.[3023] Mr le Roux testified that he undertook a security analysis and installation, at the request of Mr Agrizzi and Mr Dlamini, at a Randburg property for Mbulelo Gingcana under the code name "Project PRASA". The Special Project team installed an alarm system, full IP-based CCTV system, new gate motor and an intercom system, including the cost of vehicle travel and labour, to the value of approximately R239,486.84.[3024]

1862. Mr Gingcana gave evidence that he had been employed by SACAA since April 1999 and was seconded to PRASA from around October 2015 until October 2016 in the position of Acting Chief Procurement Officer, and thereafter to the National Treasury in the office of Chief Procurement Officer.[3025] Mr Gingcana disputes that at the time of the security upgrade to his home there was a project linked to PRASA or that he was a secondee of PRASA. Mr Gingcana confirmed that an alarm and CCTV system with a new gate motor and intercom system were installed at his home in Randburg. He testified that the upgrade was installed in 2017.[3026]

3022 Transcript, day 75, p 41.

3023 Transcript, day 75, p 41.

3024 Exhibit T21, paras 89-99, pp 19-21.

3025 Transcript, day 416, pp 63-64.

3026 Transcript, day 416, p 89.

1863. Mr Dlamini visited Mr Gingcana's residence in 2016 and provided an approximate cost to upgrade Mr Gingcana's security system that was installed at his residence at the time.[3027]

1864. Initially, Mr le Roux was unable to recall the dates when he undertook the installation. Under cross-examination, Mr le Roux testified that the installation was done in March or April 2016.[3028] When he was questioned about the fact that he did not dispute Mr Gingcana's affidavit in which Mr Gingcana stated that the equipment was installed in 2017, Mr le Roux indicated that it was due to a mistake on his part at the time of responding to Mr Gingcana's affidavit.

1865. Mr Gingcana did not dispute that Bosasa installed a security system at his residence, for which he did not pay, although he contended that at the time of the installation he did not know that Bosasa installed the system and was of the view that it was a company of which Mr Dlamini was a director. Mr Gingcana's version is that despite various requests to Mr Dlamini for an invoice for the upgrade, none was forthcoming. Although Mr Gingcana disputes when the upgrade was installed, it is likely that the upgrade was installed at Mr Gingcana's residence in 2016 and not during 2017 for the following reasons:

1865.1. Mr Dlamini was at Mr Gingcana's residence in 2016 when he provided an estimate of the cost to upgrade the security system to Mr Gingcana.

1865.2. Mr le Roux testified that this was the only special project installed on the instruction of Mr Dlamini and supporting evidence in the form of invoices were identified by Mr le Roux because they were marked "project sd", which stood

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3027 Transcript, day 416, p 24. See also Mr Dlamini's affidavit, paras 32, 46, pp 6, 8.

3028 Transcript, day 416, p 127.

for Syvion Dlamini. Those invoices are dated 26 April and 10 May 2016.[3029] Mr le Roux testified that he would not hold stock for a year before installation.[3030]

1865.3. Mr Gingcana was unable to provide any explanation on why the security system was only installed in 2017 when he had first discussed the security upgrade with Mr Dlamini in 2016. Accepting Mr Gingcana's version that the security system was to be installed from September 2016, when he was due to receive a bonus, he was still unable to provide any plausible explanation. Mr Gingcana said:[3031]

> "That is the question that I want to understand, because it was agreed that we were going to install after September but because the year was almost over then it was only installed in April. I was ready for installation after September."

1865.4. 2016 accords with the period of time when Mr Gingcana was seconded to PRASA, which is consistent with Mr le Roux's evidence that Mr Dlamini and Mr Agrizzi had requested him to do a security installation for Mr Gingcana, who worked for PRASA.[3032]

1866. As indicated, Mr Gingcana gave evidence that the security upgrade would be undertaken by Mr Dlamini. He said that he repeatedly requested an invoice from Mr Dlamini, but never received one.[3033] In his affidavit, Mr Dlamini stated that he mentioned Mr Gingcana's details in a meeting with Mr Agrizzi, who offered to assist.[3034] According to Mr Dlamini, Mr Agrizzi thereafter involved Mr le Roux to whom he

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3029 Exhibit T21, paras 89-91, p 19; annexure RLR13, pp 109-112.

3030 Transcript, day 416, p 145.

3031 Transcript, day 416, p 89.

3032 Transcript, day 44, pp 99-103.

3033 Mr Gingcana's application, para 23, p 8.

3034 Mr Dlamini's affidavit, para 34, p 7.

provided Mr Gingcana's address after he had confirmed with Mr Gingcana that he still wished to upgrade his security system.[3035]

1867. Does the evidence pertaining to Mr Gingcana fall within the scope of the terms of reference? Other than Mr Agrizzi's hearsay evidence that he had received reliable information that bribes had been paid for an access control contract through Sondolo IT with PRASA, there was no evidence of irregularities concerning a contract or a tender being awarded to Bosasa or any of its subsidiaries. None of TOR 1.2 to 1.9 come into play. Does TOR 1.1 apply?

1868. As was the case with Mr Nair, there can be little doubt that from the perspective of Bosasa and Sondolo IT, the installation of the security system for no charge was an attempt at inducement. Whatever Mr Gingcana's ability to influence the outcome of tenders, his perceived influential position as a senior procurement officer would have made him an appropriate target for inducement in circumstances where Bosasa and Sondolo IT wished to secure or retain security service contracts with PRASA. This is so despite Mr Gingcana's evidence that he did not form part of any procurement or bid committees.[3036]

1869. A chief procurement officer is a functionary or office-bearer of an organ of state and, therefore, falls within the reach of TOR 1.1. Mr Gingcana's version must therefore be considered.

1870. There are a number of aspects of Mr Gingcana's version that present difficulties for its acceptance:

3035 Mr Dlamini's affidavit, para 35, p 7.

3036 Mr Gingcana's application, paras 25-26, p 9.

1870.1. It would be expected that a chief procurement officer would take deliberate steps and great care to ensure that there was no misunderstanding as to who was responsible for the security upgrade, whether it was Bosasa, Sondolo IT, or a company linked to Mr Dlamini. Mr Gingcana gave no evidence that he took such steps and care. He testified that he was told that the persons installing the equipment were from a company of which Mr Dlamini was a director.

1870.2. Mr Dlamini does not corroborate Mr Gingcana's version as to a private agreement. Instead he confirmed the involvement of Mr Agrizzi, Mr Le Roux and the Special Projects team. Mr Dlamini denied that he ever undertook to invoice or to collect payment from Mr Gingcana. Mr Dlamini stated that he indicated to Mr Gingcana that he would pass the invoice on to him if and when he received it. This does not accord with Mr Gingcana's version that the upgrade was by agreement with Mr Dlamini.

1870.3. Mr Agrizzi and Mr le Roux testified that Mr Gingcana was at his residence when they attended with Mr Dlamini. Although Mr Dlamini stated that Mr Gingcana was at work at the time, all versions corroborate the fact that employees of Bosasa and Sondolo IT were at Mr Gingcana's residence. Mr le Roux was clear in his evidence that Mr Gingcana met Mr Agrizzi at his residence. It is unlikely that Mr le Roux would have reason to fabricate that Mr Gingcana was present at the meeting.

1870.4. Mr Dlamini gave evidence that he advised Mr Gingcana after the upgrade had been completed to exchange contact details with Mr le Roux, should Mr Gingcana experience any technical or operating challenges with the system. Mr Gingcana later in fact contacted Mr le Roux for assistance. He did not fully

explain the context in which he contacted Mr le Roux if he believed that Mr Dlamini was in fact responsible for the security upgrade at his residence.

1870.5. Mr Gingcana's version that the security upgrade was installed in 2017 is improbable, for the reasons given earlier.

1870.6. Mr Gingcana's evidence was that he was still willing to pay for the security upgrade at his premises. However, he has not done so despite becoming aware that it was Bosasa that installed the upgrade. He testified that, after the evidence against him was made public in the media, there was turmoil at Bosasa and he could not get hold of Mr Dlamini. He said that he never attempted to discuss the invoice or payment with Mr le Roux and never attempted to contact Bosasa directly.

1871. None of these difficulties was satisfactorily explained by Mr Gingcana in his oral evidence. Under cross-examination, no significant weaknesses in Mr le Roux's evidence were pointed out. He had no motive to falsely implicate Mr Gingcana.

1872. There is no evidence that Mr Gingcana corruptly provided anything in return for the installation. However, this is not a component or requirement of TOR 1.1.

1873. With reference to TOR 7, the question arises whether the presumption in section 24 of PRECCA could, notwithstanding the absence of evidence of a *quid pro quo*, be applied to Mr Gingcana so as to justify an investigation or prosecution.

1874. In that regard there is a reasonable basis for suspecting that Mr Gingcana accepted or agreed to accept gratification[3037] as contemplated in section 24(1)(a).

[3037] As defined in section 1 of PRECCA.

1875. With reference to section 24(1)(b)(i), there is a reasonable basis for suspecting that he received the gratification from an entity, Sondolo IT, who holds (or seeks to obtain) a contract from a public body or institution, PRASA. Section 24(1)(b)(i) has a further requirement that the person charged was serving as an official in the public body or institution – here PRASA. Mr Gingcana was seconded as the acting Chief Procurement Officer of PRASA at the time.

1876. The presumption is thus engaged. It would then be incumbent upon the State in terms of the second part of section 24(1) to "take reasonable steps" to see whether or not it is "able with reasonable certainty to link the acceptance of … the gratification to any lawful authority or excuse on the part of the person charged." On the basis of the earlier analysis, the Commission was not able to find a lawful authority or excuse for the security installations for Mr Gingcana. If the State's steps give rise to a similar conclusion, then proof of receipt of the gratification (in the form of the security installations) in terms of paragraphs (a) and (b) of section 24(1) becomes, in the absence of evidence raising a reasonable doubt as to the absence of lawful authority or excuse, proof of a *quid pro quo* on the basis set out in paragraphs (aa) to (dd) of section 24(1).

1877. Section 25 of PRECCA is also of relevance in assessing the possible referral of the matter.

1878. In the circumstances, there is a reasonable prospect that further investigation will uncover a *prima facie* case against Mr Gingcana in respect of the offence of corruption in terms of section 3 of PRECCA, and the matter is referred for investigation accordingly.

Conclusion and findings in relation to TOR 1.1

1879. Mr Agrizzi's evidence is corroborated in various respects by the evidence of Messrs van Tonder, le Roux, Mlambo, Venter, Vorster and Lawrence. The testimony of these witnesses is also corroborated by documentary and video evidence. As with Mr Agrizzi, when assessing the weight to be accorded to the evidence of Messrs van Tonder, le Roux, Venter, Vorster and Lawrence, consideration must be given to the fact that these witnesses implicated themselves in the various unlawful acts. Evidence is also given particular weight where the witness was directly involved in the event that was testified to. This was the case in respect of all of these witnesses.

1880. Taken as a whole, the balance of the evidence overwhelmingly establishes that Bosasa, its directors and some of the employees, along with persons and entities associated with it, were involved on an industrial scale in attempts to influence, through inducement or gain, members of the National Executive and office bearers and functionaries of, or employed by, state institutions and organs of state. This includes attempts at such influence, by way of inducement or gain, through Mr Mantashe, as secretary-general of the ANC, and the ANC as an organisation itself.

1881. It is not established on the evidence whether any of the employees of the entities or government departments who received illegal cash payments from Bosasa were directors of the organisations concerned. However, even if they were not directors, they would fall within the category of employees of organs of state.[3038]

[3038] South African Airways Soc v BDFM Publishers (Pty) Ltd and Others 2016 (2) SA 561 (GJ) at para 4.

1882. The evidence in relation to inducements and gains said to have been provided to Mr Frolick, Mr Smith, Ms Ngwenya, Mr Magagula, Mr Zuma, Ms Mokonyane and Ms Myeni, is dealt with under TOR 1.4.

1883. Based on the evidence, the following directors and employees of Bosasa were involved in attempts to influence public office bearers in the categories contemplated in TOR 1.1, through inducements or gain:

1883.1. Gavin Watson (widespread involvement);

1883.2. Angelo Agrizzi (widespread involvement);

1883.3. Andries van Tonder (widespread involvement);

1883.4. Carols Bonifacio and Jacques van Zyl (involved in the manipulation of documents; Mr Bonifacio was also involved in the authorisation of payments and Mr van Zyl was involved in the payment of inducements);

1883.5. Carien Daubert (accounting staff involved in manipulation of company documents);

1883.6. Rieka Hundermark (accounting staff involved in manipulation of company documents);

1883.7. Gavin Hundermark (manipulation of the accounting system "Great Plains");

1883.8. Leon van Tonder (involved in the payment of inducements);

1883.9. Richard le Roux (involved in the payment of inducements);

1883.10. Johannes Gumede, Papa Leshabane and Thandi Makoko (involved in agreeing to pay someone, in the payment and/or provision of inducements and authorising payments).

1884. Based on the evidence, the following persons who were either employees of, or associated with, Bosasa were involved in attempts to influence public office bearers in the categories contemplated in TOR 1.1, through inducements or gain:

1884.1. William Daniel Mansell (widespread involvement);

1884.2. Riaan Hoeksma (facilitated the generation of cash for Bosasa from Jumbo Liquor Wholesalers and the creation of fictitious lists of casual employees);

1884.3. Gregory Lawrence (delivered cash to Bosasa from Equal Trade);

1884.4. Greg Lacon-Allin (facilitated the generation of cash for Bosasa from Equal Trade);

1884.5. Sesinyi Seopela (involved in the payment of bribes);

1884.6. Richard Mti (involved in the payment of bribes);

1884.7. Patrick Littler and Ryno Roode (involved in the payment of bribes);

1884.8. Valence Watson (involved in the payments of bribes);

1884.9. Reggie Nkabinde (involved in corruptly influencing the award tenders);

1884.10. Sam Sekgota (involved in corruptly influencing the award of tenders);

1884.11. Petrus Venter (involved in the payment of bribes).

1885. Based on the evidence, the following juristic entities were involved in attempts to influence public office bearers in the categories contemplated in TOR 1.1, through inducements or gain:

1885.1. Bosasa Operations;

1885.2. Sondolo IT;

1885.3. AA Wholesalers;

1885.4. Riekele Konstruksie;

1885.5. Jumbo Liquor Wholesalers;

1885.6. Equal Trade 4 and Equal Food Traders;

1885.7. Lamozest.

1886. Based on the evidence, there are reasonable grounds for suspecting that the following persons were involved in attempts to influence public office bearers in the categories contemplated in TOR 1.1, through inducements or gain:

1886.1. Syvion Dlamini;

1886.2. Trevor Mathenjwa; and

1886.3. Kevin Wakeford.

1887. Based on the evidence and his own admission, Mr Venter was aware of the scheme between Bosasa, AA Wholesalers and Equal Trade to generate cash and, at a minimum, failed to report these schemes.

Further recommendations under TOR 7 with reference to TOR 1.1

1888. The evidence establishes a *prima facie* case of money laundering in terms of section 4 of POCA against the following persons in respect of whom the matter is referred for further investigation and prosecution:

1888.1. Angelo Agrizzi;

1888.2. Andries Johannes van Tonder;

1888.3. Carlos Bonifacio;

1888.4. Jacques van Zyl;

1888.5. Riaan Hoeksma;

1888.6. Gregg Lacon-Allin; and

1888.7. the entities AA Wholesalers, Riekele Konstruksie, Jumbo Liquor Wholesalers, Lamozest, and Equal Trade 4 and Equal Food Traders.

1889. The evidence establishes a *prima facie* case of corruption in terms of section 3 of PRECCA against the following persons in respect of whom the matter is referred for further investigation and prosecution:[3039]

1889.1. Angelo Agrizzi;

1889.2. Andries Johannes van Tonder;

[3039] Read with sections 4 to 16 of PRECCA, as relevant.

1889.3. Jacques van Zyl;

1889.4. Johannes Gumede;

1889.5. Papa Leshabane;

1889.6. Thandi Makoko;

1889.7. Leon van Tonder;

1889.8. Richard le Roux;

1889.9. Petrus Venter;

1889.10. William Daniel Mansell;

1889.11. Sesinyi Seopela;

1889.12. Linda Mti;

1889.13. Frans Vorster;

1889.14. Carlos Bonifacio; and

1889.15. Riaan Hoeksma.

1890. The evidence establishes a *prima facie* case of fraud against the following persons in respect of whom the matter is referred for further investigation and prosecution:

1890.1. Angelo Agrizzi;

1890.2. Andries Johannes van Tonder;

1890.3. Carlos Bonifacio;

1890.4. Jacques van Zyl;

1890.5. Greg Lacon-Allin; and

1890.6. Riaan Hoeksma.

1891. The evidence establishes that there is a reasonable prospect that further investigation will uncover a *prima facie* case of money laundering, corruption and/or fraud against the following persons and the matter is accordingly referred for further investigation:

1891.1. Carien Daubert;

1891.2. Rieka Hundermark;

1891.3. Gavin Hundermark;

1891.4. Cedric Frolick;

1891.5. Patrick Littler;

1891.6. Danie van Tonder;

1891.7. Ishmael Dikane;

1891.8. Syvion Dlamini;

1891.9. Trevor Mathenjwa; and

1891.10. Ryno Roode.

1892. This must not, however, be taken as a finding by the Commission against any persons that did not receive rule 3.3 notices.

1893. The evidence establishes a *prima facie* case of the failure to report suspicious or unusual transactions, in contravention of section 52 of FICA, against the following persons in respect of whom the matter is referred for further investigation and prosecution:

1893.1. Angelo Agrizzi;

1893.2. Andries Johannes van Tonder;

1893.3. Carlos Bonifacio;

1893.4. Jacques van Zyl;

1893.5. Carien Daubert;

1893.6. Rieka Hundermark;

1893.7. Gavin Hundermark;

1893.8. Johannes Gumede;

1893.9. Papa Leshabane; and

1893.10. Thandi Makoko.

1894. The evidence establishes a *prima facie* case of assisting another to benefit from the proceeds of unlawful activities, in contravention of section 5 of POCA, against Gregory

Lawrence, in respect of whom the matter is referred for further investigation and prosecution.

1895. The evidence establishes that Petrus Venter was aware of the illegal transactions taking place at Bosasa and failed to report them. Further investigations should take place for a failure to comply with section 34 of PRECCA and other relevant legislative requirements. The matter is referred to the SAPS for this purpose. The matter is also referred to SARS and the SA Institute of Tax Practitioners ("**SAIT**") for further investigation.

1896. The evidence establishes *prima facie* instances of various tax offences. These matters are referred to SARS for further investigation in conjunction with relevant law enforcement agencies.[3040]

1897. Messrs Agrizzi, van Tonder and Bonifacio are facing pending charges of corruption, fraud and conspiracy to commit fraud. The matter is nonetheless referred to the SAPS, the DPCI and the Investigating Directorate, to ascertain whether those charges cover all instances of corruption revealed in the evidence before the Commission and, if not, for the charges to be expanded accordingly.

1898. The matter of forms of inducement or gain being paid to persons in the NPA for Bosasa to have been able to gain possession of confidential documentation is referred for further investigation.

[3040] See also the section titled "Instances not covered by terms of reference 1.1, 1.4, 1.5 and 1.9".

Analysis and findings with reference to TOR 1.4

Introduction

1899. The questions raised by TOR 1.4 are -

1899.1. whether any of the identified public office bearers facilitated the unlawful award of tenders in the governmental or SOE sectors;

1899.2. whether they thereby breached the Constitution, any relevant ethical code or legislation; and

1899.3. if so, whether they did so in order to benefit any family, individual or corporate entity doing business with government or any organ of state.

1900. The range of potential facilitators in respect of whom the question is asked, includes the President, members of the National Executive, including deputy ministers, public officials,[3041] and employees of SOEs.

1901. The focus thus moves from those seeking to influence, discussed in relation to TOR 1.1, to those subject to the attempts at influence. The question raised is, in effect, whether the targets of the attempts responded by facilitating the unlawful award of tenders in the governmental or SOE sectors, for their own or another person or family's benefit.

1902. This term of reference is approached by assessing particular tender awards and then focussing on those implicated in facilitating them.

[3041] For reasons elaborated upon below, this would include members of Parliament.

1903. The analysis is best commenced with reference to the evidence of what took place in relation to the DCS tenders.

Contracts with the Department of Correctional Services

1904. A supply management system must be fair, equitable, transparent and competitive. The system requires a department to conduct a needs assessment for the provision of goods or services and to prepare precise specifications for the services to be procured to ensure *inter alia* that value for money is achieved.

1905. In the analysis that follows, the award of four contracts (and various renewals and an extension of these contracts) by the DCS to Bosasa and its affiliate companies is assessed for compliance with these requirements and in order to establish whether or not there was corrupt facilitation of the kind contemplated by TOR 1.4.

The catering contracts

1906. Concerning the first catering contract, the evidence of Mr Agrizzi and Mr Vorster was that Mr Gillingham played an integral role assisting Bosasa in corruptly being given the opportunity of developing the tender specifications for this contract and tailoring them to suit and advantage Bosasa as one of the tendering parties.[3042]

1907. This evidence is corroborated by the findings in the SIU Report which records that during a search and seizure operation at Mr Gillingham's residence, a document containing the bid evaluation criteria and guidelines for evaluating this tender was found and this data was determined to have originated from Mr Agrizzi's computer.[3043] Although the SIU Report notes that the date of creation of this data could not be

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[3042] Transcript, day 38, p 188.

[3043] Mr Agrizzi's Initial Affidavit, p AA280.

determined, its existence aligns with Mr Agrizzi's evidence that Bosasa was allowed to prepare the contract specifications. This is also evidence of Mr Gillingham's facilitation of the unlawful award of the tender. The evidence of Mr Agrizzi and Mr Bloem confirms that Bosasa was ultimately awarded the contract in and around July 2004.[3044]

1908. That Bosasa was afforded the opportunity to draft the specifications for the tender and was later successful in being awarded the contract, establishes that the specifications and tender-award process were skewed in favour of Bosasa. This would have had the effect of undermining the competitiveness and parity of the bid evaluation process and falls foul of the requirement that departments must implement supply chain management policies that are fair, equitable and competitive, thus rendering the award of the contract unlawful. Even if, notionally, the tender specifications had not been skewed in favour of Bosasa, the mere participation of Bosasa in preparing (or being involved in the preparation of) the specifications for a tender process in which it would participate, would violate the requirements of fairness, equity, transparency and competitiveness.

1909. In respect of the second catering contract, Mr Agrizzi's evidence that contract HK14/2008 was granted using the same specifications drafted for the first catering contract is undisputed. The second catering contract was a natural progression from the first contract (including the extension of the first contract referred to below). Consequently, the irregularities referred to above pervade the award of the second contract and are causally linked to it.

1910. As a general observation in respect of the catering contracts, the undisputed evidence of Mr Agrizzi is that the benefits given to Mr Mti and Mr Gillingham as detailed in Part

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[3044] Transcript, day 37, p 124; transcript, day 45, p 52.

F of this section of the report were linked to the award of the catering tenders at the DCS.[3045] There is no evidence to suggest that there was a lawful basis for the benefits provided to Mr Mti and Mr Gillingham. Nor did they come forward to offer one. The extent of the benefits lavished on them, and the fact of the awards of the tenders, demonstrate that they, as public officials, facilitated the award of tenders in the manner contemplated by TOR 1.4.

1911. Given the scale of the illegalities in the procurement process in this regard, it would have been insufficient to ensure the ongoing corrupt award of the tenders, to have unlawful facilitation by Mr Mti and Mr Gillingham alone. It may safely be concluded that other DCS officials officially involved in the procurement and implementation processes in respect of these contracts, were in receipt of corrupt payments from Bosasa and similarly facilitated the illegal award of the tenders. Those identified by Mr Agrizzi who failed to respond to rule 3.3 notices or regulation 10(6) directives are listed below.

1912. For these reasons, the procurement processes resulted in failures to implement supply chain procedures in compliance with regulation 16A of the Treasury Regulations which requires -

1912.1. that a supply chain management system be fair, equitable, transparent, competitive and cost effective (regulation 16A.3);

1912.2. officials involved in supply chain management to treat all suppliers and potential suppliers equitably (regulation 16A.8); and

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[3045] Transcript, day 39, p 12.

1912.3. officials involved in supply chain management to maintain the credibility or integrity of the supply chain management system (regulation 16A.8).

1913. Furthermore, the procurement processes failed to comply with section 217 of the Constitution which requires that, when an organ of state contracts for goods or services, it must do so in accordance with a tendering system that is "fair, equitable, transparent, competitive and cost-effective".

1914. Prima facie, certain statutory crimes may also have been committed.

1915. In the light of the above, it is established that the tenders giving rise to the award of these contracts were unlawfully awarded, that the awards of the tenders were facilitated by Mr Mti, Mr Gillingham and other officials of the DCS in breach of the Constitution and legislation and that they did so to benefit themselves, their families, Bosasa and its associates and the Watson family.

The access control contract

1916. Mr Agrizzi testified that, following a meeting in November 2004, Bosasa was invited to attend a meeting of the DCS to *inter alia* showcase some of the other services Bosasa could provide. This meeting was attended by Mr Mti, Mr Gillingham and Mr Agrizzi, together with a number of Bosasa directors (excluding Mr Watson and Mr Mansell).[3046]

1917. Following this meeting, Mr Agrizzi was informed by Mr Watson that he had received "very good feedback" from Mr Mti and that there was an access control contract in the pipeline. Mr Agrizzi testified that he was then instructed by Mr Watson and Mr Mansell to prepare a specifications document for the access control system to be procured by

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[3046] Transcript, day 37, pp 130-131.

the DCS.[3047] Mr Agrizzi testified that, when doing so, he included security aspects which afforded Bosasa a clear advantage over the other bidders. This evidence remains undisputed. Further, the SIU Report corroborates the evidence that these specifications were prepared by Mr Agrizzi and sent to Mr Gillingham.[3048]

1918. It is thus established that Bosasa was allowed to draft the specifications for the tender. The fact that it was subsequently awarded the contract demonstrates that the procurement process was unfair, inequitable and did not foster competitiveness. For these reasons, the award of the tender giving rise to the contract was unlawful.[3049] The evidence suggests that Bosasa's efforts to secure the access control contract were prompted by Mr Mti and the unlawful award of the contract was then facilitated by Mr Gillingham. Mr Mti, in prompting the involvement of Bosasa, facilitated the award to them. In addition, he must have been aware of Mr Gillingham's efforts in this regard. So, too, on the probabilities, were the other officials that were involved in procurement and implementation that were receiving corrupt payments from Bosasa. In this regard, silence and a failure to report corruption by an official who knows it is taking place or has taken place in relation to a tender, amounts to facilitation as contemplated in TOR 1.4.

1919. Prima facie there may also be certain statutory crimes that may have been committed.

1920. It is, therefore, established that there was facilitation of an unlawful tender as contemplated in TOR 1.4 in respect of the DCS access control tender. The facilitation was in breach of the Constitution and legislation and was aimed at benefitting the

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3047 Transcript, day 39, p 13.

3048 Mr Agrizzi's Initial Affidavit, p AA 282.

3049 Regulation 16A of the Treasury Regulations.

Bosasa officials who received the corrupt payments as well as their families in the case of Mr Mti and Mr Gillingham and the Watson family.

The fencing contract

1921. With regard to the fencing contract, Mr Mansell has not responded to the rule 3.3 notices issued to him on 2 April 2019 and 30 June 2020. Consequently, the evidence implicating him in the irregular award of the fencing contract is undisputed.

1922. In this regard, Mr Agrizzi testified that Mr Mansell compiled the specifications for the contract before the tender was issued.[3050] This was corroborated by the investigative media report which appeared in the Mail & Guardian on 30 January 2009 with reference to evidence reviewed by the journalists.[3051] The fact that the tender specifications were weighted in favour of Bosasa is also confirmed in the SIU Report.[3052] This could only have come about with facilitation by officials within the DCS and, on the probabilities, this was provided by Mr Mti, Mr Gillingham and those others in the DCS that were in receipt of corrupt payments from Bosasa.

1923. Apart from obtaining an advantage over other bidders by being integrally involved in the creation of the tender specifications, the evidence that Bosasa was afforded early access to the DCS sites to survey the area in preparing the specifications was undisputed, as was the evidence that an unreasonable amount of time was granted to Bosasa compared with other bidders, to prepare and submit bids for the contract.[3053]

[3050] Transcript, day 38, p 25.

[3051] Transcript, day 38, pp 120-121.

[3052] Mr Agrizzi's Initial Affidavit, p AA 285.

[3053] Transcript, day 38, pp 27, 35.

1924. For these reasons, the procurement process resulted in a failure to implement a supply chain procedure in compliance with regulation 16A of the Treasury Regulations which requires -

1924.1. a supply chain management system be fair, equitable, transparent, competitive and cost effective (regulation 16A.3);

1924.2. officials involved in supply chain management to treat all suppliers and potential suppliers equitably (regulation 16A.8); and

1924.3. officials involved in supply chain management to maintain the credibility or integrity of the supply chain management system (regulation 16A.8).

1925. Furthermore, the procurement process failed to comply with section 217 of the Constitution. Prima facie, there may be certain crimes which have been committed in relation to the facilitation of this unlawful tender. The award of the tender was therefore unlawful.

1926. In the light of the above, it is established that the facilitation of the unlawful award of this tender was in breach of the Constitution and legislation as contemplated in TOR 1.4. This was done in order to benefit Mr Mti, Mr Gillingham, their families, the other officials involved, Bosasa, its associates and the Watson family.

The integrated computerised offender management system contract

1927. Mr Agrizzi's evidence that Bosasa was, through Mr Gillingham, provided with the necessary documents and was involved in the preparation of the tender specifications for the integrated computerised offender management system, was undisputed.[3054] As

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[3054] Transcript, day 38, p 48.

with the catering contract, this would have resulted in the specifications being skewed in favour of Bosasa and the undermining of the competitiveness and parity of the bid evaluation process. Consequently, the award to Bosasa of the tender giving rise to this contract was unlawful for the same reasons as those listed in relation to the tenders discussed above. The role of Mr Gillingham in enabling this process amounted to the facilitation of the unlawful awarding of a tender as contemplated in TOR 1.4.

1928. Moreover, the evidence shows that Mr Mansell and Mr Watson were aware from their discussions with Mr Mti and Mr Gillingham, prior to Bosasa preparing the tender specification and pricing their proposal, that the DCS had surplus funds that it needed to use. In this respect too, Mr Mti and Mr Gillingham played a facilitative role in enabling Bosasa to plan for and obtain the tender. On the probabilities, the other officials in receipt of corrupt payments were similarly involved in the facilitation of the unlawful award of this tender.

1929. The flawed procurement process followed resulted in a failure to implement a supply chain procedure in compliance with regulation 16A of the Treasury Regulations for the same reasons as those given above in respect of other DCS tenders. Furthermore, the procurement process failed to comply with section 217 of the Constitution. Prima facie there may also be a case for statutory crimes committed in relation to the facilitation of this tender. The award of the tender giving rise to this contract was thus unlawful.

1930. In the light of the above, it is established that the facilitation of the award of this tender was in breach of the Constitution and legislation. The corrupt payments and other forms of gratification benefitted Mr Mti, Mr Gillingham, their family members and the other officials of the DCS who received the corrupt monetary payments. The facilitation of the unlawful award of the tenders was also intended to benefit Bosasa, its

associates and the Watson family. This amounts to conduct as contemplated in TOR 1.4.

The extension of the catering contract

1931. Insofar as the 2004 extension of the catering contract to seven other satellite correctional centres is concerned, Mr Agrizzi's evidence that (i) the contract was extended without any tender process, following Bosasa's proposal in this regard to Mr Gillingham and subsequent approval by Mr Mti; (ii) the catering contract was extended without authorisation in terms of the original tender or a new tender; (iii) Ms Jolingana, then Acting Head of the Bid Adjudication Committee of the DCS, ensured that the contract was extended,[3055] and (iv) the contract was extended by Mr Mti, is uncontested.[3056]

1932. The alleged irregularities with this extension were corroborated by Mr Bloem who confirmed that the Portfolio Committee had, without success, called upon the DCS to account for the extension and the role Mr Gillingham had played in this process.

1933. The fact that the extension was borne of a proposal from Bosasa that was directed to Mr Gillingham and approved by Mr Mti, both persons in receipt of corrupt benefits from Bosasa, renders the extension of the contract and its facilitation, unlawful.

1934. The procurement process also resulted in a failure to implement a supply chain procedure in compliance with regulation 16A of the Treasury Regulations.

1935. Furthermore, the procurement process failed to comply with section 217 of the Constitution. Given that the officials involved were in receipt of corrupt payments and

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[3055] Ms Jolingana failed to respond to the Rule 3.3 notice.

[3056] Transcript, day 37, p 127.

other benefits, there may also be a *prima facie* case for certain statutory offences having been committed.

1936. In the light of the above, it is established that –

1936.1. the award of this contract was in breach of the Constitution and legislation and was therefore unlawful;

1936.2. there was facilitation of the unlawful award of this contract, on the part of Mr Mti, Mr Gillingham, Ms Jolingana and all those officials of the DCS involved in procurement and implementation who were receiving corrupt payments from Bosasa; and

1936.3. those involved in the facilitation acted in breach of the Constitution and legislation and aimed to benefit themselves, in the case of Mr Mti and Mr Gillingham, their families, Bosasa and the Watson family.

1937. TOR 1.4 refers to the facilitation of the unlawful award of tenders. On a purposive interpretation, this must include the extension of a contract concluded pursuant to the award of a tender (particularly a tender which had itself been awarded unlawfully).

1938. The focus must now turn to the particular individuals named in the testimony of the various Bosasa witnesses as having facilitated the unlawful award of tenders, including the respects in which they benefitted from the corruption.

Mr Mti

1939. Given that Mr Mti was implicated in the evidence of Messrs Agrizzi, le Roux, Vorster, van Tonder, Blake and Venter, he was issued with five notices in terms of rule 3.3 as detailed above. He was also issued with a regulation 10(6) directive. Mr Mti refused to

comply with the directive, primarily because he stated that it infringed his right to remain silent and his right to a fair trial. Mr Mti's position and the Commission's response is set out above.

1940. There is *prima facie* evidence that called for an answer from Mr Mti. The evidence is sufficient to make adverse findings against Mr Mti.[3057] The evidence includes the following:

1940.1. Cash payments were made to Mr Mti in exchange for his facilitation of the unlawful award of tenders to Bosasa in the manner described above.

1940.2. In addition, Mr Mti was provided with funds to purchase luxury clothing items. Mr Agrizzi's evidence on the amounts paid to Mr Mti and the type of goods purchased for Mr Mti was not superficial,[3058] and the level of detail provided presents a compelling basis for establishing that Mr Mti received these benefits. This evidence is also supported by the copies of extracts from Mr Agrizzi's black book that were provided to the Commission and record that Mr Mti was paid cash by Mr Agrizzi and/or Mr Watson on several occasions. The extracts also suggest that Mr Mti was given cash to pay to other persons, including Adv Mrwebi, Adv Jiba, Ms Lepinka, Ms Jolingana, and Grace Molatedi.[3059] No findings are made against Grace Molatedi as she was not issued with a rule 3.3 notice. Nor are any made against Adv Mrwebi for the reasons already given. The evidence reveals that Ms Jolingana facilitated the extension of the catering contract. She was issued with a rule 3.3 notice and

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3057 A similar approach can be taken in criminal proceedings, for example, see Osman and Another v Attorney-General, Transvaal 1998 (4) SA 1224 (CC) at para 22.

3058 Transcript, day 38, pp 58-77; transcript, day 76, pp 80-85.

3059 See annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 85 – 91. The position in relation to Adv Mrwebi, Adv Jiba and Ms Lepinka is dealt with below.

failed to respond. Accordingly, an adverse finding may be made against her, given that she has failed to dispute the evidence against her.

1940.3. Bosasa paid for the furnishing of Mr Mti's house through the Taverners' company.[3060]

1940.4. Security upgrades were conducted at Bosasa's cost to Mr Mti's home. This evidence was corroborated by Mr le Roux in his further affidavit.[3061] Mr le Roux produced invoices for work done at Mr Mti's homes in Greenbushes Plot and Colchester in Port Elizabeth. The updated estimated cost of this project was R417,980.19. This comprised equipment, accommodation, labour and vehicle travel.[3062]

1940.5. Mr Vorster's evidence regarding the purchase of a Volkswagen Touareg V8 for Mr Mti demonstrated that it coincided with the timing of the award of the access control contract (April 2005) and the fencing contract (November 2005) to Bosasa.[3063] An inference can therefore reasonably be drawn that the vehicle was intended to be a *quid pro quo* for Mr Mti's facilitation of the securing of these contracts.

1940.6. Mr Agrizzi testified that Mr Mti facilitated the award of 2010 FIFA World Cup security plan to Sondolo IT following receipt of his monthly R65,000 cash payment from Mr Watson.[3064] Mr Agrizzi had been requested by Mr Watson to prepare a security plan and to assist Mr Mti. Mr Agrizzi was present at the

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3060 Transcript, day 38, p 64.

3061 Exhibit T21.

3062 Exhibit T21, p 18.

3063 Transcript, day 43, pp 124-125.

3064 Transcript, day 76, p 86.

meeting when Mr Watson handed Mr Mti a grey security bag containing his monthly payment of R65,000.

1940.7. Mr Agrizzi testified that Mr Mti received regular payments from Bosasa for as long as it maintained contracts with the DCS.[3065]

1940.8. Mr Agrizzi also testified that holiday costs, the education costs of Mr Mti's children and the fee for a security guard outside Mr Mti's residence were paid for by Bosasa.[3066] The holiday and travelling costs were paid for by Bosasa, through an account opened at Blake's Travel in the name of JJ Venter. Mr Blake confirmed that reservations were made for Mr Mti and his family through the "Venter", "Bosasa VIP", and "Mr Agrizzi" accounts. These bookings were predominantly paid for in cash by Mr Agrizzi or his wife. Mr Blake attached a spreadsheet to his affidavit, together with supporting invoices, reflecting the travel booked for Mr Mti and his family for the period October 2012 to January 2017 to a total value of R1,234,481.11.

1941. In addition, the SIU Report records that Mr Mti received benefits following the award of the four contracts (the kitchens/catering, access control, fencing, and television contracts) and the extension of the catering contract.

1942. Apart from the other evidence of facilitation, on the basis of the inducements paid and gains provided to Mr Mti, the inference may be drawn that Mr Mti facilitated the unlawful awards and the unlawful extension of the catering contract. It would be most improbable that Bosasa and its officials would continue to lavish Mr Mti with payments and other substantial material benefits at considerable expense, if he was not

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3065 Transcript, day 38, pp 80-81.

3066 Transcript, day 38, p 79.

facilitating the award of the tenders that formed a substantial part of Bosasa's business.

1943. In the light of the above, there is undisputed evidence that Mr Mti breached the Constitution (section 217 and 195) and legislation (the PFMA and PRECCA) by facilitating the unlawful award of tenders by the DCS to benefit his own family, the Watson family, Bosasa and its associated business entities.

1944. Mr Mti's conduct also involved the breach of the following obligations as an accounting officer:

1944.1. ensuring that the DCS maintained an appropriate procurement system which was fair, equitable, transparent, competitive and cost-effective;[3067] and

1944.2. taking effective and appropriate steps to *inter alia* prevent unauthorised and irregular expenditure.[3068]

1945. Mr Mti's failure to comply with section 38 of the PFMA also amounts to a *prima facie* case of a criminal offence under section 86 of the PFMA. It can also be inferred from the evidence that Mr Mti was aware of the conduct of Mr Gillingham. Mr Mti also failed to manage the investigation and correction of financial misconduct in the DCS as required in terms of Regulation 4.1 of the Treasury Regulations.

1946. In addition to the Constitutional and statutory breaches detailed above, the evidence reveals that Mr Mti facilitated the awarding of tenders to benefit himself and his family

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3067 Not all of the general responsibilities prescribed by section 38 have been referenced, this section is limited to the responsibilities relevant to the assessment of the issues herein.

3068 Section 38(1)(c) of the PFMA.

in contravention of section 3, 4, 12 and 13 of PRECCA and there is a *prima facie* case of a criminal offence against him in this regard.

1947. Insofar as the commission agreement alleged to have been concluded between Mr Watson and Mr Mti, and witnessed by Mr Perry, is concerned,[3069] in the absence of this agreement having been produced before the Commission, Mr Agrizzi's failure to particularise the nature and purpose of the commission agreement, and the fact that Mr Perry was not issued with a notice in terms of rule 3.3, there are insufficient facts to conclude that such agreement existed.

1948. In many instances, the evidence suggests that, in his capacity as CFO, Mr Gillingham was more closely involved than Mr Mti in the management of the negotiation of contracts and preparation of tenders for various contracts with the DCS. Although Mr Mti may have delegated such duties to Mr Gillingham, in terms of section 44(2)(d) of the PFMA[3070] it did not divest Mr Mti of responsibility concerning the exercise or performance of that delegated power or assigned duty. Had Mr Mti come across unlawful conduct by Mr Gillingham (as he must on the overwhelming probabilities have done), it was open to him in terms of section 44(3) of the PFMA[3071] to override and reverse any unlawful decisions made or steps taken by Mr Gillingham. There is no evidence that he did so.

3069 Transcript, day 38, pp 167-168.

3070 Section 44(2)(d) provides in relevant part as follows:

"(2) A delegation or instruction to an official in terms of subsection (1)-

(a) ....

(d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty."

3071 Section 44(3) provides as follows:

"The accounting officer may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision."

1949. Moreover, the probabilities are strong that Mr Mti was complicit with Mr Gillingham in the facilitation of the unlawful award of the tenders, given the extent to which inducements were paid and gains provided to Mr Mti by Bosasa. This complicity included providing Mr Gillingham with protection from investigation, discipline and prosecution, at the highest level within the DCS.

1950. Mr Mti facilitated the unlawful award of tenders in breach of the Constitution and legislation in order to benefit himself, his family, Bosasa and its associates and the Watson family. Mr Mti's conduct thus falls squarely within that contemplated by TOR 1.4.

1951. With reference to TOR 7, in addition to offences already referred to, there is a prima facie case against Mr Mti in respect of at least the following offences:

1951.1. the general offence of corruption in section 3 of PRECCA;

1951.2. offences in respect of corrupt activities relating to public officers in section 4 of PRECCA;

1951.3. offences in respect of corrupt activities relating to members of the prosecuting authority in section 9 of PRECCA;

1951.4. offences in respect of corrupt activities relating to contracts in section 12 of PRECCA;

1951.5. offences in respect of corrupt activities relating to procuring of tenders in section 13 of PRECCA;

1951.6. the common law offences of fraud, theft and perjury.

1952. Mr Mti is already facing pending charges of corruption, fraud and conspiracy to commit fraud. The matter is nonetheless referred to the relevant authorities for investigation and prosecution, to the extent that the existing charges do not cover any of the conduct on the part of Mr Mti set out in this report.

Mr Gillingham

1953. Mr Gillingham was summonsed to appear before the Commission but failed to do so. For the reasons given above, an adverse inference may be drawn from his failure to rebut the evidence that was given against him.

1954. In the absence of Mr Gillingham appearing before the Commission to dispute the evidence implicating him, there is undisputed evidence that Mr Gillingham breached the Constitution and legislation by facilitating the unlawful award of tenders by the DCS to benefit himself, his family, the Watson family, Bosasa and its associated business entities.

1955. The evidence of illicit facilitation in return for inducements and gain has to some extent been set out above in the analysis of the successive tenders. The following evidence is also relied upon to reach these conclusions:

1955.1. Bosasa purchased various vehicles for Mr Gillingham and members of his family.[3072] The timing of these benefits is sufficiently linked to the award of the first catering contract to substantiate his corrupt facilitative role. The SIU Report corroborates that Mr Gillingham received benefits from Bosasa after the award of this tender.

[3072] Transcript, day 38, pp 105-106; transcript, day 43, pp 83-84, 108-109, 114-115.

1955.2. The integrated computerised offender management system and television contract was awarded in March 2006. Mr Vorster's evidence is that in April 2006, he assisted in negotiating a deal to purchase a vehicle for Mr Gillingham's son which vehicle was ultimately funded by Mr Mansell.[3073] The timing of this financial assistance is sufficiently linked to the award of this contract to justify an inference that it was a reward for the facilitation of the award of the contract.

1955.3. Mr van Tonder corroborates Mr Agrizzi's evidence that Mr Gillingham offered his cooperation in arranging for Bosasa to be awarded the various tenders and tender extensions with the DCS in return for assistance in building a house.[3074] There is no evidence before the Commission to suggest that there was a lawful cause for this benefit to Mr Gillingham.

1955.4. The assistance provided to Mr Gillingham to purchase vehicles for himself and his family has been confirmed by Mr Agrizzi, Mr Vorster and Mr van Tonder. Mr Vorster and Mr van Tonder's evidence on the conclusion of a sham loan agreement between Mr Vorster and Mr Gillingham to advance him an amount of R180,000 to purchase a vehicle is further corroborated by documentary evidence.

1955.5. Mr Blake also confirmed that travel and vehicle hire were booked and paid for by Bosasa for Mr Gillingham and his family, and that Blake's Travel did not receive any direct payment from Mr Gillingham or his wife for any of the bookings.[3075] There is no compelling reason to reject this evidence, particularly

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3073 Transcript, day 43, p 108.

3074 Transcript, day 43, p 122.

3075 Exhibit T18, paras 42-43, pp 19-20.

in light of Mr Gillingham's failure to refute the evidence before the Commission.

1955.6. Mr Agrizzi testified that he was instructed to draft and conclude fictitious loan agreements between Mr Gillingham and various Bosasa employees for all of the benefits that Mr Gillingham had received unlawfully.[3076] Mr Agrizzi was also instructed by Mr Watson to prepare an official declaration on behalf of Mr Gillingham, as a senior manager in the DCS, to "declare" such benefits. This was corroborated with a copy of the declaration in the form of a memorandum addressed to Mr Mti from Mr Gillingham and on the DCS letterhead.[3077] In the absence of Mr Mti or Mr Gillingham complying with the regulation 10.6 directives issued to them, the undisputed evidence before this Commission is that this declaration was a sham.

1955.7. Mr Agrizzi's version that Mr Gillingham received a regular amount from Bosasa in lieu of his salary following his resignation from the DCS is borne out by the video recording of the conversation in Mr Watson's vault.[3078]

1955.8. Apart from the above, the SIU Report notes in relation to each of the contracts referred to above that Mr Gillingham received financial benefits from Bosasa after the award of the tenders.

1956. It is established that Mr Gillingham facilitated the unlawful award of tenders as contemplated by TOR 1.4.

[3076] Transcript, day 38, p 109.

[3077] Transcript, day 38, pp 110-112; annexure L to Mr Agrizzi's initial affidavit.

[3078] Transcript, day 75, pp 104-105.

1957. Based on the evidence, Mr Gillingham breached the following obligations applicable to him as a senior official of the DCS:

1957.1. Section 217 and 195 of the Constitution.

1957.2. The duty to ensure that the system of financial management and internal control established for DCS is carried out within his area of responsibility as CFO.

1957.3. The responsibility for the effective, efficient, economical and transparent use of financial and other resources within his area of responsibility.

1957.4. The obligation to take effective and appropriate steps to prevent irregular expenditure.

1957.5. The obligation to comply with the provisions of the PFMA.[3079]

1958. In addition to the constitutional and statutory breaches detailed above, the evidence reveals a *prima facie* case that Mr Gillingham facilitated the award of tenders to benefit himself and his family in contravention of section 3, 4, 12 and 13 of PRECCA.

1959. Mr Gillingham facilitated the unlawful award of tenders in breach of the Constitution and legislation in order to benefit himself, his family, Bosasa and its associates and the Watson family. Mr Gillingham's conduct thus falls squarely within that contemplated by TOR 1.4.

[3079] Sections 45 and 57 of the PFMA.

1960. With reference to TOR 7, in addition to offences already referred to, there is a prima facie case against Mr Mti in respect of at least the following offences:

1960.1. the general offence of corruption in section 3 of PRECCA;

1960.2. offences in respect of corrupt activities relating to public officers in section 4 of PRECCA;

1960.3. offences in respect of corrupt activities relating to members of the prosecuting authority in section 9 of PRECCA;

1960.4. offences in respect of corrupt activities relating to contracts in section 12 of PRECCA;

1960.5. offences in respect of corrupt activities relating to procuring of tenders in section 13 of PRECCA;

1960.6. the common law offences of fraud, theft and perjury.

1961. Mr Gillingham is already facing pending charges of corruption, fraud and conspiracy to commit fraud. The matter is nonetheless referred to the relevant authorities for investigation and prosecution, to the extent that the existing charges do not cover any of the conduct on the part of Mr Gillingham set out in this report.

Other officials

Mr Cedric Frolick

1962. Mr Agrizzi testified that Mr Frolick assisted Bosasa in resolving an impasse with Mr Smith who was, at the time, Chairperson of the Portfolio Committee on Correctional

Services and was considered "anti-Bosasa". He testified that, in return for doing so, a payment was made to Mr Frolick at a meeting held with him and Mr Butana Komphela (then chair of the parliamentary Portfolio Committee on Sport) at the office park where Bosasa is situated, and that further monthly payments were made to Mr Frolick after that.[3080]

1963. Save that he firmly denies having received any corrupt payments and disputes other aspects of the detail of events, Mr Frolick confirms important aspects of Mr Agrizzi's evidence, namely that:

1963.1. Mr Frolick, had a longstanding relationship with the Watson family - Mr Frolick testified that this went back to the 1980s when he met Daniel 'Cheeky' Watson through non-racial sport and when he served as adviser to, and later, on the board of, the Eastern Province Rugby, which Mr Daniel Watson chaired from 2006/2007, and which had led to his meeting the other Watson brothers.

1963.2. Mr Frolick testified that he met with Mr Watson at Bosasa and was accompanied by Butana Komphela at this meeting - Mr Frolick however denied details of the meeting testified to by Mr Agrizzi, including the latter's presence at the meeting, and further testified that the meeting was organised between Mr Komphela and Mr Daniel Watson for purposes of viewing a youth sports facility for young offenders at Bosasa and he went along, as he often did, as a friend of Mr Komphela because of Mr Komphela's physical disability (also testified to by Mr Agrizzi).[3081]

[3080] Transcript, day 76, pp 9 – 14.

[3081] This is furthermore confirmed by Mr Khompela.

1963.3. Mr Watson was unhappy with the manner in which the Portfolio Committee treated Bosasa, and Mr Frolick was requested to facilitate a meeting with Mr Smith because he considered Mr Smith to be a colleague and friend and they stayed in the same parliamentary village. Mr Frolick, however, testified that the proposal of facilitating a meeting between Mr Watson and Mr Smith was that of Mr Komphela, after Mr Watson had said that their written requests for such a meeting had not met with success.

1963.4. Mr Frolick testified that, indeed, he facilitated a meeting between Mr Smith, Mr Agrizzi and Mr Njenje in Parliament, albeit that it was brief and not seen as successful at the time, this after Mr Watson had called Mr Frolick to say that he himself would not be able to attend.

1963.5. Mr Frolick had lunch with Mr Agrizzi and Mr Njenje in Parliament, although he denied having provided a tour, save for pointing out the assembly where the apartheid government sat.

1963.6. He said that he was called by Mr Watson at the time when Bosasa was considering litigating against the DCS relating to the failure to award the full catering tender to Bosasa in 2016/2017 and he advised Mr Watson to consider the negative impact the contemplated litigation could have on their future business relationships with government. Mr Frolick said that this advice was given to Mr Watson because he was a friend.

1963.7. Mr Frolick testified that he received travel benefits to attend rugby matches, but stated that he was under the impression that his travel was paid for by EPRU.

1964. It is clear from the above that Mr Frolick sought to assist Bosasa resolve its impasse with Mr Smith and thereby improve its relations with a Parliamentary oversight body that was concerning itself with allegations of irregularities in the award of contracts to Bosasa. It must have been known to Mr Frolick (as a member of Parliament and later House Chair of Committees, who must have kept himself well-informed about affairs within and beyond Parliament, and as a friend of the Watson family) at the time that -

1964.1. Parliamentary oversight committees have considerable powers in their capacity to expose malfeasance in public administration and dealings between the public administration and the private sector;

1964.2. exposing malfeasance on the part of a company benefitting from it could well result in the cancellation of contracts deriving from it or the non-renewal of such contracts;

1964.3. Bosasa had contracts with the DCS and would inevitably have sought the renewal of those contracts in later tender processes from time to time;

1964.4. there were allegations of corruption on the part of Bosasa in relation to the award of tenders to it - the Mail & Guardian had been reporting on the matter since 2007[3082] and Mr Frolick on his own version records Mr Smith's response when he approached him about meeting with Bosasa officials as follows:

> "I had a discussion with Mr Smith and he said: 'Man, you know, there are big problems surrounding this company."

[3082] This date is based on independent research on the internet. The date is referred to in the book *Troublemakers: The Best of South Africa's Investigative Journalism* edited by A Harber and M Renn first published by Jacana Media (Pty) Ltd in 2010.

1964.5. despite this response, Mr Frolick said to Mr Smith in response that *"it is important just to hear the other side"* and proposed either a private meeting or one before the committee;

1964.6. as Mr Frolick conceded when questioned by the evidence leader, he was aware that the rules governing members of Parliament would prevent them from being seen to be *"batting for one company or one individual"*;[3083]

1964.7. on his own version, the intentions of Mr Watson at the meeting at Bosasa were not in good faith - assuming Mr Frolick's version is correct that they were called to the meeting to inspect a sports facility for youth offenders, the moment Mr Watson began instead to discuss and press him for a solution to his problems with the chair of the relevant portfolio committee and to inform him that they were not ready for a viewing of or discussion about the sports facility, Mr Frolick must have become aware that he and Mr Komphela had flown all the way to Johannesburg under false pretences; the appropriate response of an innocent parliamentarian thus mislead would have been one of anger and a desire to dissociate himself from what was happening, not accommodation by exploring and offering solutions to Bosasa's problem.

1965. Taking all of this into account, on Mr Frolick's own version, there was conduct facilitating the unlawful award of tenders in breach of, at least, the oath sworn by members of Parliament in schedule 2 item 4 of the Constitution, not only to uphold the Constitution, but also to perform their work to the best of their ability, and clauses 4.1.1, 4.1.3, 4.1.4 and 4.1.5 of the code of conduct governing members of the National

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[3083] Transcript, day 275, p111.

Assembly.[3084] That facilitation stood to benefit Bosasa, its associates and the Watson family. That is sufficient to establish conduct contemplated by TOR 1.4.

1966. Of course, the averments made by Mr Agrizzi go much further than this, to include allegations of corrupt payments in return for the facilitation brought to bear by Mr Frolick. This must be considered because it determines the form that the conduct contemplated by TOR 1.4 took, and because it is relevant to the basis for any referral of the matter under Term of Reference 7 for prosecution or further investigation.

1967. Mr Agrizzi's evidence is that (i) Mr Watson presented Mr Frolick with a security bag of money at the meeting at Bosasa; and (ii) Mr Frolick received regular payments of R40,000 often through Mr Valence Watson. Mr Frolick denies this. Mr Agrizzi and Mr Frolick therefore have irreconcilable versions.

1968. Mr Frolick denies that Mr Agrizzi was present at the meeting with Mr Khompela, Mr Frolick and Mr Watson.[3085] He also disputes certain details of that visit, for example, the duration of the meeting and that Mr Khompela was driven around the Bosasa campus in a golf cart because of his disability. Mr Agrizzi found it difficult to pinpoint the year in which the meetings at Bosasa and at Parliament took place. It is so that he cannot produce documentary evidence of the payments to Mr Frolick, although that is

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3084 The code reads in relevant part as follows:

"4.1 Members must:

4.1.1 abide by the principles, rules and obligations of this Code;

4.1.2 by virtue of the oath or affirmation of allegiance taken by all elected Members, uphold the law;

4.1.3 act on all occasions in accordance with the public trust placed in them;

4.1.4 discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interests;

4.1.5 maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution; and

4.1.6 in the performance of their duties and responsibilities, be committed to the eradication of all forms of discrimination."

3085 Mr Frolick denies Mr Agrizzi was present at this meeting.

to be expected. There was also no detailed evidence of the ongoing payments allegedly made to Mr Frolick, save for the single instance where Mr Agrizzi saw monies being handed to Mr Frolick by Mr Valence Watson at the latter's home.

1969. Despite this, there are significant features of Mr Agrizzi's evidence pointing to its reliability:

1969.1. Save for the issue of whether Mr Frolick received payments from Mr Watson or Bosasa, the substantive aspects of Mr Agrizzi's evidence are not in dispute. Both the meetings that he testified about were conceded by Mr Frolick to have taken place and Mr Agrizzi's evidence as to the subject matter of the meetings was, in the main, confirmed by Mr Frolick.

1969.2. Mr Agrizzi's detail of having arranged a golf cart because of Mr Komphela's physical disability, although denied by Mr Frolick, is corroborated to a significant degree by Mr Frolick's evidence that he used to accompany Mr Komphela to meetings because of his disability and the assistance he needed.

1969.3. Mr Agrizzi has not been offered a section 204 indemnity in return for his testimony. He nevertheless provided evidence against Mr Frolick, despite such evidence implicating himself in criminal activities.

1969.4. Although not able to provide documentary evidence of the particular payments allegedly made to Mr Frolick, Mr Agrizzi was able to produce substantial documentary and other evidence, including the evidence of other witnesses, corroborating his evidence of the systemic, organised, large-scale payment of bribes by Bosasa to secure and retain contracts with organs of State.

1970. As far as Mr Frolick's evidence is concerned -

1970.1. He did not present a compelling explanation why Mr Agrizzi would seek to implicate him, i.e. there is no suggestion of Mr Agrizzi's being biased towards him or having a motive to implicate him.

1970.2. Whilst his evidence that the meeting at Bosasa was intended to deal with a sports facility for youth offenders enjoys some corroboration from the fact that he was accompanied by the chair of the Portfolio Committee on Sport and Recreation, his own version as to how he responded by going along with the request to set up a meeting with Mr Smith, is not the response expected from a busy Parliamentarian finding that he has been brought to a meeting under false pretences.

1970.3. Mr Frolick's version is self-serving. Unlike Mr Agrizzi who is already facing charges of fraud and corruption, Mr Frolick has an interest in denying the allegations against him so as to avoid further scrutiny.

1970.4. Given his admitted longstanding friendship with the Watsons, there is a reasonable basis to believe that Mr Frolick would shield them from allegations of wrongdoing and a foundation for Mr Watson to seek to persuade him to act corruptly in Bosasa's interests.

1970.5. In the circumstances where Mr Frolick faces allegations of corruption, one would have expected more than a short, formulaic confirmatory affidavit from Mr Komphela. As a close friend and colleague, surely he would have been willing to give oral testimony to corroborate Mr Frolick's evidence. At the very least one would expect an affidavit that provided a full account of events from Mr Komphela's perspective.

1970.6. It is curious that Mr Frolick obtained a confirmatory affidavit from Mr Khompela but did not, despite the seriousness of the evidence against him, attempt to obtain one from his longstanding friend, Mr Valence Watson. Mr Frolick's explanation for not doing so was that Mr Valence Watson was upset by Mr Agrizzi's evidence. This explanation is unsatisfactory. It seems more likely than not that Mr Valence Watson would have seized the opportunity to discredit Mr Agrizzi if Mr Frolick's version is in fact the correct one.

1970.7. Mr Daniel (Cheeky) Watson provided an affidavit to the Commission that confirmed the content of Mr Frolick's affidavit insofar as it related to him. Mr Daniel Watson confirms that from 2007 to 2016, he was the president of Eastern Province Rugby and Mr Frolick became involved at the request of the late Minister of Sport. He confirms that Mr Frolick travelled on behalf of Eastern Province Rugby on several occasions and attended certain test matches at the cost of Eastern Province Rugby. According to Mr Daniel Watson, in 2014 Mr Frolick brought a cheque to his offices for a flight that was arranged by Eastern Province Rugby for an acquaintance to travel. He said that any flights or accommodation were arranged by himself or Eastern Province Rugby for Mr Frolick, and that was the only knowledge that Mr Frolick had.

1970.8. Mr Frolick testified that he had assisted Mr Watson in smoothing things out with Mr Smith because he had a general interest in assisting the public resolve complaints with government officials. This explanation is expedient given Mr Frolick's longstanding relationship with the Watsons and that there are no other examples of Mr Frolick assisting general members of the public resolve disputes with members of portfolio committees.

1970.9. As discussed elsewhere, the evidence strongly suggests that Mr Smith was won over to Bosasa's cause and came to protect Bosasa pursuant to benefits corruptly conferred upon him by Bosasa.

1971. Taking all of this into account there are at least reasonable grounds for suspecting that Mr Frolick's conduct in assisting Bosasa in the respects set out above and in the summary of the evidence, was in return for payments corruptly made to him in contravention of section 3 and 7 of PRECCA. Section 7 of PRECCA deals with offences in respect of corrupt activities relating to members of the legislative authority as described in section 43 of the Constitution.

1972. With reference to TOR 7, the matter is referred to the relevant investigative authorities on the basis that there is a reasonable prospect that further investigation will uncover a prima facie case of corruption in terms of sections 3 and 7 of PRECCA.

Ms Jolingana and other DCS officials

1973. According to Mr Agrizzi, during the period from 2007 until approximately 2016 payments were made to the following DCS officials on a monthly basis: Josiah Maako; Maria Mabena; Shishi Matabella; Mandla Mkabela; Dikeledi Tshabalala; Zach Modise; and Mollet Ngubo. These officials had been identified to look after Bosasa's DCS contracts and Ms Jolingana is said to have ensured the extension of the catering contract. All of the officials are recorded in the extracts from Mr Agrizzi's black book.[3086]

[3086] See annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 85 – 91.

1974. Ms Jolingana failed to respond to the rule 3.3 notice issued to her, with the consequence that the evidence against her is undisputed.

1975. Regulation 16A.8 of the Treasury Regulations requires all officials and other role-players in a supply chain management system to comply with the highest ethical standards in order to promote mutual trust and respect, and an environment where business can be conducted with integrity and in a fair and reasonable manner.

1976. The duties resting on Ms Jolingana as acting head of the BAC included:

1976.1. recognising and disclosing any conflict of interest that may arise;

1976.2. treating all suppliers and potential suppliers equitably;

1976.3. not using her position for private gain or to improperly benefit another person;

1976.4. ensuring that she did not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act; and

1976.5. assisting the accounting officer in combating corruption and fraud in the supply chain management system.[3087]

1977. Further, regulation 16A.8.5 of the Treasury Regulations required an official in the supply chain management unit to immediately report any breach or failure to comply with any aspect of the supply chain management system to the accounting officer in writing.

[3087] Regulation 16A.8 of the Treasury Regulations.

1978. The payments to Ms Jolingana recorded in Mr Agrizzi's black book were *quid pro quo* for the extension of the catering contract. Such conduct is, in addition to the contraventions of the Treasury Regulations, *prima facie* in contravention of sections 3, 4, 12 and 13 of PRECCA for purposes of criminal liability. By receiving the corrupt payments, she benefitted herself and by facilitating the extension of the catering contract, she benefited Bosasa, its associates, and the Watson family. Her conduct falls squarely within TOR 1.4.

1979. With reference to TOR 7 there is a prima facie case against Ms Jolingana of offences under PRECCA as listed above and the matter is referred to the relevant authorities for investigation and prosecution accordingly.

1980. The remaining officials said to have received cash payments from Bosasa to ensure that they continued to "look after" its contracts with the DCS were issued with notices in terms of rule 3.3. Save for Josiah Maako and Dikeledi Tshabalala, no official has challenged the evidence against them. There is therefore undisputed evidence establishing that they facilitated the unlawful award of tenders in the DCS in return for corrupt payments, as contemplated in TOR 1.4.

1981. With reference to TOR 7 there is a prima facie case against these officials of offences under sections 3, 4, 12 and 13 of PRECCA and the matter is referred to the relevant authorities for investigation and prosecution accordingly.

1982. In relation to Mr Maako and Ms Tshabalala, while they have, through an attorney's letter, denied the allegations against them, they have not made an application in terms of rule 3.4, nor denied the allegations under oath. They have failed adequately to dispute the truth of Mr Agrizzi's evidence. On that basis it may be accepted that they

facilitated the unlawful award of tenders in the DCS in return for corrupt payments, as contemplated in TOR 1.4 and in prima facie contravention of sections 3, 4, 12 and 13 of PRECCA.

1983. With reference to TOR 7, there is a prima facie case of offences under the said provisions of PRECCA, and the matter is referred to the relevant authorities for investigation and prosecution accordingly.

Ms Ngwenya

1984. In Mr Bloem's evidence, he referred to a fellow Portfolio Committee member, Ms Ngwenya, having shown bias towards Bosasa during the deliberations of the Portfolio Committee on Correctional Services. According to Mr Bloem, Ms Ngwenya informed him that there was money involved in meeting with Bosasa.

1985. Mr Agrizzi testified that Ms Ngwenya was paid cash on a monthly basis in return for keeping quiet and ensuring that the negative public press on Bosasa and scrutiny by the Portfolio Committee on Correctional Services would not prevent it from getting new business. According to Mr Agrizzi, Ms Ngwenya lived close to Bosasa's office and would collect her payments there when he did not make the payments to her personally, or through Mr Smith.[3088]

1986. Ms Ngwenya was issued with a notice in terms of rule 3.3 on 28 February 2019. She has not made an application in terms of rule 3.4 for leave to cross-examine either Mr Agrizzi or Mr Bloem, or to present evidence at the Commission. The evidence implicating her in corrupt activities and in failing to discharge her duties as a Portfolio Committee member in good faith is therefore unchallenged.

[3088] Transcript, day 37, pp 89, 91.

1987. Her conduct constitutes facilitation of the unlawful award of tenders in return for corrupt payments in breach of the Constitution (section 217 and 195), the provisions of the code of conduct for members of the National Assembly and legislation (the PFMA and PRECCA).

1988. For her and the other members of Parliament referred to above, given that they were holders of a public office, "public official" includes within its ambit a member of Parliament. Her conduct therefore falls squarely within TOR 1.4.

1989. With reference to TOR 7, there is *prima facie* case of a contravention of sections 3 and 7 of PRECCA and the matter is referred to the relevant authorities for investigation and prosecution accordingly.

Mr Vincent Smith

1990. Mr Smith deposed to an affidavit on 3 August 2020 and testified before the Commission on 4 September 2020. Mr Smith's evidence was in response to evidence given by Mr Agrizzi, Mr Richard le Roux and Mr Blake. Initially, in response to a 10(6) directive, Mr Smith had relied on his right to remain silent and right to a fair trial as a basis not to respond to the directive issued by the Commission compelling him to answer certain evidence against him.[3089] Despite assurances from the Commission, Mr Smith initially failed to place his version before the Commission in response to rule 3.3 notices dated 23 January, 28 March and 1 July 2020 (the latter was addressed to Mr Smith's daughter, Brumilda Doreen Smith), as well as the 10(6) directive.

[3089] The 10(6) directive was issued on 21 August 2019. In response, Mr Smith's legal representatives filed written submissions on his behalf regarding Mr Smith's right not to incriminate himself and to remain silent. See annexure VGS12, Exhibit T30, p 80.

1991. Ultimately, however, Mr Smith elected to file the affidavit referred to above with the Commission. His daughter did not furnish the Commission with an affidavit.

1992. In his affidavit Mr Smith provided a detailed account of how he interacted with the Commission from late January 2019 when he received the first rule 3.3 notice until he filed his affidavit in August 2020.[3090]

1993. Mr Smith also contended in his affidavit that, despite his name being mentioned so many times before the Commission, there was no evidence presented to the Commission pointing to his involvement *"in any activities where I facilitated the unlawful awarding of tenders for my benefit or the benefit of any other person, family and/or entity"*, and *"in influencing the unlawful awarding or maintenance of any tender for my own or family interest, or the interest of any entity where I have an interest"*.[3091]

1994. Mr Smith provided his account of the nature and evolution of the relationship between business and politics post-1990, as commencing when multitudes of individuals in exile or prison, including activists inside the country in hiding from the police, returned to their homes and started a process of rebuilding their personal lives. Mr Smith said that many business people saw an opportunity (for good or bad motives) to provide financial and other assistance to politicians and activists who did not have the wherewithal to re-establish their personal lives. According to Mr Smith, so began a relationship *"characterised by inherent conflict"* between *"business generally, government and individuals who are public representatives"*. Mr Smith identified the Watson brothers as members of the "patriotic bourgeoisie".[3092]

3090 Exhibit T30, paras 18-45, pp 7-16.

3091 Exhibit T30, para 15, p 7.

3092 Exhibit T30, paras 46.1 – 46.4, pp 16-17.

1995. Mr Smith explained in his affidavit that it was in the early days, post-1990, that he first met Mr Watson while working on re-establishing ANC branches in the greater Johannesburg area. Mr Smith indicated that Mr Watson assisted with the financing of some of the community development projects and that he also, on a personal level, received financial assistance from Mr Watson from time-to-time, long before he was deployed to Parliament in 1999. For Mr Smith, it was not unusual to call on Mr Watson for assistance as and when he needed to, even after he had become a parliamentarian. According to Mr Smith, this was never in any way a *quid pro quo* exchange. Mr Watson indicated to Mr Smith that he should liaise with Mr Agrizzi when Mr Watson was unavailable to attend to Mr Smith's requests, which is when a line of communication was opened between Mr Agrizzi and Mr Smith.[3093]

1996. Mr Smith acknowledged that he was aware of the various allegations of corruption against Bosasa. He was asked why, despite knowing these allegations, he still requested assistance from Mr Watson and Mr Agrizzi. His response was that his requests were based on the fact that at the time he was no longer active in the Portfolio Committee on Correctional Services, that he always maintained a distinction between the company, Bosasa, on the one hand, and Mr Watson and Mr Agrizzi, on the other, and that the separation of powers doctrine did not allow a member of parliament to influence the award of tenders and similar affairs within a government department.[3094]

1997. This was not the only time that Mr Smith relied on the separation of powers doctrine as a reason for why he could not have influenced the workings of the DCS (specifically,

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3093 Exhibit T30, paras 46.8 – 46.12, pp 18-19.

3094 Transcript, day 261, pp 59-60. Independent research reveals that Mr Smith was chairperson of the Portfolio Committee on Correctional Services from 29 April 2009 until 6 May 2014. He was an alternate member of the Portfolio Committee on Justice and Correctional Services from 20 June 2014 until 28 August 2018, and was a member of the Portfolio Committee on Justice and Constitutional Development from 28 August 2018 until 7 May 2019 (see People's Assembly www.pa.org.za/person/vincent-george-smith/#experience).

the award of tenders) in his interactions with Mr Agrizzi.[3095] In theory, the doctrine of the separation of powers may assist in preventing corrupt activities. The Constitutional Court in *In re: Certification of the Constitution of the Republic of South Africa, 1996* said:[3096]

> "the principle of separation of powers, on the one hand, recognises the functional independence of branches of government. On the other hand, the principles of checks and balances focuses on the desirability of ensuring that the constitutional order, as a totality, prevents the branches of government from usurping power from one another. In this sense it anticipates the necessary or unavoidable intrusion of one branch on the terrain of another. No constitutional scheme can reflect a complete separation of powers: the scheme is always one of partial separation."

1998. Mr Smith is correct that the doctrine encompasses the notion that legislative, executive and judicial functions are separate and distinct, and do not operate in the realm assigned to the other. However, as Montesquieu said of the doctrine of separation of powers:[3097]

> "... it will perish when the legislative power shall be more corrupt than the executive."

Parliament makes laws, but it is also entrusted with the onerous task of overseeing the executive.[3098] The doctrine assists in reducing the influence of one arm of government over another, but is not a fool proof guard against corrupt activities by individuals with no respect for the rule of law. Where Parliament fails to hold the executive accountable, whether deliberate or not, corruption can flourish. If Parliament itself is corrupt, it can actively exert corrupt influence over government departments or passively permit corruption to enter into and establish itself within the executive.

3095 Transcript, day 261, pp 169-172.

3096 Ex Parte Chairperson of the Constitutional Assembly: In Re: Certification of the Constitution of the Republic of South Africa, 1996 1996 (4) SA 744 (CC) at paras 108-109.

3097 Montesquieu, *The Spirit of the Laws, vol. 1,* trans. Thomas Nugent (London: J. Nourse, 1777), pp. 221-237.

3098 Democratic Alliance v Speaker of the National Assembly and Others 2016 (3) SA 487 (CC) at paras 14, 17.

1999. Mr Smith acknowledged that relationships of corruption can endure beyond an official's term of office. He accepted the proposition that a company engaged in corrupt activities could be involved in making corrupt payments to persons after they had left their position in Parliament, on the basis of what they had done for the company at the time when they were able to do things to benefit the company.[3099]

2000. Mr Smith denied ever being a recipient of cash payments from Bosasa. Mr Agrizzi testified that initially Mr Smith as a member of the Portfolio Committee would receive R45,000 monthly in exchange for keeping quiet and helping to manage the negative press concerning Bosasa, so as to ensure that it would not prevent Bosasa from receiving further business from the State.[3100] Mr Agrizzi testified that, at Mr Smith's request, the payments to him increased to R100,000 in 2016.[3101] Mr Agrizzi testified that he had personally handed the cash to Mr Smith on various occasions.[3102] Mr Smith did not deny meeting with Mr Watson and Mr Agrizzi, but claimed that he did so on a social basis when he was in Johannesburg. He denied receiving payments at these meetings, frequent or otherwise.[3103] Mr Smith's name also appears in Mr Agrizzi's black book, as "Vincent Smith 100,000".[3104]

2001. Mr Smith denied that the assistance he received from Mr Watson and Mr Agrizzi was ever on a *quid pro quo* basis.[3105] He relied on minutes of meetings of the Portfolio Committee, which in his view reflect his position as being consistently against outsourcing from 2009 to 2013. Mr Smith reasoned that it did not make sense that

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3099 Transcript, day 261, pp 169-172.

3100 Transcript, day 37, pp 85, 87.

3101 Transcript, day 37, pp93-94.

3102 Transcript, day 37, p 95.

3103 Mr Smith's affidavit, paras 59-63, 76 pp 23, 26.

3104 Annexure T4 to Mr Agrizzi's Initial Affidavit, p 586.

3105 Mr Smith's affidavit, paras 59-63, 76 pp 23, 26.

Bosasa would have paid him to be soft on them, in circumstances where he remained harshly against outsourcing.[3106] Whilst Mr Smith maintained that he held a strong view in this respect, he was not able to point to an instance where he singled out Bosasa for criticism.[3107]

2002. Mr Smith was unable to provide an explanation for WhatsApp messages exchanged between Mr Watson and Mr Agrizzi, in late 2016 or early 2017, wherein -

2002.1. both Mr Watson and Mr Agrizzi mentioned having received phone calls from Mr Smith;

2002.2. Mr Watson referred to a meeting Mr Smith told him he was to have the next day with "ZM", in all probability Zach Modise, then National Commissioner of Correctional Services and Mr Smalberger, a senior manager in the DCS, the outcome of which Mr Watson should await *"until Tuesday"*;

2002.3. Mr Agrizzi mentioned advice received from Mr Smith to *"continue the prep meetings drafting documents"* and that *"we will convene on Tuesday at 14:00 then review our approach and adjust the three pronged strategy"*, but that Smith *"didn't say should halt it"*;

2002.4. Mr Watson confirmed the three pronged approach as being *"our approach, Vincent's approach and Cedrick's approach"*;

2002.5. Mr Watson explained *"it is for the meeting on Tuesday to give us more information on how to approach this thing. This is why he is having a meeting*

3106 Transcript, day 261, p 69.

3107 Transcript, day 261, p 70.

with Smallburger to give us more information on what's taken place in DCS".[3108]

2003. This evidence points strongly towards the giving by Mr Smith (and Mr Frolick) of assistance constituting a clear *quid pro quo*. Mr Smith said that at the time he was no longer Chairperson of the Portfolio Committee and that he was not privy to what Mr Agrizzi and Mr Watson were discussing. However, his long spell as chair of the Portfolio Committee and his senior position in the ANC would have given him access to the senior officials in the DCS. The provision of inside information about what was taking place internally within the department is a clear *quid pro quo*. Mr Smith said that he needed more context to respond in relation to this exchange of messages. However, a public official whose conduct was consistently beyond reproach would easily be able to explain away evidence of this nature.

2004. Mr Smith admitted that Bosasa installed security upgrades at his residence, following a burglary that took place in 2014. He admitted that he did not pay for the installation. According to Mr Smith, he requested the invoice on various occasions so that he could make payment but that it was not forthcoming. Mr Smith also admitted that, after the installation, he would contact Mr Agrizzi or Mr le Roux if there was a fault with the system, which would be attended to. Mr Smith disputed that the value of the security installation was R200,000 as alleged by Mr le Roux.

2005. In Mr Smith's affidavit, he stated that he had contacted Mr Watson for some advice after the burglary, given Mr Watson's businesses' involvement in the security industry. During his evidence, Mr Smith indicated that he had canvassed at least three organisations for quotations and that Mr Watson's company was one of them. Mr Smith did not see any conflict of interest in contacting Mr Watson because at that time he

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[3108] Mr Agrizzi's affidavit in reply to Mr Smith's affidavit, annexure AG1.1, pp 357-360.

was no longer active in the Portfolio Committee and because he thought that the separation of powers did not allow for such influence.[3109] Mr Smith's explanation of this as an innocent, legitimate transaction faces the following difficulties:

2005.1. no evidence was put up of the other quotations that he had sought;

2005.2. he remained an ordinary member of the Portfolio Committee of Justice and Correctional Services at the time[3110] and there can be no doubt that an ordinary member of the Committee who had for several years served as its chairperson and represented the majority party in Parliament would continue to wield a considerable amount of influence;

2005.3. in any event, if there had been facilitative conduct during his time as chairperson, there is no reason why benefits would not continue after that time and there is no logical reason why the benefits would have to precede or coincide with facilitation;

2005.4. the fact that Mr Smith testified that he requested an invoice for the installation on various occasions contradicted what he stated in his affidavit i.e. that he had received financial assistance from Mr Watson on various occasions and that it was not unusual, even after he became a Parliamentarian, to call on Mr Watson's assistance as and when he needed to, although it was never a *quid pro quo* exchange;[3111]

3109 Transcript, day 261, pp 169-172.

3110 Independent research reveals that Mr Smith was chairperson of the Portfolio Committee on Correctional Services from 29 April 2009 until 6 May 2014. He was an alternate member of the Portfolio Committee on Justice and Correctional Services from 20 June 2014 until 28 August 2018, and was a member of the Portfolio Committee on Justice and Constitutional Development from 28 August 2018 until 7 May 2019 (see People's Assembly www.pa.org.za/person/vincent-george-smith/#experience).

3111 Exhibit T30 para 36.10 p 19. In this regard, Mr Smith said that he could recall two instances when he requested assistance from Mr Watson during the time that he was a member of parliament (although the details were not provided or canvassed in his evidence).

2005.5. in any event, as soon as there had been allegations of corruption against Bosasa in an official report of the SIU during the time when he was Chair of the Portfolio Committee, which had been deliberated upon in the Committee, he should, from that time onwards, have been scrupulous in ensuring that he neither received, nor could be perceived to have received, any benefit in any form whatsoever from Bosasa or any of its senior office bearers or employees. A clean break was all the more necessary where Mr Smith had a personal friendship and political association with Mr Watson. This would have required him not to enter into any transaction of whatsoever nature with Bosasa, Mr Watson or Mr Agrizzi, whether or not quotations were sought from other security system service providers;

2005.6. in September 2018 Mr Smith publicly responded to, amongst others, the evidence that the security installation at his home had been paid for by Bosasa. A newspaper reported on his response, referring to the payment in respect of his daughter's university tuition, discussed below, and went on to quote Mr Smith as saying -

> "I deny any further assistance, financial or otherwise, including the installation of CCTV cameras at my home from him [Mr Agrizzi] or any other person or company. The cameras that are at my home were paid for by myself."[3112]

2005.7. The following comments are apposite in relation to this public statement:

2005.7.1. On Mr Smith's own evidence before the Commission, the statement is dishonest.

[3112] This corresponds verbatim with the version of the press statement released by Mr Smith on 4 September 2018, which is recorded at https://www.ancparliament.org.za/content/media-statement-anc-mp-mr-vincent-smith.

2005.7.2. Before the Commission, he volunteered that he received financial assistance from Mr Watson before and after he became a member of Parliament - the statement is not consistent with this.

2005.7.3. He also admitted that he received assistance in the form of the hiring by Bosasa of a vehicle for his daughter on three occasions - the statement is not consistent with this.

2005.7.4. The final sentence regarding the cameras at his home having been paid for by himself must be read in context with the preceding sentence. By not providing any detail or dates, it is intended both to reinforce the preceding sentence containing his denial of any benefit whatsoever (including any CCTV cameras) and to counter the allegation that a security system had been provided to him at no cost by Bosasa. The meaning intended to be conveyed to the reader is an emphatic denial of any such installation at any time. Yet on Mr Smith's own version before the Commission, Bosasa installed the security system in 2014 and removed it following a request to Mr Watson to do so, "end of 2017 beginning of 2018" because it had "become obsolete". The last sentence in the public statement is thus a classic example of a half-truth and, read in context, is dishonestly intended to deceive as to the true position.

2005.7.5. If the installation was legitimate on the basis Mr Smith contended for in his evidence before the Commission, particularly in the face of a specific evidence of this illicit benefit, one would have expected Mr Smith in the public statement to have admitted that Bosasa had, sometime in the past, installed cameras at his home following his having obtained three quotations, that Bosasa's quote was the cheapest, that subsequent to

installation he had requested an invoice on various occasions which was not forthcoming, that those cameras had subsequently been removed and that the cameras installed at his house since 2018 had been paid for by Mr Smith. What he said in the statement amounted to a complete denial of any such installation by Bosasa, which was untrue.

2005.7.6. When I put the difficulties with his public statement to him Mr Smith said *"it's very difficult at this point"* and conceded that what I had said made sense.[3113]

2005.7.7. Mr Smith's dishonesty in the public statement undermines his assertion that he gave no *quid pro quo* in return - why deny the benefit it if was not tainted with corruptly having given something in return? It also undermines his assertion that he had canvassed quotations and had always intended to pay for the installation. If it was so, why not point this out in the public statement?

2006. There was a brief debate on when the security installation was removed from Mr Smith's residence at his instruction, January or October 2018, and whether it was because of allegations that had been published in the media in September 2018. Mr Smith said that the installation was removed in late 2017, early 2018 and it was accepted that the date reflected in the video that showed the removal could have been January 2018, and not October 2018.[3114] This does not, however, detract from the dishonesty of his public statement.

[3113] Transcript, day 261, pp 172-181.

[3114] Transcript, day 261, pp 183 – 186.

2007. Mr Agrizzi testified that Bosasa paid for Mr Smith's daughter's university fees to study overseas at the University of Aberystwyth. Both in his public statement and in his evidence before the Commission, Mr Smith said that this was a personal loan from Mr Agrizzi, to be repaid when an investment of Mr Smith's matured in 2023. Mr Smith did not dispute that -

2007.1. amounts of R267,667.90 and R395,076.00 were paid into Mr Smith's company (Euro Blitz) account in July 2015 and August 2016 respectively;

2007.2. these amounts were paid for purposes of payment of Mr Smith's daughter's university fees;

2007.3. no written loan agreement was concluded between Mr Smith and Mr Agrizzi;

2007.4. the first payment was made by cash deposit and the second payment was made through a law firm with the electronic payment referenced as "Car Accident Settlement";

2007.5. the payments were made following an email from Mr Smith to Mr Agrizzi on 11 May 2015 under the subject line *"daughter's study 2015 University of Aberystwyth"*, in which he referred to *"discussions earlier this year"* and conveyed *inter alia* that he was *"in the process of sorting out the funding requirements for her and hereby request any assistance in this regard."*

2007.6. Mr Smith did not disclose the loan to Parliament but did disclose his interest in Euro Blitz.

2008. Mr Smith testified that he had wanted the money to be paid into his company Euro Blitz's account for audit purposes and because the dividends that he would use to repay Mr Agrizzi, would be paid into the Euro Blitz account. He did so despite the fact

that the loan from Mr Agrizzi was a personal loan. Mr Smith did not declare the alleged loan between himself and Mr Agrizzi and explained that at the time there was a debate in Parliament about whether one was obliged simply to disclose one's interest in a company or whether one was obliged to refer to "line-items", as he sought to characterise the loan.

2009. Mr Smith's position was expressed as follows:

> "by the time I had left, I have not reached any conclusion [on the debate], other than saying: Here is my company. And if somebody wanted to ... go and look at the transactions, they probably could have gone to look at the transactions".[3115]

2010. Mr Smith's attempt to characterise this as a legitimate, arms-length transaction faces the following difficulties:

2010.1. As Mr Smith conceded, the position in as far as Parliament is concerned is that there is nothing that Mr Smith did to disclose to Parliament that he had been given a loan personally and that there was nothing indicating that Mr Agrizzi had given a loan to Euro Blitz.

2010.2. Mr Smith also accepted that a person inspecting the books of the lender, would see the name of an unknown company and would not have any reason to check whether it had been declared, in the same way that they would have done if they saw Mr Smith's name, a prominent person, on the books.

2010.3. Initially, Mr Smith had testified that he had provided Mr Agrizzi with a copy of the valuation of his shares as security regarding Mr Smith's ability to pay Mr Agrizzi. However, when Mr Smith provided a copy of the valuation to the Commission (during a lunch break and after his evidence that he had given a

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[3115] Transcript, day 261, pp 130-131.

copy to Mr Agrizzi in 2015), it was apparent that the valuation was dated 2017. Mr Smith admitted that he could not have shown the valuation to Mr Agrizzi and said that he had only shown the quantum of shares that he held to Mr Agrizzi. On Mr Smith's version, Mr Agrizzi thus advanced him a loan without any form of security or written assurance as to Mr Smith's ability to repay the loan and, in particular, without having seen the Rand value of the shares referred to.[3116]

2010.4. Mr Smith admitted that R600,000 was a lot of money to request from an individual.[3117] Mr Smith was questioned by the Chairperson as to why he was not concerned that Mr Agrizzi, as a high ranking official at Bosasa, a company that he knew to have faced allegations of corruption, was paying a large amount of money to him in cash. Mr Smith said that he did not register it that way at the time. He said that maybe it "should have rung a bell" but that at the time it "never registered either way".[3118]

2010.5. Mr Smith refused to answer a question regarding his agreement with Mr Agrizzi on the interest to be paid on the loan because he said that he had been advised not to answer the question as it could potentially incriminate him. On two previous occasions when he had been asked about the terms of interest, Mr Smith did not answer the questions directly and merely stated that there had been no written loan agreement.[3119]

2010.6. Mr Smith's use of his company for a personal loan contradicts his repeated emphasis on separating the individual from the institution/company. When

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[3116] Transcript, day 261, pp 99-103.

[3117] Transcript, day 261, pp 84-86.

[3118] Transcript, day 261, pp 113-114.

[3119] Transcript, day 261, pp 83, 85.

specifically questioned about the fact that Mr Watson was seen as "Mr Bosasa" by various witnesses who had given evidence, Mr Smith said that he distinguished between Mr Watson and Bosasa but that, in hindsight, the lines were blurred.[3120]

2010.7. Mr Smith was unable to provide a reason why Mr Agrizzi would say that the money paid for Mr Smith's daughters' university fees was paid as a bribe and not a loan. It is improbable that Mr Agrizzi would have said that such a large sum of money was paid as a bribe if it was in fact a loan to Mr Smith, particularly when considering that -

2010.7.1. this evidence would deprive Mr Agrizzi of any basis for claiming repayment of the money; and

2010.7.2. Mr Agrizzi's evidence implicated himself in criminal activities in circumstances where he was already facing criminal charges.

2010.8. Mr Smith's email seeking assistance in the payment of his daughter's university fees makes no mention whatsoever of a loan.

2010.9. There is no evidence that the money was paid as a loan. There is no evidence of an agreed interest rate. Mr Smith's evidence as to repayment terms is flimsy and is undermined by the failure to put up the written evidence of the value of the shares alleged to provide an assurance of his capacity to repay the loan.

2010.10. In any event, if there was facilitation of the kind contemplated in TOR1.4, it would remain unlawful if the *quid pro quo* took the form of a loan on favourable

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[3120] Transcript, day 261, pp 153-156.

terms. Absent any evidence regarding an arms-length rate of interest, on Mr Smith's own version, it was a favourable loan, not at arms-length.

2011. Mr Smith admitted that his daughter made use of a rented vehicle that Bosasa facilitated and paid for on three occasions at an approximate cost of R26,000 and that he did not disclose this to Parliament.[3121] Mr Smith sought to justify this on the basis that it was a minor favour and remarked that, if he was receiving the monthly payments that were alleged, he would have paid for this himself out of those funds. The difficulties with his explanation are these:

2011.1. the benefit is clearly one that was required to be disclosed in terms of the code of conduct governing members of the National Assembly;

2011.2. it was clear from Mr Smith's evidence that he was aware that this benefit was coming from Bosasa, and not from either Mr Watson or Mr Agrizzi - this undermines his evidence that he drew a clear and consistent line between Mr Watson and Mr Agrizzi on the one hand and Bosasa on the other;

2011.3. when faced with a complaint of having received a bribe, a *de minimis non curat lex* defence would not justify payment or receipt of a benefit to the value of, R26,000;

2011.4. his attempt to use his admission of the benefit in relation to the car hire as a basis for disputing the monetary payments is unconvincing and may well point the other way i.e. that Mr Smith was a person who was on the take in respect of whatever was on offer from Bosasa.

[3121] Transcript, day 261, pp 163-166.

2012. What emerges from the evidence is that Mr Smith clearly received benefits that were paid for by Bosasa, including money that was used to pay for his daughter's university fees and car hire as well as security upgrades at his home. Having regard to the many difficulties in his version in relation to these benefits listed above, his attempt to suggest that these were at arms-length and legitimate does not withstand scrutiny. The benefits were corruptly conferred on him. This is so before one even gets to the alleged monthly cash payments of R45,000 and, later, R100,000, which Mr Smith disputes. These are addressed below.

2013. On a consideration of the evidence, in the main Mr Smith does not dispute the receipt of illicit benefits other than the monthly payments, but that he facilitated the unlawful awarding of tenders by organs of state so as to benefit any family or individual. In this regard the following must be taken into account:

2013.1. Most of Mr Agrizzi's evidence in relation to Mr Smith was corroborated by Mr Smith himself. Mr Agrizzi's evidence that Mr Smith was brought onside and dropped the hostility that was previously shown by him in his capacity as chair of the Portfolio Committee must therefore be taken seriously.

2013.2. Mr Smith's main answer to this is that he was unrelenting in his opposition to outsourcing. However, notwithstanding his alleged stance in this regard, the reality is that, during his tenure as chairperson, Bosasa retained 60% of the catering contract (upon its renewal), while its other contracts remained intact, and, of particular importance, the SIU investigation which had earlier formed the subject matter of scrutiny in the Portfolio Committee, ground to a halt.

2013.3. The evidence of Mr Frolick's intervention to enable a meeting between Mr Smith and Bosasa representatives was largely common cause, as was the evidence of the subsequent meeting at Parliament (less successful) and in

Johannesburg (on the probabilities, more successful). It is odd that the chairman and members of a Portfolio Committee would agree to meet with a stakeholder in Johannesburg in a hotel where that stakeholder had, to the knowledge of the Committee, quite recently been accused of serious corruption. It does not appear to be justified even to have a meeting in a hotel. It is difficult to see why members of the Portfolio Committee would have had to go and meet a stakeholder accused of corruption in a hotel instead of dealing with such stakeholder in an official Portfolio Committee meeting in Cape Town. What legitimate purpose would there have been for members of a Portfolio Committee to meet a company alleged to be engaged in corruption in hotel rooms instead of calling them to a proper Portfolio Committee meeting and questioning them about such allegations.

2013.4. Taking into account the non-cash benefits alone, it is unlikely that an organisation would spend several hundred thousand rand on one person, without expecting something in return.

2013.5. Mr Smith conceded that he could not identify a single instance of his having singled Bosasa out for criticism subsequent to the meetings with Mr Watson and Mr Agrizzi. This too tends to point to a *quid pro quo* having been provided. In the main, what was expected of Mr Smith by way of a *quid pro quo* was <u>not</u> to act i.e. not to criticise Bosasa and not to scrutinise their activities or call them to account. It was therefore not difficult for him to respond in the manner expected by Bosasa.

2013.6. In any event, the WhatsApp exchange between Mr Watson and Mr Agrizzi points to active involvement on the part of Mr Smith in the facilitation of the award of tenders. At the same time as the WhatsApp exchange, in late 2016,

a tender was advertised for the catering contracts in the DCS. Zach Modise was the Commissioner at the time. Mr Agrizzi testified that he was concerned about the catering tender that Bosasa was trying to retain, that he had received information that Bosasa was the cheapest and should have been awarded all ten management areas but that two areas had been awarded to other companies. At the time, Bosasa only had received contracts for seven of the ten management areas.[3122]

2014. It may be inferred that Mr Smith provided facilitation of the unlawful award of tenders as contemplated by TOR 1.4.

2015. The question then is whether Mr Smith in doing so breached or violated the Constitution or any relevant ethical code or legislation.

2016. The offence of corruption requires that Mr Smith must have had the intention of acting in a certain manner in return for the gratification. The gratification must be accepted with a certain aim, which is broadly defined under PRECCA. It includes influencing another person to act in a manner that amounts to the biased performance of any powers or functions arising out of a constitutional, statutory or other legal obligation or that amounts to abuse of a position of authority or amounts to any other unauthorised or improper inducement to do or not to do anything. Based on the evidence before the Commission, read with the presumption contained in section 24(1) of PRECCA, gratification (in the form of the benefits identified above) was accepted by Mr Smith in order to achieve one or more of the aims set out in the definition. A reasonably diligent and vigilant person in Mr Smith's position (having the knowledge and experience expected of a member of parliament) would have known or suspected that the benefits

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[3122] Mr Agrizzi's affidavit in reply to Mr Smith's affidavit, para 12, pp 333-334. In 2016/2017, Mr Smith was an alternate member on the Portfolio Committee; see Mr Smith's affidavit, para 6, p 3.

that were conferred upon him by Bosasa were unlawful and were given in order to induce a certain result.

2017. It is improbable that Mr Smith did not know that the assistance he received from Bosasa was on a *quid pro quo* basis because Mr Smith had, by his own admission, been shocked by the amount of corruption that the SIU alleged was associated with BOSASA and its relationship with DCS. When Mr Smith accepted the benefits from Bosasa as described above, he knew that he was receiving them from a company that faced serious allegations of bribery and corruption. Therefore, Mr Smith must have known that these benefits were being given to him for corrupt purposes.

2018. It is also improbable that Mr Smith intended to pay for the security upgrades at his residence having regard to the following:

2018.1. he had not done so for a period of four years;

2018.2. he was dishonest in a public statement about the security system;

2018.3. Mr Smith admitted that Mr Watson had assisted him in the past and he had no difficulty with such an arrangement, even when he was a member of Parliament.

2019. For the reasons set out above Mr Smith came to protect Bosasa pursuant to benefits corruptly given to him by Bosasa and, from the perspective of any prosecution, a *prima facie* case of corruption under at least sections 3 and 7 of PRECCA has been established.[3123]

[3123] Section 3 read with section 7.

2020. Mr Smith acted in breach of section 40(2) and 195 of the Constitution. He breached the oath sworn by members of Parliament to uphold the Constitution and to perform their work to the best of their ability (read with section 48 of the Constitution). Mr Smith's conduct was also in breach of clauses 4.1.1 to 4.1.5 , 5.2.1, 9.3.6 and 9.3.7 of the code of conduct governing members of the National Assembly.[3124]

2021. Mr Agrizzi's evidence that Mr Smith was one of the persons who received monthly payments, initially of R45,000 per month and later, R100,000 per month was disputed by him. A finding in this regard is not required to bring his conduct within the ambit of TOR 1.4 or for there to be a *prima facie* case of corruption. His conduct in relation to the benefits admittedly received by him is sufficient to do so. However, the question whether he received such payments is relevant to the factual basis upon which TOR 1.4 is engaged and the basis upon which any referral is made in terms of TOR 7. The following considerations need to be weighed:

2021.1. Mr Agrizzi contradicted himself as to whether it was Mr Smith or Mr Watson that developed an antipathy towards Mr Seopela attending their meetings;

2021.2. the extract from Mr Agrizzi's "little black book" received into evidence as an exhibit specifically records amongst other names "Vincent Smith R100,000";

3124 The Code reads in relevant parts as follows:

"5.2 A Member must –

5.2.1 Not accept any reward, benefit or gift from any person or body:

(i) that creates a direct conflict of financial or business interest for such Member or any immediate family of that Member …;

(ii) that is intended or is an attempt to corruptly influence that Member in the exercise of his or her duties or responsibilities as a public representative."

"9.3 The following kinds of financial interests are registrable interests and must be disclosed:

9.3.1 shares and other financial interests in companies and other corporate entities;

9.3.6 gifts and hospitality in excess of R1500 , from a source other than a family member of permanent companion or gifts of a traditional nature provided this does not create a conflict of interest for the Member;

9.3.7 any other benefit of a material nature."

2021.3. there is in Mr Smith's case documentary evidence to support Mr Agrizzi's allegation of receipt of cash payments;

2021.4. there is no other written evidence of the cash payments, although this would obviously be the reason to make use of cash payments;

2021.5. on the information before the Commission, Mr Agrizzi does not stand to gain anything by making the allegation, whereas Mr Smith benefits from his denial;

2021.6. Mr Smith's own evidence corroborated that of Mr Agrizzi in respect of major components of the evidence against Mr Smith, including the security installation, the funding of his daughter's overseas education and the provision of a hired car to his daughter during university vacations;

2021.7. Mr Smith's demonstrable dishonesty in the form of an almost blanket denial of the allegations against him when he made his public statement on 4 September 2018 renders his denial in relation to the cash payments unreliable.

2022. In the circumstances and weighing the competing considerations, it may be concluded, at least on a balance of probabilities, that Mr Smith did indeed receive the monthly cash payments testified to by Mr Agrizzi.

2023. With reference to TOR 7, Mr Smith is already facing pending charges of corruption, fraud and conspiracy to commit fraud. The matter is nonetheless referred to the relevant authorities for investigation and prosecution, to the extent that the existing charges do not cover any of the conduct on the part of Mr Smith set out in this report.

Mr Mnikelwa Nxele

2024. The evidence before the Commission is that the Regional Commissioner of the DCS in KwaZulu Natal, Mr Mnikelwa Nxele, received a monthly payment in exchange for ensuring that undue pressure was placed on Mr Petersen, the then National Commissioner of Correctional Services, and the DCS to continue the DCS's association with Bosasa.[3125]

2025. Mr Nxele's name is recorded in the extracts from Mr Agrizzi's black book.[3126] Mr Nxele was issued with a notice in terms of rule 3.3 on 24 January 2019. He did not make an application in terms of rule 3.4 for leave to cross-examine Mr Agrizzi or present evidence at the Commission. This evidence implicating him in corrupt activities and in failing to discharge his duties as an official of the DCS in good faith is therefore unchallenged. He benefitted personally. His conduct is in breach of section 195 and 217 of the Constitution, section 45 and 57 of the PFMA and thus falls within the ambit of TOR 1.4.

2026. With reference to TOR 7, this conduct gives rise to a prima facie case of corruption in terms of sections 3 and 4 of PRECCA. The matter is referred to the relevant authorities for investigation and prosecution accordingly.

2027. There is also evidence of facilitation of the unlawful award of tenders by other government departments to benefit the Watson family, Bosasa and its associated business entities. These allegations of corrupt payments in return for the facilitation of the unlawful awarding of tenders by SOEs or government departments, as contemplated under TOR 1.4, are discussed below.

3125 Transcript, day 38, p 95.

3126 See annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 85 – 91.

Contracts with the DoJ&CD

2028. Mr Seopela, whose function Mr Agrizzi described as liaising with potential clients of Bosasa and getting involved with politicians, informed Mr Agrizzi that the DoJ&CD was looking to investigate the implementation of new security systems, including access control and surveillance equipment. Mr Seopela had told Mr Agrizzi that he was well-connected with high-ranking officials in the NPA and the Hawks and that Bosasa could benefit from his interactions, which went right up to ministerial level.[3127]

2029. Mr Agrizzi testified that he was instructed by Mr Watson to make cash available to Mr Seopela for purposes of making payments to influential persons.[3128]

2030. Mr Agrizzi testified that Sondolo IT was awarded the contract with the DoJ&CD for the installation of access control across courts nationally, that the award of this contract was irregular and that certain officials received payments as lobbying fees or bribes.[3129] However, save for Mr Thobane and Ms Nyambuse, no particulars were given as to the identity of these officials.

2031. Mr Thobane[3130] and Ms Nyambuse[3131] were implicated in Mr Agrizzi's evidence as having received bribes. He testified that he had direct evidence of these payments. Ms Nyambuse and Mr Thobane's names appear in Mr Agrizzi's black book.[3132] Neither Mr Thobane nor Ms Nyambuse was issued with a rule 3.3 notice informing them that Mr Agrizzi's evidence implicated them. No adverse findings are therefore made against them. Nevertheless, Mr Agrizzi's evidence implicating Mr Thobane and Ms Nyambuse

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3127 Transcript, day 37, p 49.

3128 Transcript, day 37, p 51.

3129 Transcript, day 41, pp 31-32.

3130 Norman Thobane was an official at the DoJ&CD - see transcript, day 41, p 37.

3131 Mams Nyambuse was an official at the DoJ&CD - see transcript, day 41, p 37.

3132 Mr Agrizzi's Supplementary Affidavit, pp 87-88.

is serious and whether it is true or not needs to be investigated because, if they are given an opportunity to put their side of the story in the further investigation to be conducted by law enforcement agencies and, they either do not offer their versions or they offer versions which are not convincing the law enforcement agencies should continue with their investigations until they finalise them which might or might not lead to prosecution.

2032. Sondolo IT was also appointed to undertake the security upgrades at the SALU premises, rented by the DoJ&CD, with no tender process having been followed and the consent to their involvement not having been secured from the owner of the building, Billion Group. The Billion Group as owner of the building was responsible for the improvements and preferred to involve their own supplier. Arrangements were then made with Mr Seopela to facilitate the transaction and, later, to secure payment from the Billion Group. Mr Agrizzi testified that he gave Mr Seopela R1.9m in cash, as a fee for arranging the contract. Mr Agrizzi testified that he did not know whether Mr Seopela paid the money over to anyone.[3133]

2033. Mr Seopela was employed in Consilium as a consultant and was given access to the Bosasa VIP travel account, provided with a company credit and fuel card and access to Blake's Travel. Mr Seopela would also hire cars on the company account.[3134]

2034. Mr Seopela's stance in response to his being implicated has been dealt with above. The upshot is that the evidence against him stands undisputed. For purposes of TOR 1.4 and having regard to Bosasa's business model, persons within the DoJ&CD must have facilitated the unlawful award of the tender in return for corrupt payments. Further investigation would be required to identify who they were. For purposes of

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[3133] Transcript, day 41, p 46.

[3134] Transcript, day 37, p 45.

TOR 1.1, it may be accepted that Mr Seopela influenced the award of the tender by providing inducements or gain.

Contracts with the Department of Education

2035. Mr Agrizzi testified that Mr Mathenjwa facilitated payments for Bheki Gina's sister at the Department of Education to secure the contract for the provision of CCTV and access control systems. On the one hand, Mr Agrizzi testified that approximately R1.25m was paid as bribe money to her, but on the other hand stated that he was "out of the loop" on this tender.[3135]

2036. Mr Mathenjwa was sent a rule 3.3 notice on 31 January 2019. Mr Mathenjwa filed an affidavit, dated 6 September 2020, with the Commission in response to a 10(6) directive. In his affidavit, Mr Mathenjwa denied that he had approached Mr Agrizzi to solicit work from the Department of Education in the Northern Cape, or to make any bribe in that regard.[3136] According to Mr Mathenjwa, Mr Bheki Gina did not have a sister who worked at the Department of Education. Mr Mathenjwa denied that there was no tender process for the work undertaken by Sondolo IT for the Department of Education, Northern Cape.[3137] Mr Mathenjwa denied having any knowledge of payments being approved for Mr Gina's sister, or that he managed any contract for the Department of Education.[3138]

2037. In the absence of any particularity of the identity of the person implicated in this evidence, her position at the Department of Education and ability to influence its decision-making in the award of contracts, coupled with Mr Agrizzi's admission that he

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[3135] Transcript, day 76, pp 106-108.

[3136] Mr Mathenjwa's affidavit, p 17.

[3137] Mr Mathenjwa's affidavit, p 18.

[3138] Mr Mathenjwa's affidavit, p 19.

did not have detailed information on the award of the contract, there is insufficient evidence to make a finding on the lawfulness of the award of the contract or on the conduct of the unidentified person. The evidence is incomplete and no findings are appropriate.

Contracts with USAASSA

2038. The Universal Service Agency and Access of South Africa ("USAASSA") is a schedule 3A SOE. Its existence, functions, duties and mandate are governed by sections 80 – 91 of the Electronic Communications Act, 36 of 2005. Sondolo IT was interested in a contract that had been awarded to USAASSA to provide iPads for schools in Gauteng.

2039. Mr Agrizzi testified that, although the tender was subsequently cancelled or did not perform, an initial amount of R500,000 was paid to Mr Mzazi (director at Sondolo IT) for purposes of illegally paying procurement personnel at USAASSA for portions of the tender to be allocated to Sondolo IT.[3139] Mr Agrizzi testified that he was present in the vault when the cash was handed over to Mr Mzazi.

2040. Mr Agrizzi also testified that the accounting officer of USAASSA agreed to work together with Bosasa, in return for the illegal payment of money to him, for the extension of existing contracts and other opportunities, during a meeting with Mr Watson. Mr Agrizzi stated that he did not know what transpired with this contract subsequently.[3140]

2041. Mr Mzazi failed to respond to the rule 3.3 notice issued to him, with the consequence that the evidence against him is undisputed. That means that inducement is established for purposes of TOR 1.1. However, absent the identification of the

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[3139] Transcript, day 76, p 113.

[3140] Transcript, day 76, p 115.

recipient or evidence of the conclusion of a contract, it is not possible to establish facilitation for purposes of TOR 1.4.

Contracts with the Department of Transport

2042. The evidence presented before the Commission by Mr Agrizzi that payments were made to a certain "Mlungise" at the Department of Transport in order to secure the award of the contract for fleet management to Kgwerano, and to other officials in that Department to secure the extension of the contract, is dealt with above in discussing TOR 1.1.

2043. From the perspective of TOR 1.4, there is a lack of evidence about the identity of the persons alleged to have received corrupt payments from either Mr Leshabane or Mr Seopela and therefore of persons responsible for facilitation of the unlawful award of tenders. Further investigation would be required to ascertain their identities. No referral is made in this regard. It is up to the investigating authorities to decide whether to take the matter further.[3141]

Contracts with the Department of Health in the Mpumalanga Province

2044. Mr Agrizzi's evidence in this regard has been dealt with above for purposes of TOR 1.1.

2045. From the perspective of TOR 1.4, Mr Agrizzi's evidence was corroborated by Mr Vorster who testified that the cost of servicing Mr Netshishivhe's vehicle was booked against one of the Bosasa vehicles.[3142] Bosasa was awarded the contract. This is evidence of the facilitation of the unlawful award of tenders. In the absence of Mr

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[3141] As a starting point Vicus Luyt, Alan Chapman, Itu Moraba, Brian Gwebu, Clive Els and the Department of Transport can be contacted for further information.

[3142] Transcript, day 43, p 159.

Netshishivhe having been issued with a rule 3.3 notice, no adverse finding is made against him. Nevertheless, there is no reason why the law enforcement agencies should not, investigate this matter, starting, if necessary with seeking Mr Netshivhevhe's version if he will elect to provide it. If his explanation is such that there is no need for further investigation, that would be the end of the matter. If, however, with or without his version, a further investigation is warranted, the law enforcement agencies would decide whether to take the matter further.

Contracts with Randfontein Local Municipality

2046. Mr Agrizzi testified that, although he had been opposed to it, an unnamed official at the municipality facilitated the award of the tender for the provision of CCTV access control systems to Sondolo IT in return for a proportion of the value of the contract being paid to him and the Dahua video surveillance system being installed at his residence.[3143] Mr Agrizzi also purported to provide the Commission's investigators with the home address of the implicated official, maintaining that one could still see the Dahua System installed at the house.[3144]

2047. At the same time as dealing with this testimony, Mr Agrizzi testified that an employee of Sondolo IT, Riaan van der Merwe, approached him in March 2017 to arrange a meeting between the local CEO of Dahua, Mr Kwon, and Mr Andile Ramaphosa. Dahua was a Chinese company that manufactured these surveillance systems and was growing rapidly. Mr Agrizzi did not have faith in its products. He set up the meeting but did not attend it himself.[3145]

[3143] Transcript, day 76, p 118.

[3144] Transcript, day 76, p 118.

[3145] Transcript, day 76, pp 116-118.

2048. Mr Andile Ramaphosa filed an affidavit in response to a rule 3.3 notice[3146] in which he denied-

2048.1. that the evidence of Mr Agrizzi in itself implicated him in any corrupt or otherwise unlawful conduct; and

2048.2. ever having been contacted by Mr Agrizzi in relation to, or having attended any such meeting.[3147]

2049. Mr Andile Ramaphosa is correct on the first point and for that reason alone, no finding or referral can be made against him on this score. There are the following additional difficulties in relation to this evidence:

2049.1. No particulars are provided on the identity of the municipal official or his scope of influence within the municipality. It would however be possible to trace him using the address provided by Mr Agrizzi if that information turns out to be correct.

2049.2. Mr Agrizzi testified that there were numerous irregularities committed at the municipality but did not provide any detail of these alleged irregularities.

2049.3. The incident occurred after Mr Agrizzi had left Bosasa and his version is based on the hearsay evidence of an unidentified whistle-blower.

2050. In the circumstances, it would not be appropriate to draw a conclusion as to whether or not there was facilitation as contemplated in TOR1.4 on the part of any official of the Randfontein-Mogale City Municipality.

[3146] Note that this rule 3.3 notice did not deal with the issue of the payment of R500,000 to the "efg2" account.

[3147] Affidavit of Andile Ramaphosa dated 6 August 2019 pp 3-4 paras 8-10.

2051. A finding against Mr Andile Ramaphosa on this aspect of Mr Agrizzi's evidence would not be justified, given that no conduct falling within the terms of reference is alleged against him.

Contracts with the Department of Social Development in the North West province

2052. Mr Agrizzi testified that Ms Kgasi and Ms Mogale, officials at the North West Department of Social Services, agreed on a fictitious arrangement with Bosasa as a mechanism to generate money for electioneering purposes for the ANC. Invoices were raised by Bosasa for software that was never provided to the department, because the department already had it, or for software that was provided but which had no inherent value and had therefore not been paid for by Bosasa. Bosasa was paid R4.5 m by the department through this arrangement. The money was allegedly then handed back to be used for electioneering purposes.[3148] Mr Agrizzi testified that Mr Dlamini would raise an invoice for the software.

2053. Ms Kgasi and Ms Mogale were both issued with rule 3.3 notices, but failed to respond to them. The evidence against them is therefore uncontested by them. However, the evidence against them is, to some extent, contested by Mr Dlamini. Mr Dlamini filed an affidavit, dated 14 September 2020, in response to a 10(6) directive, in which he denied any knowledge of the inflation of invoices or drawing of cash for purposes of bribery or ever taking any cash to or from anyone. Mr Dlamini avers that it could only have been Mr Agrizzi that was responsible for inflated invoices or bribing of officials. Only Mr Agrizzi had the authority to negotiate, sign for or authorise the costing in respect of the tendering for services in any Bosasa company.[3149] According to Mr

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[3148] Transcript, day 75, p 94.

[3149] Mr Dlamini's affidavit, p 5 paras 19-21.

Dlamini, as far as the information technology system was concerned, the Department of Social Development had purchased software and therefore owned it.[3150]

2054. There is no suggestion by Mr Agrizzi that the conduct involved the unlawful awarding of tenders. The question therefore arises whether any of the terms of reference are engaged by the conduct alleged by Mr Agrizzi on the part of the officials in question. Clearly, if the alleged transaction had not been a sham one, and software was to be procured by the Department of Social Services, a tender process would have to have been followed. It would be absurd if corruption involving the abuse of procurement processes fell outside the TOR because the procurement laws were disregarded to such a flagrant degree. If the word "tenders" is interpreted to include contracts that ordinarily flow from a tender process, then the conduct complained of here is included within TOR 1.4 (and TOR 1.9), even if the contract entered into is a sham for the misappropriation of public funds. Thus, on a purposive interpretation of TOR 1.4, the conduct, from the perspective of the officials involved, constitutes facilitation of the unlawful awarding of tenders.

2055. As against the two officials, facilitation of the kind contemplated by TOR 1.4 is established at the level of reasonable grounds for a suspicion, for the reasons already given. The question then is whether the conduct of the officials in question was in breach or violation of the Constitution, any ethical code or legislation. Clearly the procurement requirements of section 217 of the Constitution would have been breached if the conduct of which they are suspected were proven. In addition, a sham contract for the provision of software concluded in order to generate money, whatever its intended use, falls within the definition of corruption.

[3150] Mr Dlamini's affidavit, p 5 para 22.

2056. Ms Kgasi and Ms Mogale's conduct may also be in breach of the following obligations resting on department officials in terms of the PFMA:

2056.1. The responsibility for the effective, efficient, economical and transparent use of financial and other resources within their area of responsibility.

2056.2. The obligation to take effective and appropriate steps to prevent irregular, fruitless and wasteful expenditure.

2056.3. The obligation to comply with the provisions of the PFMA.[3151]

2057. In the light of Ms Kgasi and Ms Mogale's failure to respond to rule 3.3 notices and their failure to make an application in terms of rule 3.4, the evidence before the Commission is such that there are reasonable grounds for suspecting that their conduct fell within the ambit of TOR 1.4.

2058. For purposes of TOR 7, there is a reasonable prospect that further investigation will uncover a prima facie case. The matter is referred to the relevant authorities for investigation accordingly.

Members of the National Executive

Thabang Makwetla

2059. Mr le Roux testified that Bosasa provided former Deputy Minister for Correctional Services Mr Thabang Makwetla, with a security installation and maintenance services

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[3151] Sections 45 and 57 of the PFMA.

to the value of more than R308,754.25.[3152] The installation was on the instruction of Mr Watson. Mr Agrizzi was not aware of the installation.

2060. A rule 3.3 notice was issued to Deputy Minister Makwetla on 18 March 2019. Mr Makwetla testified before the Commission on 19 March and 5 July 2021.

2061. Mr Makwetla did not dispute that Bosasa had installed a security system at his residence while he was the Deputy Minister of the Department. Initially Mr Makwetla testified that he did not find it strange that Bosasa would provide him with a security installation in circumstances where it had a contract with the Department and had requested his intervention on its behalf regarding its rates in terms of its contract. Mr Makwetla justified his response on the basis that he had requested a service from Bosasa that he was going to pay for. He said that, for that reason, there was no conflict of interest. He also testified that Mr Watson had requested his assistance on Bosasa's contract rates before he had raised his problem with his home security with Mr Watson.[3153]

2062. Mr Makwetla testified that at the time when Mr Watson advised him that he would not charge Mr Makwetla for the work, he was shocked because he thought that Mr Watson would appreciate that he could not make such an offer because Bosasa was doing business with the Department at the time.[3154] Mr Makwetla said that he had explained this to Mr Watson. At the time, Mr Makwetla was also alive to the previous negative reports in the media concerning Bosasa. According to Mr Makwetla, he was frustrated and worried and was caught in "an unfortunate situation" where a comrade said he

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3152 Transcript, day 44, p 95. See also exhibit T21 paras 53-67 pp 12-14.

3153 Transcript, day 364, pp 283-284.

3154 Transcript, day 364, pp 268-269.

would do him a favour that he rejected, and that Mr Watson did not want to understand his material conflict of interest.[3155]

2063. At the end of his evidence, Mr Makwetla confirmed that in hindsight what transpired was regrettable.[3156] He also admitted that he knew now that doing so was a conflict of interest but that at the time he did not know that a situation such as this would arise.[3157]

2064. Mr Makwetla confirmed that he raised the matter regarding Bosasa's rates under its contract with the accounting office of the Department.[3158] He claimed not to see any difficulty or conflict of interest in him personally interfering in contractual affairs of the Department or that it may have amounted to the improper influence of a price to be agreed upon.[3159]

2065. Under re-examination, Mr Makwetla did not dispute any material fact concerning the installation of the security system at his residence. He disputed the number of technicians that attended at his residence, the labour cost, and the number of days it took to complete the installation.[3160]

2066. Mr Makwetla's evidence was problematic in the following respects:

2066.1. Whilst one could perhaps understand the topic of a burglary at his private home might arise during a discussion about the previous festive season, it is strange that this would not come at the beginning of an official meeting during

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3155 Transcript, day 364, p 270.

3156 Transcript, day 364, p 328.

3157 Transcript, day 364, pp 296-299.

3158 Transcript, day 364, pp 282-283.

3159 Section 12 of PRECCA.

3160 Transcript, day 421, pp 51-110.

the exchange of pleasantries before the official business of the day came under discussion.

2066.2. The fact that the topic was raised following Mr Watson's request for a change in rates under the contract, seems to make matters worse, not better for Mr Makwetla. Hard on the heels of Mr Watson's request for an increase in rates came the revelation that Mr Makwetla was struggling to find a service provider for an electric fence.

2066.3. Mr Makwetla's protestation that the conflict of interest was not apparent to him because he said that he was going to pay for the service is unconvincing. The conflict was a glaring one. He was getting involved in private contractual arrangements with a company that was doing business with his department in circumstances where Mr Watson was seeking an increase in rates outside of any formal process for achieving this. If Mr Makwetla's evidence that he saw no conflict of interest in this situation is true, then, quite frankly, that is scary. Mr Makwetla was and still is a Deputy Minister. Not only that, previously he was Premier of Mpumalanga Province. What guidance would he have given to the members of his Executive Council in the Province if he, as Premier, did not know that a situation such as this constituted a conflict of interest? Mr Makwetla has had about five years to reflect on this incident since it occurred. Yet, when he gave evidence before the Commission in March 2021, he still said that he saw no conflict of interest in this scenario. If this is true, it means that he should not be occupying such a senior position in government. It means that in the Department in relation to which he is Deputy Minister, he would advise the Director General and others that there is no conflict in a situation where there is a clear conflict of interest.

2066.4. It is also strange that he did not call an immediate halt to the installation when he returned from Cape Town to his residence and purportedly found that the installation had proceeded to an advanced stage before any quotation had been provided; instead, he had arranged for his son to give access to the inside of the house for the installation to be completed.[3161]

2066.5. Mr Makwetla's explanation for his initial inaction on the basis that he did not wish to be seen to be "playing to the gallery and wanting to make [himself], you know, a better more disciplined person in terms of, you know, appearance, you, to procedure", is difficult to comprehend.[3162]

2066.6. His evidence was unconvincing where he acknowledged knowing about reports about unethical conduct on the part of Bosasa in 2009, even down to the detail of which newspaper they appeared in and that it was "massive",[3163] yet, when I asked him why he, therefore, did not completely dissociate himself from Bosasa, he said "I did not even technically understand exactly what were they saying was the problem with this BOSASA" and "all I know is that there was reports that were negative at some point and that is where it ends."[3164]

2066.7. When he purportedly sought to address the problem when knowledge of the installation became public, he only paid for what he claimed to have asked for,

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[3161] Transcript, day 364, p 268.

[3162] Transcript, day 364, pp 286-287.

[3163] The Mail and Guardian. Transcript, day 364, pp 269, 319.

[3164] Transcript, day 364, pp 319-320.

but did not suggest that he tendered the return of the balance of the installation that he had received for free.

2067. In the circumstances, Mr Makwetla's version suggesting innocent receipt does not withstand scrutiny and must be rejected. Mr Makwetla's supposed resolve to take the matter up with Mr Zuma and, later, President Ramaphosa does not detract from the fact that he had received a form of gratification from Bosasa in order to act or to exert influence on another to act and that amounts to the illegal or biased performance of a duty, or amounts to the abuse of a position of authority, or is designed to achieve an unjustified result.[3165]

2068. Mr Makwetla testified that Bosasa eventually provided him with an invoice for the security installation in the amount of R90,000 inclusive of VAT. The invoice was provided after the security installation by Bosasa had been made public. Mr Makwetla paid R25,000 for the security upgrades as he resolved to only pay for the items that he had requested be installed.[3166] The amount paid by Mr Makwetla is substantially below the amount quoted by Bosasa and that calculated by Mr le Roux.

2069. In terms of section 96 of the Constitution, a Deputy Minister may not expose him/herself to any situation involving the risk of a conflict between his official responsibilities and his private interests. Further, he must act in accordance with a code of ethics prescribed by national legislation, i.e. the Executive Members' Ethics Act and the Executive Ethics Code published in terms of section 2 of that Act.[3167]

2070. In terms of the Executive Ethics Code, Mr Makwetla was not permitted to:

3165 Section 4(1) of PRECCA.

3166 Transcript, day 364, pp 273-275.

3167 See Appendix 1.

2070.1. use his position or any information entrusted to him, to enrich himself or improperly benefit any other person;

2070.2. expose himself to any situation involving the risk of a conflict between his official responsibilities and his financial and/or personal interests;

2070.3. solicit or accept a gift or benefit which (i) is in return for any benefit received in his official capacity; (ii) constitutes improper influence of him; or (iii) constitutes an attempt to influence him in the performance of his duties.

2071. In respect of the benefits conferred upon him by Bosasa he was in breach of his constitutional, legislative and ethical duties, as contemplated in TOR 1.4.

2072. Mr Makwetla was also under a duty not to solicit or accept a gift or benefit in return for any benefit given in an official capacity and a duty to seek permission to receive and to disclose a gift worth more than R1,000.[3168] Mr Makwetla failed to do so.

2073. With reference to TOR 7, despite the fact that Mr Makwetla's conduct in discussing the rates in terms of the Bosasa contract with the accounting office of the Department was not explored further in the course of Mr Makwetla's evidence, the evidence establishes a *prima facie* case of corruption in terms of sections 3 and 4 of PRECCA against him. The matter is accordingly referred to the relevant authorities for investigation and, if the National Prosecuting Authority so decides, prosecution. .

[3168] Section 4.

Mr Ngconde Balfour

2074. Although Mr Bloem testified that Mr Balfour was aware of the Portfolio Committee's concerns with the catering contract and that Mr Balfour protected Mr Mti,[3169] there is no evidence that Mr Balfour received any benefit from Bosasa in return for facilitating the award of unlawful contracts by the DCS. Mr Agrizzi testified that Mr Balfour did not receive any benefits.[3170]

2075. It is significant, however, that Mr Bloem testified that both he and, later, Ms Vytjie Mentor raised their concerns personally with Mr Balfour on more than one occasion. When asked by the Chairperson whether he was able to give some factual basis for his statement that Mr Mti enjoyed the protection and support of Mr Balfour, Mr Bloem responded:[3171]

> "Chairperson many a times when both of them appeared before the Portfolio Committee and we ask difficult questions to the Department, Mr Mti or Gillingham the Minister will interject and say he will answer such questions. When we - I meet with him personally one by one he will tell me that no Comrade Bloem you know this comrade is an experienced comrade. We must not harass this comrade. Let us treat him well. That is my conclusion. That is my observation. That is why I am saying that Chairperson." (sic)

2076. A rule 3.3 notice was issued to Mr Balfour on 8 February 2019. He has failed to respond to the allegations made against him and the evidence before the Commission is therefore undisputed. Taking into account that Mr Agrizzi was clear that Mr Balfour did not receive corrupt payments and that the above extract from the evidence of Mr Bloem is insufficient, on any of the relevant standards of proof, to conclude that there was knowing facilitation of the award of unlawful tenders, the evidence of Mr Bloem does not provide a sufficient basis for any adverse finding in respect of Mr Balfour.

3169 Transcript, day 45, pp 61-66.

3170 Transcript, day 38, p 123.

3171 Transcript, day 45, p 66.

The finding that can be made against Mr Balfour is that he acted improperly by protecting Mr Mti and Mr Gillingham from proper accountability as testified to by Mr Bloem.

Mr Jacob Zuma

2077. Introduction

2078. Mr Zuma is the most senior public office bearer that Bosasa is said to have attempted to influence. Conduct falling within the Commission's terms of reference involving Mr Zuma is said to have occurred during his tenure as President of the Republic of South Africa.

2079. Mr Zuma was issued with a notice in terms of rule 3.3 on 30 January 2019. On 30 April 2019, Mr Zuma was invited to appear before the Commission from 15 to 19 July 2020. The purpose of this appearance was to address the evidence of witnesses who had implicated him and to answer questions from the Commission.

2080. Mr Zuma thereafter appeared at the Commission and testified for two and half days before declining to answer questions and objecting to being questioned in a manner that he said amounted to cross-examination. He then indicated that he would no longer participate in the proceedings of the Commission.[3172]

2081. Following an agreement between the evidence leaders and Mr Zuma, he was furnished with a letter on 30 July 2019 outlining particular "areas of interest" in respect of which a response was required by affidavit.[3173]

[3172] Transcript, day 136.

[3173] Transcript, day 136, p 39.

2082. Mr Zuma did not meet the deadline for submitting his affidavit. Therefore, in December 2019, the Commission's legal team took a decision to invoke the Commission's powers of compulsion to force Mr Zuma to attend and testify. The Commission's secretary was later authorised to issue summons which was issued on 20 October 2021. The summons required Mr Zuma to appear before the Commission from 16 to 20 November 2020.

2083. On 16 November 2020, Mr Zuma attended before the Commission but his representative moved an application for my recusal.[3174] On 19 November 2020, I delivered my ruling dismissing the application for recusal.[3175] Following the ruling, Mr Zuma left the hearing without being excused. The Chairperson instructed the secretary to lay a criminal charge against Mr Zuma for this conduct and to launch urgent proceedings in the Constitutional Court.

2084. The Constitutional Court issued an order in terms of which Mr Zuma was ordered to obey all summonses and directives lawfully issued by the Commission and appear and give evidence before the Commission on dates determined by it. The Court's order further declared that Mr Zuma did not have a right to remain silent in the proceedings before the Commission, although he was entitled to all privileges under section 3(4) of the Commissions Act, including the privilege against self-incrimination.

2085. In its judgment, the Constitutional Court held that a witness has an obligation to appear before the Commission on receipt of a duly issued summons and remain in attendance

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[3174] Transcript, day 307-308.

[3175] Transcript, day 309.

until the proceedings are concluded or the witness is excused by the Chairperson. A breach of this duty constitutes an offence under section 6 of the Commissions Act.[3176]

2086. In a public statement issued after judgment was handed down by the Constitutional Court, Mr Zuma stated:[3177]

> "I…state in advance that the commission into allegations of state capture can expect no further cooperation from me in any of their processes going forward. If this stance is considered to be a violation of their law, then let their law take its course."
>
> "In the circumstances, I am left with no other alternative but to be defiant against injustice as I did against the apartheid government. I am again prepared to go to prison to defend the Constitutional rights that I personally fought for."

2087. The next date upon which Mr Zuma was required to attend the proceedings of the Commission was Monday 15 February 2021. Following similar public statements, his attorneys addressed a letter to the Commission shortly before the hearing was due to commence confirming that he was unwilling to attend.[3178]

2088. Mr Zuma's unwillingness to attend at the Commission precipitated an urgent application by the Secretary of the Commission for direct access to the Constitutional Court seeking an order declaring him to be in contempt of court, and sentencing him to a period of two years' direct imprisonment. This application was not opposed by Mr Zuma.

2089. The majority of the Constitutional Court found that Mr Zuma was in contempt of court in that (i) there was an order of the Constitutional Court; (ii) which was served on Mr Zuma; (iii) Mr Zuma had subsequently failed to comply with the order by failing to

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3176 Secretary, Judicial Commission of Inquiry into Allegations of State Capture at para 82.

3177 Reported in the Mail & Guardian on 1 February 2021 available at https://mg.co.za/politics/2021-02-01-Mr Zuma-refuses-to-testify-in-the-zondo-commission-saying-hed-rather-go-to-jail/

3178 Transcript, day 344.

depose to affidavits or appear and give evidence before the Commission; and (iv) Mr Zuma had failed to present evidence to establish a reasonable doubt that his non-compliance was wilful and mala fide.[3179] In respect of the sentence that should be applied against Mr Zuma, the Constitutional Court held:

> "[128] Quantifying Mr Zuma's egregious conduct is an impossible task. So, I am compelled to ask the question: what will it take for the punishment imposed on Mr Zuma to vindicate this Court's authority and the rule of law? In other words, the focus must be on what kind of sentence will demonstrate that orders made by a court must be obeyed and, to Mr Zuma, that his contempt and contumacy is rebukeable in the strongest sense. With this in mind then, I order an unsuspended sentence of imprisonment of 15 months. I do so in the knowledge that this cannot properly capture the damage that Mr Zuma has done to the dignity and integrity of the judicial system of a democratic and constitutional nation. He owes this sentence in respect of violating not only this Court, nor even just the sanctity of the Judiciary, but to the nation he once promised to lead and to the Constitution he once vowed to uphold."

2090. Following the contempt of court judgment, Mr Zuma began serving his 15-month jail sentence for contempt of court. He also applied for rescission of the Contempt Judgment. At the heart of the application was the allegation the order of the Court was erroneously granted in Mr Zuma's absence. The application was characterised by the majority of the Court as "nothing more than an attempt to re-open the contempt proceedings on the merits"[3180] and that Mr Zuma had not met the requirements of rescission either in terms of the Court's rules or at common law. The majority of the Court concluded that it would be contrary to the interests of justice to expand the legal grounds of rescission or reconsider its earlier judgment. The rescission application was therefore dismissed with costs.

3179 Secretary, Judicial Commission of Inquiry into Allegation of State Capture v Zuma and Others 2021 (5) SA 327 ("the Contempt Judgment").

3180 Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and others (Council for the Advancement of the South African Constitution and another as amici curiae) 2021 (11) BCLR 1263 (CC) ("Recission Judgment").

2091. Mr Zuma has since been granted medical parole. He has not presented evidence before the Commission. The consequence of his stance is that the evidence before the Commission implicating him remains undisputed except the evidence he was able to dispute when he gave evidence in July 2019.

The evidence

2092. The evidence implicating Mr Zuma is summarised below. A significant portion of the evidence is hearsay, but hearsay evidence is admissible in the Commission's proceedings.[3181] Full details of the evidence pertaining to Mr Zuma are to be found in Part F above. It includes the following:

2092.1. Mr Watson was introduced to Mr Zuma during 2009 by Ms Zukiswa Madonga, when he was President of the ANC, but not of the Republic.[3182] This took place at Mr Zuma's home at Forest Town in Johannesburg.

2092.2. Later a second introduction to Mr Zuma was brought about by Ms Myeni, which Mr Agrizzi said resulted in several further meetings with Mr Zuma at Nkandla.[3183]

2092.3. Mr Agrizzi testified that Mr Watson openly used to tell him and others that he paid Ms Myeni R300,000 a month for the benefit of the Jacob G Zuma Foundation.[3184] Mr Agrizzi said that he witnessed these payments being

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3181 See the discussion of hearsay evidence above.

3182 Transcript, day 41, p 92.

3183 Transcript, day 41, p 68, Mr Agrizzi Initial Affidavit, p 84, para 41.9.

3184 Transcript day 41 pp 41-52; para 1142 above.

delivered to Ms Myeni on three occasions – twice delivered by Mr Watson and once delivered by Mr Mathenjwa.[3185]

2092.4. One of the meetings following the second introduction was when Mr Watson and Mr Gumede met Mr Zuma at Nkandla. According to Mr Watson and Mr Gumede, at the meeting Mr Watson asked Mr Zuma to call Mr Dramat to tell him to shut down the Hawks investigation into Bosasa.[3186] Mr Watson informed Mr Agrizzi that at the meeting a "bag of R300 000 cash" was given to Mr Zuma. Mr Watson also wished to check with Mr Zuma at the meeting that Ms Myeni was "not taking a haircut of the money".[3187] Apparently Mr Zuma said that she was not.[3188]

2092.5. Mr Agrizzi attached to his affidavit a recording of a subsequent Bosasa EXCO meeting, in which Mr Gumede talks about this meeting that he and Mr Watson had held with Mr Zuma. This transcript is discussed in more detail below.

2092.6. Mr Agrizzi testified that he was also present at a meeting at Mr Mti's house during which Mr Watson spoke to Mr Zuma on the telephone and then proceeded to hand the telephone to Mr Mti saying "*your boss wants to speak to you*".[3189] Mr Agrizzi testified that on that occasion, Mr Mti completed his conversation with Mr Zuma (or the person he believed to be Mr Zuma) by saying: "I am ready to be redeployed" or words to that effect.

3185 Transcript, day 41, pp 54, 93.

3186 Transcript, day 41, p 96.

3187 Transcript, day 41, p 72.

3188 Transcript day 41, pp 71 - 72.

3189 Transcript, day 41, p 97.

2092.7. There was testimony that Mr Zuma visited Bosasa facilities on at least two occasions:

2092.7.1. Mr Zuma visited the Bosasa office park with Ms Myeni and the then Minister of Health, spending some 4½ hours there on a Saturday morning.[3190]

2092.7.2. Mr Van Tonder recalled being formally introduced to Mr Zuma during a visit to the prawn production facility in Krugersdorp using artificial sea water operated by the Bosasa subsidiary, Bioorganics (Pty) Ltd.[3191]

2092.8. Ms Myeni often called upon Mr Watson to arrange high-end functions for Mr Zuma including an occasion when Bosasa catered for a birthday dinner for him at short notice. Mr Agrizzi estimated the cost of these functions at approximately R3.5m per year. These were treated as corporate social investment payments in the company's financial records. Ms Myeni confirmed Bosasa's involvement in arranging and funding birthday celebrations for Mr Zuma.[3192] Mr Agrizzi also attached to his affidavit a thank you letter from Ms Myeni in respect of the birthday celebrations.[3193]

2092.9. Ms Myeni testified that donations from Bosasa for purposes of the Jacob G Zuma Foundation's events for the birthday of Mr Zuma, were deposited electronically to the relevant service providers after the Foundation had indicated to Bosasa what it would like to see done for the event.[3194]

3190 Transcript, day 41, p 92.

3191 Transcript, day 43, p 20.

3192 Transcript, day 299, pp120, 127.

3193 Annexure V to Mr Agrizzi's Initial Affidavit, p 697.

3194 Transcript, day 299, pp 120, 127.

2092.10. On one evening Mr Agrizzi received a call from Mr Watson instructing him to drive to Café Mozart where he dealt with "Fritz" and designed a cake for the then President Zuma's 72nd birthday. A photograph of the cake was attached as an annexure to Mr Agrizzi's affidavit. Although not clearly visible from the photograph, Mr Agrizzi was able to point out the Bosasa logo on the cake.[3195]

2092.11. In around May/June 2016 Ms Myeni facilitated a meeting between the then President Zuma, Mr Watson, Mr Philip O'Quigley, International Chairman of the Falcon Oil and Gas Group, and Ms Liezl Oberholzer of the same company, to seek President Zuma's assistance in advising the then Minster of Minerals and Energy, Mr Ngoako Ramatlhodi, to make certain amendments to what were considered to be restrictive regulations applicable to the oil and gas industry. Although Mr Agrizzi himself did not attend the meeting, he was informed about it in independent accounts by Mr Watson, Mr Radhakrishna and Ms Oberholzer.[3196]

2092.12. Following the meeting, the Minister of Minerals and Energy's legal advisors were instructed to meet with Ms Oberholzer to make the necessary amendments to the regulations. Mr Agrizzi was uncertain whether such amendments were actually effected.[3197]

2092.13. Ms Myeni, whilst denying that she had influence in respect of the issue pertaining to the oil and gas regulations (which pertained to amendments to certain regulations, which were required to facilitate fracking in the Karoo),

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3195 Transcript, day 37 pp 10-12. Mr Agrizzi's Initial Affidavit, p 37 at para 22.5.4. Annexure G, p 268-269.

3196 Transcript, day 41, p 66.

3197 Transcript, day 41, pp 66, 67.

admitted that she was party to a meeting that took place with then President at Nkandla in this regard.

2093. Assessment of the evidence

2094. The following observations are made regarding this evidence:

2094.1. Whilst a significant part of the evidence is hearsay, it enjoys a level of corroboration in important respects.

2094.2. The manifestly generous expenditure by Bosasa on Mr's Zuma's birthday parties was confirmed in oral evidence by Ms Myeni and also evidenced by her thank you letter and the photographs attached to Mr Agrizzi's affidavit, including the photographs of the birthday cake with the Bosasa logo.[3198]

2094.3. Whilst the detail of the meeting with Mr O'Quigley and Ms Oberholzer is not confirmed by Ms Myeni, the fact that the meeting took place at Nkandla is confirmed by her.[3199]

2094.4. The email from Ms Myeni to Ms Oberholzer dated 20 July 2014 put up by Ms Oberholzer as an annexure to her affidavit is also corroborative evidence of Ms Myeni having arranged for the meeting to take place.[3200]

2094.5. The recording of the Bosasa executive committee meeting arranged by Mr Gumede, is also corroborative evidence that a meeting with then President

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3198 Transcript, day 37, pp 10-12.

3199 Transcript, day 300, p 11.

3200 Transcript, day 300, pp 16-20.

Zuma had taken place and further that the President had undertaken to provide assistance by making calls to two persons.

2094.6. To the extent that the evidence includes hearsay, it is admissible in the Commission's proceedings for the reasons already given. Mr Zuma had every opportunity to come forward and dispute the evidence. He elected not to do so.

2094.7. There were aspects of Mr Agrizzi's evidence that may be criticised.

2094.7.1. For example, it was not entirely clear whether the R300,000 monthly payments were, in truth, originally intended for the Foundation, or whether this was simply a guise for payments directly to Mr Zuma. Mr Agrizzi was clear, though, that his suspicion was that they were being applied by Mr Zuma for his personal use.

2094.7.2. It may well be that the frequency of the meetings at Nkandla was exaggerated, because the evidence that emerged focussed on two meetings at Nkandla.

2094.7.3. There is no concrete evidence of any facilitation of the award of any unlawful tender or amendment of any regulations emanating from the President's meeting with Mr Watson, Mr O'Quigley and Ms Oberholzer.

2094.8. TOR 1.4, part of terms of reference issued under the hand of Mr Zuma himself,[3201] specifically requires the Commission to focus on the holder of the office of the President and whether he facilitated the unlawful awarding of

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[3201] On 23 January 2018, published in Proclamation 3 of Government Gazette No. 41403 dated 25 January 2018. This circumstance was commented on by the Constitutional Court in Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma 2021 (5) SA 1 (CC) at para 22.

tenders. In those circumstances, given that South Africa is a constitutional democracy in which accountability and transparency are recognised as basic values of public administration, one would have expected the President to come forward voluntarily to provide a full accounting of all of his dealings with Mr Watson and Bosasa.

2095. The upshot of the evidence by the witnesses referred to, particularly that of Mr Agrizzi, along with the failure by Mr Zuma to rebut it, is that the only version available to the Commission as to what transpired is that which is summarised above.

2096. In the circumstances, there are reasonable grounds for suspecting that these events took place. Even if the evidence of the R300,000 payments were to be ignored, there is clear and convincing, non-hearsay evidence, confirmed by Ms Myeni, that Mr Zuma received the benefit of lavish spending by Bosasa on his birthday functions. That on its own required Mr Zuma to come forward and explain publicly and on oath how that spending was justified, how it was dealt with in terms of the Executive Ethics Code and that it was not reciprocated with any form of *quid pro quo*. His failure to do so warrants an adverse inference.

2097. <u>Application to the terms of reference</u>

2098. That evidence must then be considered against the terms of reference, primarily those in TOR 1.4.

2099. As pointed out above, the range of potential facilitators contemplated by TOR 1.4 includes "the President".

2100. There is no evidence to suggest direct facilitation by the then President Zuma of the unlawful award of any of the tenders discussed above to Bosasa. Nor is there any

evidence of his having facilitated the award of any other tenders. However, it is clear on a conspectus of the evidence that it was crucial for Bosasa's ability to retain its lucrative contracts and its continued ability to secure tender awards in its favour, that the criminal investigations against Bosasa should be brought to a halt. It is also clear that the achievement of this goal would be facilitated by the provision to Bosasa's leadership of confidential information about the investigation. This would mean that they could prepare to respond in Bosasa's best interests and those of its leadership.

2101. Both Mr Agrizzi's evidence and the recording of the executive committee meeting arranged by Mr Gumede, confirm that there are reasonable grounds for suspecting that then Mr Zuma assisted Bosasa on this score. The relevant part of the transcript of the recording of the meeting reads as follows:

> "[part of the transcript is marked as inaudible and then appears what follows....] go and see the old man, the president, on this matter, when this matter was starting to brew again. We went to see him and he told me to say (sic), he was going to Russia, I remember when we had a chat with him he said, no, before I go, I will phone the two people, and we didn't phone them, because we got feedback and that's the reason why. Then the next thing, the guy from the Hawks, he even showed us, the meeting we were having, every month you were having a meeting, where he decides all those things. It's confidential information he showed us."

2102. The transcript of this recording goes on to make reference to Mr Watson and Mr Gumede. Whilst Mr Gumede's words do not present a model of clarity (enhancing the probability that it is a genuine recording), they draw a clear causal link (*"the next thing"*) between President Zuma's undertaking to *"phone the two people"* and the provision by a member of the Hawks of *"confidential information"*. From the discussion that followed, the confidential information, in the form of minutes, some of which Mr Gumede was able to *"take ... on my phone"* provided inside information on what was developing in relation to the investigation and who, in particular, it was envisaged would be charged. He also confirms that *"I showed him [Mr Agrizzi] the minutes."* Mr

Gumede also refers to Mr Agrizzi's disappointment because *"Gavin did not appear on the list of suspects."*

2103. The probability of Mr Zuma having played a role in securing the disclosure of confidential information in the hands of the prosecuting authorities, is enhanced by the fact that Mr Zuma's close associate, Ms Myeni, was also involved in providing confidential information emanating from the prosecuting authorities to Bosasa, as further analysed and discussed below.

2104. The Supreme Court of Appeal[3202] has recognised that the provision of confidential information in the hands of police pertaining to investigations into criminal conduct, constitutes a quid pro quo for purposes of the crime of corrupt activities relating to public officers in section 4(1)(a)(i)(bb) of PRECCA. That provision reads in relevant part -

> "Any public officer who, directly or indirectly, accepts or agrees to or offers to accept any gratification from any other person … in order to act, personally or by influencing another person to act, in a manner … that amounts to the … misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation."[3203]

2105. What can also not be ignored is the fact that there was a concrete result. The investigation and prosecution were, indeed, successfully brought to a halt. Again, Mr Zuma having failed to appear before the Commission and provide a full account, there are reasonable grounds to suspect that he was instrumental in preventing the investigation and prosecution from proceeding. After all, according to Mr Agrizzi's evidence, Bosasa was paying some money to Ms Myeni every month for the benefit of the JG Zuma Foundation.

3202 S v Selebi 2012 (1) SA 487 (SCA) at paras 32 to 38.

3203 Identical wording is used in section 3(a)(i)(bb), the general crime of corruption.

2106. That would certainly constitute the facilitation of the unlawful award of tenders by organs of state. By playing a role in inhibiting a prosecution in respect of unlawful tenders already awarded, Mr Zuma would have both -

2106.1. prevented, or assisted in preventing the setting aside of the contracts flowing from the unlawful tender awards; and

2106.2. enabled Bosasa to keep an ostensibly clean record, which would, in turn, have facilitated the further unlawful award of tenders from organs of State and SOEs.

2107. It follows ineluctably from the foregoing analysis that there are reasonable grounds to suspect that Mr Zuma provided the facilitation in order to benefit a corporate entity doing business with government and organs of State, namely Bosasa; and to benefit himself and his Foundation as the recipients of Bosasa's material and monetary largesse.

2108. It is so that there was no evidence that the meeting with Mr Watson, Mr O'Quigley and Ms Oberholzer generated any concrete facilitation of unlawful tender awards or the amendment of any regulations. Nevertheless, it does serve as evidence of Mr Watson having developed, through Bosasa's spending on Mr Zuma, a relationship where he had easy access to the President and the ability to influence his decision-making.

2109. The question then is whether the conduct suspected of Mr Zuma in facilitating the unlawful award of tenders in the manner described above, was in breach or violation of the Constitution, any ethical code or legislation.

2110. A President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and Head of the National

Executive.[3204] Central to the President's duties is the obligation to uphold, defend and respect the Constitution as the supreme law of the country, and to promote the unity of the nation and advance the country.[3205] In *Hugo*, Kriegler J described this position as follows:

> "Ultimately the President, as the supreme upholder and protector of the Constitution, is its servant. Like all other organs of state, the President is obliged to obey each and every one of its commands."[3206]

2111. In *Economic Freedom Fighters,*[3207] Mogoeng CJ said:

> 2112. "[The President] is indeed the highest calling to the highest office in the land. He is the first citizen of this country and occupies a position indispensable for the effective governance of our democratic country. Only upon him has the constitutional obligation to uphold, defend and respect the Constitution as the supreme law of the Republic been expressly imposed. The promotion of national unity and reconciliation falls squarely on his shoulders. As does the maintenance of orderliness, peace, stability and devotion to the well-being of the Republic and all of its people. Whoever and whatever poses a threat to our sovereignty, peace and prosperity he must fight. To him is the executive authority of the entire Republic primarily entrusted. He initiates and gives the final stamp of approval to all national legislation. And almost all the key role players in the realisation of our constitutional vision and the aspirations of all our people are appointed and may ultimately be removed by him. Unsurprisingly, the nation pins its hopes on him to steer the country in the right direction and accelerate our journey towards a peaceful, just and prosperous destination, that all other progress-driven nations strive towards on a daily basis. He is a constitutional being by design, a national pathfinder, the quintessential commander-in-chief of State affairs and the personification of this nation's constitutional project.
>
> He is required to promise solemnly and sincerely to always connect with the true dictates of his conscience in the execution of his duties. This he is required to do with all his strength, all his talents and to the best of his knowledge and abilities. And, but for the Deputy President, only his affirmation or oath of office requires a gathering of people, presumably that they may hear and bear witness to his irrevocable commitment to serve them

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3204 Section 84(1) of the Constitution.

3205 Section 83 of the Constitution.

3206 President of the Republic of South Africa v Hugo 1997 (4) SA 1 (CC) at para 65.

3207 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (3) SA 580 (CC) at paras 20-21 (footnotes omitted).

> well and with integrity. He is after all, the image of South Africa and the first to remember at its mention on any global platform."

2113. Section 96(2)(b) of the Constitution provides that members of Cabinet,[3208] (which includes the President) may not expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests. In addition, members of Cabinet, including the President, may not use their positions or any information entrusted to them, to enrich themselves or improperly benefit any other person.[3209]

2114. Section 96(1) of the Constitution enjoins the President, as a member of Cabinet, to act in accordance with a code of ethics prescribed by national legislation. The national legislation and code of ethics contemplated in section 96(1) are, respectively, the Executive Members' Ethics Act and the Executive Ethics Code.

2115. Section 2(1) of the Executive Members' Ethics Act provides as follows:

> "The President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECs must comply in performing their official responsibilities."

2116. The Executive Ethics Code was published in terms of this subsection and prescribes that members may not use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person; nor may they expose themselves to any situation involving the risk of a conflict between their official responsibilities and their financial and/or personal interests.

3208 Section 91(1) of the Constitution.

3209 Section 96(2)(c) of the Constitution.

2117. Conclusion

2118. It follows from this that there are reasonable grounds to suspect that Mr Zuma's conduct was in breach of his obligations as President under the Constitution, in breach of his obligations under the Executive Ethics Code and in breach of legislation. Having regard to the nature of the relationship between Mr Zuma and Bosasa, as revealed by the evidence, Mr Zuma placed himself in a conflict of interest situation.

2119. In those circumstances there was conduct on the part of Mr Zuma that fell within the ambit of TOR 1.4.

2120. With reference to TOR 1.1, Bosasa and its leadership clearly provided inducements and gain to Mr Zuma, aimed at gaining influence over him. Accordingly, on the basis of the evidence presented in relation to Mr Zuma, there was also conduct falling within TOR 1.1.

2121. With reference to TOR 7, and based on the foregoing analysis, there is sufficient evidence to establish that (i) Mr Zuma accepted gratification; (ii) from another person, i.e. Bosasa (or its directors or employees), (iii) which held and sought to obtain contracts with government.

2122. With reference to the presumption in section 24(1) of PRECCA, the state can likely show that, despite having taken reasonable steps, it was not able to link the acceptance of the gratification by Mr Zuma, to any lawful authority or excuse for receiving the gratification. This is because Mr Zuma, failed to provide evidence to the contrary to show a lawful authority or excuse for receiving the gratification, either at all or at a level that could give rise to a reasonable doubt. Indeed, he did not testify at all.

2123. Section 24(1) of PRECCA would likely deem there to be sufficient evidence to establish that Mr Zuma accepted the gratification from Bosasa and in doing so breached his Constitutional and legislative duties as well as ethical obligations in order to act in one or more of the "manners" in paragraphs (aa) to (dd) of the PRECCA, being the different statutorily recognised forms of *quid pro quo*.[3210]

2124. The matter is referred to the appropriate authorities for further investigation on the basis that there is a reasonable prospect that such further investigation will uncover a prima facie case in terms of section 3 and/or 4 and/or 11 and/or 12 and/or 13 of PRECCA. Section 11 of PRECCA deals with corrupt activities relating to witnesses and evidential material during certain proceedings. Ms Nomvula Mokonyane

Introduction

2125. The evidence pertaining to Ms Mokonyane must be considered both from the perspective of TOR 1.1 and TOR 1.4. Whilst the focus of -

2125.1. TOR 1.1 is on whether there were "attempts through any form of inducement or for any gain … to influence" public office bearers in the identified categories; and

2125.2. TOR 1.4 is on whether there was facilitation of the unlawful award of tenders by the listed office bearers,

evidence about the inducements is relevant to both TOR 1.1 and TOR 1.4. This is because the conferral of benefits on a public office bearer by a person or entity doing

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[3210] The "manners" include that which amounts to illegal, dishonest, unauthorised, incomplete, or biased; a misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; the abuse of a position of authority; a breach of trust; the violation of a legal duty or a set of rules; designed to achieve an unjustified result; or that amounts to any other unauthorised or improper inducement to do or not to do anything.

business with the State or SOEs, particularly when the benefits are substantial, leads ineluctably to the question of whether anything was expected in return. The question is relevant to Ms Mokonyane because of the fact that there was evidence of substantial benefits having been conferred on her, some of which are not in dispute. Taking this into account, the evidence pertaining to Ms Mokonyane is dealt with under the rubric of TOR 1.4, whilst at the same time enquiring whether there was conduct as contemplated in TOR 1.1.

2126. Ms Mokonyane falls squarely within the lists of public office bearers in both TOR 1.1 and TOR 1.4. She served in various senior roles in the executive at national and provincial level – Premier of Gauteng, Minister of Water and Sanitation, Minister of Communications and Deputy Minister of Environmental Affairs.

The evidence

2127. In considering the other components of TOR 1.4 (and TOR 1.1) it is appropriate to start with the evidence pertaining to the benefits received. There was extensive evidence of a wide range of benefits that were given to Ms Mokonyane and her family by Bosasa and its leadership. It is not necessary to repeat all of the evidence here. In summary, this included evidence of Bosasa –

2127.1. having funded the venue, catering, associated hire of chairs and the like, a large volume of alcohol and birthday gifts for Ms Mokonyane's 40th birthday party at the Victorian Guesthouse, near the Bosasa office park;[3211]

2127.2. funding and arranging the catering and other aspects of many ANC events on a widespread basis;

[3211] Transcript, day 254, pp 39-61.

2127.3. providing its facilities for purposes of the ANC election campaign;

2127.4. a monthly payment of R50 000;[3212]

2127.5. providing lavishly for the Christmas needs of Ms Mokonyane and her family, including large volumes of cold drinks, alcohol including premium whisky and brandy and various kinds of meat and braai packs;[3213]

2127.6. having provided Ms Mokonyane and her PA, Ms Thomas, with birthday gifts or hampers annually valued between R700 and R1500;[3214]

2127.7. having provided security installations at Ms Mokonyane's homes;[3215]

2127.8. having attended to maintenance problems and problems with the security system on an ongoing basis at her homes;

2127.9. having provided for the costs of funerals of ANC members or their families and specifically having covered a range of the expenses for the funeral held for Ms Mokonyane's son, including marquee hire, air conditioning, printing of memorial pamphlets and refreshments;[3216] and

2127.10. having provided hired cars for Ms Mokonyane's daughter when she was on vacation from her University studies in China.[3217]

3212 Transcript, day 75, pp 54-57.

3213 Transcript, day 75, p 72.

3214 Transcript, day 258, pp 34-43.

3215 Transcript, day 46, p 87.

3216 Transcript, day 37, pp 6-10, see also Mr Agrizzi's Replying Affidavit to Ms Mokonyane's affidavit, para 28.4.

3217 Transcript, day 75, p 65.

2128. To her credit, Ms Mokonyane responded to the Commission's regulation 10(6) directive and notice in terms of rule 3.3, and presented both affidavit and oral evidence at the Commission. She denied any conduct on her part that was unlawful or might fall within the Commission's terms of reference. As regards -

2128.1. the birthday party, Ms Mokonyane denied that she had ever celebrated any birthday party of hers at the Victorian Guesthouse or that any party had ever been funded or sponsored by Bosasa;[3218]

2128.2. the catering and other arrangements for many ANC functions, whilst she did not dispute this, this would not have fallen within her area of responsibility and no blame could be directed at her in this regard;[3219]

2128.3. the making available of its facilities for the ANC for elections, essentially the same applied;

2128.4. the cash payments in the amount of R50 000 per month, she denied this entirely;[3220]

2128.5. the provision of alcohol, beverages and various kinds of meat for Christmas, she denied that Bosasa bought and delivered alcohol, beverages, meat and other groceries to her home in December every year for many many years (over 10 years) for her family. She even denied that any groceries purchased by Bosasa were delivered to her home. However, her PA admitted that this did happen but said that the groceries were not meant for Ms Mokonyane or her family but was for poor communities over the Christmas period. Ms

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3218 Transcript, day 235, pp 59-62.

3219 Transcript, day 235, pp 84-88; see also Ms Mokonyane's affidavit, p 12, para 34.

3220 Transcript, day 235, pp 180-181; see also Ms Mokonyane's affidavit, p 15, paras 41-43.

Mokonyane may have later adjusted her evidence in this regard, after her PA had given her evidence;[3221]

2128.6. annual birthday gifts, she denied knowingly receiving these;

2128.7. the security installations, she denied these and indicated that such equipment would have been provided by the State;[3222]

2128.8. maintenance work provided at her home, she disputed this and said that the family had their own service providers and that, if any services were provided, this was something arranged by her late husband without her knowledge;[3223]

2128.9. having provided for expenses for her son's funeral, she denied this, asserted that the family had paid for these expenses and that, if a donation was made by Mr Watson, this was not at her request;[3224]

2128.10. car hire for her daughter, she said that this was because Mr Watson knew her daughter well, made use of her services arising from the fact that she was fluent in Mandarin and would have made his own arrangements as between the two of them – Ms Mokonyane had no part in this.[3225]

2129. Further, Ms Mokonyane contended that Mr Agrizzi, whom, she said, she had never met either socially or professionally, was motivated by racism and retaliation for her not providing him with assistance he thought she had the capacity to provide.[3226]

3221 Transcript, day 260, pp 71-77.

3222 Transcript, day 235, pp 128-129.

3223 Transcript, day 235, pp 106-107.

3224 Ms Mokonyane's affidavit, p 16, para 47.

3225 Transcript, day 235, pp 78-79; see also Ms Mokonyane's affidavit, pp 11-12, para 33.

3226 Transcript, day 235, pp 197-200.

Assessment of the evidence: inducements and gain

2130. The following observations are made regarding the foregoing competing versions emerging from the evidence:

2130.1. As regards the evidence that Bosasa funded Ms Mokonyane's birthday party at the Victorian Guest House, Ms Mokonyane denied, more than once, that there had ever been a party (of any kind or at any time) for her at the Victoria Guesthouse in Krugersdorp. It was only upon being confronted with the evidence of the owner of the guesthouse, Mr Coetzee, that Ms Mokonyane admitted that that her 40th birthday celebration was indeed held at the Victorian Guesthouse. Her explanation for failing to disclose this in her initial testimony was wanting. In this regard, she stated that she did not mention the 40th birthday party because she was "preoccupied" by Mr Agrizzi's assertions that it was her 50th birthday party with a "Break a Leg" theme.

2130.2. A birthday marking the passage of a decade in one's life is invariably well remembered. All the more so where, on her version, she walked into the venue expecting a private family dinner and found that a surprise party with a large number of guests had been arranged for her. It strains credulity that she would not have had this function foremost in her mind while dealing with the questions put to her.

2130.3. Ms Mokonyane disavowed any personal knowledge of most of the evidence regarding the booking and payment of the venue for her birthday party. She said that the event was arranged by her late husband.[3227] She later

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[3227] Ms Mokonyane's affidavit, p 5, para 15.

contradicted herself by stating that both she and her husband knew that they did not pay for the party because they did not arrange it.[3228]

2130.4. Ms Mokonyane later accepted that she could not dispute Mr Coetzee's evidence that the event was paid for by Bosasa. Ms Mokonyane initially claimed that she had not seen Mr Agrizzi at the birthday event, but later stated that she could not remember if Mr Agrizzi was there.[3229]

2130.5. Although she testified that Mr Coetzee's version on the number of guests and the additional drinks at the event was an exaggeration, she provided no substantive evidence to contradict his evidence. She sought to explain her inability to recall the event because it was a dinner rather than a party. This is not so - it was a gathering of over 100 people.

2130.6. Ms Mokonyane's recollection of the event was unintelligible at times. For example, she initially stated that they did not have many people speaking at the event. When reminded of Mr Coetzee's evidence that the speeches at the event lasted for three hours, she responded by stating that she was not part of the preparation and she did not know what the situation was "behind the scenes."

2130.7. The upshot is that Ms Mokonyane was shown to have been dishonest in her evidence when she initially denied that any party had ever been held for her at the Guesthouse. She was given more than one opportunity to think about her initial denials before persisting in them. In fairness to her it was pointed

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[3228] Transcript, day 260, p 28.

[3229] Transcript, day 260, pp 31-32.

out that her denials would form the subject matter of further investigation. Yet she persisted in them.

2130.8. There is full justification for a finding that Bosasa organised and paid for Ms Mokonyane's 40th birthday party at the Victorian Guest House. There was no suggestion that Mr Coetzee would have had an ulterior motive for corroborating Mr Agrizzi's version. On the contrary, his evidence would probably not be good for business. Mr Agrizzi's presence at the party, along with his role in arranging it, is confirmed by Mr Coetzee and supported by the probabilities. In first denying that Mr Agrizzi was at the party and later saying she did not know whether Mr Agrizzi was at the party, Ms Mokonyane lied. There is no way that she would not have seen Mr Agrizzi at the party, particularly because Mr Agrizzi was the COO of Bosasa which was paying for the party, that Mr Agrizzi was organising the party and because Mr Agrizzi is physically a large man – nobody would easily miss him in a room.

2130.9. Given that her late husband was responsible for keeping the secret to ensure that it was a surprise, there must have been a significant degree of involvement on his part in the arrangements. He must have been aware of Bosasa's involvement. Ordinarily, a spouse would be responsible for hosting a surprise birthday party. Where another party assumed responsibility for this, it is probable that the responsible spouse would know who it was. Her evidence that she never enquired of her husband afterwards about the funding of the event is also not credible.

2130.10. Significantly, Ms Mokonyane agreed that it would be entirely inappropriate for Bosasa to have paid for her birthday party. Given her dishonesty about the dinner, the conclusion is unavoidable that she was well-aware of Bosasa's

role in sponsoring and arranging the birthday party, but did not wish to acknowledge it because she knew that it was corrupt in nature.

2130.11. Ms Mokonyane disavowed any responsibility for seeking and obtaining Bosasa's assistance in catering and other arrangements for ANC events and the making available of facilities during elections. She did not, however, deny that such assistance was provided to the ANC. It is seriously open to doubt that Ms Mokonyane was not involved in procuring such assistance, particularly because of her close relationship with Mr Watson. President Ramaphosa acknowledged Bosasa's assistance to the ANC and that vigilant members of the ANC would have been aware of the fact that Bosasa was helping the ANC through donations and benefits in circumstances where there was a concern regarding criminal elements of its conduct.

2130.12. The evidence that R50,000 in cash would be packed and delivered to Ms Mokonyane on a monthly basis was denied by Ms Mokonyane. She even initially denied that Mr Agrizzi had ever been to her house. Later, she said if he had ever been there, it may have been on those occasions where, for example, there may have been members of the public in the house or there was a bereavement. In support of his evidence pertaining to the cash payments, Mr Agrizzi testified that he was able to describe Ms Mokonyane's two houses where the cash was delivered, first the one in Krugersdorp and later the one in Bryanston and proceeded to do so in considerable detail. Ms Mokonyane disputed this as the basis for Mr Agrizzi's familiarity with her home. In this regard, she claimed (i) someone may have given Mr Agrizzi a description of the house (she offered no explanation of who);[3230] (ii) the

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[3230] Transcript, day 235, pp 118 to 120.

guardhouse could be seen on Google Maps[3231] (although this did not explain Mr Agrizzi's familiarity with the interior); (iii) representatives from Bosasa may have met with her husband or visited the house when she experienced a bereavement; (iv) Mr Agrizzi may have become familiar with some features of her house when her fence was being looked at (there was no evidence of Mr Agrizzi's involvement in attending to her fence; and this corroborates the evidence that Bosasa was involved in assisting her with maintenance of her security); and (v) Mr Agrizzi was "desperate" to tarnish Mr Watson's reputation and had not denied that he hated black people or that he had complained about the relationship she had with Mr Watson.[3232]Ms Mokonyane's denial that Mr Agrizzi had been to her house was a hopeless attempt to avoid a finding that Mr Agrizzi had personal knowledge of certain occasions where she was given Bosasa money.

2130.13. Also supporting Mr Agrizzi's version was his ability to provide the code that was used for her payments - "NMR 50 CCY", with Watson as the "Distribution Person".[3233] The code NMR 50 CCY was recorded in documentary evidence in the form of a list of cash payments to recipients attached to Mr Agrizzi's initial affidavit.[3234]

2130.14. Counting against Mr Agrizzi in relation to this particular evidence is that an aspect of his evidence, when discussing the payments, may have been contradictory. Seemingly at the time of one of the payments, when he was in a car with Mr Watson outside Ms Mokonyane's house, he questioned the wisdom of the payments that were being made to her. In his subsequent

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3231 Transcript, day 235, p 127.

3232 Transcript, day 235, pp 124 to 126.

3233 Mr Agrizzi Supplementary Affidavit, p 26 para 22; Annexure HH p 86. Transcript, day 75, p 132.

3234 Exhibit S, annexure P, p 359.

evidence he seemed to contradict himself as to whether his concern was that there was no corrupt *quid pro quo* coming from Ms Mokonyane or whether his concern was Bosasa's continued reliance on corruption when the business no longer required it. In fairness to Mr Agrizzi, however, his original affidavit appears to have disclosed both concerns, and they are not incompatible.[3235]

2130.15. The difficulty for Ms Mokonyane is that she was shown to be dishonest in relation to the benefit constituted by the sponsorship and arranging of her 40th birthday party, including Mr Agrizzi's role in it. That has the effect of undermining the reliance that can be placed on her other denials pertaining to the receipt of benefits from Bosasa, including the alleged cash benefits.

2130.16. Ms Mokonyane's denial that Bosasa made payments of R50,000 to her monthly, or, at least on three occasions that Mr Agrizzi said he had personal knowledge of, is not credible and falls to be rejected as a lie. The factors supporting the rejection of her denial in this regard and support in accepting Mr Agrizzi's version in this regard are the following:

2130.16.1. initially Ms Mokonyane denied having even met with Mr Agrizzi and she was shown to have lied about this;

2130.16.2. Ms Mokonyane initially denied Mr Agrizzi's evidence that Bosasa made certain security installations at her houses and Mr Agrizzi's version was proved to be truthful, and Ms Mokonyane could ultimately not maintain her denial of this;

[3235] Transcript, day 37, pp 29 - 44; Mr Agrizzi's Supplementary Affidavit, p 39 para 22.13.

2130.16.3. Ms Mokonyane initially denied Mr Agrizzi's evidence that he had been to her house and, in response, Mr Agrizzi gave details of the outside and the inside of Ms Mokonyane's house including where her study was in the house, and, ultimately, Ms Mokonyane could no longer deny that Mr Agrizzi had been inside her house;

2130.16.4. Ms Mokonyane initially denied Mr Agrizzi's evidence that Bosasa organised and paid for her birthday party that was held at the Victorian Guest House and the Commission called Mr Coetzee, the owner of the Guest House, whose evidence – both oral and documentary – simply demolished Ms Mokonyane's denial and fully corroborated Mr Agrizzi's evidence, except that it was not her 50th birthday as Mr Agrizzi had said but her 40th;

2130.16.5. Mr Agrizzi had testified that over many years, every December, Bosasa would buy certain grocery items and have them delivered to Ms Mokonyane's house for her and her family's benefit. Ms Mokonyane denied that any grocery items were delivered to her home at all by Bosasa every December but, later on, her PA, Ms Thomas, admitted that the grocery items were bought and delivered by Bosasa to Ms Mokonyane's home but that the grocery items were for poor communities and not for the benefit of Ms Mokonyane and her family. However, the fact that those groceries included expensive wine and liquor suggests that the grocery items were not for poor communities but for Ms Mokonyane and her family. If the grocery items were delivered to Ms Mokonyane's home but were meant for poor communities, there is no way that Ms Mokonyane, as a politician who projects herself as attached to poor communities would not have been aware of this and

there would have been no reason for her to deny that Bosasa used to buy such groceries and deliver them to her home because she would have been told by Bosasa about them and she would have made arrangements for the delivery of the groceries to the poor communities. The fact that she denied that groceries were delivered by Bosasa is an indication that the only groceries that Bosasa delivered to Ms Mokonyane's home were those intended for her and her family's benefit; the reason she denied them is because she knew it was inappropriate for her to have allowed this to happen;

2130.16.6. Mr Agrizzi had no reason to falsely implicate Ms Mokonyane in wrongdoing and even Ms Mokonyane failed to advance any convincing reason why Mr Agrizzi would have decided to falsely implicate her in wrongdoing;

2130.16.7. Mr Agrizzi's version that Bosasa paid Ms Mokonyane R50,000 monthly is supported by the contents of his black book in which he recorded such payments using codes.

2130.17. The finding is, therefore, that Bosasa did make monthly payments of R50,000 to Ms Mokonyane over a certain period and those payments had no lawful basis or cause.

2130.18. While Ms Mokonyane denied receiving Christmas hampers of alcohol, meat and other beverages from Bosasa, the evidence strongly suggests the contrary. In this regard, Ms Thomas confirmed that she would liaise with Ms Mokonyane's sister about the arrival of items destined for Kagiso. Ms Dube corroborated the evidence that "Christmas" deliveries were made to Ms Mokonyane on Mr Leshabane's instruction. She was able to recall a specific

instance in 2017, the supplier of the meat and the approximate value thereof. Ms Mokonyane's suggestion that Bosasa supplied food and drink destined for the community may be true to a degree but as was pointed out to her, parcels destined for the poor would not have included alcohol, particularly premium whisky and brandy.

2130.19. There was sufficient evidence to establish that Ms Mokonyane and Ms Thomas received birthday gifts from Mr Watson and Mr Agrizzi. In fact, one can go as far as saying that this was established beyond any reasonable doubt. This was corroborated by Ms Pieters and Ms Thomas – the latter being an individual with a strong allegiance to Ms Mokonyane.[3236] Ms Pieters confirmed that Mr Agrizzi had requested her to stipulate that there should be no reference to Bosasa on the hampers, so that the parcels could not be linked to Bosasa. The insistence on hiding the link with Bosasa points to the arrangement being a corrupt one.

2130.20. As regards the security installations and maintenance work at her homes, although Mr le Roux was unable to match the work done at Ms Mokonyane's residence in Krugersdorp with invoices as the work occurred in 2013 and the invoices from Regal Distributors are from 2014 onwards, he provided extensive detail about the nature of the work conducted and the cost thereof. This was not meaningfully disputed by Ms Mokonyane.

2130.21. Mr le Roux's evidence that he received numerous call-outs for maintenance issues at the premises was corroborated by a WhatsApp message from Ms Thomas requesting help with the house alarm. Ms Thomas confirmed that this

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[3236] Ms Thomas has served as Ms Mokonyane's personal assistant for a number of years and, on her version, is close to Ms Mokonyane and her family.

was not her first contact with Mr le Roux. The WhatsApp message from Ms Thomas to Mr le Roux dated 1 June 2017 was an instance where Ms Mokonyane accepted that Bosasa's involvement had been sought by Ms Thomas, but she said that this was on a once-off basis. However, this could not be reconciled with the fact that, if this was a once-off item of work, why the premises were simply referred to as "the house" without giving the address.[3237] The implication is that Mr le Roux knew the address of the house. No explanation was provided for this. Mr le Roux's evidence was not unsatisfactory in any way and the probabilities are firmly against this having been a once-off request for assistance.

2130.22. Mr Charl le Roux was able to give significant detail of Ms Mokonyane's premises to support his evidence of having assisted with the installation of security and maintenance work at the property. Ms Mokonyane confirmed his evidence in several respects. Ms Mokonyane denied, however, that the Aston Martin was black or blue. She said that the connections to the generator were not inside the garage but were outside.[3238] She believed that this demonstrated that Mr Charl le Roux may have been misleading the Commission.[3239] That has no proper basis. Mr Charl le Roux's evidence was confirmed by Ms Mokonyane in several respects without an explanation of how he would have been privy to this information without having attended at the premises. Ms Mokonyane later agreed that it appeared indisputable that Mr Van Biljon's company did do various items of work at her residence, that he, together with Messrs Charl and Richard le Roux, had all been to her

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[3237] Transcript, day 235, pp 155-156.

[3238] Transcript, day 235, pp 163-164.

[3239] Transcript, day 235, pp 168-170.

house, that Mr Van Biljon's company had been paid by Bosasa and were there on Bosasa's instructions.

2130.23. No objective evidence was presented by Ms Mokonyane to refute Mr le Roux's evidence that the estimated cost of the equipment installed at her house was in the region of between R100,000 and R130,000, and the cost for labour and travelling to undertake this work would have been approximately R58,080.[3240]

2130.24. A letter was produced from the Department of Public Works stating that the department did not have a record of a formal request for security measures in Ms Mokonyane's private residence either by the Gauteng Housing Department, the Gauteng Office of the Premier, the Department of Infrastructure Development, or the Department of Water and Sanitation. The department indicated that generally security measures are administered by the province and not the national department.[3241] Ms Mokonyane responded by pointing out that it was her assumption that security was done by the State and this letter simply referred the Commission to the provincial government.

2130.25. There is no reasonable basis to reject the credibility of Messrs Richard and Charl le Roux's evidence and that of Mr Van Biljon. If that is so, then the version that Ms Mokonyane asks the Commission to accept is that her husband never informed her of the arrangements with, and the work done on their private residence by, Bosasa. This proposition is far-fetched and inconsistent with the probabilities. It is also expedient that Ms Mokonyane

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[3240] Exhibit T21, pp 3-4.

[3241] Transcript, day 260, p 91.

claims that any knowledge of this arrangement was between her husband and Bosasa, since her late husband can no longer be asked about this.

2130.26. Although she denied Mr Agrizzi's evidence that he signed off expenses such as the cost of hiring a marquee, air-conditioning, printing of memorial pamphlets, and refreshments for the funeral of her son, Ms Mokonyane did not unequivocally deny that Bosasa contributed towards her son's funeral. Again, Mr Agrizzi's evidence was detailed in this regard, and his evidence as to his role in signing off on this expenditure was consistent with the position that he held in Bosasa.

2130.27. Ms Mokonyane did not deny that Mr Watson assisted her daughter with the costs of car hire, although she said she had played no role in relation to the rental of a car and asserted that there was a business justification for this, given that her daughter could assist Bosasa with her ability to speak Mandarin. Assuming that this is correct and that Ms Mokonyane's daughter arranged university holiday employment with Bosasa herself, it remains contrary to the probabilities that a student employee would be afforded the employment benefit of the expensive hire of a cabriolet vehicle, even if she could speak Mandarin. In any event there was no evidence of Bosasa's need for an employee fluent in Mandarin. The inference more reasonably to be drawn is that this was one of the many forms of inducement and gain provided to Ms Mokonyane and her family in order to buy Ms Mokonyane's influence.

2131. Considering the foregoing analysis with reference to TOR 1.1, there were clearly extensive attempts by Bosasa and its leaders, through various forms of inducement and gain, to influence Ms Mokonyane in her position as a member of the national executive, the provincial executive and office bearer in organs of state.

Assessment of the evidence: facilitation

2132. TOR 1.4 then requires one to ask whether Ms Mokonyane was involved in the unlawful facilitation of tenders.

2133. Insofar as the facilitation of tenders is concerned:

2133.1. Mr Agrizzi testified that in approximately 2008/2009 when Ms Mokonyane was the Premier of Gauteng, Ms Mokonyane approached Bosasa with a request to do an analysis of security at Gauteng hospitals. Mr Agrizzi duly prepared a report at an expense to Bosasa of some R2m. The idea was that, if Bosasa produced a good report, there would be a tender put out for the provision of security services at such hospitals that it could be involved in. Ms Mokonyane denied this and stated that she never requested any such report; she said that she was never furnished with one by Mr Agrizzi and that she had no involvement in hospitals at the time.[3242] No report has been placed before the Commission.

2133.2. Mr Agrizzi testified that in 2014, at the time that Ms Mokonyane was the Minister of Water Affairs, Bosasa was requested to do an analysis and report on the securing of the dams in South Africa for the Department of Water Affairs.[3243] Mr Agrizzi said that he was also instructed by Mr Watson to recommend a consultant group who would assist the Department of Water Affairs in managing the award of the tender for securing the dams.

2133.3. Mr Agrizzi testified that a report was duly prepared at an estimated cost of R1.3 million. He said that there was a tight deadline and Mr Agrizzi had to get

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[3242] Ms Mokonyane's affidavit, p 14, para 38.

[3243] Transcript, day 37, p 19.

the assistance of *"official security people that understood dams and that type of thing to assist us. … The report included the protection of dams with high security fencing, to prevent any ingress or any contamination of the dams. It included sensors to measure levels of dams, potential leaks, breakages in dam walls. It also included, if I recall correctly, camera systems that were integrated onto a singular platform, which to be viewed (sic) by the Minister at any one time."*[3244]

2133.4. The instruction to recommend a consultant group resulted in Mr Agrizzi scheduling a meeting with Chiefton Consultants, represented by Mr Paul Silver, whom Mr Agrizzi described as Head of Facilities Management, and Mr Raymond Moodley, whom Mr Agrizzi described as co-founder of Chiefton. The specifications of the contemplated project were discussed as well as their potential role as consultants and the expectation that they would be pro-Bosasa when evaluating the tender.[3245]

2133.5. According to Mr Agrizzi, Chiefton Consultants were never appointed due to a problem with their registration with the Private Security Industry Regulatory Authority. Nor did Bosasa bid for the tender, if indeed any tender was ultimately put out. Nothing came of the report and Bosasa was not paid for it.

2133.6. Ms Mokonyane denied this evidence on a blanket basis without further elaboration. Mr Agrizzi's evidence in this regard is, however, detailed and reasonably convincing. If one searches "Chiefton Consulting" on the internet it takes one to the website www.chiefton.co.za. There reference is made to Chiefton South Africa as a holding company and one of the companies in the

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[3244] Transcript, day 37, p 20.

[3245] Transcript, day 37, p 22.

group as being Chiefton Facilities Management (Pty) Ltd which "was formed in 2003 with a key focus on Facilities Management and Consultancy." "Our team" refers to three persons, one of whom is Raymond Moodley, who is described as "Group CEO". His LinkedIn profile describes him as "Chief Executive Officer and co-founder of Chiefton Facilities Management and goes on to say -

> "We furthermore embark on Security by Design analysis and has (sic) saved clients millions in doing things differently and efficiently. Paul Silver heads this division with vast experience internationally and has co-authored correctional facility books and is a Professional Architect."

2133.7. This tends to bear Mr Agrizzi's evidence out. Chiefton and Mr Moodley were issued with a rule 3.3 notice, but did not respond to it.

2133.8. When contrasted with Ms Mokonyane's bare denial, there is a sufficient basis for a finding that the facts as testified to by Mr Agrizzi in this regard are established.

2133.9. Had the tender proceeded, the facts testified to by Mr Agrizzi would have given rise to its being an unlawful tender process in breach of the relevant provisions of the Constitution, the PFMA and the Treasury Regulations.[3246] That process would have been facilitated by Ms Mokonyane's having assisted Bosasa in positioning themselves to have an unlawful and unfair advantage in securing the tender. This would have amounted to the unlawful facilitation of the tender. Does the fact that the unlawful facilitation was incomplete and unsuccessful change matters? There is no reason why it should. The initial steps were

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[3246] Regulation 16A of the Treasury Regulations.

taken and were clearly unlawful. That is sufficient to bring the matter within the ambit of the unlawful facilitation component of TOR 1.4.

2133.10. The other aspect relevant to facilitation was what Mr Agrizzi ascribed to Mr Watson as the reason given by him for the conferral of extensive benefits by Bosasa on Ms Mokonyane. According to Mr Agrizzi, when he challenged Mr Watson as to the justification for continuing to make payments to Ms Mokonyane, Mr Watson responded that *"she has a lot of clout"* and *"[w]e needed her support for the protection from the SIU investigation, the HAWKS and the NPA."* Mr Agrizzi at that stage questioned whether they were indeed getting that protection.[3247] However, in the long run, the fact of the matter is that, as pointed out earlier, the investigation and prosecution pursuant to the SIU report did indeed grind to a halt.

2133.11. What is also not in dispute is that Ms Mokonyane was at all material times a senior and influential person and office bearer within both the ANC and government. There is no direct evidence of any particular steps taken by Ms Mokonyane towards stopping the investigation. However, the glaring question is what Bosasa was receiving in return for the multiple benefits bestowed upon Ms Mokonyane. The Watson family's long history with the ANC would have meant that they were well attuned to where best within the ANC and government, there was the greatest prospect of generating influence.

[3247] Transcript, day 37, pp 29 - 44.

Breaches

2134. In her various positions in the executive, Ms Mokonyane was subject to the Constitution, her oath of office under the Constitution, the Executive Members Ethics Act, and the Executive Ethics Code.

2135. In terms of section 96 of the Constitution, a member of Cabinet may not expose him/herself to any situation involving the risk of a conflict between his/her official responsibilities and his/her private interests. Further, he/she must act in accordance with a code of ethics prescribed by national legislation, i.e. the Executive Members' Ethics Act and the Executive Ethics Code published in terms of section 2 of that Act.

2136. In terms of the Executive Ethics Code, she was not permitted to:

2136.1. use her position or any information entrusted to her, to enrich herself or improperly benefit any other person;

2136.2. expose herself to any situation involving the risk of a conflict between her official responsibilities and her financial and/or personal interests;

2136.3. solicit or accept a gift or benefit which (i) is in return for any benefit received from her in her official capacity; (ii) constitutes improper influence of her; or (iii) constitutes an attempt to influence her in the performance of her duties.

2137. In respect of all of the benefits conferred upon her by Bosasa she was in breach of her constitutional, legislative and ethical duties, as contemplated in TOR 1.4.

2138. The facilitation provided by Ms Mokonyane in relation to the dams report did not benefit Bosasa within the meaning of TOR 1.4. However, it did benefit Ms Mokonyane herself in that she continued to receive benefits from Bosasa and efforts such as this one

would probably have given the impression that she was attempting to look after Bosasa's interests.

2139. With reference to TOR 7, and based on the foregoing analysis, there is sufficient evidence to establish that (i) Ms Mokonyane accepted gratification; (ii) from another person, i.e. Bosasa (or its directors or employees), (iii) which held and sought to obtain contracts with government.

2140. With reference to the presumption in section 24(1) of PRECCA, the state can likely show that, despite having taken reasonable steps, it was not able to link the acceptance of the gratification by Ms Mokonyane, to any lawful authority or excuse for receiving the gratification. This is because Ms Mokonyane, failed to provide evidence to the contrary to show a lawful authority or excuse for receiving the gratification, either at all or at a level that could give rise to a reasonable doubt.

2141. Section 24(1) of PRECCA would, in the Commission's view, deem there to be sufficient evidence to establish that Ms Mokonyane accepted the gratification from Bosasa and in doing so breached her Constitutional and legislative duties as well as ethical obligations in order to act in one or more of the "manners" in paragraphs (aa) to (dd) of the PRECCA, being the different statutorily recognised forms of *quid pro quo*.[3248]

2142. The matter is referred to the appropriate authorities for further investigation and prosecution of Ms Mokonyane on charges of corruption in terms of section 3 and/or 4 and/or 11 and/or 12 and/or 13 of PRECCA.

[3248] As regards "the manners", see footnote 3272 above.

Ms Dudu Myeni

Introduction

2143. The evidence pertaining to Ms Myeni is in certain respects also relevant to TOR 1.1. In this regard she is a director of the board of an SOE as contemplated in that TOR.

2144. Much of the evidence against Ms Myeni remains unchallenged, given her refusal to answer most questions on the basis that she might incriminate herself.[3249] The decision of the Constitutional Court in *Secretary, Judicial Commission of Inquiry into allegations of State Capture* makes it clear that claiming privilege against self-incrimination is not there for the asking. Ms Myeni was required to demonstrate how an answer to the questions in issue would breach the privilege. This she failed to do.

2145. Even if she had properly claimed the privilege, the consequence would still have been that the evidence in question was left unanswered for purposes of the Commission's findings. It would not prevent the Commission from proceeding on the basis of the unanswered evidence to make its findings with reference to the terms of reference.

The evidence of benefits

2146. The evidence against Ms Myeni is set out in detail in Part F above and need not be repeated. It includes the following:

2147. Mr Watson spoke openly about the fact that he regularly paid Ms Myeni R300,000 in cash for the benefit of the Jacob G Zuma Foundation. Mr Agrizzi witnessed these payments being made himself on three occasions. He was also involved in packing the money on occasion. Mr Agrizzi suspected the funds were going directly to then

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[3249] Transcript, day 300, pp 46 - 53, 63 - 80.

President Jacob Zuma and were not in fact destined for the Foundation, given that the payments were always paid in cash and hand delivered to Ms Myeni as opposed to being paid by bank transfer to the Foundation.[3250]

2147.1. Evidence was given that Ms Myeni received gifts as well as upgrades to the security at her home in Richards Bay. Mr le Roux was able to present documentary evidence in support of this allegation in the form of a series of invoices for work done at Ms Myeni's home. Mr le Roux's evidence established that the total approximate cost of the equipment, vehicle travel and labour was R486,514.63.[3251]

2147.2. Mr Agrizzi testified that he and Mr Watson purchased a Louis Vuitton handbag for Ms Myeni.[3252] The handbag was delivered to the Bosasa offices and filled with R300,000 in cash by Mr Watson. Although Ms Myeni denied being in possession of a Louis Vuitton handbag which was filled with cash to the amount of R300,000 this was nothing more than a bare denial. She later refused to answer any further questions on the issue on the basis that she might incriminate herself.[3253]

2147.3. Mr Agrizzi testified that Ms Myeni, in her capacity as Chairperson of the Jacob G Zuma Foundation, often called upon Mr Watson to arrange high-end functions for Mr Zuma. The cost of these functions was approximately R3.5m

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3250 Transcript, day 41, p 70.

3251 Exhibit T21, p 7.

3252 Transcript, day 41, pp 77 and 78.

3253 Transcript, day 300, p 22.

per year.[3254] Ms Myeni confirmed Bosasa's involvement in arranging and funding birthday celebrations for Mr Zuma.[3255]

Assessment of the evidence: benefits

2148. Given the evidence that, according to Mr Agrizzi, Mr Watson said that Mr Zuma confirmed receipt of the monthly cash amounts, it must be accepted that Ms Myeni was not benefitting personally from these payments, but they would certainly have boosted her position as Chairperson of the Jacob G Zuma Foundation and her ability to have a significant degree of influence over Mr Zuma. If she was remunerated for her work as Chairperson of the Foundation, the payments would have benefitted her indirectly insofar as the funds would have gone into the payment of her remuneration and that of the staff of the Foundation. However, there was no evidence that she was remunerated for her work on the Foundation.

2149. Similarly, she would not have derived direct financial benefits from the spending on Mr Zuma's birthday parties. However, she would certainly have benefitted insofar as it was clearly her duty as Chairperson of the Jacob G Zuma Foundation to ensure that lavish birthday parties were provided for Mr Zuma. Bosasa's contribution would have been invaluable to her in successfully carrying out that responsibility. It would also have been invaluable in ensuring her continuing ability to influence Mr Zuma and to benefit from his decision-making insofar as she herself was concerned. In any event, section 3 of PRECCA criminalises the corrupt receipt of gratification *"whether for the benefit of … herself or for the benefit of another person."*

[3254] Transcript, day 41, p 64. Transcript, day 299, pp120, 127.

[3255] Transcript, day 299, pp120, 127.

2150. The evidence in relation to the handbag filled with cash was disputed by Ms Myeni, but the denial was a bare one and she put up no evidence to expand upon or explain her denial. She also resorted to the privilege against self-incrimination to avoid further questions on the issue. In the circumstances, the gift of the handbag filled with cash is established.

2151. As pointed out above, Ms Myeni was unwilling to answer questions pertaining to the installation of the valuable security system at her home on the basis of the privilege against self-incrimination. The evidence is uncontested, clear and supported by documentary evidence. The provision of this benefit is established.

2152. Having regard to the foregoing, it is established, in respect of Ms Myeni, that there were attempts made through inducements and gain to influence both her, as Chairperson of the Jacob Zuma Foundation or as someone close to Mr Zuma and director of an SOE and, through her, Mr Zuma, as contemplated in TOR 1.1.

<u>The evidence of facilitation</u>

2153. The evidence relevant to the enquiry into facilitation included the following:

2153.1. Mr Agrizzi testified about Ms Myeni's assistance in facilitating a meeting between President Zuma, Mr Watson, Mr O'Quigley and Ms Oberholzer to seek President Zuma's aid in advising the then Minister of Minerals and Energy to make certain amendments to what were considered restrictive regulations applicable to the oil and gas industry that impacted on the potential for fracking in the Karoo. Although Ms Myeni denied evidence that she had influence over President Zuma to bring about an amendment of the regulations in question, she admitted that the meeting took place at Nkandla in this regard and involved these persons. However, when given an

opportunity to explain the basis of her abovementioned denial, Ms Myeni refused to answer questions on the basis that she might incriminate herself.

2153.2. Ms Oberholzer's evidence on affidavit was that the meeting in question was arranged by Ms Myeni. In confirmation of this, she put up an email dated 20 July 2014 from dudumyeni@telkomsa.net, seemingly addressed to Mr Watson and later the same day forwarded by him to Ms Oberholzer, which conveyed that they should rest assured, all was under control and that Ms Myeni was trying to set up the meeting for the 27th. Despite being faced with this evidence corroborating the allegation against her, Ms Myeni again refused to answer any questions on the email as she said that she did not want to risk incriminating herself.[3256]

2153.3. Mr le Roux confirmed Mr Agrizzi's evidence that Ms Myeni attended at Bosasa's premises. He explained that he was instructed to delete security footage of Ms Myeni's visit to the premises together with President Zuma and Mr Bheki Cele.[3257]

2154. There was also important evidence pertaining to Ms Myeni's involvement in providing to Bosasa confidential documentation in relation to the investigation and potential prosecution of Bosasa, and persons associated with it, arising from the SIU report. The evidence before the Commission can be summarised as follows:

2154.1. Mr Agrizzi testified that Mr Mathenjwa was given primary responsibility for dealing with Ms Myeni on Bosasa's problems with the investigation and

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3256 Transcript, day 300, p 16 - 20.

3257 Transcript, day 44, p 37; Mr le Roux's Affidavit, p 4 at para 17. Mr le Roux was stripped of his responsibility to monitor the systems at the beginning of 2017 – transcript, day 44, p 38.

prosecution. Nonetheless, Mr Agrizzi said he was present at meetings where the investigation and contemplated prosecution of Bosasa was discussed with Ms Myeni and this led to the involvement of President Zuma directly.[3258]

2154.2. Mr Watson asked Mr Agrizzi to attend a meeting with Ms Myeni at the Sheraton Hotel in Pretoria regarding information on the Hawks investigation and discussions she had with the NPA.[3259] Mr Watson prepared the R300,000 in cash. When they arrived at the Sheraton Hotel, they were escorted to a private lounge area with stringent access control on a member's only basis.

2154.3. During this meeting, Ms Myeni indicated that she was trying to arrange that the investigation be terminated. She produced a police case docket that had purportedly been obtained from the NPA. She provided Mr Agrizzi and Mr Watson with sight of it but insisted that Mr Agrizzi should not make copies. Mr Agrizzi, therefore, requested that he be excused to study it and make notes in his journal.

2154.4. Despite the admonition by Ms Myeni not to take any photographs of the docket, Mr Agrizzi took a few photographs of the docket on his cell phone.[3260] The docket was placed on the carpeted hotel floor when Mr Agrizzi took the photographs.

2154.5. Mr Dutton confirmed that Mr Agrizzi had a series of photographs of documents which appear to be photographs of confidential documents of the South African Police Service's Anti-Corruption Task Team relating to the progress of

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3258 Transcript, day 41, p 93.

3259 Mr Agrizzi's Initial Affidavit, pp 85-86, para 41.12 to 41.15.

3260 Copies of the photographs appear as Annexure Y to Mr Agrizzi's Initial Affidavit, pp 710-726.

the police criminal investigation into corruption allegations against Bosasa. These photographs were taken at the Sheraton Hotel.

2154.6. Mr Dutton explained Mr Agrizzi's description of the layout of the 6th floor of the Sheraton Hotel where he was alleged to have met Ms Myeni. Mr Dutton visited the Sheraton Hotel on 21 December 2018 and Mr Agrizzi's description of the 6th floor aligned closely to what Mr Dutton observed. In addition, he observed that the pattern on the carpet was identical to that featured in Mr Agrizzi's photographs.[3261]

2154.7. A document thus photographed by Mr Agrizzi was titled "ACTT Monthly Progress and Audit Report' that was generated by the police providing monthly reports on the status of the Bosasa investigation.[3262]

2154.8. An examination of the metadata of the photographs taken by Mr Agrizzi by the Commission's digital forensics team revealed that the photographs on Mr Agrizzi's phone were taken on 23 September 2015 at 10:37:06. The longitude and latitude co-ordinates of the location of the photograph is within the vicinity of the Sheraton Hotel.[3263]

2154.9. The hotel's general manager, Mr Pascal Foquet, confirmed on affidavit and through hotel records that Ms Myeni had booked into the hotel on 22 September 2015 and there were no further transactions on her invoice after 24 September 2015. She had been accommodated in Room 616.[3264] From

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3261 Exhibit T7, p 20; transcript, day 46, pp 70 to71.

3262 Annexure "FKDA", Exhibit T7, p 4

3263 Transcript, day 46, p 79.

3264 Transcript, day 46, p71.

that the general manager had deduced that she had checked out on the date. The account was settled on 5 October 2015.[3265]

2154.10. Mr Dutton confirmed that the account for Ms Myeni's stay was paid off from the FNB account of one Nicole Stone and on top of the customer registration card it stated 'Account Jacob Zuma Foundation'.[3266] Nicole Stone is a travel agent from either Richards Bay or Empangeni.[3267]

2154.11. The Commission's investigation team showed Mr Agrizzi's photographs to both General Moodley and senior State Advocate De Kock who was originally the prosecutor assigned to the matter and they both advised that the documents appeared to be an ACTT progress report dated 24 August 2015. They confirmed that these documents were not publicly available and were confidential documents and correspondence between the police and the NPA.[3268]

2155. Despite facing the corroborating evidence referred to above and despite appreciating the implications of her refusal to answer questions on her evidence,[3269] Ms Myeni refused to answer questions regarding (i) the meeting of 23 September 2015 (ii) Mr Blake's evidence regarding payment in respect of her earlier stay at the Sheraton between 4 and 6 May 2014;[3270] (iii) handing over a police docket containing information

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3265 Mr Foquet's affidavit appears at p21 of Exhibit T7 and the invoice referred to in his affidavit appears at p 30 of Exhibit T7.

3266 Transcript, day 46, p73-74.

3267 Transcript, day 46, p75.

3268 Transcript, day 46, p77.

3269 Transcript, day 300, p 143.

3270 Transcript, day 300, p 7 and 129.

regarding the investigation into Bosasa, all on the basis that she did not want to risk incriminating herself.[3271]

2156. The final evidence against Ms Myeni was that she arranged a meeting at ORTIA to enable Bosasa officials to meet the then CEO or acting CEO of SAA, Nico Bezuidenhout. It was stated that during the pre-meeting a tender for security services was discussed and Ms Myeni wanted Bosasa to look into the possibility of taking over the security contract and the catering contract for SAA.[3272]

2157. Confirmation that the meeting took place at the Intercontinental Hotel at ORTIA and details of the meeting were provided in an affidavit by Mr Bezuidenhout. Despite this, Ms Myeni refused to answer any questions put to her on the basis of his affidavit because of her concern that she could incriminate herself.[3273]

Analysis of the evidence: facilitation

2158. There is more than sufficient evidence to support a finding that Ms Myeni facilitated the meeting with President Zuma in relation to the oil and gas regulations. In fact, this has been established beyond reasonable doubt. The question, however, is whether that amounts to the facilitation of the unlawful award of a tender as contemplated in TOR 1.4. There is insufficient evidence to sustain such a finding. The incident serves rather as evidence of the influence that Ms Myeni was able to exert over President Zuma and of the closeness of her association with him.

3271 Transcript, day 300, p 37.

3272 Transcript, day 76, p 73.

3273 Transcript, day 300, pp 53 - 62.

2159. Similarly, the evidence concerning Ms Myeni and President Zuma's visit to the Bosasa office park is not a sufficient basis to find that Ms Myeni facilitated the award of unlawful tenders.

2160. However, the evidence pertaining to Ms Myeni making available to Mr Agrizzi confidential information belonging to the Hawks or the NPA in connection with the investigation and prosecution, -

2160.1. is compelling and, given the strong documentary and photographic corroboration, warrants a finding that these facts were established beyond reasonable doubt; and

2160.2. amounts to the corrupt provision by Ms Myeni of a quid pro quo for the inducements and gain provided to her;[3274] and

2160.3. indirectly facilitated the unlawful award of tenders by ensuring that existing contracts were retained by Bosasa and an ostensibly clean record was maintained by it to secure further tenders from the State and SOEs.

2161. The evidence pertaining to the meeting with Mr Bezuidenhout is corroborated by him. Although nothing came of the meeting, had the contracts been concluded, there would have been a tender process. By arranging the meeting long before any such tender process had commenced, Ms Myeni sought to give Bosasa an unfair advantage. The conduct, accordingly, amounted to the facilitation of unlawful tenders, even if the facilitation was incomplete and did not bear fruit. As pointed out earlier, section 21(a) of PRECCA recognises the offence of attempted corruption.

[3274] See the reference to *S v Selebi* above in footnote 3202.

2162. Given the above analysis, there was indeed the facilitation of the unlawful award of tenders by Ms Myeni as contemplated in TOR 1.4. That facilitation was intended to benefit Bosasa, a corporate entity doing business with government, and, potentially, SAA, which is an organ of State. Ms Myeni benefitted as an individual, given the benefits she received. That requirement of TOR 1.4 is, accordingly, also satisfied in respect of Ms Myeni.

2163. With reference to TOR 7, and based on the foregoing analysis, there is a prima facie case of corruption against Ms Myeni of corruption in terms of on charges of corruption in terms of section 3 and/or 4 and/ or 9 and/or 11 and/or 12 and/or 13 of PRECCA.

2164. The matter is referred to the appropriate authorities for further investigation and prosecution of Ms Myeni accordingly.

Breaches and benefits

2165. In sharing the information with Mr Agrizzi, Ms Myeni's conduct frustrated the police and prosecution authorities in their steps relating to investigating and prosecuting corruption in relation to tender processes.

2166. Accordingly, Ms Myeni's facilitation of the unlawful awarding of tenders constituted breaches of the Constitution and legislation.

2167. The evidence in relation to the giving and receipt of gratification by Ms Myeni in the form of receipt of the benefits found to have been provided and the facilitation provided both in relation to the provision of confidential information pertaining to the investigation and the incomplete attempt to facilitate security and catering contracts with SAA, give rise to a *prima facie* case of corruption in terms of at least sections 3

and 11 of PRECCA along with other statutory and common law crimes, including defeating the ends of justice.

2168. In engaging in the facilitation of the unlawful award of tenders in the respects identified, Ms Myeni clearly sought to benefit Bosasa and its associates and directors or employees potentially facing prosecution. She also sought to benefit herself and to benefit Mr Zuma insofar as her work as Chairperson of the Jacob G Zuma Foundation was facilitated by the benefits conferred by Bosasa.

2169. In the circumstances, there was conduct on the part of Ms Myeni falling squarely within TOR 1.4.

Beneficiaries of the facilitation

2170. Returning to the analysis at a more general level, it is, of course, so that the persons identified in all of the foregoing analysis as having facilitated the unlawful award of tenders in return for inducements and gain, sought to benefit themselves. However, that is not the only question raised by the latter part of TOR 1.4. The question also requires asking whether the facilitation benefitted any -

2170.1. family;

2170.2. individual (in addition to the facilitator); or

2170.3. corporate entity that was doing business with government or any organ of state.

2171. Clearly, Bosasa and the entities falling within the Bosasa group were the primary beneficiaries of the facilitation and they fall within the description of a corporate entity doing business with both government and organs of state. The facilitators and other

individuals who benefitted have generally been identified in the course of the preceding analysis.

2172. The question must, however, be asked whether the Watson family, as distinct from Bosasa, benefitted from the facilitation. Mr Agrizzi testified that Mr Watson made decisions which ultimately benefitted Bosasa, Mr Watson and his family.[3275] He also testified that Mr Watson was Bosasa.[3276]

2173. There was also evidence of particular benefits conferred on particular family members:

2173.1. There is evidence that houses constructed for Lindsay and Roth Watson were paid for by companies within the Bosasa group.[3277]

2173.2. Various interests were held by the Watson family in companies that were also alleged to have benefitted from the corrupt relationships established by the Watsons with various public officials, including Vulisango (Pty) Ltd, Inyanda Energy Projects (Pty) Ltd, Laidback Investments (Pty) Ltd, and O'Feh Investments (Pty) Ltd.[3278]

2173.3. Mark Taverner, Watson's brother-in-law, was also involved in various activities related to Bosasa. His companies not only supplied Bosasa (for which a benefit must have been received in return), but would also facilitate unlawful transactions for Bosasa.

[3275] Transcript, day 76, p 77.

[3276] Transcript, day 76, p 77.

[3277] Transcript, day 74, p 64.

[3278] Transcript, day 75, pp 76-77.

2173.4. Mr Agrizzi described Mr Watson as the godfather of Bosasa.[3279] The evidence reveals that the Watson family was involved in Bosasa's affairs at a high-level, at times in the day-to-day activities as well as in exerting various forms of pressure or influence on others, to their and Bosasa's benefit.

2174. Accordingly, the Watson family benefited from the facilitation of the unlawful awarding of tenders, as contemplated in TOR 1.4.

Conclusion and findings in relation to TOR 1.4

2175. Overall, the evidence shows that Mr Zuma, at least one member of his National Executive, public officials and the Chairperson of an SOE breached the Constitution, legislation and ethical codes by facilitating the unlawful award of tenders by SOEs and organs of state to benefit -

2175.1. the Watson family;

2175.2. Bosasa and its associated entities;

2175.3. the recipients of monetary and other illicit benefits in return for the facilitation; and

2175.4. the families of the recipients, particularly where family members were directly provided with benefits, as in the case of Mr Mti, Mr Gillingham, Mr Smith and Ms Mokonyane.

[3279] Transcript, day 76, p 77.

Analysis and findings with reference to TOR 1.5

Introduction

2176. The questions asked by TOR 1.5 are -

2176.1. whether there was corruption in the award of contracts and tenders by any of the major public entities listed in schedule 2 to the PFMA; and, if so,

2176.2. what the nature of the corruption was; and

2176.3. what the extent of the corruption was.

2177. As pointed out above, the focus of the enquiry required by TOR 1.5 is on whether there is evidence of corruption in the award of contracts and tenders by a particular category of public entities, being those listed in Schedule 2 to the PFMA, and, if so, its nature and extent. The entities in question are the "major public entities".[3280]

2178. This term of reference is best analysed with reference to the evidence pertaining to the contracts concluded by Bosasa and its associated entities with ACSA and SAPO. The three questions raised may be considered together.

[3280] They include Airports Company, Air Traffic and Navigation Services Company, Alexkor Limited, Armaments Corporation of South Africa, Broadband Infraco Limited, CEF (Pty) Ltd, DENEL, Development Bank of Southern Africa, ESKOM, Independent Development Trust, Industrial Development Corporation of South Africa Limited, Land and Agricultural Bank of South Africa, SA Broadcasting Corporation Limited, SA Forestry Company Limited, SA Nuclear Energy Corporation, SA Post Office Limited, South African Airways Limited, South African Express (Proprietary) Limited, Telkom SA Limited, Trans-Caledon Tunnel Authority, Transnet Limited.

Contracts with ACSA

2179. Bosasa was awarded a tender in 2001 to provide protection and guarding services at ORTIA. Mr Agrizzi understood Bosasa still to have the contract when he testified at the Commission in 2019.[3281]

2180. According to Mr Agrizzi, various persons at ACSA were paid a cash amount on a monthly basis in return for facilitating the contract and its renewals. These persons included:[3282]

2180.1. Thele Moema, Head of Risk at ACSA;

2180.2. Siza Thanda, Head of Security for ACSA;

2180.3. Reuben Pillay, 'Joe' Serobe and Mohammed Bashir (procurement officers).

2181. The payments were made over a period of a few years and would cease when the person left the employment of ACSA. Mr Agrizzi testified that he often visited ORTIA with Mr Gumede and that they would take grey security bags filled with money to give to certain people at ORTIA. Mr Agrizzi also testified that he had packed some of the money bags and had kept a record in this regard. The payments were still being made when Mr Agrizzi left Bosasa. That was in 2017.

2182. Mr Agrizzi recorded some of the payments made to ACSA officials in his black book. Those parts of the black book which Mr Agrizzi was able to provide to the Commission reflected payments made through Mr Gumede to the following persons/entities:

3281 Transcript, day 34, p 110.

3282 Transcript, day 34, pp 121-122.

2182.1. Bongi Mpungose;[3283]

2182.2. Jason Tshabalala;[3284] and

2182.3. Mohammed Bashir[3285]

2183. Mr Agrizzi's evidence implicating these persons is supported by his recordal of payments in the black book. Thele Moema, Reuben Pillay, and Johannes Serobe were each sent a rule 3.3 notice by the Commission and they failed to respond to it.[3286] Consequently, the evidence implicating them in the receipt of monies is not disputed.

2184. Bongi Mpungose, Jason Tshabalala and Mohammed Bashir were not sent rule 3.3 notices by the Commission. In the circumstances, no adverse findings are made against them.

2185. With respect to TOR 7, the evidence establishes a *prima facie* case of corruption against the following persons in respect of whom the matter is referred for further investigation and prosecution:

2185.1. Thele Lesetsa Moema, Reuben Pillay, and Mohapi Johannes Serobe (employees or former employees of ACSA).

2186. The evidence also establishes that there is a reasonable prospect that further investigation will uncover a *prima facie* case of corruption against Siza Thanda for the facilitation of the unlawful award of a contract or tender and the matter is referred for this purpose. In respect of the following persons, it is up to the investigating authorities

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3283 Annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 86, 87, 88

3284 Annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 86, 87, 88

3285 Annexure HH to Mr Agrizzi's Supplementary Affidavit, pp 86, 87, 88

3286 The rule 3.3 notices are dated 24 January 2019.

to decide whether or not to investigate the matter further (starting, if considered necessary, with obtaining statements from them on their side of the story if they agree to provide statements):

2186.1. Bongi Mpungose;

2186.2. Jason Tshabalala; and

2186.3. Mohammed Bashir (all employees of ACSA).

Contracts with SAPO

2187. Mr Agrizzi testified that Bosasa made regular payments to the former Head of Security at SAPO, Siviwe Mapisa, and the former CEO, Maanda Manyatshe on a basis similar to that in respect of other recipients of cash inducements.[3287]

2188. In addition to the cash payments, Mr Agrizzi testified that Bosasa also provided them with premium gifts including pens, cufflinks and watches. Mr Mapisa was also taken on hunting trips at Mr Ronnie Watson's game farm in the Eastern Cape. The cash payments and gifts were provided in exchange for their facilitation of the award of the SAPO security contract.

2189. Both Siviwe Mapisa and Maanda Manyatshe were sent rule 3.3 notices by the Commission and failed to respond.[3288] Consequently, the evidence implicating them in the corrupt receipt of monies and gifts is not disputed.

[3287] Transcript, day 34, p 103.

[3288] The rule 3.3 notices are dated 25 January and 18 February 2019.

2190. With respect to TOR 7, The evidence establishes a *prima facie* case of corruption against the following persons in respect of whom the matter is referred for further investigation and prosecution:

2190.1. Siviwe Luthando Bongani Mapisa and Maanda Benjamin Manyatshe (employees or former employees of SAPO).

Conclusion and findings in relation to TOR 1.5

2191. None of those persons implicated in the evidence in this section of the report who were issued with rule 3.3 notices responded to those notices. In the circumstances, the evidence in relation to them remains undisputed.

2192. Although the evidence is based on the single witness testimony of Mr Agrizzi, it is corroborated in some instances by the recordal of names in Mr Agrizzi's black book. The evidence also implicates Mr Agrizzi in criminal activity and is to his detriment, and it is unlikely that he would lie to prejudice himself. His evidence is also supported by the video evidence pertaining to the vaults and the safes where cash was stored and packaged for purposes of corrupt payments.

2193. The evidence establishes that there was corruption in the award of contracts or tenders to Bosasa by Schedule 2 SOEs. The undisputed evidence was that the ACSA contract was unlawfully awarded in 2001 and was believed still to be in effect in 2019. The evidence of corruption was both for the facilitation of the original contract and the various extensions of the contract.

2194. Returning to the questions arising from TOR 1.5, the evidence establishes that -

2194.1. there was corruption in the awarding of tenders in two SOEs that Bosasa had dealings with, ACSA and SAPO;

2194.2. the corruption involved the payment of unlawful gratification by way of ongoing monthly payments to various persons to ensure the grant and extension of the contracts to provide security services.

2195. An assessment of the extent of the corruption must await further investigation of the persons that did not receive rule 3.3 notices. A total of five implicated employees have received rule 3.3 notices and have not responded.

Analysis and findings with reference to TOR 1.9

2196. The questions arising from TOR 1.9 are -

2196.1. whether there was corruption in the award of contracts and tenders by Government Departments, agencies and entities; and, if so,

2196.2. what the nature of the corruption was; and

2196.3. what the extent of the corruption was; and

2196.4. whether the corruption involved office bearers in the listed categories seeking to benefit themselves, their family members or entities in which they held a personal interest.

2197. The focus of the enquiry required by TOR 1.9 is on corruption in the award of tenders by government departments, agencies and entities, as distinct from the major public entities. It also focuses on whether the relevant office bearers sought to benefit themselves, their family members or entities in which they had an interest.

2198. To a significant degree, the questions whether there was corruption in the award of contracts and tenders by government departments, agencies and entities and whether the corruption involved office-bearers seeking to benefit themselves, their family members, or entities in which they held a personal interest, have already been answered in the analysis with reference to other terms of reference, particularly TOR 1.1 and TOR 1.4. That already establishes the existence and very substantial extent of the phenomenon of corruption in relation to the awarding of contracts and tenders by government departments involving office bearers in the categories concerned.

2199. The analysis in this section will therefore focus on the nature and the extent of the corruption.

2200. The evidence reveals that that there was widespread corruption in the awarding of contracts and tenders to Bosasa and its associated business entities or organisations, by Government departments, SOEs, agencies and entities. Members of the National Executive,[3289] public officials and functionaries of various organs of state influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest.

2201. Mr Agrizzi's evidence suggested that the aggregate value of contracts awarded to the Bosasa Group of Companies by various public departments and entities between 2000 and 2016 was at least R2,371,500,000.00. Mr Agrizzi estimated that approximately R75,700,000 was paid out in bribes.[3290] The breakdown of the various contracts within the Bosasa Group and an estimated value that was paid out in bribes annually, per contract, was provided earlier. These values do not include the value of houses built, fixtures and fittings as well as furnishings, motor vehicles purchased and travel expenses incurred. Mr Agrizzi's estimations must be treated with a measure of caution. However, even on that basis, there was systemic corruption on what is described above as an industrial scale in the forms contemplated in TOR 1.9. Corruption was central to Bosasa's business model.

2202. Mr Agrizzi, along with other witnesses, testified and demonstrated that Bosasa (and the Watson family) established a reasonably well-organised network of well-placed, well-connected and powerful people whose loyalty was secured with financial and other material incentives and bribes. It was through this network that they were able

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[3289] Including Mr Zuma, Ms Mokonyane (former Minister of Water and Sanitation) and Mr Makwetla (former Deputy Minister of Correctional Services).

[3290] Mr Agrizzi's Supplementary Affidavit, p 10, paras 12, 13.

to promote and protect the private interests of Bosasa by irregular procurement and practices to extract money from the state in very substantial amounts. In Mr Agrizzi's experience, every one of the contracts in which Bosasa was involved was tainted with bribes and corruption. Where contracts were not awarded as a result of corruption, corruption would creep in once they had been awarded, to ensure their retention and their extension or renewal. These contracts spanned, at least, a 17-year period.

2203. With respect to TOR 7, there was massive corruption in the awarding of tenders and contracts to Bosasa and its affiliates by government departments, agencies and entities. The corruption took the form of Bosasa through its directors and employees providing gratification in the form of cash payments and other material benefits to state office bearers as contemplated in TOR 1.9, in exchange for the unlawful award of tenders and contracts to Bosasa and its affiliates.

2204. The referrals pursuant to TOR 1.9 are all covered by TOR 1.1 and 1.4.

Instances possibly not covered by terms of reference 1.1, 1.4, 1.5 and 1.9

2205. The evidence reveals unlawful activities possibly not covered by the terms of reference detailed above. Those instances are detailed below and where appropriate, are referred for prosecution, further investigation or the convening of a separate enquiry to the appropriate body regarding the conduct of certain persons as contemplated in TOR 7.

2206. There is evidence of corruption involving the following persons:

2206.1. Mr Simon Mofokeng, former General Secretary of CEPPWAWU for the acceptance of grocery items on a monthly basis to the value of R12,000 to

R15,000 (for the offence of corrupt activities relating to the procuring and withdrawal of tenders in terms of section 13 of PRECCA),[3291]

2206.2. Mr Sydney Mantata, who purchased and delivered the grocery items to Mr Mofokeng[3292]

but it is not clear whether rule 3.3 notices were issued against them and, in any event, there is a possibility that any crimes committed by them before February 2002 may have prescribed in terms of section 18 of the Criminal Procedure Act No. 51 of 1977. This evidence may be considered by the relevant investigating authorities, but no referral is recommended in this regard.

2207. There was evidence to suggest that a number of persons were involved in -

2207.1. the destruction of electronic data and files, as well as computer hardware, and documentation, to prevent this evidence being seized by the SIU;

2207.2. the destruction of computers and invoicing books from Blake's Travel;

2207.3. the destruction of files through the faked server crash;

2207.4. the deletion of files due to the SIU investigation; and

2207.5. the intimidation of potential witnesses.

2208. The persons implicated in this conduct were the following:

[3291] Transcript, day 34, p 99.

[3292] Transcript, day 34, p 97-99.

2208.1. Angelo Agrizzi;

2208.2. Johannes Andries van Tonder;

2208.3. Leon van Tonder;

2208.4. Matthew Robert Leeson (referred to by Mr Agrizzi as Max Leeson);

2208.5. William Brander; and

2208.6. Brian Blake.

2209. Brian Blake disputes that computers were removed from Blake's Travel, destroyed and later replaced. Mr Blake's version is improbable in the light of the corroborating evidence of Messrs Agrizzi, van Tonder and van der Bank. This is particularly the case as Mr Agrizzi and Mr van Tonder implicate themselves in criminal activity, to their own detriment. It is unlikely that they would lie to prejudice themselves. Matthew Leeson and William Brander failed to respond to rule 3.3 notices issued by the Commission in February and March 2019, respectively and the evidence against them is undisputed.

2210. Accordingly, there are reasonable grounds for suspecting that the above conduct occurred and that the persons implicated are guilty of defeating or obstructing the course of justice and/or fraud and/or corrupt activities relating to witnesses and evidential material in terms of section 11 of PRECCA and/or unacceptable conduct relating to witnesses in terms of section 18 of PRECCA and/or unacceptable conduct relating to witnesses in terms of section 19 of PRECCA.

2211. There is a reasonable prospect that further investigation will uncover a *prima facie* case. These matters are accordingly referred for further investigation and prosecution.

2212. Having regard to the evidence pertaining to them, there is a reasonable prospect that further investigation by the relevant professional bodies will reveal a *prima facie* case of professional misconduct on the part of the following persons or firms:

2212.1. Brian Biebuyck, through an investigation by the Legal Practice Council ("LPC").

2212.2. Petrus Venter, through an investigation by the SAIT.

2212.3. The various attorneys whose trust accounts were used by Bosasa to make various unlawful payments, through an investigation by the LPC.

2212.4. D'Arcy-Herrman, through an investigation by the Independent Regulatory Board for Auditors ("IRBA").

2213. The Commission report must be made available to SARS so that it may exercise its investigative powers derived from the provisions of the Tax Administration Act 28 of 2011 ("TAA") to determine whether any tax offences were committed by Bosasa or its associates. In particular, the following issues are referred to SARS for further investigation:

2213.1.1. whether Mr Papadakis breached his obligations in terms of the TAA as an official and/or a former official of SARS;

2213.1.2. the failure to disclose income and false invoicing deriving from the various cash accumulation mechanisms developed and used by Bosasa;

2213.1.3. including the cost of benefits provided to various individuals and state functionaries through the Special Projects Team as operational costs to be deducted from income in Bosasa's tax returns;

2213.1.4. the deduction of the invoices issued by Mr Mansell for "work" done as expenses;

2213.1.5. Bosasa's utilisation of SeaArk's assessed loss, the existence of the assessed loss in BSCM and Bosasa Operations and the equipment write-offs; and

2213.1.6. Phezulu Fencing in respect of receipts being hidden under contingent liabilities in the balance sheet instead of the income statement to avoid paying tax of R10.3m.

APPENDIX 1: PERSONS ISSUED WITH RULE 3.3 NOTICES

No.	Witness Name	Implicated Parties	3.3 Notice Date
1	Agrizzi A	AA W/S Directors:	20-Mar-19
2	Agrizzi A	AA Wholesalers	20-Mar-19
3	Agrizzi A	Bonifacio Mr Carlos	31-Jan-19
4	Agrizzi A	Brander Mr William	06-Mar-19
5	Agrizzi A	Chieftan Facilities Management (Pty) Ltd	20-Mar-19
6	Agrizzi A	Daubert Ms Carien	31-Jan-19
7	Agrizzi A	De Oliveria Munirah	31-Jan-19
8	Agrizzi A	De Wee Dr William Khotso	30-Jan-19
9	Agrizzi A	Dikani Mr Ishmail	31-Jan-19
10	Agrizzi A	Dlamini Mr Syvion	31-Jan-19
11	Agrizzi A	Gumede Mr Johannes (Joe)	31-Jan-19
12	Agrizzi A	Hoeksma Mr Riaan	31-Jan-19
13	Agrizzi A	Hundermark Mr Gavin	31-Jan-19
14	Agrizzi A	Hundermark Ms Rika	31-Jan-19
15	Agrizzi A	Jiba Adv Nomgcobo	06-Feb-19
16	Agrizzi A	Jolingana Ms Nontsikelelo	13-Feb-19
17	Agrizzi A	Khoabane Ms Pinky	06-Feb-19
18	Agrizzi A	Lamozest (Pty) Ltd	27-Mar-19
19	Agrizzi A	Leeson Mr Matthew Robert	18-Feb-19
20	Agrizzi A	Lepinka Ms Jackie	06-Feb-19
21	Agrizzi A	Leshabane Mr Papa	31-Jan-19
22	Agrizzi A	Leyds Ms Jacqueline	31-Jan-19
23	Agrizzi A	Littler Mr Patrick	31-Jan-19
24	Agrizzi A	Maako Mr Makuka Josiah	14-Feb-19
25	Agrizzi A	Mabena Ms Kaslutho Maria	14-Feb-19
26	Agrizzi A	Magagula Mr Vincent	13-Feb-19
27	Agrizzi A	Makoko Ms Thandi	31-Jan-19
28	Agrizzi A	Mansell Mr Jarrod	02-Apr-19
29	Agrizzi A	Mansell Mr William Daniel	02-Apr-19
30	Agrizzi A	Manyatshe Mr Maanda Benjamin	18-Feb-19
31	Agrizzi A	Maphisa Mr Siviwe Luthando Bongani	25-Jan-19
32	Agrizzi A	Matabella Ms Shishi	13-Apr-19
33	Agrizzi A	Mathenjwa Mr Trevor	31-Jan-19
34	Agrizzi A	Mitto Trading CC	28-Mar-19
35	Agrizzi A	Mkabela Mr Jephtha Mandla	14-Feb-19
36	Agrizzi A	Modise Mr Zach	04-May-19
37	Agrizzi A	Moema Mr Thele Lesetsa Nathaniel	24-Jan-19
38	Agrizzi A	Mokonyane Ms Nomvula	22-Jan-19
39	Agrizzi A	Monyeki Mr Mokunyo Patrick	27-Feb-19

40	Agrizzi A	Moyane Mr Thomas Swabihi	14-Feb-19
41	Agrizzi A	Mrwebi Adv Lawrence	06-Feb-19
42	Agrizzi A	Myeni Ms Duduzile Cynthia	24-Jan-19
43	Agrizzi A	Ndou Mr Michael	31-Jan-19
44	Agrizzi A	Ngubo Ms Mthokozeni Mollet	14-Feb-19
45	Agrizzi A	Ngwenya Ms Winnie	28-Feb-19
46	Agrizzi A	Nkabinde Mr Reggie	13-Feb-19
47	Agrizzi A	Nxele Mr Mnikelwa	24-Jan-19
48	Agrizzi A	O'Quigley Mr Phillip	15-Mar-19
49	Agrizzi A	Oberholzer Mrs Lizel	18-Feb-19
50	Agrizzi A	Olivier Ms Natasha	31-Jan-19
51	Agrizzi A	Papadakis Mr George	22-Jan-19
52	Agrizzi A	Passano Mr Louis	31-Jan-19
53	Agrizzi A	Pillay Mr Reuben	24-Jan-19
54	Agrizzi A	Radhakrishna Mr Aneel	06-Mar-19
55	Agrizzi A	Riekele Construction (Pty) Ltd	31-Jan-19
56	Agrizzi A	Roode Mr Ryno	01-Mar-19
57	Agrizzi A	Sekgotha Mr Sam	13-Feb-19
58	Agrizzi A	Seopela Mr Sesinyi	31-Jan-19
59	Agrizzi A	Serobe Mr Mohapi Johannes	24-Jan-19
60	Agrizzi A	Sishuba Ms Jabulile	07-Mar-19
61	Agrizzi A	Sithole Mr Khulekani	25-Mar-19
62	Agrizzi A	Smith Mr Vincent	23-Jan-19
63	Agrizzi A	Tanda Mr Sisa Antony	18-Feb-19
64	Agrizzi A	Tshabalala Ms Dikeledi Elizabeth	14-Feb-19
65	Agrizzi A	Van der Bank Mr Gerhard	01-Mar-19
66	Agrizzi A	Van Zyl Mr Jacques	20-Jun-19
67	Agrizzi A	Venter Mr Peet	24-Jan-19
68	Agrizzi A	Viljoen Mr Hennie	31-Jan-19
69	Agrizzi A	Wakeford Mr Kevin	23-Jan-19
70	Agrizzi A	Watson Mr Daniel John	06-Mar-19
71	Agrizzi A	Watson Mr Gavin	31-Jan-19
72	Agrizzi A	Watson Mr Jared	06-Feb-19
73	Agrizzi A	Watson Mr Ronald	06-Feb-19
74	Agrizzi A	Watson Mr Roth	31-Jan-19
75	Agrizzi A	Watson Mr Valence	06-Feb-19
76	Agrizzi A	Watson Ms Lindsay	31-Jan-19
77	Agrizzi A	Zuma Former Pres Jacob	30-Jan-19
78	Agrizzi A (2)	Allibone Mr Fred	28-Mar-19
79	Agrizzi A (2)	Biebuyck Mr Brian	28-Mar-19
80	Agrizzi A (2)	Bonifacio Mr Carlos	28-Mar-19
81	Agrizzi A (2)	Department of Education: Kimberley	28-Mar-19
82	Agrizzi A (2)	Dlamini Mr Syvion	28-Mar-19
83	Agrizzi A (2)	Dlodlo Minister Ayanda	27-Mar-19

84	Agrizzi A (2)	Frolick Mr Cedrick	27-Mar-19
85	Agrizzi A (2)	Gillingham Mr Patrick	28-Mar-19
86	Agrizzi A (2)	Gumede Mr Johannes (Joe)	27-Mar-19
87	Agrizzi A (2)	Jiba Adv Nomgcobo	27-Mar-19
88	Agrizzi A (2)	Kgasi Ms Lindile Matshediso	28-Mar-19
89	Agrizzi A (2)	Kgwerano Financial Services (Pty) Ltd	28-Mar-19
90	Agrizzi A (2)	Komphela Mr Butana Moses	28-Mar-19
91	Agrizzi A (2)	Kotzen Mr Arthur (deceased)	28-Mar-19
92	Agrizzi A (2)	Leshabane Mr Papa	27-Mar-19
93	Agrizzi A (2)	Mantashe Mr Gwede	27-Mar-19
94	Agrizzi A (2)	Maphisa Mr Siviwe Luthando Bongani	27-Mar-19
95	Agrizzi A (2)	Maphisa-Nqakula Minister Nosiviwe	27-Mar-19
96	Agrizzi A (2)	Masutha Minister Michael	26-Mar-19
97	Agrizzi A (2)	Mathenjwa Mr Trevor	27-Mar-19
98	Agrizzi A (2)	Mogale City Municipality	28-Mar-19
99	Agrizzi A (2)	Mogale Ms Matshidiso Cordelia	28-Mar-19
100	Agrizzi A (2)	Mokonyane Ms Nomvula	27-Mar-19
101	Agrizzi A (2)	Mrwebi Adv Lawrence	28-Mar-19
102	Agrizzi A (2)	Mti Mr Linda	27-Mar-19
103	Agrizzi A (2)	Myeni Ms Duduzile Cynthia	27-Mar-19
104	Agrizzi A (2)	Mzazi Mr Fez	28-Mar-19
105	Agrizzi A (2)	Njenje Mr Gibson	28-Mar-19
106	Agrizzi A (2)	Ramaphosa Mr Andile	28-Mar-19
107	Agrizzi A (2)	Seopela Mr Sesinyi	27-Mar-19
108	Agrizzi A (2)	Smith Mr Vincent	28-Mar-19
109	Agrizzi A (2)	Van der Merwe Mr Riaan	28-Mar-19
110	Agrizzi A (2)	Van Tonder Mr Andries	28-Mar-19
111	Agrizzi A (2)	Watson Mr Gavin	22-Mar-19
112	Agrizzi A (2)	Watson Mr Valence	28-Mar-19
113	Agrizzi A/ van tonder/ vorster	Blakes Travel Agency (Pty) Ltd	20-Mar-19
114	Agrizzi A/ van tonder/ vorster	Director: Blake Mr Brian Douglas	20-Mar-19
115	Agrizzi A/van Tonder	African Global Operations	31-Jan-19
116	Agrizzi A/van Tonder	Biebuyck Mr Brian	06-Feb-19
117	Agrizzi A/van Tonder	Jumbo Liquor	20-Mar-19
118	Agrizzi/Le Roux/Vorster/van Tonder	Mti Mr Linda	27-Feb-19
119	Agrizzi/van Tonder/Lawrence	Equal Trade 4 (Mr Lacon Allin)	20-Mar-19
120	Baijoo Mr Doothiakuma	Mathenjwa Mr Trevor	06-Aug-20
121	Baijoo Mr Doothiakuma	Nair Mr Desmond	06-Aug-20
122	Baijoo Mr Doothiakuma	Van der Merwe Mr Riaan	07-Aug-20
123	Basson J	Dube Ms Benedicta	30-Jan-19
124	Blake Mr Brian	Agrizzi Mr Angelo	30-Jun-20
125	Blake Mr Brian	Agrizzi Ms Debbie	01-Jul-20

126	Blake Mr Brian	Biebuyck Mr Brian	30-Jun-20
127	Blake Mr Brian	Bonifacio Mr Carlos	30-Jun-20
128	Blake Mr Brian	Bopape Mr Molebatsi	01-Jul-20
129	Blake Mr Brian	Daluxolo Mr Peter	01-Jul-20
130	Blake Mr Brian	Dlamini Mr Syvion	30-Jun-20
131	Blake Mr Brian	Du Toit Mr Jacobus	01-Jul-20
132	Blake Mr Brian	Fourie Mr Trevor	01-Jul-20
133	Blake Mr Brian	Frolick Mr Cedrick	30-Jun-20
134	Blake Mr Brian	Gaolaolwe Fenny	01-Jul-20
135	Blake Mr Brian	Gillingham Mr Patrick	30-Jun-20
136	Blake Mr Brian	Gumede Mr Johannes (Joe)	30-Jun-20
137	Blake Mr Brian	Leshabane Mr Papa	30-Jun-20
138	Blake Mr Brian	Makoko Ms Thandi	30-Jun-20
139	Blake Mr Brian	Mansell Mr William Daniel	30-Jun-20
140	Blake Mr Brian	Mathenjwa Mr Trevor	30-Jun-20
141	Blake Mr Brian	Mbasela Mr Vusi	01-Jul-20
142	Blake Mr Brian	Mokonyane Mr Katleho	01-Jul-20
143	Blake Mr Brian	Moorad Mr Mohamed	01-Jul-20
144	Blake Mr Brian	Mti Mr Linda	30-Jun-20
145	Blake Mr Brian	Myeni Ms Duduzile Cynthia	30-Jun-20
146	Blake Mr Brian	Njenje Mr Baba	30-Jun-20
147	Blake Mr Brian	Orren Jade	01-Jul-20
148	Blake Mr Brian	Seopela Mr Sesinyi	30-Jun-20
149	Blake Mr Brian	Seyema Mr Phumlani	01-Jul-20
150	Blake Mr Brian	Smith Ms Brumilda	01-Jul-20
151	Blake Mr Brian	Van Tonder Mr Andries	30-Jun-20
152	Blake Mr Brian	Venter Mr Peet	30-Jun-20
153	Blake Mr Brian	Watson Mr Cheeky	30-Jun-20
154	Blake Mr Brian	Xulu Mr Sicelo	01-Jul-20
155	Bloem D	Balfour Mr Ngconde	08-Feb-19
156	Coetzee Mr Frederick	African Global Operations	27-Jul-20
157	Coetzee Mr Frederick	Agrizzi Mr Angelo	27-Jul-20
158	Coetzee Mr Frederick	Mokonyane Ms Nomvula	27-Jul-20
159	den Drijver Mr Michael	African Global Operations	09-Sep-20
160	den Drijver Mr Michael	Amod Mr Ameer	09-Sep-20
161	den Drijver Mr Michael	Watson Ms Lindsay	09-Sep-20
162	Dlamini Mr Syvion	Agrizzi Mr Angelo	21-Sep-20
163	Dlamini Mr Syvion	Gingcana Mr Mbulelo	21-Sep-20
164	Dlamini Mr Syvion	Le Roux Mr Richard	21-Sep-20
165	Dube Ms Bongiwe	African Global Operations	08-Jul-20
166	Dube Ms Bongiwe	Esua Mr Allister	08-Jul-20
167	Dube Ms Bongiwe	Jotina Mr Fezile	08-Jul-20
168	Dube Ms Bongiwe	Leshabane Mr Papa	08-Jul-20
169	Dube Ms Bongiwe	Mathabathe Ms Catherine	08-Jul-20

170	Dube Ms Bongiwe	Mokonyane Ms Nomvula	08-Jul-20
171	Dube Ms Bongiwe	Passano Mr Louis	08-Jul-20
172	Dube Ms Bongiwe	Zuma Former Pres Jacob	08-Jul-20
173	Groenewald Mr Lionel	Mokonyane Ms Nomvula	05-Jul-20
174	Hoeksma Mr Riaan	African Global Operations	10-Sep-20
175	Hoeksma Mr Riaan	Agrizzi Mr Angelo	10-Sep-20
176	Hoeksma Mr Riaan	Nascimento Fernando DJC c/o Captain Liquor Wholesalers	10-Sep-20
177	Hoeksma Mr Riaan	Van Tonder Mr Andries	10-Sep-20
178	Hoeksma Mr Riaan	Van Zyl Mr Jacques	10-Sep-20
179	le Roux Mr Charl	Mokonyane Ms Nomvula	03-Jul-20
180	le Roux Mr Richard	Gingcana Mr Mbulelo	06-Feb-19
181	le Roux Mr Richard	Makwetla Mr Thabang	18-Mar-19
182	le Roux Mr Richard	Mantashe Mr Gwede	06-Feb-19
183	le Roux Mr Richard	Nair Mr Desmond	06-Feb-19
184	le Roux Mr Richard (2)	Dlamini Mr Syvion	10-Jul-20
185	le Roux Mr Richard (2)	Gingcana Mr Mbulelo	01-Jul-20
186	le Roux Mr Richard (2)	Makwetla Mr Thabang	03-Jul-20
187	le Roux Mr Richard (2)	Mantashe Mr Gwede	03-Jul-20
188	le Roux Mr Richard (2)	Mathenjwa Mr Trevor	19-Jul-20
189	le Roux Mr Richard (2)	Mokonyane Ms Nomvula	03-Jul-20
190	le Roux Mr Richard (2)	Mti Mr Linda	03-Jul-20
191	le Roux Mr Richard (2)	Myeni Ms Duduzile Cynthia	03-Jul-20
192	le Roux Mr Richard (2)	Nair Mr Desmond	03-Jul-20
193	le Roux Mr Richard (2)	Smith Mr Vincent	03-Jul-20
194	Njenje Mr Lizo	Frolick Mr Cedrick	09-Jul-20
195	Njenje Mr Lizo	Smith Mr Vincent	09-Jul-20
196	Pieters Ms Gina	Agrizzi Mr Angelo	19-Aug-20
197	Pieters Ms Gina	Mokonyane Ms Nomvula	19-Aug-20
198	Pieters Ms Gina	Thomas Ms Sandy	19-Aug-20
199	van Biljon Mr Renier	Mokonyane Ms Nomvula	03-Jul-20
200	Van der Merwe Mr Riaan	Agrizzi Mr Angelo	07-Aug-20
201	Van der Merwe Mr Riaan	Dikani Mr Ishmail	07-Aug-20
202	Van der Merwe Mr Riaan	Gumede Mr Johannes (Joe)	07-Aug-20
203	Van der Merwe Mr Riaan	Huma MrTshepo	11-Aug-20
204	Van der Merwe Mr Riaan	Le Roux Mr Richard	07-Aug-20
205	Van der Merwe Mr Riaan	Leshabane Mr Papa	07-Aug-20
206	Van der Merwe Mr Riaan	Mahlaola Mr Sidwell	11-Aug-20
207	Van der Merwe Mr Riaan	Makoko Ms Thandi	07-Aug-20
208	Van der Merwe Mr Riaan	Mathenjwa Mr Trevor	11-Aug-20
209	Van der Merwe Mr Riaan	Mthimkulu Mr Ronny	14-Aug-20
210	Van der Merwe Mr Riaan	Nair Mr Desmond	28-Jul-20
211	Van der Merwe Mr Riaan	Ngoako Mr Thabo	07-Aug-20
212	Van der Merwe Mr Riaan	Smith Mr Vincent	07-Aug-20
213	Van der Merwe Mr Riaan	Tlhoaele Mr Raymond	14-Aug-20

214	Van Rensburg Ms Magda	African Global Operations	10-Sep-20
215	Van Rensburg Ms Magda	Agrizzi Mr Angelo	10-Sep-20
216	Van Rensburg Ms Magda	Amod Mr Ameer	10-Sep-20
217	Van Rensburg Ms Magda	Dlamini Mr Syvion	10-Sep-20
218	Van Rensburg Ms Magda	Gumede Mr Johannes (Joe)	10-Sep-20
219	Van Rensburg Ms Magda	Leshabane Mr Papa	10-Sep-20
220	Van Rensburg Ms Magda	Makoko Ms Thandi	10-Sep-20
221	Van Rensburg Ms Magda	Mncwaba Mr Ishmael	10-Sep-20
222	Van Rensburg Ms Magda	Perry Mr Tony	10-Sep-20
223	Van Rensburg Ms Magda	Van Tonder Mr Andries	10-Sep-20
224	Van Rensburg Ms Magda	Van Zyl Mr Jacques	10-Sep-20
225	Van Rensburg Ms Magda	Venter Mr Peet	10-Sep-20
226	Van Rensburg Ms Magda	Watson Ms Lindsay	10-Sep-20
227	Van Tonder A J	Gillingham Mr Patrick	30-Jan-19
228	Van Tonder Mr Andries	African Global (Pty) Ltd incl (1) Bosasa Prop ; (2) Bosasa SCM ; (3) Leading Prospect Trading 111 (Pty) Ltd	14-Sep-20
229	Van Tonder Mr Andries	Agrizzi Mr Angelo	14-Sep-20
230	Van Tonder Mr Andries	Amod Mr Ameer c/o AA Wholesalers	14-Sep-20
231	Van Tonder Mr Andries	Barnes Mr Craig	16-Sep-20
232	Van Tonder Mr Andries	Captain Liquor c/o Mr Nascimento	14-Sep-20
233	Van Tonder Mr Andries	Daubert Ms Carien	14-Sep-20
234	Van Tonder Mr Andries	Den Drijver Mr Mike c/o DD Construction	14-Sep-20
235	Van Tonder Mr Andries	Dhenkar Mr Aaqib	14-Sep-20
236	Van Tonder Mr Andries	Du Toit Mr Leon	14-Sep-20
237	Van Tonder Mr Andries	Equal Food Traders (Pty) Limited	14-Sep-20
238	Van Tonder Mr Andries	Equal Trade 4 (Pty) Limited	14-Sep-20
239	Van Tonder Mr Andries	Hoeksma Mr Riaan c/o Riekele Const	14-Sep-20
240	Van Tonder Mr Andries	Lacon-Allin Mr Greg	14-Sep-20
241	Van Tonder Mr Andries	Van Zyl Mr Jacques	14-Sep-20
242	Van Tonder Mr Andries	Venter Mr Peet	14-Sep-20
243	Van Tonder Mr Andries	Watson Ms Lindsay	14-Sep-20
244	Venter P.S.	Agrizzi Mr Angelo	07-May-19
245	Venter P.S.	D'Arcy Herman Inc	07-May-19
246	Venter P.S.	Gumede Mr Johannes (Joe)	07-May-19
247	Venter P.S.	Leshabane Mr Papa	07-May-19
248	Venter P.S.	Mti Mr Linda	09-May-19
249	Venter P.S.	Van Tonder Mr Andries	07-May-19
250	Venter P.S.	Watson Mr Gavin	07-May-19
251	Vorster S	Jansen van Rensburg Ms Colleen	01-Mar-19
252	Wakeford Mr Kevin	African Global Operations	07-Aug-20
253	Wakeford Mr Kevin	de Kock Mr Johan Viljoen	07-Aug-20

254	Wakeford Mr Kevin	Engelbrecht Ms Chrisna	07-Aug-20
255	Wakeford Mr Kevin	Louw Mr Japie Jacob	07-Aug-20
256	Wakeford Mr Kevin	Papadakis Mr George	07-Aug-20
257	Wakeford Mr Kevin	Radhakrishna Mr Aneel	07-Aug-20

APPENDIX 2: RESPONSES TO RULE 3.3 NOTICES

	Implicated person	Nature of response	Status
2214.1.	Mr Kevin Wakeford	Application in terms of rule 3.4	Application granted.
2214.2.	Adv Nomgcobo Jiba	Application in terms of rule 3.4	Application postponed *sine die*. Application not pursued.
2214.3.	Ms Jabulile Elizabeth Sishuba	Application in terms of rule 3.4	Application refused as Mr Agrizzi's evidence against her was withdrawn and an apology made to her.
2214.4.	Mr Gwede Mantashe	Application in terms of rule 3.4	Application granted .
2214.5.	Mr Mbulelo Babalo Gingcana	Application in terms of rule 3.4	Application granted.
2214.6.	Mr Cedric Frolick	Application in terms of rule 3.4	Application granted.
2214.7.	Dr Khotso De Wee	Application in terms of rule 3.4	Application granted.

2214.8.	Adv Lawrence Mrwebi	Application in terms of rule 3.4	Application withdrawn.

	Implicated person	**Nature of response**	**Status**
21.1.	Mr Josiah Maako	Denial of allegations but not in the form of a rule 3.4 application	N/A
21.2.	Ms Dikeledi Tshabalala	Denial of allegations but not in the form of a rule 3.4 application	N/A
21.3.	Mr Sisa Anthony Tanda	Denial of allegations but not in the form of a rule 3.4 application	N/A
21.4.	Mr Andile Ramaphosa	Affidavit filed in response to the allegations	

21.5.	Mr Gerhard Van Der Bank	Affidavit filed in response to the allegations	Affidavit admitted into evidence

APPENDIX 3: PERSONS ISSUED WITH REGULATION 10(6) DIRECTIVES

Name	Implicating person	Signed	Date on which to file	Filed	Y/N
Mr Papa Leshabane	Mr Agrizzi	21/08/2019	06/09/2019		N
Mr Linda Mti	Mr Voster	04/08/2019	26/09/2019		N
Mr Linda Mti	Mr van Tonder	04/08/2019	26/09/2019		N
Mr Linda Mti	Mr le Roux	04/08/2019	26/09/2019		N
Mr Linda Mti	Mr Venter	04/08/2019	26/09/2019		N
Mr Linda Mti	Mr Agrizzi	04/08/2019	26/09/2019		N
Mr Linda Mti	Mr Agrizzi	04/08/2019	26/09/2019		N
Mr Desmond Nair	Mr le Roux		26/09/2019	Affidavit 26/08/2019	Y
Ms Nomvula Mokonyane	Mr Agrizzi	21/08/2019	06/09/2019	Affidavit 25/09/2019	Y
Mr Vincent Smith	Mr Agrizzi	21/08/2019	06/09/2019	Affidavit 03/08/2020	Y

Mr Gavin Watson	Mr Venter	21/08/2019	16/09/2019		N[3293]
Mr Gavin Watson	Mr Agrizzi	21/08/2019	30/09/2019		N[3294]
Mr Gavin Watson	Mr Agrizzi	21/08/2019	30/09/2019		N[3295]
Mr Johannes Gumede	Mr Agrizzi	21/08/2019	16/09/2019		N
Mr Johannes Gumede	Mr Venter	21/08/2019	16/09/2019		N
Mr Sesinyi Seopela	Mr Agrizzi	26/09/2019			N
Mr Sesinyi Seopela	Mr Agrizzi	11/08/2020	28/08/2020		N
Mr Mnikelwa Nxele	Mr Agrizzi	11/08/2020	28/08/2020		N
Ms Jacobeth Lepinka	Mr Agrizzi	11/08/2020	28/08/2020	Affidavit 08/09/2020	Y
Mr Sarom Smangaliso Duncan Trevor Mathenjwa	Mr Agrizzi	07/08/2020	21/08/2020	Affidavit 16/09/2020	Y
Mr Sarom Smangaliso Duncan Trevor Mathenjwa	Mr Doothiakuma Baijoo	07/08/2020	21/08/2020	Affidavit 16/09/2020	Y

[3293] Mr Watson passed away prior to service.

[3294] Mr Watson passed away prior to service.

[3295] Mr Watson passed away prior to service.

Mr Sarom Smangaliso Duncan Trevor Mathenjwa	Mr le Roux	07/08/2020	21/08/2020	Affidavit 16/09/2020	Y
Mr Mfanafuthi Syvion Dlamini	Mr Agrizzi	04/08/2020	21/08/2020	Affidavit 14/09/2020	Y
Mr Mfanafuthi Syvion Dlamini	Mr le Roux	04/08/2020	21/08/2020	Affidavit 14/09/2020	Y
Mr Mfanafuthi Syvion Dlamini	Mr Gingcana	04/08/2020	21/08/2020	Affidavit 14/09/2020	Y
Mr Mfanafuthi Syvion Dlamini	Mr Peet Venter	11/08/2020	21/08/2020		N

APPENDIX 4: IMPLICATED PARTIES NOT ISSUED WITH RULE 3.3 NOTICES

2215. Johnson Vovo

2216. Bongi Mpungose

2217. Jason Tshabalala

2218. Mohammed Bashir

2219. Mamsi Nyambuse

2220. Norman Thobane

2221. Clive Els

2222. Mr Netshishivhe

2223. Moroka Consultants

2224. Hlaudi Motsoeneng