BETRAYAL OF THE PROMISE: HOW SOUTH AFRICA IS BEING STOLEN

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State Capacity Research Project
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Preface

The State Capacity Research Project is an interdisciplinary, inter-university research partnership that aims to contribute to the public debate about 'state capture' in South Africa. This issue has dominated public debate about the future of democratic governance in South Africa ever since then Public Protector Thuli Madonsela published her report entitled *State of Capture* in late 2016.[1] The report officially documented the way in which President Zuma and senior government officials have colluded with a shadow network of corrupt brokers.

Calls for Zuma to resign have intensified (including from within his own party) and the largest protest marches since the advent of democracy in 1994 have taken place in support of this demand. However, the academic community has contributed little to this discussion. To remedy this, the State Capacity Research Project was initiated to achieve two objectives:

1. Provide a conceptual framework that draws from the literature on the political economy of development, neopatrimonialism in Africa and democratic governance that can help to make sense of what we describe in our first chapter as a 'silent coup'.
2. Collate a vast quantity of published and unpublished empirical material on the extensive 'repurposing' of state institutions to redirect rents away from development and into the hands of an increasingly confident power elite that intentionally operates in extra-legal and anti-constitutional ways.

We agree with the intentions of the governing party's commitment to 'radical economic transformation', but in our view this is being used as an ideological smokescreen to mask the rent-seeking practices of the Zuma-centred power elite.

One of our aims is to change the popular discourse from a focus on corruption to a focus on the systemic nature of state capture as the political project of a well-organised network that strives to manage what we call the symbiotic relationship between the constitutional state and the shadow state. To this end, this is not only a collaboration between University research institutions, we also aim to collaborate with various stakeholders, social movements and organisations engaged in similar work. This is why we have collaborated with the South African Council of Churches (SACC), who mounted their own independent process called the Unburdening Panel. The results of this work by the SACC were merged with some of our research and presented by the Secretary-General of the SACC at a public meeting at Regina Mundi, Soweto, on 18 May 2017.[2] Although the SACC's Unburdening Panel and the State Capacity Research Project (SCRP) were totally independent processes using very different methodologies, the SACC concluded that the individual confidential testimonies they were receiving from Church members matched and confirmed the arguments developed by the SCRP using largely publicly available information. This triangulation of different bodies of evidence is of great significance.

The State Capacity Research Project is an academic research partnership between leading researchers from four Universities and their respective research teams: Prof. Haroon Bhorat from the Development Policy Research Unit, University of Cape Town; Prof. Ivor Chipkin from the Public Affairs Research Institute, University of the Witwatersrand; Prof. Mzukisi Qobo, part of the South African Research Chair Initiative – African Diplomacy and Foreign Policy, University of Johannesburg; Mr Lumkile Mondi, Department of Economics, University of the Witwatersrand; Professor Mark Swilling, Centre for Complex Systems in Transition, Stellenbosch University.

Our programme, with funding from the Open Society Foundation of South Africa, is as follows:

1. Produce this, our first report, by May 2017.
2. Release detailed case study reports of the state-owned enterprises that have been captured by the Zuma-centred power elite over the past decade.
3. Possibly by early 2018 produce a book manuscript and some journal articles.

In our view the South African case is just one quite typical example of a global trend in the growth of increasingly authoritarian, neopatrimonial regimes where a symbiotic relationship between the constitutional and shadow states is maintained, but with real power shifting increasingly into the networks that comprise the shadow state. Understanding the South African context and challenge, therefore, is an important contribution to our understanding of this global phenomenon. It is also our contribution to the broad struggle to save South African democracy and development practice from a power elite that pursues its own interests at the expense of South African society, in particular the poorest people who will suffer first and most from the consequences of what is in reality a de facto silent coup.

An advisory panel of international experts will act as a sounding board to ensure that we achieve a balance between academic rigour and doing what is required to make an impact on the public discourse. They will be expected to peruse reports and publications prior to publication, but not to attend meetings. Their comments and suggestions will be addressed in the most responsive and appropriate way.

1. Public Protector South Africa. 2016. *State of Capture*. [Online] Available: http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf.
2. http://www.enca.com/south-africa/catch-it-live-south-african-council-of-churches-releases-corruption-report

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Executive Summary

This report suggests South Africa has experienced a silent coup that has removed the ANC from its place as the primary force for transformation in society. Four public moments define this new era: the Marikana Massacre on 16 August 2012; the landing of the Gupta plane at Waterkloof Air Base in April 2013; the attempted bribing of former Deputy Minister of Finance Mcebisi Jonas to sell the National Treasury to the shadow state in late 2015; and the Cabinet reshuffle in March 2017. Resistance and capture is what South African politics is about today.

Commentators, opposition groups and ordinary South Africans underestimate Jacob Zuma, not simply because he is more brazen, wily and brutal than they expect, but because they reduce him to caricature. They conceive of Zuma and his allies as a criminal network that has captured the state. This approach, which is unfortunately dominant, obscures the existence of a political project at work to repurpose state institutions to suit a constellation of rent-seeking networks that have been constructed and now span the symbiotic relationship between the constitutional and shadow state. This is akin to a silent coup.

This report documents how the Zuma-centred power elite has built and consolidated this symbiotic relationship between the constitutional state and the shadow state in order to execute the silent coup.

At the nexus of this symbiosis are a handful of the same individuals and companies connected in one way or another to the Gupta-Zuma family network. The way that this is strategically coordinated constitutes the shadow state. Well-placed individuals located in the most significant centres of state power (in government, SOEs and the bureaucracy) make decisions about what happens within the constitutional state. Those, like Jonas, Vytjie Mentor, Pravin Gordhan and Themba Maseko who resist this agenda in one way or another are systematically removed, redeployed to other lucrative positions to silence them, placed under tremendous pressure, or hounded out by trumped up internal and/or external charges and dubious intelligence reports. This is a world where deniability is valued, culpability is distributed (though indispensability is not taken for granted) and where trust is maintained through mutually binding fear. Unsurprisingly, therefore, the shadow state is not only the space for extra-legal action facilitated by criminal networks, but also where key security and intelligence actions are coordinated.

It has been argued in this report that from about 2012 onwards the Zuma-centred power elite has sought to centralise the control of rents to eliminate lower-order, rent-seeking competitors. The ultimate prize was control of the National Treasury to gain control of the Financial Intelligence Centre (which monitors illicit flows of finance), the Chief Procurement Office (which regulates procurement and activates legal action against corrupt practices), the Public Investment Corporation (the second largest shareholder on the Johannesburg Securities Exchange), the boards of key development finance institutions, and the guarantee system (which is not only essential for making the nuclear deal work, but with a guarantee state entities can borrow from private lenders/banks without parliamentary oversight). The cabinet reshuffle in March 2017 has made possible this final control of the National Treasury.

The capture of the National Treasury, however, followed five other processes that consolidated power and centralised control of rents:

- The ballooning of the public service to create a compliant politically-dependent, bureaucratic class.
- The sacking of the 'good cops' from the police and intelligence services and their replacement with loyalists prepared to cover up illegal rent seeking (with some forced reversals, for example, Robert McBride)
- Redirection of the procurement-spend of the SOEs to favour those prepared to deal with the Gupta-Zuma network of brokers (those who are not, do not get contracts, even if they have better BEE credentials and offer lower prices).
- Subversion of Executive Authority that has resulted in the hollowing out of the Cabinet as South Africa's pre-eminent decision-making body and in its place the establishment of a set of 'kitchen cabinets' of informally constituted elites who compete for favour with Zuma in an unstable crisis-prone complex network;
- The consolidation of the Premier League as a network of party bosses, to ensure that the National Executive Committee of the ANC remains loyal.

At the epicentre of the political project mounted by the Zuma-centred power elite is a rhetorical commitment to radical economic transformation. Unsurprisingly, although the ANC's official policy documents on radical economic transformation encompass a broad range of interventions that take the National Development Plan as a point of departure, the Zuma-centred power elite emphasises the role of the SOEs, particularly their procurement spend. Eskom and Transnet, in turn, are the primary vehicles for managing state capture, large-scale looting of state resources and the consolidation of a transnationally managed financial resource base, which in turn creates a continuous source of self-enrichment and funding for the power elite and their patronage network.

In short, instead of becoming a new economic policy consensus, radical economic transformation has been turned into an ideological football kicked around by factional political players within the ANC and the Alliance in general who use the term to mean very different things.

The alternative is a new economic consensus. Since 1994 there has never been an economic policy framework that has enjoyed the full support of all stakeholders. A new economic consensus would be a detailed programme of radical economic transformation achieved within the constitutional, legislative and governance framework. The focus must be a wide range of employment- and livelihood-creating investments rather than a few 'big and shiny' capital-intensive infrastructure projects that reinforce the mineral-energy-complex. For this to happen, an atmosphere of trust conducive for innovation-oriented partnerships between business, government, knowledge institutions and social enterprises is urgently required. None of this is achievable, however, until the shadow state is dismantled and the key perpetrators of state capture brought to justice.

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Politics of Betrayal

Introduction

It is now clear that while the ideological focus of the ANC is 'radical economic transformation', in practice Jacob Zuma's presidency is aimed at repurposing state institutions to consolidate the Zuma-centred power elite. Whereas the former appears to be a legitimate long-term vision to structurally transform South Africa's economy to eradicate poverty and reduce inequality and unemployment, the latter – popularly referred to as 'state capture' – threatens the viability of the state institutions that need to deliver on this long-term vision.

Until recently, the decomposition of South African state institutions has been blamed on corruption, but we must now recognise that the problem goes well beyond this. Corruption normally refers to a condition where public officials pursue private ends using public means. While corruption is widespread at all levels and is undermining development, state capture is a far greater, systemic threat. It is akin to a silent coup and must, therefore, be understood as a political project that is given a cover of legitimacy by the vision of radical economic transformation. The March 2017 Cabinet reshuffle was confirmation of this silent coup; it was the first Cabinet reshuffle that took place without the full prior support of the governing party. This moves the symbiotic relationship between the constitutional state and the shadow state that emerged after the African National Conference (ANC) Polokwane conference in 2007 into a new phase. The reappointment of Brian Molefe as Eskom's chief executive officer (CEO) a few weeks later in defiance of the ANC confirms this trend.

While it is obvious that the highly unequal South African economy needs to be thoroughly transformed, the task now is to expose and analyse how a Zuma-centred power elite has managed to capture key state institutions to repurpose them in ways that subvert the constitutional and legal framework established after 1994. As will be argued in this report, it is now clear that the nature of the state that is emerging – a blending of constitutional and shadow forms – will be incapable of driving genuine development programmes. By its very nature this mode of governance is counter development. The need for radical economic transformation must be rescued from a political project that uses it to mask the narrow ambitions of a power elite that is only really interested in controlling access to rents and retaining political power.

The dawn of democracy in 1994 delivered a promise that united South Africa. Nelson Mandela's inauguration on 10 May 1994 expressed this promise in the clearest terms. Speaking on behalf of the democratically elected ANC-led government, he promised:[3]

…to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender and other discrimination … [to] build [a] society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity – a rainbow nation at peace with itself and the world.

To deliver on this founding promise, the ANC needed to use the state institutions it inherited from the apartheid era. These institutions included national, provincial and local-level government administrations, state-owned enterprises (SOEs), the judiciary, parliament and the executive.

Unsurprisingly, transforming the core administrations and SOEs into vehicles for service delivery and development became a major challenge. Undertaking deep institutional reforms is a daunting exercise that requires extraordinary levels of dedication, technical capacity and a well-defined governance programme aimed at systematically overcoming the complex legacy of apartheid. Although significant progress was made, there is now widespread dissatisfaction across society and within the ANC itself with the performance of these institutions. Whereas the promise of 1994 was to build a state that would serve the public good, the evidence suggests that our state institutions are being repurposed to serve the private accumulation interests of a small powerful elite. The deepening of the corrosive culture of corruption within the state, and the opening of spaces for grafting a shadow state onto the existing constitutional state, has brought the transformation programme to a halt, and refocused energies on private accumulation.

The then Public Protector Thuli Madonsela's *State of Capture* report,[4] existing and growing empirical evidence (much of it referred to in this report), declarations by senior ANC members of bribery attempts, well-known sophisticated forms of bribery via 'donations' by businesses to the ANC, the perversion of corporate governance norms in SOEs, the resultant slow collapse of the Tripartite Alliance (the ANC, the Congress of South African Trade Unions (COSATU) and the South African Communist Party) and much else, have all made it clear that the 2012 National Development Plan's recommendation that "South Africa needs to focus relentlessly on building a professional public service and a capable state"[5] has been usurped. Instead of the plan's vision of a "professional public

3. University of Pennsylvania. n.d. *Inaugural Speech*. [Online] Available: https://www.africa.upenn.edu/Articles_Gen/Inaugural_Speech_17984.html.
4. Public Protector South Africa. 2016. *State of Capture*. [Online] Available: http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf.
5. National Planning Commission. 2012. *National Development Plan 2030: Our future – make it work*. [Online] Available: http://www.gov.za/sites/www.gov.za/files/Executive%20Summary-NDP%202030%20-%20Our%20future%20-%20make%20it%20work.pdf.

service and a capable state", a symbiotic relationship has emerged between a constitutional state with clear rules and laws, and a shadow state comprising well-organised clientelistic and patronage networks that facilitate corruption and enrichment of a small power elite. The latter feeds off the former in ways that sap vitality from formal institutions and leave them empty shells incapable of executing their responsibilities.

What this power elite cannot achieve via the constitutional state, it achieves via the shadow state and vice versa. Some senior officials and politicians have participated unwittingly in this hegemonic project because they are insufficiently aware of how their specific actions contribute to the wider process of systemic betrayal that has up until now remained opaque.

This detailed report will provide the evidence that the nation needs to realise that the time has come to defend the founding promise of democracy and development by doing all that is necessary to stop the systemic and institutionalised process of betrayal that is now in its final stage of execution. It is not too late. The 1994 democratic promise remains an achievable goal.

An analysis is required that proceeds on two levels:

1. Firstly, we must understand what the Zuma-centred power elite has attempted to achieve on its own terms, and why Zuma continues to enjoy the support of a political coalition that ensures he remains in power as the lead exponent of radical economic transformation.
2. Secondly, it is necessary to demonstrate empirically (based on public reports) how state institutions have been captured and repurposed, and why this will make radical economic transformation unrealisable if the Zuma-centred power elite remains in place.

Key terms

- Corruption and state capture: Corruption tends to be an individual action that occurs in exceptional cases, facilitated by a loose network of corrupt players. It is somewhat informally organised, fragmented and opportunistic. State capture is systemic and well-organised by people with established relations. It involves repeated transactions, often on an increasing scale. The focus is not on small-scale looting, but on accessing and redirecting rents away from their intended targets into private hands. To succeed, this needs high-level political protection, including from law enforcement agencies, intense loyalty and a climate of fear; and competitors need to be eliminated. The aim is not to bypass rules to get away with corrupt behaviour. That is, the term corruption obscures the politics that frequently informs these processes, treating it as a moral or cultural pathology. Yet, corruption, as is often the case in South Africa, is frequently the result of a political conviction that the formal 'rules of the game' are rigged against specific constituencies and that it is therefore legitimate to break them. The aim of state capture is to change the formal and informal rules of the game, legitimise them and select the players allowed to play.
- Repurposing: Repurposing state institutions refers to the organised process of reconfiguring the way in which a given state institution is structured, governed, managed and funded so that it serves a purpose different to its formal mandate. Understanding state capture purely as a vehicle for looting does not explain the full extent of the political project that enables it. Institutions are captured for a purpose beyond looting. They are repurposed for looting as well as for consolidating political power to ensure longer-term survival, the maintenance of a political coalition, and its validation by an ideology that masks private enrichment by reference to public benefit.
- Rents and rent seeking: Development is a process that is consciously instigated when states adopt policies to directly and/or indirectly reallocate resources to redress the wrongs of the past and to create modern transformed industrialised economies that can support the wellbeing of society. To achieve this, state institutions must be used to allocate resources from one group to another, or to support one group to overcome the disadvantages of the past. These allocations are what can be called beneficial rents. Once measures are taken, however, that result in a flow of potentially beneficial rents to specific economic actors (whether these are businesses, households or public institutions), there is competition to access these flows and this creates the conditions for rent seeking. There is legal, ethical rent seeking, such as lobbying or legal interventions to benefit certain groups. Rent seeking can also be corrupt, however, and lead to state capture and repurposing. Corrupt rent-seeking behaviour can undermine the development agenda by diverting resources into the hands of unproductive elites. It follows that if beneficial rents are necessary for realising development, a system is needed to counteract the inevitable competition to access them from being corrupted by those who gain leverage via political access, passing of bribes, promises of future returns, etc. The literature on neopatrimonialism clearly provides examples of countries that did manage to accelerate development by effectively deploying beneficial rents to boost specific economic actors.[6] Limiting corruption was a key part of these programmes. The most successful ones tended to be guided by a long-term developmental vision and tended to centralise control of rents to limit overly competitive destructive rent seeking. They never eliminated corruption, but they prevented it from corroding the development process. Centralised rent management can, of course, also be corrupted by power elites who use centralisation to eliminate lower-level competitors to further enrich themselves and entrench their power positions.
- Power elite: We use the notion of a 'power elite' to refer to a relatively well-structured network of people located in government, state institutions, SOEs, private businesses, security agencies, traditional leaders, family networks and the governing party. The defining feature of membership of this group is direct (and even indirect) access (either consistently

6. For a useful overview see Kelsall, T. 2013. *Business, Politics and the State in Africa*. London: Zed Press.

or intermittently) to the inner sanctum of power to influence decisions. It is not a ruling class per se, although it can see itself as acting in the interests of an existing class or, as in the South African case, a new black business class in the making. Nor is it just the political-bureaucratic leadership of the state, which is too fragmented to reliably mount a political project. The power elite is not necessarily directed by a strong strategic centre, and it includes groups that are to some extent competing for access to the inner sanctum and the opportunity to control rents. The power elite exercises its influence both through formal and informal means. However, what unites the power elite is the desire to manage effectively the symbiotic relationship between the constitutional and shadow states. In order to do this, and in broad terms (expanded on in Chapter 4), this power elite loosely organises itself around a "patron or strongman", who has direct access to resources, under whom a layer of "elites" forms who dispense the patronage, which is then managed by another layer of "brokers or middlemen".

- Symbiotic relationship between the constitutional state and the shadow state: Drawing on the well-developed literature on neopatrimonialism,[7] we will refer to the emergence of a symbiotic relationship between the constitutional state and the shadow state. The constitutional state refers to the formalised constitutional, legislative and jurisprudential framework of rules that governs what government and state institutions can and cannot do. The shadow state refers to the networks of relationships that cross-cut and bind together a specific group of people who need to act together for whatever reason in secretive ways so that they can either effectively hide, actively deny or consciously 'not know' that which contradicts their formal roles in the constitutional state. This is a world where deniability is valued, culpability is distributed (though indispensability is not taken for granted) and where trust is maintained through mutually binding fear. Unsurprisingly, therefore, the shadow state is not only the space for extra-legal action facilitated by criminal networks, but also where key security and intelligence actions are coordinated. As extra-legal activity becomes more important, ensuring a compliant security and intelligence apparatus becomes a key priority. What matters is the symbiosis between the two, which is what the rent-seeking power elite emerges to achieve. The symbiosis that binds the power elite consists of the transactions between those located within the constitutional state and those located outside the constitutional state who have been granted preferential access via these networks to the decision-making processes within the constitutional state. These networks have their own rules and logics that endow key players within the networks with the authority to influence decisions, allocate resources and appoint key personnel. They draw on informal power that is linked to Zuma as both the party leader and president of the country. Invariably, there are a range of power nodes spread out across the networks. The Gupta and Zuma families (popularly referred to as the 'Zuptas') comprise the most powerful node, which enables them to determine for now how the networks operate and who has access. They depend on a range of secondary nodes clustered around key individuals in state departments, SOEs and regulatory agencies. In practice, this symbiosis is highly unstable, crisis-prone and therefore very difficult to consolidate in a relatively open democracy, as still exists in South Africa. It is much easier to consolidate in more authoritarian environments like Russia, which is why this kind of neopatrimonialism can quite easily drift into authoritarianism to consolidate the symbiotic relationship between the constitutional and shadow state thus reinforcing the current political crisis we face in South Africa.
- Radical economic transformation: We agree that although the official ANC ideology of radical economic transformation is ill-defined and lacks a discernible conceptual framework, this transformation is needed if the 1994 promise is to be realised. Too little has been done to this end since 1994. Because the notion of radical economic transformation, however, is apparently used to mask a political project that enriches the few, subverts South Africa's democratic and constitutional system, weakens state institutions and expatriates capital overseas, we will attempt to make clear when using this term to differentiate between this ideological role and the real intentions of ANC policy documents. In our conclusion, we argue that a new economic consensus will be required that will entail very radical change, but without subverting the constitutional state. For radical economic transformation to become the basis for a new economic consensus, it must in practice be achieved within the existing constitutional order, and an appropriately enacted legislative framework. As we will demonstrate, contrary to what is stated in ANC policy documents, the power elite profess a commitment to radical economic transformation, but see the constitutional order and legislative framework as an obstacle to transformation.
- Political project: When we argue that it is necessary to focus on the political project of the Zuma-centred power elite, we are referring to the way power is intentionally deployed in ways that serve the interests of this power elite and are legitimised, in turn, by an ideology that is repeatedly articulated by a specific (but ever-shifting) political coalition of interests (that includes the power elite but also wider networks). We will show that the abuse of power by Zuma is what enables strategies that are aimed at promoting corrupt rent-seeking practices by preferred networks and the consolidation of power by an inner core around Zuma. Legitimated by the ideology of radical economic transformation, this comprises the political project pursued by the Zuma-centred power elite. It will be argued that it is time that the ANC reclaims this ideology from the power elite that has co-opted the term for its own political project.

To reveal the systemic betrayal associated with the Zuma presidency, this report provides:

- An analytical overview of the evolution of the Zuma-led state and how a power elite emerged that has executed the betrayal of the founding promise.
- A detailed account of the emergence of the shadow state and

7. Kelsall, T. 2013. *Business, Politics and the State in Africa*. London: Zed Press.

the key role that the Gupta networks have played as brokers.
- Insight into key governance dynamics, including the role of state guarantees, the decomposition of cabinet governance, ballooning of a politically loyal top management in the public service, deployment of shadow state loyalists onto boards of SOEs and the key role of procurement.
- A note on how state capture is organised and facilitated by the Gupta networks and sanctioned by the power elite.
- A concluding section that draws out the implications for the future of state capacity and how to best defend the founding promise.

This report will be followed with a succession of detailed case studies over the coming months that will elucidate in greater detail the examples summarised in this report. These case studies will provide further evidence of a power elite that has pursued a strategy of systemic betrayal to seize control of key state institutions. The consequences and implications with respect to each case will be carefully described.

Understanding the political project

Commentators, opposition groups and ordinary South Africans underestimate Jacob Zuma, not simply because he is more brazen, wily and brutal than they expect, but because they reduce him to caricature. They conceive of Zuma and his allies as a criminal network that has captured the state. This approach, which is unfortunately dominant, obscures the existence of a political project at work to repurpose state institutions to suit a constellation of rent-seeking networks that have constructed and now span the symbiotic relationship between the constitutional and shadow state. It is being pursued in the context of two, related transitions:

1. The transition from traditional black economic empowerment (BEE), which was premised on the possibility of reforming the white-dominated economy (now depicted as white monopoly capital), to radical economic transformation, which is driven by transactors disguised as a black capitalist class not dependent on white monopoly capital.
2. The transition from acceptance of the constitutional settlement and the 'rules of the game' to a repurposing of state institutions that is achieved, in part, by breaking the rules.

These two transitions fuse in the strategic shift in focus from reforming the economy (the focus of the Mbeki era (1999–2008), which we call the constitutional transformers, to repurposing state institutions (with special reference to procurement and SOEs) as the centrepiece of a new symbiotic relationship between the constitutional state and the shadow state, which we call the radical reformers.

The 'Polokwane moment'

The scholarly literature on South Africa's transition notes that the betrayal of the democratic transition starts early on. The jettisoning of the Reconstruction and Development Programme (RDP) in 1996 in favour of the Growth, Employment and Redistribution (GEAR) strategy marked a profound shift away from the RDP model of development that sought to reconcile participatory democracy with state-led development to a model of development that sought welfare receipts from a growing capitalist economy. The first drew on an impressive tradition of radical politics and scholarship showing the complicity of the capitalist sector in the emergence of apartheid. The second married welfarism, market-oriented policies and the racial transformation of economic ownership and control. The first was deeply sceptical of the ability of the capitalist sector, even in a growing economy, to generate developmental outcomes. The second was a bet that it could.

Developmental welfarism started during the Mandela presidency (1994–1999), though its specific institutional form took shape during the Mbeki era. It was organised around three policy platforms and an organisational shift:

- Massive expansion of the grants system for the poor and the unemployed, focusing principally on mothers and the aged.
- A strong focus on 'deracialising' control of the economy through affirmative action policies designed to fast-track the placement of black people into management and senior management positions.
- Transformation of white ownership of the economy through BEE policies.

Mbeki's fourth innovation was the organizational shift of political control away from the ANC itself to the Presidency – an institution that he sought to build into a powerful apparatus of control and coordination at the centre of the state. These actions were to support the aspiration of creating a South African version of the developmental state.

The 2007 'Polokwane moment' when Mbeki was unseated as President of the ANC is often said to be the revenge of Luthuli House against Mbeki's *bonapartism*. The party re-established control of the state by recalling a sitting state president and installing a temporary replacement until the conditions were in place for Zuma to become president. Reflecting Zuma's commitment to the party branches, in his final address to the 52nd ANC National Conference he noted that "ANC branches are supreme".[8]

The 'Polokwane moment' represented a three-pronged reaction to Mbeki's approach:

- The shift in power from Luthuli House to the Presidency was resented, particularly by provincial party bosses.
- Black business was unhappy with an approach that hitched their accumulation potential to the commitments of white business and wanted more state support for black business.
- Radical factions resented the accommodation of business and limited nature of state intervention.

8. ANC. 2007. 52nd National Conference closing speech. [Online] Available: http://www.anc.org.za/content/52nd-national-conference-closing-speech-anc-president-jacob-zuma.

During his years as president, Mbeki's pragmatic approach to business was to engage CEOs via 'working groups'. Zuma's election created the conditions that resulted in the rise of the SOEs and preferential procurement as the primary means for creating a powerful black business class. At first, this was welcomed by the radical factions who interpreted this as a commitment to enhanced state intervention. But the Polokwane conference represented more than this. It was based on a conviction about the nature of economic change in a society where the African majority remain subordinated to white interests

An Africanist conviction

At least since the historic Morogoro conference in 1969 the position of the ANC has been that the anti-apartheid struggle was a nationalist struggle led by the working class. The ANC said then that "the main content of the present stage of the South African revolution is the national liberation of the largest and most oppressed group – the African people."[9] In the 1969 text this was a strategic consideration, tempered by the fact that if Africans could deliver political freedom, it was the increasingly organised working class that would deliver economic freedom. The relationship between these 'phases' of the 'national democratic revolution' have defined the terms of political struggle within the ANC and its alliance with Cosatu and the South African Communist Party ever since.

There were signs of a shift at the 1985 ANC conference in Kabwe. For all its analysis of the South African 'social formation' as capitalist and its identification of the 'ruling class' as made up of white monopoly capitalists there was no mention of the working class as a protagonist of change. The ANC has struggled with this question of who the 'motive forces' of the national democratic revolution are – the working class or Africans? During Mbeki's era, the answer was the latter in his famous 'I am an African' speech.[10] The challenge, however, is that it was neither Africans as a whole nor the working class per se that benefited most during the post-1994 period.

Despite the economy growing at a rate faster than anything seen in South Africa since the 1960s due to the economic policies Mbeki promoted, black ownership of the economy remained unremarkable. Mbeki noted this in his speech at the Polokwane conference.[11]

Black ownership of the economy as a whole remains very low; a recent survey put black ownership of the economy at about 12 percent … If we take foreign ownership of South African-based firms into account, black ownership might be about 15 or 18 percent of local ownership. While we are progressing, our rate of progress is unacceptably low, and we cannot take our eyes off the empowerment challenge.

Yet the problem was not simply the slow pace of change. The 'Polokwane moment' was informed by a basic conviction that the economy remained in white hands and because of this the 'people' did not share in the wealth of the country. When Malema as ANC Youth League leader announced the slogan of 'Economic Freedom in Our Lifetime' in 2010, a recall of an older slogan from the 1940s, he insisted on the promise of the Freedom Charter. "Simply put," he explained, "economic freedom in our lifetime means that all the economic clauses of the Freedom Charter should be realised to the fullest."[12]

The problem with BEE up until at least 2007 was that white businesses – referred to as 'white monopoly capital' in government discourse since 2014 – could game the policy through fronting, the practice of either appointing blacks to positions without decision-making authority or by bringing in 'empowerment partners' on terms that did not alter the balance of economic power in firms. In other words, the BEE route to transformation left white monopoly capital intact. Moreover, it had produced a small black elite, while leaving ordinary people, especially women and youth, excluded from the economy.

What was the alternative?

When Julius Malema was expelled from the ANC in 2012 and formed the Economic Freedom Fighters (EFF) the alternative to BEE was expressed as the need for nationalisation of the mines and land. Malema's critique resonated with the Fanonist critique of post-colonial nationalist movements in Africa. Later, the EFF would ground its analysis in what it claimed was a reconciliation of Fanon and Marxism-Leninism. Yet within the ANC another strategy was beginning to emerge.

It was grounded on the simple conviction that the economy was transformed to the extent that the grip of white monopoly capitalism was broken, and that black people would own and control large-scale companies. The 53rd ANC National Conference held in Mangaung in 2012 set the stage for what was to emerge:[13]

[W]e are boldly entering the second phase of the transition from apartheid colonialism to a national democratic society. This phase will be characterised by decisive action to effect economic transformation and democratic consolidation, critical both to improve the quality of life of all South Africans and to promote nation-building and social cohesion.

The Mangaung conference was preceded by the Black Business Council's (BBC) 2012 split from Business Unity South Africa because they argued that their interests were not well represented in the organisation. After the split the BBC became the preferred business partner of government. The name of the council is misleading

9. SAHistory.org. n.d. *Strategy and tactics statement*. [Online] Available: http://www.sahistory.org.za/archive/strategy-and-tactics-statement-adopted-anc-morogoro-conference-april-may-1969-abridged.
10. Mbeki.org. 2016. *I am an African speech*. [Online] Available: https://www.mbeki.org/2016/06/01/i-am-an-african-speech-by-president-thabo-mbeki-8-may-1996/.
11. IOL.co.za. 2007. *Mbeki's speech at ANC conference: Part 1*. [Online] Available: http://www.iol.co.za/news/politics/mbekis-speech-at-anc-conference-part-1-382829.
12. Polity.org. 2010. ANCYL: Malema: Address by the president of the ANCYL, at the 1st National General Council, Midrand. [Online] Available: http://www.polity.org.za/article/ancyl-malema-address-by-the-president-of-the-ancyl-at-the-1st-national-general-council-midrand-25082010-2010-08-26.
13. SAHistory.org. 2017. *Draft declaration by the ANC*. [Online] Available: http://www.sahistory.org.za/archive/draft-declaration-anc-20-december-2012-53rd-anc-annual-conference-mangaung.

because it is a professional umbrella institution representing the Black Management Forum, the Association of Black Chartered Accountants, the Black Lawyers Association and the Association of Black Securities and Investment Professionals. Michael Spicer, former CEO of Business Leadership South Africa, contends that although the government formally regretted the rupture, through its funding and other material support, it was happy to support an exclusively black business organisation. The BBC also assumed a higher profile role in the delegations of business people taken on President Zuma's international travels.[14]

The National Empowerment Fund was used to fund the BBC in 2012 with a R3 million grant to promote black economic empowerment. The support was meant to provide an alternative voice to what was perceived by government as a marginalised group given the history of South Africa. The Department of Trade and Industry (DTI) provided support amounting to R7 million for similar purposes. The first expression of the Mangaung resolution was in an announcement made by the DTI in 2014, after the BBC had lobbied Zuma. In discussion of a new programme of radical economic transformation, the DTI declared it would "create hundred Black industrialists in the next three years", further stating that:[15]

Over the next five years, a host of working opportunities will become available to South Africans. For example, a new generation of Black industrialists will be driving the re-industrialisation of our economy. Local procurement and increased domestic production will be at the heart of efforts to transform our economy, and will be buoyed by a ***government undertaking to buy 75% of goods and services from South African producers*** *[emphasis added].*

As discussed further in Chapter 3, the centrepiece of the strategy was to use the state's procurement spend to bring about radical economic transformation. This was not nationalisation, but the creation of a new black-owned economy.

The battleground for economic transformation was shifting away from the economy itself to the state and, specifically, to SOEs that outsourced massive industrial contracts to private-sector service providers. Enter Eskom, Transnet, SAA, the Passenger Rail Agency of South Africa (PRASA) and other SOEs as the vehicles for change. This model required preferential procurement from black-owned companies and the displacing of white-managed and -owned businesses from SOE-linked value chains.

The problem, however, was that the existing constitutional and legislative environment constrained this model of economic transformation by insisting that bidders for state contracts satisfied more than racial conditions, namely price and experience. In other words, the blackness of firms was not a sufficient condition for securing contracts from the state. Moreover, given that white-managed and -owned businesses had more experience than emerging black companies, were better capitalised and, moreover, could bring in empowerment partners to circumvent racial conditions, it seemed that the formal rules of the game were rigged in favour of white monopoly capitalists and against black-owned businesses.

This model of economic transformation has received clearer theoretical and political articulation since then. The ANC's policy discussion paper circulated to branches in 2017 was titled *Employment Creation, Economic Growth and Structural Change*. This document uses the above cited resolution from the 53rd National Conference and the National Development Plan as a point of departure for defining radical economic transformation:

Primarily, radical economic transformation is about fundamentally changing the structure of South Africa's economy from an exploitative exporter of raw materials, to one which is based on beneficiation and manufacturing, in which our people's full potential can be realized. In addition to ensuring increased economic participation by black people in the commanding heights of the economy, radical economic transformation must have a mass character. A clear objective of radical economic transformation must be to reduce racial, gender and class inequalities in South Africa through ensuring more equity with regards to incomes, ownership of assets and access to economic opportunities. An effective democratic developmental state and efficiently run public services and public companies are necessary instruments for widening the reach of radical economic transformation enabling the process to touch the lives of ordinary people.[16]

It is hard to disagree with the ambitious content of this vision for inclusive structural transformation. As an ideology, it has very broad appeal because of South Africa's economic challenges.

This ideology, however, can also cement a coalition that (largely unwittingly) enables the betrayal of this vision by a power elite who are only interested in rent seeking and political survival, and who are prepared to use extra-constitutional and unlawful means to achieve their goals where necessary.

Understanding rents and rent-seeking

Since 1994, the South African government has adopted a wide range of policies that actively seek to reallocate resources across a wide range of sectors, including such things as housing subsidies, social grants, incentives for new black-owned industries, BEE strategies, preferential procurement, investments in education, land reform and tariffs.

For neoclassical economists, these expenditures are rents that require state intervention and therefore are usually inefficient – a

14. Spicer, M. 2016. The business government relationship: What has gone wrong. *Focus* 78:3-19.
15. Gov.za. 2014. *The DTI to create 100 black industrialists in next three years*. [Online] Available: http://www.gov.za/dti-create-100-black-industrialists-three-years.
16. ANC.org. 2017. *Economic transformation discussion document*. [Online] | Available: http://www.anc.org.za/sites/default/files/National%20Policy%20Conference%202017%20Economic%20Transformation_1.pdf.

windfall gain for a private actor is a loss for society. Although this perspective is no longer influential, it has translated in the past into policy advice about how to 'level the playing field' and ensure 'good governance' by minimising state intervention to remove the conditions for rent seeking.

For heterodox economists, these kinds of beneficial rents are necessary during certain stages of development. State interventions such as using procurement to benefit certain groups, promoting research and development to create competitive sectors, protecting certain industries during the early phases of their development, favouring historically disadvantaged groups in various ways or subsidising certain actors/groups while they are establishing themselves are all deemed to be necessary developmentally beneficial rents if the goal is growth, development and poverty eradication. There is reference in the economics literature to both productive and unproductive rent seeking. The former (beneficial rents) seek to achieve clearly defined transformation goals and there is an exit plan. The latter become permanently captured by interest groups who would use their political power to hold on to rents even when they no longer perform productively.

Bearing in mind the definition of rents and rent seeking provided at the start of this chapter, comprehending rents and the competition to control rent seeking is key to understanding the contemporary political crisis. As we will argue, what started off, according to our findings, as collusion in relatively low-level corruption between the Zuma family and the Guptas has evolved into state capture and the repurposing of state institutions. In less than a decade the Zuma and Gupta families have managed to position themselves as a tight partnership that coordinates a power elite that aims to manage the rent seeking that binds the symbiotically connected constitutional and shadow states. What unites this power elite is an ideological commitment to building a black business class, using state institutions to drive investment and growth, and streamlining through centralisation the control of rent seeking. Different constituencies are attracted to different combinations of this political project, from those who simply want to be awarded SOE contracts to radicals pleased with more state intervention; from party loyalists terrified about electoral losses if the economy does not improve to a vast network of people who exchange loyalty for patronage. The resolutions of the 53rd National Conference and the 2017 ANC policy discussion document *Employment Creation, Economic Growth and Structural Change* capture this common purpose. But in reality, these resolutions and the 2017 policy document contradict what the Zuma-centred power elite does in practice.

To understand this political project, however, it is necessary to understand the limits of the post-1994 policy framework that Mbeki himself talked about at the Polokwane Conference.

From constitutional transformers to radical reformers

A critique of South Africa's transition to democracy has been developing for several years within mainstream ANC thinking (originating in the ANC Youth League under Malema) that has focused on the profound continuities between the apartheid and the post-apartheid economies: glaring inequality that still largely coincides with the country's traditional racial profile. What is new about this critique is that it increasingly repudiates South Africa's constitutional settlement as an obstacle to radical economic transformation. This has led to the current clash between radical reformers and the constitutional transformers. The former want to subvert and bypass constitutionally entrenched institutions to manage rents on behalf of a power elite, while the latter seek to build state capacity to deliver on the 1994 promise of equality and development by managing rents to promote investment and service delivery.

This difference between the radical reformers and constitutional transformers lies in how the transition to democracy is understood. The institutions produced by this transition are associated with two different ways of doing politics. The constitutional transformers operate within the confines of the Constitution and are invested in institution building. That is, social and political transformation is deemed contingent on giving flesh to the socio-economic rights defined in the Constitution by building state administrations able to work programmatically to achieve progressive policy outcomes. Building a capable state is their aim, including limiting corruption wherever possible. There has been much activism from social movements on this front to force municipalities and national and provincial departments to implement their own policies and/or to comply with constitutional mandates. The Socio-Economic Rights Institute and the Social Justice Coalition, for example, have been using constitutional provisions to win struggles waged by poor communities.

Starting as a revolt against Thabo Mbeki, though not yet associated with a clear ideology, the 'Polokwane moment' gave rise to a new power elite that found a language of its own in the narratives of the radical reformers. Its protagonists claimed to speak for 'ordinary people', those who are not well educated, who don't speak English well, who live in shacks or small towns and rural areas and who are excluded from the economy and the formal institutions of the state. They constitute a politics profoundly mistrustful of the formal 'rules of the game', whether of the Constitution or of government. The formal rules are rigged, this position proclaims, in favour of whites and urban elites, and against ordinary people. Radical economic transformation is thus presented as a programme that must frequently break the rules – even those of the Constitution. The argument is compelling at first glance, especially because unemployment and poverty are presented as overwhelmingly black experiences.

The constitutional transformers

For those progressive forces that negotiated the democratic breakthrough and for the many people that moved into government after 1994, the constitution was deemed a framework *through which* transformation could be achieved.

The Constitution was based on a complex negotiated settlement, including a deal made with major conglomerates that they would mobilise investments in the post-apartheid economy – in particular, in manufacturing – to support the democratic project. At the time, a handful of people representing the conglomerates that owned the large bulk of assets could make this deal. However, as elaborated further below, the combined impact of the shareholder value movement, financialisation, trade liberalisation (from the General Agreement on Tariffs and Trades to the World Trade Organisation), BEE deals and import-dependency combined to break up these conglomerates and severely limit investment, particularly in the manufacturing sector.

Strategic refocusing (as required by the shareholder value movement) resulted in a massive increase in returns to shareholders that, in turn, undermined reinvestment (a total of R384 billion between 1999 and 2009, equal to 17 percent of gross fixed investment during this same period).[17] This was reinforced by transfers to BEE groups (R317 billion between 2000 and 2014 equal to 8 percent of gross fixed investment during this period).[18] These two sets of transfers (both underestimated here because they exclude transfers to external shareholders, and are only for specific periods) created disincentives for reinvestment because of the need to service the (often debt-based) equity claims of these groups.

Debt-based buyouts of key South African manufacturers (such as the South African Iron and Steel Corporation, Dorbyl and Scaw) by local and international companies limited investment in expansion because of the need to service company debt. Furthermore, international listings of South African companies promoted disinvestment rather than supporting the much-promised capital raising for inward investment. And debt-based expansion of consumption to deracialise the middle class resulted in consumer- rather than production-based growth (which largely reached its limits by the early 2000s).[20]

As a result, South Africa continues to lag its emerging market peer group in terms of investment expenditure as a share of gross domestic product. Data for 2012 for example, shows that in China and India investment levels were between 1.8 to 2.8 times that of South Africa. Yet the interesting anomaly is that the rates of return on investment in South Africa are not low; real returns have averaged around 15 percent between 1994 and 2008 while nominal returns were 22 percent between 2005 and 2008.[21] Notably these rates of return are the same as that of China, albeit over a longer period. Usually investment levels are high if returns on investment are high. Not so in South Africa. What this suggest is that non-price factors have affected the level of investment in South Africa. These range from product and factor market distortions to structural concerns around political stability and governance. The rate of return, therefore, is not the only factor that guides and influences investment levels in an economy. Furthermore, and exacerbating the problem, South Africa's notoriously low savings levels (fuelling our consumption-driven economic growth trajectory) means that we rely on short-term capital flows to finance domestic investment. The dependence on short- to medium-term capital inflows tends to perpetuate dependence on the resource sector, processors of resources, and powerful, publicly-quoted oligopolies in the services sector. The market power of these companies produces the generous margins that portfolio investors seek.[22]

The upshot is that South Africa remains dependent on short-term capital flows to finance investment focused on a narrow band of capital-intensive or highly concentrated sectors, in an environment of low-savings and high internal rates of return. The path dependency then in this job-starved, capital intensive growth trajectory is starkly evident. The most significant result of this economic conundrum is that poverty, when measured using the official national poverty line (as updated in 2011), increased from 31 percent in 1995 to 53.8 percent in 2011.[23]

Instead of using the post-1994 moment to attack the unproductive structure of the economy (in particular the mineral-energy-complex), the constitutional transformers adopted economic policies that were inappropriate to direct the restructuring of the extractive institutions at the centre of corporate South Africa. They assumed that a remarkably simple mix of economic policies would provide the framework for macroeconomic stabilisation and growth of a market-driven economy. These included inflation and public expenditure controls; removal of market 'distortions' such as tariffs, capital controls, excessive labour market protections and requirements to lend to particular sectors (to avoid inefficient rents); a faith in foreign direct investment and the associated transfers of technology and management efficiencies.[24]

This economic cocktail was coupled to an equally simple equation of development with fiscal policy, resulting in a massive expansion in expenditures on welfare, housing, health and education.[25]

17. Zalk, N. 2016. Selling off the Family Silver: the imperative for Productive and Jobs-Rich Investment. *New Agenda*, Issue 63:10-15.
18. Zalk, N. 2016. Selling off the Family Silver: the imperative for Productive and Jobs-Rich Investment. *New Agenda*, Issue 63:10-15.
19. Zalk, N. 2016. Selling off the Family Silver: the imperative for Productive and Jobs-Rich Investment. *New Agenda*, Issue 63:10-15.
20. Khan, F. 2013. Poverty, Grants, Revolution and 'Real Utopias': Society must be Defended by any and all Means Necessary! *Review of African Political Economy*, 40(138):572-588; Swilling, M. 2008. Tracking South Africa's Elusive Developmental State. Administratio Publico, 16(1); Mohamed, S. 2010. The State of the South African Economy. In: J. Daniel, P. Naidoo, D. Pillay and R. Southall. (Ed.). New South African Review 1: Development or Decline? Johannesburg: Wits University Press.
21. Bhorat, H., Cassim, A. & Hirsch, A. 2014. Policy co-ordination and growth traps in a middle-income country setting: the case of South Africa. Cape Town: University of Cape Town. Paper commissioned by the United Nations University UNU-WIDER and Korea International Cooperation Agency, WIDER Working Paper 2014/155.
22. Bhorat, H., Hirsch, A., Kanbur, R. & Ncube, M. (2013). Economic Policy in South Africa Past, Present, and Future. In H. Bhorat., A. Hirsch, R. Kanbur, & M.Ncube (Eds.) *The Oxford Companion to the Economics of South Africa.* Oxford: Oxford University Press.
23. Bhorat, H., Naidoo, K., Oosthuizen, M. & Pillay, K. 2015. *Demographic, employment, and wage trends in South Africa*. WIDER Working Paper Number 141. Helsinki: United Nations University World Institute for Development Economics Research. (wider.unu.edu).
24. Zalk, N. 2016. Selling off the Family Silver: the imperative for Productive and Jobs-Rich Investment. *New Agenda*, Issue 63:10-15.
25. Swilling, M. 2008. Tracking South Africa's Elusive Developmental State. *Administratio Publico*, 16(1); Khan, F. 2013. Poverty, Grants, Revolution and 'Real Utopias': Society must be Defended by any and all Means Necessary! Review of African Political Economy, 40(138):572-588.

The combination of market-oriented macroeconomic stabilisation and development-as-welfarism did not adequately address the problem and consequences of low investment levels caused by the way the South African corporate structure was being transformed by a combination of shareholder value, BEE deals and financialisation.[26]

Critics of the post-1994 market-oriented economic policies argued that international evidence shows that public investment does not in fact displace private investment; but instead it catalyses private investment. Furthermore, international experience shows that lowering tariffs without restructuring by using industrial policy had proven unviable in other contexts (especially where developmental rent management worked well). These critics further argued that capital account stability was a good thing; that a stable well-paid workforce was preferable to an over-indebted underemployed poorly paid workforce; and that the state needed to actively lead corporate restructuring to ensure that investment rather than dividends and rents was prioritised.[27]

Although the adoption of the developmental state discourse in the early 2000s marked a realisation that the state needed to play a stronger leadership role in the economy, this entailed a narrow focus on infrastructure-led growth to draw in private investors rather than strategies to guide corporate restructuring and private-sector investment into strategic industrial sectors.

When Mbeki was forced to resign as president, the ANC was facing the consequences of growing inequalities, persistent poverty and remarkably high unemployment levels. This prompted the ANC Youth League to lead the way in calling for more radical economic transformation. All talk of privatising SOEs fell away as they came to be viewed as key instruments for ratcheting up investment levels in the wake of the ongoing failure of the corporate sector to adopt a long-term dividend-oriented approach to investment. At the same time, there was growing dissatisfaction in the black business sector – the slow pace of accumulation in this sector was blamed on an over-dependence on the white corporate sector.

The radical reformers

The rise of Zuma can be understood in this context. With an economic environment set by the developmental state discourse, infrastructure-led growth, BEE, the emerging significance of the SOEs and state-investment institutions like the Public Investment Corporation, conditions were ripe for an assertive power elite to repurpose state institutions in the name of addressing the contradictions of the Mbeki era. As discussed in Chapter 3, the solution of the Zuma faction was heavy dependence on the use of the procurement systems of the SOEs. Repurposing the SOEs to become the primary mechanisms for rent seeking at the interface between the constitutional and shadow state became the strategic focus of the power elite that formed around Zuma. To facilitate this, they needed brokers to help bypass regulatory controls and shift money around (through local and international financial institutions) to finance deals as well as the transformation of the ANC into a compliant legitimating political machine. The Gupta networks emerged as the anointed brokers of this expanding rent-seeking system.

Repurposing the state

Yet the politics of radical economic transformation, despite the slogan, is not focused on the economy, but on the state. This was most clearly expressed in the National Macro Organization of State (NMOS) Project launched on 4 June 2014 at a NMOS project team workshop attended by all national government departments. The NMOS was established to implement the new Cabinet portfolios announced on 25 May 2014 after the general election. Significantly, the NMOS steering committee, comprising all Director-Generals and chaired by the Director-General in the Presidency, reports directly to the president. The Department of Public Service and Administration (DPSA) acted as the secretariat of the NMOS project team, which reported to the steering committee. The NMOS was ostensibly about the renaming of some departments (e.g., the Department of Water Affairs to the Department of Water and Sanitation), the splitting of existing departments (e.g., the Department of Women was created from the Department of Social Development), creation of new departments (e.g., the Department of Small Business Development), transfer of functions from one department to another, and reorganisation of departments (especially those who received new functions).

The 2014 NMOS built on and reinforced the 2009 NMOS that initiated the proliferation of Cabinet portfolios. However, there was a renewed urgency in the 2014 NMOS with the Department of Government Communication and Information System insisting in its communication strategy for the NMOS that "[t]he reconfiguration of Cabinet and government departments is meant to create a *capable state* that will be able to implement the National Development Plan, respond to the current challenges and *speed up service* delivery to improve the lives of all people who live in South Africa [emphasis added]". As this statement suggests, the emphasis was that the NMOS Project be presented as improving service delivery. However, what 'capable' meant and how to 'speed up' service delivery was never further elaborated. All attention was focused on the operational details, specifically how many departments and who was responsible for what. By this point, Minister of Public Enterprises, Malusi Gigaba, appointed on 1 November 2010, had also taken the first steps towards repurposing the SOEs. Throughout his tenure until 2014 as public enterprises minister, Gigaba was engaged in the restructuring of SOE boards, which became broadly representative of 'Gupta-Zuma' interests.

Over the last 20 years the value of goods and services that government purchases, largely from the private sector, has grown to between R400 and R500 billion a year. This figure is testament to the near complete outsourcing of government's core functions. Ironically, as government does less, there is more and more of it – personnel, ministries, departments, agencies and entities.

26. Mohamed, S. 2010. The State of the South African Economy. In: J. Daniel, P. Naidoo, D. Pillay and R. Southall. (Ed.). *New South African Review 1: Development or Decline?* Johannesburg: Wits University Press.
27. Zalk, N. 2016. op. city.

The appointment of Malusi Gigaba as Minister of Public Enterprises marked the start of the systemic reconfiguring of the SOE boards.

November 2010
Malusi Gigaba – Appointed Public Enterprises Minister.

December 2010
Appoints Department of Trade and Industry official Iqbal Sharma to Transnet board.

December 2010
New Age reports that Brian Molefe will become Transnet CEO.

February 2011
Appoints Brian Molefe Transnet CEO.

July 2012
Anoj Singh becomes Transnet CFO.

This duo sign-off on some of the most contoversial Gupta-Transnet linked contracts, including the work directed to Trillian.

June 2011
Announces wholesale changes to some SOE boards:

Eskom:
Nazia Carrim is the wife of Muhammed Noor Hussain, family member of Gupta business associate Salim Essa.

Romeo Khumalo is a co-director with Essa in a company.

Mark Pamensky is a former director in Gupta company, Oakbay.

Marriam Cassim previously worked for Gupta company, Sahara.

Ben Ngubane was in business with Essa.

Kuben Moodley was in business with Pamensky and advises Gupta-aligned Mines Minister Mosebenzi Zwane.

Viroshni Naidoo is Kuben Moodley's husband.

Transnet:
Tries to make Sharma Board Chair, but Cabinet veto's reportedly based on his proximity to the Gupta family.

Transnet then creates the Board Acquisitions and Disposals Committee to supervise the planned pipeline of future large-scale infrastructure spending (tenders worth more than R2.5billion).

Sharma appointed to chair this committee.

Essentially government has become a massive tender-generating machine. The Public Affairs Research Institute called it a "contract state"[28]. This constitutes the core of what could in theory be a system for allocating beneficial rents to drive development. In reality it has provided many opportunities for entrenching clientelism and patronage networks that become dependent on the favour of those who make the decisions at the top of the pyramid. Seen from this angle, the NMOS can be seen as a framework that enabled the knitting together of the symbiotic relationship between the formalities of bureaucratic governance in the constitutional state and the increasingly significant informal networks of the 'shadow state', reinforced by the Guptas as external brokers (see Chapter 2) and a parallel set of increasingly compliant intelligence and policing apparatuses (see Chapter 3).

The proliferation of government departments at the national and provincial levels from 2009 onwards to extend the political patronage networks followed the decentralisation of financial accountability to departmental heads (defined as chief accounting officers). This process of decentralisation of financial accountability followed the abolition of the State Tender Board in 2000. The rationale for these financial management reforms came from the 'new public management' movement that became popular internationally and in South Africa (via the public management schools) during the 1990s.

Extolling the virtues of 'steering and not rowing', the movement depicted contracting out and decentralisation of financial accountability as institutional reforms for improving the efficiency of the public service. However, lessons from the around the world show that combining the decentralisation of financial accountability with a ballooning of the public service creates ideal conditions for a proliferation of corruption. One without the other is preferable, but together these conditions create a perfect storm. The result in South Africa was the expansion across all levels of government (national, provincial and local) of a competitive kleptocratic culture. By the 2014 election, this culture had been in place for more than a decade.

To substantiate the above argument, we analysed the fraud and corruption cases for the period 2010–2016 that relate directly to procurement by state institutions and SOEs. There were 166 cases involving amounts ranging from R70 000 to R2.1 billion. The total amount at stake for all these cases is a staggering R17 billion. However, some caution is required in understanding this figure. Not all the amounts are known for all the cases, which means it could be an underestimation. Also, the documentation we reviewed sometimes refers to the contract value and sometimes to the amount that has been fraudulently or corruptly misappropriated. What is significant, though, is that the evidence supports the argument that fraud and corruption proliferated during the 10 years leading up to 2014, peaking in 2012.

Figure 1: Number of fraud and corruption cases related directly to state and SOE procurement (2010–2016)

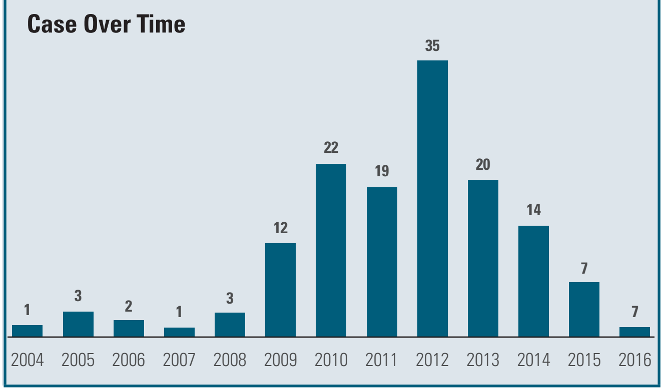

Table 1: Value of fraud and corruption charges against Transnet, Eskom and the South African Social Security Agency (2010–2013)

Region	Date	PC#	Particulars of the case	Charges	Amount
Gauteng	2010	PC027	Transnet Johannesburg CAS 2573/08/2010	Fraud & corruption	R 95,6 mill
Gauteng	2012	PC059	Eskom (emergency coal) Gauteng: SEOU enquiry CAS 04/03/2012	Fraud & corruption	R 121,7 mill
Gauteng	2013	PC082	South African Social Security Agency (SASSA) Payment of Social Grants Net1 Allpay Sunnyside CAS 1274/01/2013	Fraud, corruption and Public Finance Management Act (1999) transgression	Unknown

Signalling that the power elite around Zuma was concerned about increasingly competitive and out of control corrupt practices at the lower levels, Zuma instructed then Minister of Finance Pravin Gordhan to lead an initiative to investigate Malema-linked rent-seeking practices in Limpopo in 2012. Although Limpopo accounted for only 10 percent of the 166 cases analysed, the amounts involved equalled 15 percent of the total amount for all 166 cases.

Gordhan did more than just investigate – he shut these networks down. The political fallout from this episode (including the repercussions of the expulsion of Malema earlier that year) in the context of spreading corruption in all provinces led Zuma and other leading national figures to start calling for the re-establishment of the State Tender Board. This reflected a deeper underlying concern, not with rent seeking per se, but with the fact that there was too much rent seeking competition at the lower levels of the state that was out of control (hence the reference in the ANC 2014 Election Manifesto to the need to centralise tenders).[29]

28. PARI. 2014. The Conract State: Outsourcing and Decentralisation in Contemporary South Africa. Johannesburg: Public Affairs Research Institute.

29. Another example of an action to shut down lower level corrupt rent seeking was the 18-month investigation into corruption in the Nelson Mandela Bay Municipality led by Crispian Olver that started in 2015 (Olver, C. 2016. *State capture at a local level – a case study of Nelson Mandela Bay*. Johannesburg: Public Affairs Research Institute). This investigation, commissioned by Pravin Gordhan when he was Minister of Cooperative Governance and Traditional Affairs, was most likely allowed to proceed to conclusion because the Gupta-Zuma network were not implicated, meaning it was most likely seen as contributing to the reinforcement of the centralisation of control of rent seeking practices.

The Limpopo episode may not have triggered, but it certainly reinforced, what appears from the outside to be a coherent multi-pronged strategy to centralise control of rent seeking by an increasingly confident power elite. In practice, there was a guiding goal to centralise control, but this was achieved via a mish-mash of tactical decisions to exploit opportunities as they came up in opportunistic ways. The absence of strategic coherence and coordination meant there were many contradictory outcomes, mishaps, miscommunications, fall-outs and breakdowns along the way.

With the takeover of the National Treasury now made possible by the appointment of Malusi Gigaba as Minister of Finance, centralisation of rent seeking to consolidate the symbiosis between the constitutional and shadow state has moved into a new implementation phase. The increased confidence and brazenness of the Gupta networks on SOE boards and in senior management since the reshuffle confirms this.

In summary: seven broad areas of capture

The evolution in recent decades of rent management systems within neopatrimonial regimes around the world has taken many forms. In summary, though, they can be characterised within a spectrum that ranges from centralised/coordinated to chaotic. The South African rent-seeking system is a kind of hybrid, partly because of Zuma's personally vulnerable position due to outstanding and unresolved charges against him, the Constitutional Court finding on Nkandla and his embeddedness within a well-structured constitutional order. He aspires to be like Putin or Angola's Dos Santos, but is entangled by constitutional state requirements he cannot dispense with (like reporting to Parliament and subordination – at least for now – to the Constitutional Court) and competitive dynamics within the shadow state that the Gupta networks do not always control (witness the PRASA debacle).

As Chapter 2 outlines in detail, the Guptas managed to position themselves as the key strategic brokers of the networks that connected the constitutional and shadow states. They began with little more than a tight connection to Zuma. Like Schabir Shaik before them, they turned this political capital of having access to the president to their advantage to secure deals in his name in return for a percentage of the contract. The inclusion of Zuma's twin children in Oakbay companies as early as 2009 was used to full advantage. For Zuma and others around him, it was convenient to have a single clearinghouse where deals were brokered and financial transactions managed at a distance, especially if this clearinghouse was managed by non-South Africans with no loyalties to factions within the ANC. The word in black business circles was that without a deal with the Guptas, landing contracts with SOEs would be impossible.
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This raises the question about whether there is in fact a strategic centre of sorts. In general, the answer is no. Nor is there one single powerful network that overrides all others. The clearest and most disturbing indicator that the South African rent-seeking system tends towards the chaotic end of the spectrum is the collapse of the cabinet system as the core of the executive branch of the state (see Chapter 3).

There is evidence that Zuma tends to govern via a set of 'kitchen cabinets' comprising selected groups from different networks. Kitchen cabinets are small informal reference groups that are convened on an as-needed basis. They can also be shell structures that are activated when needed. As will be demonstrated, they have been known to be drawn from the state security establishment, Gupta networks, SOE sector, sub-groups of cabinet ministers and deputy ministers, family networks, international networks (e.g., Angola, Russian intelligence), key black business groups, the ANC (in particular the Premier League and Magashule), and selected loyalists in the public service (usually loyal director generals).

Kitchen cabinets can be once-off consultative events (e.g., with black business), or semi-permanent structures like inter-ministerial committees comprising people from different sectors and environments to tackle a common issue, or regular meetings with key networks (e.g., the Guptas or family networks). They are essentially how the competing nodes within the power elite coalesce and disperse to influence decision-making. Given that it is well known that those with the greatest influence are those who have spoken last to Zuma, it is unsurprising that these kitchen cabinets will lobby hard for face-time and follow-through on the deals they want to see realised. When we refer to the 'power elite' in this report, it is essentially key individuals located in these networks who are united by a sense that they have an historic mission to ensure the emergence of a black business class powerful enough to displace the white business class that remains a dominant force in the economy. How this reconciles with the growing prominence of Gupta-linked/owned companies with limited BEE credentials that win key contracts (e.g. T-systems or Cutting Edge at Transnet) remains somewhat of a mystery.

In summary, this power elite has centralised control within seven broad areas (some of which are elaborated in greater detail in subsequent chapters):

i. Securing control over SOEs by chronically weakening their governance and operational structures (chapters 3 and 5):

The appointment of Gigaba on 1 November 2010 as Minister of Public Enterprises marked the start of a systematic process of reconfiguring the boards of SOEs to ensure compliance, starting with his attempt to get little known DTI official and known Gupta associate Iqbal Sharma appointed as Transnet Board Chairperson in 2011 and the successful appointment of Brian Molefe as Transnet CEO in the same year. Throughout his tenure until 2014 as Minister of Public Enterprises, Gigaba was engaged in the restructuring of SOE boards. This, however, was only the first step in the repurposing of the SOEs. The second was to exploit the loophole in the Public Finance Management Act that made it possible to use the procurement procedures of SOEs to benefit selected contractors who had been sanctioned by the Gupta network. The loophole is that SOEs are not required to table their budgets and expenditure plans in Parliament, unlike government departments, which means they cannot be scrutinised in the same way as departmental budgets and expenditures. The details of SOE expenditure can, therefore, be hidden from public scrutiny.

ii. Securing control over the public service via, for example, NMOS (Chapter 3).

After the 2014 election, the NMOS project steering committee reported directly to the president creating the opportunity to couple political loyalty and responsibility for specific functions and associated budgets with deals to effectively manage procurement to control the rent-seeking networks.

iii. Securing access to rent-seeking opportunities by shaking down regulations.

Government ministers acting in concert with private interests use regulatory instruments or policy decisions in an arbitrary manner to "shake down" incumbent businesses – including black businesses – and favour particular interests. Instead of prioritising job creation and economic growth, decisions are taken for the benefit of a particular company, faction or group. The Tegeta vs Glencore Optimum deal is an example.

iv. Securing control over the country's fiscal sovereignty.

And then, there is the National Treasury. Gordhan and the National Treasury were regarded as an obstacle to this project of centralising the management of rents. The National Treasury believed in levelling the playing field and good governance. Hence the establishment of the Chief Procurement Officer in 2013. The National Treasury were aware of and opposed the increasingly corrupted and centralised rent management system that Zuma's power elite was setting up. It used the Financial Intelligence Centre to track illicit financial flows in ways that illuminated the workings of the shadow state. Prior to the cabinet reshuffle, the Financial Intelligence Centre was the only intelligence agency not controlled by the Zuma network. And the National Treasury controlled the Industrial Development Corporation and the Public Investment Corporation, which is the second largest investor on the Johannesburg Stock Exchange.

Zuma's power elite realised that to effectively centralise control of rent seeking, they needed control of the Office of the Chief Procurement Officer, the Finance Intelligence Centre, the Public Investment Corporation and the unique power available to the Minister of Finance to issue guarantees. This is only possible if a loyal Minister of Finance is in place.

v. Securing control over strategic procurement opportunities by intentionally weakening key technical institutions and formal executive processes.

Momentous national decisions appear to be taken on the basis of ad-hoc political judgments, without prior consideration of the legal, financial, economic or other public policy implications. Where technical opinions contradict the plans of vested factional interests they are arguably actively suppressed or excluded from consideration. Processes are constructed in a manner that avoids deliberation on basic facts and critical evidence (see The Special Significance of the Nuclear Deal).

vi. Securing the loyalty of the security and intelligence services by appointing loyalists (Chapter 3).

Securing control of the SOE boards went in conjunction with the process of removing key people from the security and intelligence agencies. They were replaced with loyalists who were prepared to use dirty tricks and other means to deal with troublesome individuals, especially if they were key players (see Chapter 3).

vii. Securing parallel government and decision-making structures that undermine the executive. This includes strengthening of the 'Premier League' (those with the apparent power to determine leadership positions).

There appears to be concerted efforts underway that undermine collective political institutions in the Executive, including Cabinet. It appears that critical decisions are delegated to handpicked groups, masked as Inter-Ministerial Committees, that are able to function in an unaccountable manner. Recent examples include:

- The IMC on Banks (purportedly set up to investigate the regulations and legislation that govern them, but strangely chaired by Mines Minister Mosebenzi Zwane and set up after the Bank's closed the Gupta bank accounts);
- The IMC on Communication, unusually chaired by the President;
- The National Nuclear Energy Co-ordination Committee (NNEECC), chaired by President Zuma.

The nature of IMC's is that in and of themselves they lack transparency, in that they do not report to Parliament (which individual members of Cabinet are required to do) and they are not formulated in legislation (as is the case of formal Cabinet Structures).

Additionally, a series of political appointments at Cabinet and provincial government levels reinforced the Premier League, with Ace Magashule emerging as its de facto leader. The rise of Magashule to chief political confidante of the President, with rumours that Zuma views him as the preferred candidate for vice-president, points to the fact that since the 2014 election Zuma has come to depend increasingly on the provincial party machines represented by the Premier League.

The special significance of the nuclear deal

It is no secret that one of Zuma's top priorities is to ensure that the nuclear deal with the Russians is finalised. Ignoring for the moment the obviously important issues that this is the most expensive form of power available, it is unaffordable now and will be more unaffordable when built due to inevitable budget overruns (as is normal in all Russian nuclear projects) and the procurement process has been illegal (as per the recent course case), what matters is that the nuclear deal has emerged from the depths of the shadow state system.

The Guptas bought their uranium mine because they assumed the nuclear deal would be done, and there is evidence that Russian intelligence has a presence in the Presidency to guide the process.

To ensure effective support for the nuclear deal, intelligence capabilities have been boosted that are now interfaced with the Gupta networks that brokered the shadow state transactions to pave the way for the nuclear deal. There are allegations that one set of transactions involved Russian funding for the local government elections, which may explain where the ANC managed to find R1 billion for this campaign.

The nuclear deal is also central to the consolidation of a new framework for radical economic transformation. If the nuclear deal is implemented, this will signify the final consolidation of Zuma's rent-seeking system as the glue that binds together the constitutional and shadow states. It is reasonable to assume that the Russians have linked the approval of the nuclear deal to major investment initiatives in the future that could be useful for shoring up support of black business.

It is arguable, therefore, that alternative energy futures are at the heart of the South African political crisis. According to the CSIR, in 2016 the price of renewable energy was 62c/KwH over the life cycle, compared to coal which was R1.03 - R1.20/KwH and nuclear was R1.30/KwH over the life cycle.[30] The CSIR estimated that the nuclear energy option could result in an increased annual cost of R90 billion compared to the cost of renewable energy. There is, therefore, no economic rationale for building nuclear power plants in South Africa. Many experts and commentators now argue that the only reason the Zuma-centred power elite push the nuclear option is because it creates an opportunity to extract rents on a massive scale while giving the Russians the strategic advantage they aim to achieve in building all their nuclear power plants. They are building nuclear power plants in 30 countries at the moment. As one commentator put it, a Russian nuclear plant is a 'combination of an embassy and military base' - to this one can add another advantage: they give Russia financial control of the economy if the financing was done by issuing a sovereign guarantee.

Conclusion

We must understand the politics of the power elite around Zuma in this context. The political party he heads is ideologically committed to radical economic transformation, which is to be achieved in part by using government's procurement spend to favour black businesses. This, in turn, is the cornerstone of a strategy to displace the traditional corporates who have hitherto done little to increase gross domestic fixed investment. However, this ideology masks the repurposing of state institutions to enrich a narrow power elite.

This sets the context for understanding Gigaba's statements after he took office in April 2017. He made it clear that he is committed to radical economic transformation and that he does not intend depending on white monopoly capital. Now that they have control of the National Treasury via Gigaba, the power elite assumes they will have the wherewithal to centralise and control rent seeking. A key condition of success is a compliant ANC. Extracting a flow of funds via shadow state networks (such as during the PRASA deal – see Chapter 2) makes it possible to keep the ANC going, but as a giant political Ponzi scheme that legitimates what is going on by denying the existence and salience of the shadow state.

The politicisation of procurement as a means to achieve radical economic transformation frequently results in the subversion of service delivery mandates. Therefore, in recent years there have been purges of professional public servants and the repurposing of administrations away from their constitutional and legislative mandates. It has also opened departments and especially SOEs to massive competition and rivalry, not so much about policy, but about who gets what tenders. This weakens and often breaks administrations, which are then unable to deliver services. A vacuum is created that can be filled by transactions that occur within the shadow state. This is especially devastating for working families and for the poor, who are more dependent on government services than the middle class and the rich. Failures in health and education, for example, reproduce historical, racialised patterns of inequality. It distracts attention from the economy itself and the inclusive structural transformation that is needed to make the economy more productive and labour-absorptive.

Development in an unequal society cannot work without the allocation of beneficial rents. What matters is whether the rent management system is corrupted by clientilistic and patronage networks or not. Once it is corrupted, a process sets in that can lead to the hollowing out of the state, endemic conflict and economic collapse while an elite enriches itself. This cannot be allowed to happen.

30. CSIR, 2017. Electricity scenarios for South Africa: presentation to the Portfolio Committee on Energy. Cape Town, 21 February 2017.

How the Gupta's captured nuclear

The proposed 9.6GW nuclear project is one of the largest public investment programmes in South African history. Compared to the size of our economy, it would be one of the biggest investments undertaken by any country in the world.

May 2010:
The Guptas and Duduzane Zuma buy Uranium One's Dominion Mine – later named Shiva Uranium – via an Industrial Development Corporation loan.

2011
Cabinet approves the Integrated Resources Plan (IRP2010) 2010-2030, a 20 year road map, outlining the mix of the country's future electricity generation. This includes the need for 9 600 MW of nuclear power but not as the primary solution. The IRP will be updated every two years.

Zuma establishes the inter-ministerial National Nuclear Executive Committee (NNEEC) as a political structure that will oversee the nuclear programme.

2014
Contract of the Director General of Dept of Energy Nelisiwe Magubane – a trained electrical engineer with more than 15 years experience – is not renewed. The position is left vacant for nearly a year when Thabane Zulu is appointed Director General, with no experience in energy sector (from Human Settlements).

2015
Several things happen:
Former Finance Minister Nene and former Energy Minister Tina Joemat-Pettersson accompany Zuma to Brics Summit in Russia where Nene is presented with a letter of guarantee, in his name, from the Russians, to sign against nuclear. He refuses;

A joint National Treasury – Dept of Energy Task Team is established to take the nuclear build programme forward and compiles detailed preliminary report that models the fiscal and financial implications of nuclear;

This report is never submitted to any formal government structure. Instead during a Cabinet meeting on 9 December, Nene delivers a presentation laying out the unaffordability of Nuclear; and the Energy Dept., at the same meeting, submits a memo to Cabinet recommending that nuclear procurement go ahead. Cabinet approves this and hours later Nene is fired.

2017
DoE transfers procurement to Eskom

Eskom releases RFI

Court ruling declares the nuclear procurement plan invalid because government did not follow due process.

Securing a Loyal Intelligence and Security Apparatus

December 2009
President Jacob Zuma appoints **Menzi Simelane** as Director of the South African National Prosecuting Authority (NPA).

December 2010
Nomgcobo Jiba, reportedly close to Zuma is promoted to Deputise the NPA.

April 2011
Head of Crime Intelligence (a unit within the SAPS) Richard Mdluli is arrested and charged on counts of fraud and corruption, as well as for his alleged involvement in the murder of his mistress' husband. He has been on suspension since then.

December 2011
Menzi Simelane is suspended following a Supreme Court of Appeal decision that his appointment is invalid.

June 2012
Jiba suspends and institutes charges against Major General Johan Booysen, former Head of the Hawks in KwaZulu-Natal, who was investigating corruption charges against reported presidential ally, **Thoshan Panday**. He is subsequently arrested and charged with 116 crimes, including racketeering, murder and attempted murder. The charges are later withdrawn, following a court order in his favour.

October 2013
Mxolisi Nxasana is appointed as NPA head. He clashes with Jiba and lays criminal charges of perjury, flowing from statements she made under oath in the course of the Booysen case.

May 2014
President Zuma appoints **Nathi Nhleko** as Minister of Police and **David Mahlobo** as State Security Minister

July 2014
President Zuma commences the process to remove Nxasana, after convening an enquiry to determine his fitness to hold office.

October 2014
News of the so-called SARS "rogue unit" breaks, implicating former Finance Minister Pravin Gordhan and former deputy SARS commissioner Ivan Pillay.

Tom Monyane has been appointed SARS commissioner the month before.

December 2014
Police Minister Nhleko suspends Hawks Head Anwar Dramat. At the time he was reportedly about to launch an investigation into Nkandla.

December 2014
Nhleko appoints Lieutenant General **Mthandazo Ntlemeza** as Acting Head of the Hawks (made permanent in Sept 2015)

January 2015
Ntlemeza suspends Major General Shadrack Sibiya, former Head of the Hawks in Gauteng. At the time he was investigating Mdluli.

March 2015
Police Minister Nhleko suspends Robert McBride, Executive Director of the Independent Police Investigative Directorate (IPID).

May 2015
President Zuma "agrees" to let Nxasana resign. He is paid R17m – the balance of his ten-year contract. Civil society groups file a case to review the R17m golden handshake. In 2017 Nxasana says in his responding affidavit: "It was never my intention to make a request to leave the office, nor did I ever make such a request to the President ... The president's version in this regard is false."

In effect, this suggests President Zuma lied in his affidavit when he said Nxasana left on his own volition.

June 2015
Zuma appoints Advocate **Shaun Abrahams** NPA head.

September 2016
Jiba struck off the roll of South African advocates. She is placed on special leave.

March 2017
Hawks head Berning Ntlemeza loses his appeal and is ordered out of his position by the High Court based on his lack of integrity to hold such an office.

March 2017
Fikile Mbalula is appointed police minister

Menzi Simelane

Nomgcobo Jiba

Thoshan Panday

Mxolisi Nxasana

David Mahlobo

Nathi Nhleko

Tom Moyane

Mthandazo Ntlemeza

Shaun Abrahams

Fikile Mbalula

Securing a Loyal Intelligence and Security Apparatus

2013

An anonymous document emerges at the height of moves to oust trade union federation general-secretary Zwelinzima Vavi over his criticism of the Zuma administration claiming he was funded by US organisations to undermine the government.

2015

A blog claims former public protector Thuli Madonsela, former DA parliamentary leader Lindiwe Mazibuko and EFF leader Julius Malema are spies.

In the wake of #Feesmustfall student protests at Parliament, the government activates the National Joint Operational and Intelligence Structure (NATJOINTS), the government body that coordinates the joint work of the police, intelligence agencies and the military. At the time, this raises questions as ordinarily NATJOINTS is only activated when national security in threatened. State Security Minister David Mahlobo reportedly claims that he has intelligence that students were receiving military training, that academics were teaching Afro-pessimism and that NGOs were funding the protests on behalf of foreign forces.

Project Spider Web intelligence report emerges in an attempt to discredit National Treasury by claiming the department is effectively controlled by foreign interests.

2016

The Helen Suzman Foundation (HSF) is robbed in what is reported as a well-planned robbery executed in military style. The HSF has been at the forefront of several legal challenges in defence of our democracy.

The Gupta's hire UK-based public relations consultancy Bell Pottinger, which uses fake news, disinformation and other dirty propaganda, including orchestrating the "White Monopoly Capital" narrative and distorting the meaning of "Radical Economic Transformation", in order to divert people's attention away from their state capture project.

Former Finance Minister Pravin Gordhan, together with former SARS Commissioners Ivan Pillay and Oupa Magashule, are charged by NPA head Shaun Abrahams on various counts, including fraud and corruption, allegedly linked to their time at SARS. The charges are dropped for lack of evidence and are clearly a political battering ram.

2017

Chief Justice Mogoeng Mogoeng's office is broken into and 15 computers stolen containing information about judges and other court officials.

Former Social Development Director-General Zane Dangor's home is broken into shortly after he resigns amid the social grant crisis. The house is ransacked but nothing is stolen.

Operation Checkmate Intelligence Report emerges, which Zuma reportedly uses to fire Gordhan and Jonas based on claims in the report that they are complicit with foreign forces to discredit government. The report is discredited by the ANC leadership.

An alleged "coup plotter" is arrested by the Hawks who claims he is linked to two absurdly named structures: "the Anti-State Capture Death Squad Alliance" and the "Anti-White Monopoly Capitalists Regime". This leads to civil society groups calling on South Africans not to be fooled by such an unlikely story, suggesting that the real motive is to create an artificial 'security crisis' to justify more power and influence, and a closing down of democratic space.

2

Power, authority and audacity: How the shadow state was built

"I was taken aback and continue to be surprised by the fact that the representative of the said family finds such power, authority and audacity."
– Former Prasa CEO Lucky Montana
writing to then Prasa board chair Sifiso Buthelezi (2012)

Introduction

According to amaBhungane Centre for Investigative Journalism,[1] Siyabonga Mahlangu, special legal adviser to the then Public Enterprises Minister Malusi Gigaba, sent this text message to then CEO and chairman of SAA, Vuyisile Kona in December 2013:[2]

Uyangithengisa [you are selling me out]. Why did you let her know that u knew where she [Dudu Mnyeni] was going. U will compromise the mission.

The text message was sent after a meeting at the Gupta's Saxonwold compound, which was attended by Mahlangu and Kona, where Kona reportedly was offered a R500 000 bribe, seemingly linked to a controversial Airbus fleet deal. The text, according to amaBhunagne, likely referred to a subsequent discussion Kona had with Myeni, who was appointed chairperson of SAA a week later, and whose appointment, it appears, was discussed at the Saxonwold meeting. At the time, a SAA source, speaking in confidence to amaBhungane, said: "The 'mission' was clearly this contract, all of these contracts."[3] In hindsight, 'the mission' became a much bigger, more ominous and carefully orchestrated long-term plan, which would unfold over the next seven-plus years, culminating in what we now know as the capture of the state.

Nearly three years later in July 2016, Zuma, speaking in vernacular in a speech that received very little media coverage but which was captured in a YouTube clip, said:[4]

If it were up to me, and I made the rules, I would ask for six months as a dictator. You would see wonders, South Africa would be straight. That's why, if you give me six months, and allow Zuma to be a dictator, you would be amazed. Absolutely. Everything would be straight. Right now to make a decision you need to consult. You need a resolution, decision, collective petition. Yoh! It's a lot of work!

Referring to the emergence of a shadow state, Gordhan said at the press conference after his removal as Minister of Finance:

We have failed to join the dots.

To 'join the dots', it is necessary to start with the emergence of the Gupta network that has become the lynchpin of the symbiotic relationship between the constitutional and shadow state. This report shows how the Gupta family gradually and systematically inserted themselves into Zuma's political and personal life before and after he became president.

Their privileged access to Zuma after he was elected was a form of political capital that they successfully transformed into a vast and powerful network that effectively brokered the process of state capture and the repurposing of a range of state institutions. They were useful for Zuma because they were dependent on him, and they could, therefore, be trusted to manage the shadow state transactions that Zuma required. They were loyal to him, not to any ANC faction or established business interest. They were essentially brokers and fixers who could make things happen for the Zuma-centred power elite with maximum deniability and limited culpability.

The broker-cum-fixer role played by the Gupta family is, of course, not unique to South Africa. In his PhD on the role of brokers in war economies in Africa, Dr Sybert Liebenberg, an independent public and development specialist, found that they are often non-nationals and that their primary aim is always to secure access to state resources, which requires at an early stage "the establishment of a management capability in close proximity to the actual resources"[5]. As "entrepreneurs or brokers" they facilitate and ultimately seek to control the "political market place"[6]. According to an article written by Dr Vashna Jagarnath, a senior lecturer in the Department of History at Rhodes University, "When Zuma won the Presidency, the alliance between the President and the Gupta brothers would make both the Gupta family and Zuma's family fabulously wealthy. This wealth did not come from the kind of productive investment

1. This chapter 2 depicts the facets of Gupta linked state capture as it has been reported in the South African media and elsewhere. The authors did not research the underlying facts, unless otherwise indicated and the evidence is presented as a summary of published material and not as proof of the underlying facts. Opinions expressed by the authors are based on the reports, assuming their veracity.
2. Skiti, S. 2013 Gupta's tried to buy SAA boss. [Online] Available: http://www.timeslive.co.za/sundaytimes/article790030.ece
3. Sole, S. 2013. R10-billion contract behind SAA dogfight. [Online] Available: http://amabhungane.co.za/article/2013-03-22-r10billion-contract-behind-saa-dogfight
4. Jacob Zuma: 'If I were a dictator for just 6 months everything would be sorted'. 2016. Video. SouthAfricanism.com. Youtube: https://www.youtube.com/watch?v=maINYSlsoq8
5. Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.
6. Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.

joburg-from-selling-shoes-to-assailing-the-state/#.WPsmqIN97UI.

that creates jobs, pays taxes and lays the foundation for long-term economic development." As we will see in Chapter 3, it followed from a political project that, increasingly, set itself up against the Constitution and the law and operated in the shadows of the state.[7]

The Gupta family arrives in South Africa

The Guptas, who emigrated from India to South Africa in 1993, were best known as the power behind computer marketer Sahara, but subsequently are known for their claimed close friendships with the Zuma family. Over the past two decades they have slowly inserted themselves as brokers within South Africa's power networks, but their nimbleness in achieving this could hardly have been predicted given the obscurity of their past.

According to the *Sunday Times*, until 1989, the Gupta brothers – Ajay (51), Atul (48) and Rajesh (45) – grew up in a modest apartment block in Rani Bazar, Saharanpur, Uttar Pradesh, "a dusty, fly-infested city in northern India"[8] nearly 200 kilometres from Delhi. Their father, Shiv Kumar Gupta, died in 1994, and was, according to locals interviewed by the newspaper, comparatively relatively wealthy. He was, for example, one of a handful in the community to own a car. He apparently made a living running five cooperative stores, earning commission on the sale of oil, rice, wheat flour, and cornmeal to locals who qualified for government ration cards. He also apparently made money importing spices from Madagascar and Zanzibar through his Delhi-based business SKG Marketing.[9] According to historian Dr Jagarnath:[10]

Uttar Pradesh is a known as a notoriously corrupt state in which gangsters frequently double as politicians. Business is regularly conducted through the intersection of gangsterism and politics. To contain the fallout from the acute social costs of these kinds of arrangements, a rapacious political elite, divided along caste lines, has often backed authoritarian and violent forms of far-right populism, often termed fascism. The aim is to turn the working class and poor against vulnerable minorities, especially Muslims, rather than an endemically criminal and predatory political class. Under these conditions a devastating form of hypercapitalism has been able to thrive while rational, democratic and progressive forms of solidarity, discussion and organisation have become increasingly difficult.

In a 2011 interview with the *Sunday Times,* Atul Gupta said: "We are never shy of our background. I am proud of it. We come from families that do not show or expose their business to others. It is considered showing off."[11] Both Atul and Rajesh obtained Bachelors degrees in science from the JV Jain Degree College in Delhi and after graduating, all three brothers commuted between Saharanpur and Delhi for about four years to look after SKG Marketing, and settled in the city in the late1980s. During this time Atul completed various computer courses and became a computer supervisor at a printing company in Delhi. The family then sent Atul to China to investigate businesses there, but this did not work out and the family set their sights on Africa. In the 2011 *Sunday Times* interview, Atul said: "… we didn't have much option to invest in China because they only wanted us to buy between 5% and 12% (shares) in the factory, while Ajay wanted management control."[12]

In 1993, Shiv Kumar sent Atul to South Africa because he believed "Africa would become the America of the world."[13] In 1994, according to Atul, his family transferred R1.2 million into an account he had opened in South Africa. With this money, he opened Correct Marketing, an import and distribution business selling computers and components.

Around the same time, he also tried to set up a chain selling shoes imported from India, but struggled to get customers to pay. In about 1996, he sold Liberty Da Trend, the boutique he owned in Johannesburg's Killarney Mall. Atul said: "I didn't come with money. As and when I requested money, my family transferred the money."[14] And so, from a modest turnover of R1.4 million in 1994, Correct Marketing's sales rocketed to about R98 million in 1997 – the year its name changed to Sahara Computers – and was turning over R127 million by 1999, according to Pieter-Louis Myburgh's recently released book *The Republic of Gupta: A Story of State Capture*. Ajay arrived in South Africa in about 1995 and Rajesh joined the Gupta businesses here in about 1997.

Given this fairly innocuous entry into South Africa, the origins of the Gupta's close relationship with President Jacob Zuma and his family is even more intriguing. It remains unclear precisely how the Gupta family first inserted themselves into South Africa's political class, but there seems to be consensus that it was through former Minister in the Presidency under Mbeki, Essop Pahad, who was formally introduced to Atul during a visit to India with Mbeki in 1996.[15] The meeting was brief and their friendship grew after

7. Jagarnath, V. 2016. *Ajay comes to Jo'burg; From selling shoes to assailing the State*. [Online] Available: https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#.WPsmqlN97UI.
8. Govender, P. 2011. *From Saharanpur to Saxonwold: The incredible journey of the Gupta family*. [Online] Available: http://www.timeslive.co.za/sundaytimes/stnews/2011/06/10/From-Saharanpur-to-Saxonwold-The-incredible-journey-of-the-Gupta-family1.
9. Govender, P. 2011. *From Saharanpur to Saxonwold: The incredible journey of the Gupta family*. [Online] Available: http://www.timeslive.co.za/sundaytimes/stnews/2011/06/10/From-Saharanpur-to-Saxonwold-The-incredible-journey-of-the-Gupta-family1.
10. Jagarnath, V. 2016. *Ajay comes to Jo'burg; From selling shoes to assailing the State*. [Online] Available: https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#.WPsmqlN97UI.
11. Jagarnath, V. 2016. *Ajay comes to Jo'burg; From selling shoes to assailing the State*. [Online] Available: https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#.WPsmqlN97UI.
12. Jagarnath, V. 2016. *Ajay comes to Jo'burg; From selling shoes to assailing the State.* [Online] Available: https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#.WPsmqlN97UI.
13. Jagarnath, V. 2016. *Ajay comes to Jo'burg; From selling shoes to assailing the State*. [Online] Available: https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#.WPsmqlN97UI. .
14. Jagarnath, V. 2016. *Ajay comes to Jo'burg; From selling shoes to assailing the State*. [Online] Available: https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#.WPsmqlN97UI.
15. Myburgh, P.L. 2017. *The Republic of Gupta: A Story of State Capture*. Johannesburg: Penguin Random House South Africa. Pg:35.

the Guptas moved to South Africa.[16] In 2006, Ajay Gupta, on the recommendation of Pahad, was appointed to serve on South Africa's International Marketing Council of South Africa (later named BrandSA)[17] and, in 2010, it seems the Gupta family made an early breakthrough with Pahad, funding his magazine *The Thinker* (the magazine is still publishing but no longer funded by Guptas). Pahad also sat on the board of Sahara. During Mbeki's administration, the Guptas apparently spoke of regular visits to the Mbeki family, but it seems that – except for their relationship with Pahad – they were unable to gain traction. Myburgh's book describes how Atul was included in a confidential consultative business council constituted by Mbeki in about 2006[18] but the Thabo Mbeki Foundation has distanced the former president from any meaningful association with the Guptas.[19] According to a *Sunday Times* interview, Atul Gupta claimed that they met Zuma "around 2002, 2003 when he was the guest at one of Sahara's annual functions."[20]

Jacob Zuma comes to power

Jacob Zuma was elected ANC President at the Polokwane conference in December 2007. In July 2008, Duduzile Zuma, his 26-year-old daughter, was asked to join the board of the Gupta technology company Sahara Computers (she resigned in 2010).

Duduzane, her twin brother, was also taken under the Gupta's wing and joined Sahara, though the date is unclear. The twins were two of the five children of Jacob Zuma and Kate Mantsho, who committed suicide in 2000. Zuma is reported as having always felt particularly concerned about their wellbeing.

By May 2009, the closeness between Zuma and the Guptas was noted in the media when the president personally thanked Atul Gupta at his closing address of the Twenty20 India Premier League, which Sahara had sponsored.[21] At face value, this may have seemed like the courteous thing to do (given the Gupta's sponsorship of the event), but historian Jagarnath gives this event interesting context against Indian culture. Commenting on a later cricket event, also hosted by the Guptas – a Twenty20 match between South Africa and India at Durban's Moses Mabhida Stadium in January 2011 – Jagarnath wrote:[22]

One of the Guptas' early attempts at giving a positive spin to their personal wealth and power began with an event held at the Moses Mabhida stadium in Durban on January 9, 2011. This event was held after a Pro20 cricket match between South Africa and India. It celebrated the achievements of Indian cricket legend Sachin Tendulkar and South African cricket great Makhaya Ntini. Bollywood, cricket and politics were choreographed into a single spectacle. This event borrowed directly from a model long established in India where a toxic mix of politics, Bollywood and cricket has been standard practice for many years. Popular film and sport have been corrupted to produce a politics of spectacle designed to serve the interests of a reactionary and rotten political class. The Durban event bore all the hallmarks of this well-established form of political spectacle. Zuma was placed in a lineage that ran from Gandhi to Mandela and surrounded by Bollywood stars, cricket heroes and shmaltzy shots of the Guptas' mother. The celebrity, sequins, bad lighting, lip-synching and bogus interpretations of history were aimed at wooing the audience into political narcolepsy.

The Guptas used this match as an opportunity to simultaneously host a concert to mark the launch of their newspaper, the *New Age*, which was formed in June 2010 and published its first edition in December 2010. At the time of the Twenty20 match and concert, the media reported: "Bollywood heavyweights, Shahrukh Khan, Anil Kapoor, Shahid Kapoor and Priyanka Chopra, will lead a star-studded line-up that will perform in the New Age Friendship Celebration Concert, which brings together leading entertainment stars from South Africa and India."[23]

Origins of the nuclear deal

In May 2010, exactly a year after the first Gupta sponsored Twenty20, the media broke a story that Gupta-owned company Oakbay Resources and Energy, together with minority shareholders, including Duduzane Zuma's BEE vehicle, Mabengela Investments, was the buyer of Toronto-listed Uranium One's Dominion mine in Klerksdorp. Oakbay paid $37 million (about R280 million). Mabengela Investments is reportedly jointly controlled by Duduzane Zuma and Gupta brother Rajesh (Mabengela is named after a hill overlooking President Jacob Zuma's Nkandla homestead).[24]

At the time that Oakbay bought Dominion – later named Shiva Uranium – media speculation was rife that President Zuma had intervened a month earlier, in April 2010, to extend the tenure of then Public Investment Corporation head Brian Molefe to facilitate negotiations towards a large investment in the project.[25] The Presidency denied these allegations, saying that the president's son was, "a businessman in his own right", and did not need his father's help.

16. Myburgh, P.L. 2017. *The Republic of Gupta: A Story of State Capture*. Johannesburg: Penguin Random House South Africa. Pg:35.
17. Charter, L. 2016. *Gupta brothers are not my friends – Mbeki*. [Online] Available: http://www.dispatchlive.co.za/news/2016/04/11/gupta-brothers-are-not-my-friends-mbeki/.
18. Myburgh, P.L. 2017. *The Republic of Gupta: A Story of State Capture*. Johannesburg: Penguin Random House South Africa. Pg:35.
19. Myburgh, P.L. 2017. *The Republic of Gupta: A Story of State Capture*. Johannesburg: Penguin Random House South Africa. Pg:33.
20. Govender, P. 2011. *From Saharanpur to Saxonwold: The incredible journey of the Gupta family*. [Online] Available: http://www.timeslive.co.za/sundaytimes/stnews/2011/06/10/From-Saharanpur-to-Saxonwold-The-incredible-journey-of-the-Gupta-family1.
21. Andrew, M. & Serino, K. 2010. *Keeping it in the family*. [Online] Available: https://mg.co.za/article/2010-03-19-keeping-it-in-the-family/.
22. Jagarnath, V. 2016. *Ajay comes to Jo'burg; From selling shoes to assailing the State*. [Online] Available: https://www.dailymaverick.co.za/opinionista/2016-10-28-ajay-comes-to-joburg-from-selling-shoes-to-assailing-the-state/#.WPsmqlN97UI.
23. Sport24.co.za. 2010. CSA launch historic T20 match. [Online] Available: http://www.sport24.co.za/Cricket/Proteas/CSA-launch-historic-T20-match-20101102.
24. https://www.ft.com/content/abd6e034-e519-11e5-a09b-1f8b0d268c39
25. Brümmer, S. 2010. Zuma 'meddled in mine buyout'. [Online] Available: http://amabhungane.co.za/article/2010-05-14-zuma-meddled-in-mine-buyout.

The interesting thing was that Dominion had been on 'care and maintenance' since 2008 with Uranium One chief executive Jean Nortier saying: "We had to close that chapter; we certainly weren't going to try to bring Dominion back into production — it certainly was going to require too much capital."[26] Bringing Dominion back to full production was projected to cost far more than the $37 million purchase price, according to media reports. At time of the purchase, journalist Brendan Ryan wrote:[27]

Who in their right mind would buy one of the most notorious dogs in the entire South African mining sector — the failed Dominion Uranium mine — and do it at a time when uranium prices are still depressed? … It's either the steal of the century — given that developers Uranium One wrote off an investment of $1.8 billion when they shut Dominion down in October 2008 — or it's a classic case of throwing good money after bad.

Unbeknown to Ryan at the time, and certainly in retrospect, the Zuma power elite had their sights set on a large-scale nuclear programme that would create a new and lucrative market for uranium. Molefe, then CEO of the Public Investment Corporation, seems to enter the story at this point in what may have been his first act to ingratiate himself with the Zuma group after being identified for so long as an 'Mbeki man'. Although he denied having a hand in the Gupta's Uranium One deal, there seem to be too many unexplainable coincidences.

The timing is indicative. According to amaBhungane, Molefe's last day as CEO of the Public Investment Corporation would have been 12 April 2010, two days before the Dominion transaction was closed.

However, his contract was extended for three months, to the reported irritation of senior ANC and alliance officials.[28] At the time, the *Sunday Times* reported that Jacob Zuma was "understood to have phoned a senior official in the finance ministry to ask that Molefe remain in the job."[29]

According to amaBhungane, company registration documents show that Atul Gupta and Duduzane Zuma took over as directors of the Dominion holding company on 14 April, the day the sale was finalised. If, as alleged in media reports, Molefe was involved in negotiations to commit Public Investment Corporation funding, his departure at that crucial time might have compromised the negotiations. The investment committee rejected the deal as being too risky, but the Industrial Development Corporation provided the loan.

Brian Molefe gains his foothold

By March 2011, the *Mail & Guardian* was reporting several anomalies associated with the appointment of Molefe as the new CEO of Transnet, which, according to the newspaper, appears to have been pre-determined.[30] The Gupta family denied reports that they influenced the selection of Molefe; however, the media provided circumstantial but compelling information to the contrary. According to the media article, the advert for the position of CEO was published on 26 January 2011 and candidates were given until 1 February 2011 to respond. Former Public Enterprises Minister Malusi Gigaba announced the appointment of Molefe on 16 February. Transnet said 63 applications had been received and nine applicants were interviewed. The board's corporate governance and nominations committee, chaired by Transnet chairperson Mafika Mkwanazi, apparently handled the process. The *Mail & Guardian* reported that: "A senior executive with knowledge of Transnet board operations said the applications had to be vetted and interviews for busy executives and board members arranged. 'Molefe's appointment was miraculously quick', the executive said"[31].

Transnet non-executive director and former CEO of DaimlerChrysler, Juergen Schrempp, who had only been appointed a few months before in December 2010, resigned shortly after Molefe's appointment. While he did not comment, the *Sunday Times* reported that he was unhappy about the handling of Molefe's appointment and because Mkwanazi had submitted three names of candidates to Gigaba without prior board approval.[32]

Interestingly, on 7 December 2010, about three months before his appointment, *the New Age*, without quoting its sources, said: "*The New Age* has it on good authority that Molefe will be appointed CEO by the board."[33] The paper correctly predicted other appointments to the new Transnet board, including Don Mkhwanazi and Ellen Tshabalala.

The Guptas set their sights on the SEOs

In September 2012, most of the SAA board, led by former chair Cheryl Carolus, resigned, apparently over a breakdown in its relationship with then Minister for Public Enterprises Malusi Gigaba.[34] Chief Executive Siza Mzimela and some of her key people followed in early October. This period seems to mark the start of the capture of the parastatal.

It appears that a large SAA tender, worth at least R10 billion, was at the root of the contest. About six months after the resignation of the board, questions emerged in the media about a meeting held

28. Brümmer, S. 2010. *Zuma 'meddled in mine buyout*'. [Online] Available: http://amabhungane.co.za/article/2010-05-14-zuma-meddled-in-mine-buyout.
29. Brümmer, S. 2010. *Zuma 'meddled in mine buyout*'. [Online] Available: http://amabhungane.co.za/article/2010-05-14-zuma-meddled-in-mine-buyout.
30. AmaBhungane Centre for Investigative Journalism. 2011. Going off the rails. [Online] Available: http://amabhungane.co.za/article/2011-03-04-going-off-the-rails.
31. AmaBhungane Centre for Investigative Journalism. 2011. Going off the rails. [Online] Available: http://amabhungane.co.za/article/2011-03-04-going-off-the-rails.
32. Creamer, T. 2011. Transnet, DPE deny outside influence on Molefe appointment. [Online] Available: http://www.engineeringnews.co.za/article/transnet-dpe-deny-outside-influence-on-molefe-appointment-2011-02-28/rep_id:4136.
33. Creamer, T. 2011. Transnet, DPE deny outside influence on Molefe appointment. [Online] Available: http://www.engineeringnews.co.za/article/transnet-dpe-deny-outside-influence-on-molefe-appointment-2011-02-28/rep_id:4136.
34. Sole, S. 2013. R10-billion contract behind SAA dogfight. [Online] Available: http://amabhungane.co.za/article/2013-03-22-r10billion-contract-behind-saa-dogfight

in Johannesburg at the Saxonwold compound of the Gupta family in October 2012 – involving the airline's acting CEO as well as the special adviser to Minister Gigaba.[35]

The *Mail & Guardia*n reported at the time that SAA's fleet committee had selected the new Airbus A350 over Boeing's long-haul offering and given a recommendation to the SAA board in late August 2012 – and that the outgoing board had agreed to the choice. It is this decision that seems to have ultimately precipitated the exodus of the board. According to the *Mail & Guardian* article, the new fuel-efficient, long-haul fleet was central to a detailed turnaround plan that Carolus's board had prepared. SAA was struggling, partly because of high fuel costs, and securing the correct aircraft was key to the turnaround strategy.

But Gigaba appears to have delayed his support for this strategy, acknowledging that the fleet committee had made a recommendation to the board to procure from Airbus but saying "the department was concerned that there was no long-term strategy that had been shared with it that informed the fleet renewal programme."[36] According to the *Mail & Guardian* article, the delay meant that SAA lost its production slot offered by Airbus during its bid.

After Carolus left, Gigaba brought Kona back as both acting CEO and board chair. According to the *Mail & Guardian*, he attended the October 2012 meeting at the Gupta's Saxonwold house. Also present at the meeting, according to the article, were Rajesh Gupta, Duduzane Zuma and the son of Free State Premier Ace Magashule, Tshepiso (who at one point listed Mabengela as his employer).

According to amaBhungane, at the meeting, Rajesh apparently made an offer to make R100 000 available to Kona and then increased it to R500 000.[37] The news report did not specify what the money was for, but said that Kona refused and later spoke to board colleague Dudu Myeni about the meeting.

On 27 November, following this meeting, Mahlangu apparently sent the text message to Kona: "Uyangithengisa [you are selling me out]. Why did you let her know that u knew where she was going. U will compromise the mission." On 8 January 2013, Myeni, who is close to Zuma and chairs his charitable foundation, was made SAA chair. On 11 February the SAA board announced the cautionary suspension of Kona as acting CEO pending an investigation into alleged contraventions of financial regulations. On 11 March 2013, Gigaba removed him from the board, citing a breakdown in trust.

Both Mahlangu and a spokesperson for the Gupta family told the media that the meeting at the Gupta residence was about how various companies that the Gupta family controlled could switch their corporate travel business to SAA and that nothing unlawful was discussed. AmaBhungane noted that "given that the Guptas' Oakbay Investments owns just under 5% of SAA's rival Comair this explanation was barely credible".[38]

PRASA

In late 2012, in a letter written by then Prasa CEO Lucky Montana to then Prasa board chair Sifiso Buthelezi, extraordinary details emerged of how the Gupta family and Duduzane Zuma allegedly planned to capture the parastatal and profit from a R51 billion tender.[39] This letter was only leaked four years later in 2016, but demonstrates how the Gupta network brokers political access for commercial gain. This was one of the first early warning signals that something more serious was afoot.

The Guptas, the letter said, represented China South Rail, one of seven companies then bidding to supply Prasa with 600 commuter trains. Such representatives, or facilitators, are often positioned to earn huge 'success fees'. According to Montana's letter, in 'numerous meetings' the Guptas, Duduzane Zuma and their associates allegedly pressured then Minister of Transport Ben Martins and Montana to favour the rail company. They also, the letter said, proposed allocating shares to Montana and "directly, unashamedly and unapologetically demanded" that Martins restructure Prasa's board.

Montana wrote the letter after discovering that the National Department of Transport was preparing a Cabinet memorandum to restructure the board. Montana proposed that he "negotiate my exit" from Prasa, saying: "I feel betrayed, in spite of having … been given assurances by our honourable minister that the restructuring of the Prasa board was not on the cards." His threat to leave apparently led to further reassurances from Martins and the board remained unchanged.

Another bidder, France-backed Gibela, was ultimately handed the R51 billion tender in December 2012. According to amaBhungane,[40] the BEE beneficiaries included Dudu Myeni's son Thalente whose registered address was the Zuma residence in Forest Town, Johannesburg. The BEE consortium sold out of the deal early on. The question here is whether this was a case where the Zuma-elite did not back the Gupta bid. If so, the PRASA tender is an example where competing rent-seeking groups, both with access to Zuma, clashed, leading to one winner.

Lucky Montana was arguably tied to one and he managed to win Martins over in support of the Gibela bid. As suggested below, the key difference between the two bids was the Gupta-mediated one with China South Rail would probably have required a hefty payoff

35. Sole, S. & Faull, L. 2013. R10bn contract behind dogfight at SAA. [Online] Available: https://mg.co.za/article/2013-03-22-00-r10bn-contract-behind-the-dogfight-at-saa.
36. Sole, S. & Faull, L. 2013. R10bn contract behind dogfight at SAA. [Online] Available: https://mg.co.za/article/2013-03-22-00-r10bn-contract-behind-the-dogfight-at-saa.
37. Sole, S. & Faull, L. 2013. R10bn contract behind dogfight at SAA. [Online] Available: https://mg.co.za/article/2013-03-22-00-r10bn-contract-behind-the-dogfight-at-saa.
38. Sole, S. & Faull, L. 2013. R10bn contract behind dogfight at SAA. [Online] Available: https://mg.co.za/article/2013-03-22-00-r10bn-contract-behind-the-dogfight-at-saa.
39. Brümmer, S. & Sole, S. 2016. Guptas' R51bn train grab. [Online] Available: http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab.
40. Amabhungane team and Letsoalo, M. 2014. Jacob Zuma links to 'untouchable' SAA boss. [Online] Available: https://mg.co.za/article/2014-11-06-jacob-zuma-links-to-untouchable-saa-boss

to the Guptas as brokers in the deal. The Gibela deal, in contrast, followed the conventional rent seeking route; i.e. sell off the BEE stake after the award is made and pay off whoever needs to be paid after that.

However, this did not stop China South Rail and their Gupta representatives. They appear to have gone from strength to strength at another parastatal, Transnet. There, thanks to their close relationship with Molefe, the rail company won tenders to supply 95 locomotives in 2012 and the largest share of the 1 064 locomotives, worth R50 billion, split between four bidders in 2014 (see below).

It is instructive that the pressure on Montana to favour the Gupta-led consortium started in September 2012, only three months after Zuma appointed Martins as transport minister and two months after Prasa issued the train tender. Montana wrote:[41]

I have previously reported to the chairman of my attendance of numerous meetings at various periods with the minister of transport, key advisors in the ministry of transport and representatives of the Gupta family. It is in these meetings where I was introduced to representatives of the Gupta family and the son to the president, Mr Duduzane Zuma, and their relationship with one of the bidding companies, China South Railways … I had taken issue with the representative of the Gupta family over what I considered to be attempts on their part to 'extort' money from [the bidders].

Montana told amaBhungane that he was called to a first meeting at Martins' Pretoria residence as he was about to depart for a transport conference during the third week of September 2012 in Germany. There, he was introduced to Rajesh Gupta, Duduzane Zuma and an associate. They apparently indicated their general interest in the tender.

Montana's letter says that at the conference bidders approached him to say:[42]

That they are required to pay money on the side, that they are aware that the Prasa AGM [annual general meeting] will be postponed, which truly materialised, and further informed that [the] purpose of the postponement was to allow time for the board of Prasa to be restructured. This will ensure that the requirements of the Gupta family and China South Railways are achieved.

Montana said that the bidders had told him that a Gupta associate had met with bidders in Switzerland, telling them: "We work with Lucky [Montana], we work with Ben Martins [and we have] the support of the president. [If] you don't work with us, you are not going to get this bid."[43]

Montana said he asked for a meeting at the Minister's house on his return, where he 'blasted' Rajesh Gupta and Duduzane Zuma. And he told them the correct route was for China South Rail – whom they said they now formally represented – to 'submit a compliant bid'. He said: "I thought that was the end of the matter. Unfortunately it was not."[44]

Before the adjudication process, according to the letter, Rajesh Gupta pressured Montana to include two Gupta nominees among the bid evaluators. Their CVs were delivered by a driver. "I rejected that," Montana said. The letter goes on: "I must also add that the Guptas have presented a plan that I and other people have been allocated shares within CSR [China South Rail], the plan which I rejected contemptuously in the presence of our minister." The letter refers to a Gupta associate's alleged direct demand to Martins to restructure the board. "I was taken aback and continue to be surprised by the fact that the representative of the said family finds such power, authority and audacity."[45]

On 28 October 2012 the letter says, then transport Director General George Mahlalela showed Montana "a written memorandum for the appointment of a new chairperson and other Prasa directors [that] was being processed for submission to the cabinet". The next day, the letter says, Montana met a Gupta associate who reported that:

There is agreement at political level that Prasa shall be instructed to cancel the [tender if it is] not awarded to CSR [China South Rail] or any one of the other two Chinese bidders. The restructuring of the board of Prasa is intended to achieve this stated objective…I had made it clear that the procurement process for the new trains will run its full course based on the principles required by our constitution and the law.

The awarding of the tender to the Gibela consortium was just the start of bitter contestations over access to rents via Prasa. In 2012 the South Africa Transport and Allied Workers Union triggered an investigation by the Public Protector that reported in 2015 that they had found evidence that billions had been stolen. A new board chaired by Popo Molefe was appointed in August 2015 to clean up the SOE, but it was apparently not made aware of the Public Protector's investigation. The CEO, Lucky Montana, was fired in 2015, in part because Popo Molefe apparently discovered that R80 million from a locomotive contract had been paid to the ANC. Popo Molefe and his board were eventually dismissed by the Minister of Transport in 2017, shortly before she herself lost her job.

The Guptas go provincial

Having gained their foothold in the SOEs, the Guptas turned their sights to the province of the Free State where they appeared to be brokering the patronage network of Premier Magashule, a Zuma loyalist.

In May 2013, according to an amBhungane investigation, a company called Estina, which was indirectly linked to the Guptas, was given

41. Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab.
42. Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab.
43. Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab.
44. Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab.
45. Brümmer, S. & Sole, S. 2016. *Guptas' R51bn train grab*. [Online] Available: http://amabhungane.co.za/article/2016-06-19-guptas-r51bn-train-grab.

a farm and tens of millions of Rands to start a dairy by the Free State provincial government. Magashule had endorsed the project in his State of the Province address in February that year. According to the media investigation, the provincial agriculture department had reportedly already contributed R30 million, which was set to rise to R342 million over three years.[46]

There were doubts as to Estian's capacity to conduct operations. Its only director, Kamal Vasram, worked in information technology and had no apparent farming background, according to amaBhungane. It subsequently emerged that he was linked to the Guptas.

The provincial Department of Agriculture claimed that Estina and an Indian company, Paras, were involved jointly and had committed R200 million to the project, but amaBhungane was told by a spokesperson for Paras Dairy: "We don't do any business in South Africa and we don't have any Estina on our database."[47]

Deeds records showed that Estina obtained a 99-year lease on the 4 400 hectare Krynaauwslust farm near Vrede from the department, apparently rent free, according to amaBhungane.

The provincial government, the Gupta family and Vasram all denied Gupta involvement in the project, except for a consulting subcontract amounting to R138 000 awarded to Linkway Trading, a Gupta company. However, the amaBhungane investigation strongly suggested that the Guptas played an active behind-the-scenes role in the dairy project. As the story unfolded, it emerged that the National Treasury, through its dedicated public-private partnership unit, had not approved the dairy project, nor had the Free State provincial government sought the required permission to deal with Estina.

Ultimately, a National Treasury investigation found that the dairy project had many irregularities, stating that "a company without agricultural experience and led by a computer sales manager – flouted treasury rules and was designed to milk provincial government coffers."[48] One of the investigators said to amaBhungane: "Estina is using government's money to establish a plant, putting cows on land that is given by government rent-free. Now they get to make a fortune off the infrastructure."

According to documents linked to the investigation and given to amaBhungane, the dairy project appears to have been conceived during a visit to India by senior Free State Department of Agriculture officials and then Agriculture Member of the Executive Council, Mosebenzi Zwane, whose hometown is Vrede. The trip was signed off by Magashule.

By June 2014, the Free State agricultural department announced that it had cancelled its contract with Estina, which had nevertheless done well out of the deal after the province ultimately invested a total of R144 million in the dairy farm, according to amaBhungane.

The gift that keeps on giving: The locomotive deal, VR Laser and Trillian

On 17 March 2014, while the media reported that many cattle were dying of disease and starvation on the Free State farm, Transnet released a press statement saying that it had awarded a R50 billion contract for the building of 1064 locomotives. It split the contract between four major train builders – China South Rail, Bombardier, General Electric and China North Rail.[49]

The *Mail & Guardian* had reported three weeks earlier that the National Union of Metalworkers of South Africa had submitted a report to the Public Protector, raising concerns about the way Transnet had structured, adjudicated and awarded this tender.[50] The union contended that government's policy of localisation and job creation had, in the case of the Transnet locomotive tender, been abused by "the implementation of opaque and underhand business dealings to line the pockets of a selected minority business and political elite".[51]

VR Laser Services

What piqued the union's, and ultimately the media's interest in this deal, was that the man who oversaw the awarding of the R50 billion tender, Iqbal Sharma, was simultaneously closing a deal, which potentially put him (and Duduzane Zuma) in a position to benefit directly from key subcontracts out of the locomotives deal.

Before his appointment to the Transnet Board in December 2010 by then Public Enterprises Minister Gigaba, Sharma, who is also Fatima Meer's nephew, had been the head of Trade and Investment South Africa within the DTI. This is where he reportedly met the Guptas.

In 2011, Gigaba apparently wanted him appointed Transnet board chairperson, but the Cabinet vetoed this because he was too close to the Guptas, which signalled that by 2011 Zuma had not yet secured a fully compliant Cabinet. Seemingly to circumvent Cabinet's veto, Transnet would later create a new structure, formally called the Board Acquisitions and Disposals Committee, to supervise the planned pipeline of future large-scale infrastructure

46. Sole, S. 2014. *Free State diary project damned in treasury investigation*. [Online] Available: amabhungane.co.za/article/2014-02-06-free-state-dairy-project-damned-in-treasury-investigation.
47. AmaBhungane Centre for Investigative Journalism. 2013. '*Guptas' farm cash cows in Free State*. [Online] Available: amabhungane.co.za/article/2013-05-31-guptas-farm-cash-cows-in-free-state.
48. Sole, S. 2014. *Free State diary project damned in treasury investigation*. [Online] Available: amabhungane.co.za/article/2014-02-06-free-state-dairy-project-damned-in-treasury-investigation
49. Transnet. 2014. Transnet awards largest-ever locomotive supply contract in South Africa's history. [Online] Available: http://www.transnet.net/PressOffice/Press%20Office%20Release/Transnet%20awards%20largest-ever%20locomotive%20supply%20contract%20in%20South%20Africa's%20history.pdf.
50. Faull, L, Bhardwaj, V., Letsaolo, M., Sole, S. & Brümmer, S. 2014. *Transnet tender boss's R50-billion double game*. [Online] Available: https://mg.co.za/article/2014-07-03-transnet-tender-bosss-r50-billion-double-game%20.
51. Faull, L, Bhardwaj, V., Letsaolo, M., Sole, S. & Brümmer, S. 2014. *Transnet tender boss's R50-billion double game*. [Online] Available: https://mg.co.za/article/2014-07-03-transnet-tender-bosss-r50-billion-double-game%20.

spending (comprising all tenders worth more than R2.5 billion). Sharma was appointed to chair this committee and it was from this position that be adjudicated the locomotives deal.

In February 2014, a few weeks before Transnet announced the main tender awards, a company in which Sharma, Rajesh Gupta and Duduzane Zuma were partners, acquired a stake in VR Laser Services, a Gauteng engineering firm that produces steel plate components for heavy vehicle bodies. Throughout this period, Sharma was overseeing the locomotive tender process.

When the story emerged in the media, Sharma denied any conflict of interest, claiming that VR Laser did not do – and had no intention of doing – business with Transnet. To distance himself from the allegations, he said he had bought the property company that owns VR Laser's premises, but not VR Laser itself.

However, amaBhungane[52] established that, as Sharma was completing the tender process and the acquisition of the property holding company linked to VR Laser, each of the four multinational train manufacturing companies that would later win a part of the locomotive supply contract visited the engineering company's premises to assess the possibility of subcontracting work to VR Laser.

The winning bidders for the locomotives deal were required by state procurement policy to source up to 60 percent of their components from South African subcontractors, placing VR Laser in a highly advantageous position.

Trillian Group

The size of the locomotive deal meant that financial arrangement and corporate structuring advice was necessary. A Gupta-linked company, Trillian Asset Management, ultimately benefitted from this opportunity. The emergence of Trillian, and the company's ultimate involvement in this deal, is convoluted but is worth noting because it demonstrates the extent to which the Guptas and their associates have gone to achieve the capture of state institutions.

In 2012, when Transnet issued the locomotives tender, the rail company appointed a consortium led by consultants McKinsey to advise on the deal structure and how to fund it.

Their consortium partners included Nedbank and McKinsey's long-time empowerment associate, Letsema Consulting. Financial advisory services were included in the mandate and payment was clearly capped at R35.2 million.[53]

Transnet's formal letter of intent noted: "Any overrun in terms of time will not be for the account of Transnet as the engagement is output based and not time based."[54] However, these restrictions seem to have quickly been ignored. Months after the contract was awarded, Transnet invoked unexplained conflict of interest concerns relating to first Letsema, but then to Nedbank, according to amaBhungane.[55] To resolve this conflict of interest, Transnet proposed Regiments as a substitute for Letsema and Nedbank. Regiments, started by six Johannesburg-based entrepreneurs in 2004, is a fund manager and investment advisor specialising in public sector infrastructure programmes and projects.

At that point, Regiments was given an estimated R10 million share of the contract. But, as subsequently became clear, there followed an extraordinary ballooning of the scope and cost of services, driven by then Transnet chief financial officer Anoj Singh and approved by then Transnet CEO Molefe.

In November 2013, following the triggering of the conflict of interest against Letsema, Singh apparently confirmed in writing that the main scope of the engagement would be allocated to Regiments. McKinsey, originally the consortium leader, remained "only responsible for the business case and limited technical optimisation aspects".[56] In February 2014, the contract scope for Regiments was amended to reflect a new reality. Although the addendum to the contract purported to be between Transnet and McKinsey, amaBhungane reported that Regiment's director Eric Wood (who would later emerge as a key Gupta ally) scratched out McKinsey and signed on behalf of Regiments.

Additionally, Singh, signing on behalf of Transnet, also increased the contract value by R6 million, bringing the total contract to R41.2 million, of which a R21 million 'fixed price' would go to Regiments, according to the amaBhungane investigation. Two months later, in April 2014, Singh sent a memo to Molefe in which he motivated for a post-facto revision in the fee allocation to Regiments, asking to add an additional R78.4 million. The additional fee was apparently based on Regiments' own calculation of 'the billions'[57] its advice had supposedly saved Transnet. Singh's rationale was that Regiments had apparently demonstrated to Transnet that it could save money by splitting the locomotive order between four bidders (ultimately awarded), rather than choosing one or two. According to Singh, as summarised by amaBhungane,

52. Faull, L, Bhardwaj, V., Letsaolo, M., Sole, S. & Brümmer, S. 2014. Transnet tender boss's R50-billion double game. [Online] Available: https://mg.co.za/article/2014-07-03-transnet-tender-bosss-r50-billion-double-game%20.
53. McKune, C., Brümmer, S. & Sole, S. 2016. Transnet's shady Gupta loan deal. [Online] Available: http://amabhungane.co.za/article/2016-09-18-transnets-shady-gupta-loan-deal.
54. Sole, S., McKune, C. & Brümmer, S. 2016. *How to eat a parastatal like Transnet - chunk by R600m chunk*. [Online] Available: http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk.
55. Sole, S., McKune, C. & Brümmer, S. 2016. *How to eat a parastatal like Transnet - chunk by R600m chunk*. [Online] Available: http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk.
56. Sole, S., McKune, C. & Brümmer, S. 2016. *How to eat a parastatal like Transnet - chunk by R600m chunk*. [Online] Available: http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk.
57. Sole, S., McKune, C. & Brümmer, S. 2016. *How to eat a parastatal like Transnet - chunk by R600m chunk*. [Online] Available: http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk.

although this would make each locomotive more expensive, as bidders would have a smaller volume to dilute their overheads, the full complement of 1 064 could be delivered more quickly. Based on this reasoning, the amendment to the original contract value increased Regiment's payment from R21 million to R99.5 million. Molefe provided approval for this.

In early 2015, the then group treasurer of Transnet, Mathane Makgatho, resigned unexpectedly. The media reported that she told her staff: "I arrived here with integrity, and I will leave with my integrity intact."[58] She was replaced by Phetolo Ramosebudi, the previous group treasurer of SAA, who weeks after his appointment on April 28 2015, compiled a proposal purporting to approve a 'contract extension' for Regiments' support to Transnet on the locomotive transaction, raising its fee from the previous R99.5 million by R166 million to total R265.5 million. Without citing any contract, Ramosebudi suggested "the financial advice and negotiation support that Regiments provided through this entire process, which took in excess of 12 months, was done at risk with an expectation of compensation only on successful completion of the transaction".[59]

During the course of Regiments' work for Transnet, Wood became acquainted with the Guptas, who – seemingly in a bid to get in on the lucrative Regiments contract with Transnet – approached Regiments to buy a majority stake. When the directors of Regiments refused the purchase offer, Trillian Asset Management, which at the time was a small firm of investment professionals owned by four men, including brothers Rowan and Ben Swartz, emerged as a player. Trillian worked with a second investment firm, whose principals included Stanley Shane. Shane, in turn, held two noteworthy board appointments: at Transnet, where he chaired the procurement committee and at a third investment firm, where his co-directors included Essa, the Gupta associate. According to amaBhungane, he was well placed to make the introductions that followed.

When the Swartz brothers indicated in 2015 that they wanted to sell their 50 percent share in Trillian, Shane introduced the buyer: a shelf company named Lipshell 103, according to amaBhungane. Trillian's share register shows that the Swartz brothers' shares were transferred to Lipshell on September 1, 2015. Company records indicate that Essa was registered as Lipshell's sole director later that month, backdated to just before the acquisition. Lipshell subsequently increased its stake to a controlling 60 percent of what became the Trillian group of companies, including the original Trillian Asset Management. Lipshell was renamed Trillian Holdings, where Essa remains its only director.

According to amaBhungane, in December 2015, Transnet paid Trillian Asset Management, R93.5 million, purportedly for acting as the 'lead arranger' for a R12 billion 'club loan' by a syndicate of five banks to help fund the R50 billion purchase of 1064 new locomotives (remember that Mckinsey had originally been appointed to arrange the corporate and financial structuring for the deal, which then passed to Regiments, as explained above, and now Trillian was receiving payment for allegedly doing the work).

Usually in such a deal, the lead arranger would be one of the lenders – typically an experienced financial or advisory institution, lending at least as much money as each of the others. Trillian Asset Management was a small boutique asset manager, arguably without the capacity to lead a R12 billion bank syndicate. Furthermore, the SOE's own corporate treasury, one of the largest in the country, could arguably have arranged the loan itself. Trillian allegedly did at least R170 million worth of work for Transnet. It remains unclear what kind of work could justify such large pay-outs of state resources.

On 1 March 2016, Eric Wood left Regiments to join Trillian and in May 2016 Transnet apparently transferred its contract with Regiments to Trillian. Two Regiments directors, Litha Nyhonyha and Magandheran Pillay, are now in court seeking to declare Wood a delinquent director. They are accusing him of sharing confidential company information with third parties, which they say, then paved the way for Trillian Capital Partners to make millions of Rands in illicit payments from Transnet for work Regiments did. The two directors claim that Wood leaked company information to, among others, Salim Essa in a bid to divert business from Regiments to Trillian prior to the scheduled date of his departure and, in doing so, had caused the company severe reputational harm, court papers state. Wood responded that he and the directors of Regiments had decided to break up the company but could not agree on how to apportion different parts of the business. In his view the Transnet business belonged to him, so he took it with him. These claims became the subject of an independent investigation led by Advocate Geoff Budlender SC, appointed by Trillian Board Chair Tokyo Sexwale, that has stalled because of Trillian's apparent refusal to accede to Budlender's requests for information. The National Treasury is also investigating the Trillian–Transnet contracts.

Trillian not only had contracts with Transnet, but also with Eskom, allegedly as a sub-contractor to McKinsey dating back to September 2015. Although McKinsey has denied that it sub-contracted to Trillian as part of its Eskom work, there is a letter on a McKinsey letterhead dated 9 February 2016 signed by Mckinsey's Vikas Sagar requesting Eskom to pay Trillian directly for services rendered. Furthermore, Trillian bank statements, seen by our researchers, show that it paid out R160 million to an unknown beneficiary (but through Bank of Baroda) on 14 April 2016 – the same day that Eskom paid Tegeta nearly R600 million to help buy the Optimum mine. In her *State of Capture report*, Madonsela presented evidence that a number of firms had contributed to the R2.15 billion that

58. Sole, S., McKune, C. & Brümmer, S. 2016. *How to eat a parastatal like Transnet - chunk by R600m chunk*. [Online] Available: http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk.

59. Sole, S., McKune, C. & Brümmer, S. 2016. *How to eat a parastatal like Transnet - chunk by R600m chunk*. [Online] Available: http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk.

Gupta-controlled Tegeta Exploration and Resources had to pay for Optimum. This included R235 million from Trillian and its subsidiaries – an allegation Trillian has repeatedly denied without giving details. Indeed, the R160 million payment noted above seems more than a coincidence.

As we will see in the next chapter, there is circumstantial evidence to suggest that the drama between Regiments and Trillian was related to factional battles within the ANC over funding. Regiments had strong links to the Batho Trust, an investment vehicle established in the 1990s to support Mbeki's campaign. Batho later created the Thebe Investment Corporation, which became an important ANC fundraiser. We must ask whether the shift of contracts away from Regiment to Trillian was to sever this link to the ANC and to redirect paybacks to a Zuma aligned party-political faction? What is clear is that Trillian is involved in highly questionable dealings between SOEs and shadowy business groups.

This research project observed how Trillian, for example, wrote an advisory note for Eskom to grant the Duvha 3 contract worth R4 billion to Dongfang Electric Company, a Chinese SOE, even though on technical specifications and price, Dongfang was initially disqualified by the procurement committee. The two companies that were front runners, General Electric and Murray and Roberts, suddenly found themselves out of the running. This is now the subject of a court battle with General Electric challenging Eskom on the fairness of the tender award to Dongfang.[60]

Guptas go transnational

In December 2014, it emerged that the Guptas allegedly make use of the global financial system in what law enforcement circles refer to as 'shadow transnationalism' – an essential element for brokers facilitating large-scale criminality to "navigate resources to international clearing hubs where they enter the legitimate trade and accrue value to the members of the network".[61] The deal involved the listing of Oakbay and a R100 million Industrial Development Corporation loan, given to the company in 2010 to buy the Shiva Uranium mine.

On 28 November 2014, the Gupta company, Oakbay Resources and Energy, listed on the Johannesburg Stock Exchange. Atul Gupta, his wife Chetali, brother Rajesh and sister-in-law Arti own about 80 percent of the company. Oakbay's main asset, and the main driver of its value, was its subsidiary Shiva Uranium.

But, according to an amaBhungane investigation and documents observed by this group of researchers, the Guptas appear to have significantly inflated Oakbay's market value above the inherent value given at the time, with the help of a Gupta associate in Singapore. This allowed them to pay off their Industrial Development Corporation loan, but it also meant that the state-owned entity lost out when the Oakbay share price market corrected. At the time that this story broke, Oakbay's financials showed that it had not been able to maintain profitability at Shiva. According to the 2010 purchase agreement for the mine, the entire debt should have been repaid by April 2013. But Oakbay's financials stated that, by the end February 2014, only R20 million had been paid and the debt with interest had grown to R399 million. In June 2014, after negotiations with the Industrial Development Corporation, they agreed to restructure the debt, including a new repayment schedule that would end in 2018. As part of this agreement, and as Oakbay's pre-listing statement showed, the Industrial Development Corporation would take a small stake (about 3.6 percent) in Oakbay in lieu of the debt. Oakbay's interim financials at the end of August 2014 gave the company a net asset value of about R4.6 billion, which translated into an asset value of R5.74 a share, according to amaBhungane.[62] This dropped to R4.84 a share once substituted with the lower value put on them by a valuer appointed as part of the listing requirements.

Despite this, Oakbay listed at R10 a share, which was nearly double the underlying asset value. This was significant, because it was this R10 'market' value, minus a 10 percent discount, at which the Industrial Development Corporation got shares (its 3.6 percent) *in lieu* of Oakbay's outstanding debt. When compared with the underlying value of R5.74 provided by Oakbay's own financials, or to the adjusted R4.84, the Industrial Development Corporation ultimately gave Oakbay a discount of between R93-R119 million (essentially cash in hand to clear their debt – an ultimate loss to South Africa given that these are state resources).

The question was how Oakbay allegedly inflated its market value. The answer, according to an AmaBhungane investigation, lay in Singapore, where a company called Unlimited Electronic & Computers paid R10 a share in a private placement shortly before the listing acquiring 2.3 percent of the company. Unlimited Electronic & Computers, according to amaBhungane, is owned by Kamran 'Raj' Radiowala, who has been associated with the Guptas since about 2006.[63] Online company registration data cited by amaBhungane has him being appointed managing director of an Indian electronics distribution company, SES Technologies, in 2007. SES was co-owned by the Guptas' South African business Sahara Computers, and its board included Ashu Chawla, one of their associates in South Africa. The SES chief operating officer for some time was George van der Merwe, who held the same position at Sahara and who was the former CEO of Oakbay.

… and move their money offshore

In July 2015, the first detailed analysis of how the Guptas move the proceeds of their business activities was presented by

60. Hofstatter, S. & Paton, C. 2017. GE claims Eskom favoured Chinese firm's bid, with backing of Trillian. [Online] Available: https://www.businesslive.co.za/bd/companies/energy/2017-04-26-ge-claims-eskom-favoured-trillion-bid/
61. Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.
62. AmaBhungane Centre for Investigative Journalism. 2014. *Another state bonanza for the Guptas*. [Online] Available: http://amabhungane.co.za/article/2014-12-04-another-state-bonanza-for-the-guptas.
63. AmaBhungane Centre for Investigative Journalism. 2014. *Another state bonanza for the Guptas*. [Online] Available: http://amabhungane.co.za/article/2014-12-04-another-state-bonanza-for-the-guptas.

amaBhungane. Their operation centres on a Gupta-controlled shell company called Homix. Shell companies, by virtue of the ownership anonymity that they provide, are classic vehicles for money laundering and other illicit financial activity. According to the Financial Crimes Enforcement Network:[64]

The term 'shell company' generally refers to limited liability companies and other business entities with no significant assets or ongoing business activities. Shell companies – formed for both legitimate and illicit purposes – typically have no physical presence other than a mailing address, employ no one, and produce little to no independent economic value.

Between 2014 and 2015, Homix moved R166 million through its accounts, primarily from five companies.[65] As is characteristic of shell companies, Homix has no discernible office infrastructure or staff commensurate with a company processing such large sums of money, according to amaBhungane, which visited its premises. Bank records obtained by amaBhungane, and other bank records observed by this group of researchers, show that as the money came into the Homix bank account, it immediately went straight out again, to an equally obscure entity called Bapu Trading.

This pattern displays the three classic money laundering characteristics of placement, layering and integration where placement is the movement of cash from its source (the five companies), followed by placing it into circulation (layering) through, among other mechanisms, financial institutions and other businesses (for example Homix), and finally integration, the purpose of which is to make it more difficult to detect and uncover by law enforcement. We shall say more about this in Chapter 4.

Another example of the Gupta's attempts to externalise (placement phase) the proceeds of their operations happened six days after the Gupta family infamously 'fled' South Africa in April 2016 on a late-night flight. On 13 April 2016, a Gupta plane allegedly tried to leave with a box believed to have been full of diamonds.[66] According to an amaBhungane investigation,[67] a Gupta business jet was preparing to depart Fireblade Aviation's VVIP ('very, very important person') terminal at OR Tambo International Airport when X-ray scanners picked up something suspicious inside a suitcase belonging to the departing party. In the suitcase was a box containing diamonds, according to AmaBhungane claims (a claim that has not been refuted by the Gupta family). When Fireblade security asked to look inside, a Gupta security staffer apparently refused, took the bag from the counter and left. Fireblade confirmed to amaBhungane that a "potential security incident" had taken place early one morning in April last year, but would not identify which client was involved.

The Guptas' immense offshore assets are noteworthy and, in money-laundering terms, may indicate the final stage: layering (in which they 'legitimately' realise the value of their questionable gains). These are investments, such as a Hindu Temple they're building in India for R200 million and a villa in Dubai worth R448 million, which is listed as one of the most expensive houses in the United Arab Emirates. This does not include cash, which may be sitting in offshore accounts in, for example, Hong Kong, that can be directed with ease as payoffs into their network (see below).

Returning the focus to Homix, at a point in time, the Reserve Bank became suspicious of money laundering after payments from Homix to accounts in Hong Kong did not match claimed imports (mis-invoicing is a classic money laundering scheme). It froze some of the money. AmaBhungane investigations showed, however, how at least some of the money (R51 million not frozen by the Reserve Bank) that moved through Homix was transferred out of the country into Hong Kong, where long-time Gupta associate Salim Essa is the family's placeholder in several shell companies in that country (the leaking of the Panama Papers in 2016 showed that Hong Kong was the most active centre in the world for the creation of shell companies).[69] This money went to two companies: YKA International Trading Company and Morningstar International Trade. AmaBhungane could not trace YKA's sole director, a Chinese resident. Morningstar's registered director and owner is Mahashveran Govender, a South African, who is untraceable. However, Morningstar's Hong Kong registered address is the same registered address of three other Essa companies, which are linked to the Guptas – Tequesta Group, Regiments Asia and VR Laser Asia.

Homix first emerged when amaBhungane broke a story of how national telecom company Neotel had benefitted, with the assistance of Homix, from multi-million rand Transnet tenders. Homix appeared to have positioned itself as a facilitator of state-owned company contracts. Despite Homix being virtually untraceable, Neotel's top managers had approved paying the Gupta company tens of millions of Rands in 'commissions' – ultimately more than R100-million – for no apparent work other than ensuring that they got the Transnet deal, according to amaBhungane.

In April 2015, Neotel's auditors, Deloitte, reported these unusual payments to Neotel's Board of Directors questioning the 'commerciality' of the 'fees'. The money was billed as being in respect of contracts being secured with Transnet. Deloitte correspondence suggested that Neotel management approved the Homix payments despite not knowing "who this entity is".[70]

64. Department of the Treasury Financial Crimes Enforcement Network. 2006. *The role of domestic shell companies in financial crime and money laundering: Limited Liability Companies*. [Online] Available: https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.
65. Brümmer, S., Comrie, S., McKune, C. & Sole, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry*". [Online] Available: http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full.
66. Comrie, S. 2017. EXPOSED: *The Guptas and the 'box of gems*'. [Online] Available: http://amabhungane.co.za/article/2017-02-19-exposed-the-guptas-and-the-box-of-gems.
67. Comrie, S. 2017. EXPOSED: *The Guptas and the 'box of gems*'. [Online] Available: http://amabhungane.co.za/article/2017-02-19-exposed-the-guptas-and-the-box-of-gems.
67. Price, M. 2017. *Hong Kong takes aim at middlemen in wake of Panama Papers scandal*. [Online] Available: www.reuters.com/article/us-hongkong-regulations-moneylaundering-idUSKBN15T33D?il=0.
69. Brümmer, S., Comrie, S., McKune, C. & Sole, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry*". [Online] Available: http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full
70. Brümmer, S., Comrie, S., McKune, C. & Sole, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry*". [Online] Available: http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full.

The contract that appears to have precipitated the relationship between Homix and Neotel was a master service agreement to provide Transnet with a suite of telecom services worth hundreds of millions of Rands a year. Neotel got the contract for an initial five years when it bought Transnet's in-house provider, Transtel, in 2008. At the end of 2013, Transnet put the master agreement out to tender. It was provisionally awarded to a competitor, T-Systems, but the latter withdrew by agreement some months later when it apparently became apparent its solutions were inappropriate. In April 2014, during this hiatus, Neotel paid its first R30-million to Homix, according to documents seen by amaBhungane and this group of researchers. The Deloitte correspondence identifies the payment as relating to routers and other equipment that Neotel sold to Transnet. Transnet is understood to have paid Neotel about R300 million for the equipment. Neotel's payment to Homix equals a 10 percent 'commission'.

Four months later, in August 2014, Transnet notified Neotel that it was the new preferred bidder for the master agreement and that negotiations should be concluded before Christmas. But by early December, individuals close to the negotiations claimed that Transnet became "intransigent without clear reason".[71] A week later, according to these individuals, Neotel's CEO, Sunil Joshi, met Transnet's chief financial officer, Anoj Singh, to whom the SEO's procurement structures reported. After the meeting, Joshi allegedly asked his staff to approach Homix again.

A 'success fee' was agreed with Homix – 2 percent of the R1.8 billion value of the master agreement with Transnet, equating to R36 million, plus R25 million in respect of a related agreement to sell assets to Transnet. Transnet then resumed negotiations and the master agreement was signed before Christmas.

Companies that paid money into Homix's bank account included Cutting Edge Commerce (R3.3 million between October 2014 and February 2015), of which the Guptas' Sahara System owns 51 percent. Cutting Edge's website says it provides information technology and consulting services and lists its public-sector clients as SAA, Airports Company South Africa and Transnet. Other companies are Regiments Capital (R84 million between November 2014 and March 2015) and Burlington Strategy Advisors (R1.8 million in March 2015).

Burlington Strategy Advisors, a subsidiary of Regiments Capital, signed a R5 million contract in March 2015 with German crane maker Liebherr Africa to provide it with market feasibility studies in relation to the supply of cranes to Transnet. Liebherr was a key supplier to Transnet, but the SOE was pressuring suppliers to include local companies in projects. In response, the German company signed the feasibility study agreement with Burlington and made an upfront payment of R2 million, according to amaBhungane. About 90 percent of this was paid straight on to Homix, according to bank records subsequently obtained by amaBhungane. When Burlington failed to provide actual services, Liebherr demanded that the R2 million be repaid, which is yet to happen.

It appears that the Guptas tried to obscure their link to Homix, but they failed. Company records for the company list an unknown individual Yakub Ahmed Suleman Bhikhu as the company's only active director. But when Neotel's board commissioned a law firm in April 2014 to investigate the company's links to Homix (see below), another individual, Ashok Narayan identified himself as CEO of Homix to Neotel's auditors. Narayan was a former managing director of Sahara Systems. He was also a director of Linkway Trading, a Gupta company, which had been a project consultant for the Free State Vrede dairy project in its early stages.

Enter Mosebenzi Zwane

On 22 September 2015, President Zuma – reportedly to the surprise of even top members of the ANC – announced that he would fill a six-month-old vacancy in his Cabinet with the relatively unknown Mosebenzi Zwane, who he appointed to the critically important mineral resources portfolio. Zwane's appointment as a minister escalated him from a backbencher member of parliament who previously had been in the Free State provincial government. He had no experience in mining or in a national portfolio position. His origins in the Free State suggest that this was a move orchestrated by Ace Magashule.

In April 2016, seven months after Zwane's appointment, Gupta-owned Tegeta Exploration & Resources acquired Optimum coal mine from Glencore. Duduzane Zuma owns 12.8 percent of Tegeta. Various members of the Gupta family own 36 percent of the company, Gupta associate Salim Essa owns 21.5 percent and just over 20 percent is owned by two off-shore companies registered in the United Arab Emirates, for which ownership details are unavailable.

The Guptas bought Optimum from Glencore for R2.2 billion. The purchase was, however, riddled with allegations of political interference and bias towards sectional business interests, namely the Guptas. It is now widely accepted that Eskom prejudiced Glencore, by using the full might of the law, to force Optimum into business rescue to enable Tegeta to buy the company on highly favourable terms.[72] Former Public Protector Madonsela's *State of Capture* report found that Eskom may have repeatedly broken the law to accommodate Tegeta. We shall return to this incident in Chapter 3 as it marks a key moment in the radicalisation of the Zuma administration and of the project of radical economic transformation.

But even before Tegeta bought Optimum, there were several red flags raised about the Gupta-owned company in their operation of the Brakfontein mine. In September 2015, a few months after Tegeta began supplying coal from Brakfontein, Eskom's coal scientist and a senior laboratory services manager, Mark van der Riet and Charlotte Ramavhona, were suspended after conflicting lab results raised concerns about the quality of coal Eskom received from Brakfontein mine, through Tegeta. At the time, the two were told they were being suspended as a matter of course following

71. Brümmer, S., Comrie, S., McKune, C. & Sole, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry"*. [Online] Available: http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full.

72. Cape Times. 2016. *Top bosses take to the streets to save SA*. [Online] Available: https://www.pressreader.com/south-africa/cape-times/20161103/281822873357371.

an alleged anonymous tip-off that Eskom received about collusion in the labs, according to amaBhungane.[73] Three independent sources alleged to AmaBhungane that their suspension related to disputes over the quality of Brakfontein's coal, and indeed based on circumstantial evidence, this appears to be the case.

A year later, in September 2016, a leaked draft report of a National Treasury investigation into the Brakfontein contract confirmed that the two had been correct to raise red flags. Despite Eskom's statements that tests conducted by the South African Bureau of Standards at the end of August 2016 had approved the quality of Brakfontein's coal, subsequent tests found that Brakfontein's coal failed to meet standards.

In December 2015, while Van der Riet and Ramavhona were still on suspension and Tegeta's purchase of Optimum was being finalised, Tegeta was granted a short-term contract to supply 255 000 tons of coal a month to another power station, Arnot. It subsequently emerged that the award of this contract resulted in Eskom extending Tegeta a R586 million (ex VAT) upfront payment for this coal supply, six hours after the Gupta company's banks refused them a R600 million loan to close the Optimum Coal deal. The State of Capture report concluded that the payment was likely pushed through to plug a R600 million hole in the R2 billion the Guptas needed to buy Optimum. At a special late-night tender committee meeting on 11 April 2016, Eskom executives, led by Brian Molefe, agreed to transfer R586 million to Tegeta – money that was then used, two days later, to help pay for the purchase of Optimum.

About three months after the R586 million extension, Optimum's business rescue practitioners, Piers Marsden and Peter van den Steen, filed a report with the Directorate of Priority Crime Investigation in terms of Section 34 of the Prevention and Combating of Corrupt Activities Act.

Their concerns centred on the fact that while Eskom had claimed that the prepayment was needed to open new mining areas at Optimum's mine so that it could meet the requirements of delivering an additional 250 000 tons to Arnot, the business rescue practitioners had not seen any of the prepayment, meaning that it had quite clearly been directed elsewhere and not into Optimum's accounts to assist with its liquidity, as purported by Eskom. (The business rescue practitioners had been brought in by Glencore after the company was forced to put Optimum into business rescue because Eskom, led by Molefe, had refused to renegotiate a 1993 loss-making coal-supply contract – clearly to force it into liquidation to create the space for the Guptas to come in and 'save the day' by buying it – see graphic)

The draft findings of a year-long National Treasury investigation concluded in April 2017 that the prepayment should be treated as a loan. According to the investigation: "The advance payment of R659 558 079 should be regarded as a loan because there is no evidence that Optimum Coal Mine or Tegeta Exploration and Resources used the funds to procure any equipment for increasing the volume of the coal or further processing the coal," adding that the interest should be recovered from Tegeta or the Eskom officials involved. The draft report also recommended that a forensic audit firm be appointed to "investigate why Eskom gave and continues to give preferential treatment to Tegeta … by not enforcing key conditions of the Coal Supply Agreement".[74]

In August 2016, Eskom acting CEO Matshela Koko, gave Tegeta a R7 billion coal contract without a tender, ignoring warnings from the National Treasury that such a contract could be irregular.[75] Under the contract, Tegeta's Koornfontein Mines would deliver 2.4 million tons of coal a year at R414 a ton to Komati power station, 40 kilometres south of Middelburg. The contract was due to run until August 2023. However, two months after the seven-year contract was signed, Eskom's board decided to mothball the power station. This means that Eskom will either need to buy Tegeta out of the contract or assume the cost of transporting the coal to another power station, at least 50 kilometres away.

According to amaBhungane, the R7 billion contract is one of three lucrative coal contract extensions that Eskom tried to push to Tegeta over a 15-day period in August 2016. Treasury rejected two of the contracts (one a R855 million extension for the provision of coal to Arnot power station, without an open tender) but told Eskom they could sign the Koornfontein contract provided that strict conditions were met. However, indications are that Eskom failed to meet the conditions, but signed anyway (see Chapter 3 for further information on the ballooning of the coal contracts to Tegeta).

Guptas move into the military

In February 2016, the Guptas emerged as beneficiaries in a deal with state-owned arms manufacturer Denel, to profit from the sale of its products in Asia. This deal was another demonstration of how the Guptas access and control key board positions to personally gain from state resources.

Denel had recently announced the formation of a joint venture company called Denel Asia, but did not identify the Gupta family as shareholders. According to media reports, the joint venture was concluded in the absence of Denel's permanent CEO, chief financial officer and company secretary, all three of whom were on suspension. At the time, it was speculated that the three were removed to clear the way for the deal.[76]

Announcing the joint venture, Denel said in a press release that Denel Asia, headquartered in Hong Kong, would help Denel

73. Comrie, S. 2016. *Tegeta coal quality hopelessly non-compliant, says report*. [Online] Available: http://amabhungane.co.za/article/2016-08-30-tegeta-coal-quality-hopelessly-non-compliant-says-report.
74. Comrie, S. 2017. *R10bn in 15 days - another massive Eskom boost for the Guptas*. [Online] Available: amabhungane.co.za/article/2017-04-22-r10bn-in-15-days-another-massive-eskom-boost-for-the-guptas.
75. Comrie, S. 2017. *R10bn in 15 days - another massive Eskom boost for the Guptas*. [Online] Available: amabhungane.co.za/article/2017-04-22-r10bn-in-15-days-another-massive-eskom-boost-for-the-guptas.
76. Daily Maverick. *2016. amaBhungane: How Denel was highjacked*. [Online] Available: www.dailymaverick.co.za/article/2016-05-29-amabhungane-how-denel-was-hijacked

"find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles". Denel's joint venture partner in the company was identified as "VR Laser, a company with 20 years extensive experience [in] defence and technology in South Africa".[77] Denel also said that VR Laser had "a good understanding" of the target "markets and opportunities". Hong Kong corporate records showed that VR Laser was founded on 29 January 2016 with Denel holding 51 percent and Hong Kong shell company, VR Laser Asia 49 percent.

Interestingly, VR Laser Asia was registered in Hong Kong after the Gupta family and associates acquired VR Laser Services, a Boksburg engineering firm, two years before – another deal that attracted controversy. At the time, a friend of the Guptas, Iqbal Sharma, had obtained an interest in VR Laser Services while it was in prime position to benefit from subcontracts in Transnet's R50 billion tender for locomotives. Sharma was chairing the Transnet committee that oversaw the tender process.

Westdawn Investments, a Gupta contract mining company, better known as JIC Mining Services, owns a 25 percent stake in VR Laser Services, and Salim Essa, another Gupta business associate, owns 75 percent, according to shareholder records seen by amaBhungane. Duduzane Zuma acquired a stake through Westdawn. Sharma's stake was via ownership of VR Laser's premises. Furthermore, VR Laser's only two directors are Essa and Pushpaveni Govender, who is also a director of other Gupta companies. Kamal Singhala, a 25 year-old nephew of the Guptas who gives his address as the family's Saxonwold compound, is a former director.

Momentum for the Denel/VR Laser joint venture appears to have built after Public Enterprises Minister Lynne Brown appointed a new Denel board in late July 2015. When Brown announced the new board, she apparently abandoned a list of proposed directors prepared for her by the Department of Public Enterprises, which wanted to retain most of the existing board on the basis that they had performed well and had not served their maximum two terms.

The list that Brown presented to Cabinet reportedly bore no resemblance to the one prepared by the department. It also lacked skills and experience: there was, for example, not a single engineer (Denel being a highly technical state-owned company) and most had never served on a corporate board before.

She retained only one member of the outgoing board, Johannes "Sparks" Motseki, "for purposes of continuity".[78] Motseki, a former treasurer of the Umkhonto weSizwe Military Veterans Association, is a Gupta business partner. A company of which he is the sole director was allocated 1.3 percent in the Gupta-led consortium that bought Shiva Uranium in 2010.
Once appointed, the new chair Dan Mantsha, who was also the legal adviser to the Minister of Communications and Zuma loyalist Faith Muthambi, suspended Denel CEO Riaz Saloojee, chief financial officer Fikile Mhlontlo and company secretary Elizabeth Africa. No formal reasons were given at the time, according to amaBhungane. He appointed acting CEO, Zwelakhe Ntshepe.

In January 2016, Ntshepe announced the formation of Denel Asia, jointly owned by Denel and VR Laser Asia. Denel launched this Gupta joint venture without approval from the finance and public enterprises ministers as required under the Public Finance Management Act and in line with government guarantee conditions. Denel's lucrative Asian market – and more specifically, a potential $4 billion (R62 billion) tender to deliver long-range artillery to the Indian army – appears to have been the incentive for the deal.

By March 2016 Denel was marketing its products at India's DefExpo under the banner of Denel Asia, although neither Brown, nor then Finance Minister Gordhan (Treasury had described the formation of Denel Asia as illegal) had given the necessary authority for the formation of the joint venture. At the time, Minister Brown apparently held a report from law firm ENSafrica that cited red flags about VR Laser's proximity to so-called 'politically exposed persons' and concerns about the company's solvency. According to a source with insight into the transaction, Denel had offered its intellectual property to Denel Asia in return for a promise of R100 million marketing contribution from VR Laser.

In May 2017, Finance Minister Gigaba ordered the dissolution and deregistration of Denel Asia.

Transnet continues yielding

In July 2016, it emerged that a Gupta-linked company was positioned to win the majority share of a Transnet contract worth R800 million, without a competitive tender.

Documents obtained by amaBhungane and the *Mail & Guardian* showed that, in November 2015, the rail division of the parastatal issued the tender for an information technology solution, but controversially 'confined' it to one bidder only, the business software giant SAP.[79] A condition of the tender was that 60 percent of the value was to be spent on 'supplier development', normally aimed at BEE.

This was well above the National Treasury's 25 percent limit on subcontracting and dwarfed Transnet's planned target of not less than 20 percent. When SAP submitted its bid in December 2015, it committed itself to placing the entire 60 percent with one company: Global Softech Solutions, according to amaBhungane. At that time, Global Softech Solutions was half-owned by the Guptas' Sahara Systems and the balance by an associate of theirs. In its bid documentation, SAP told Transnet that the price it had quoted was pushed up by the 'risk' of subcontracting such a large share of the contract to Global Softech Solutions, a company it had not used

77. Dludla, S. 2016. *Denel expands its horizons*. [Online] Available: www.iol.co.za/business-report/companies/denel-expands-its-horizons-1977303.
78. Daily Maverick. 2016. *amaBhungane: How Denel was highjacked*. [Online] Available: www.dailymaverick.co.za/article/2016-05-29-amabhungane-how-denel-was-hijacked.
79. AmaBhungane Centre for Investigative Journalism. 2016. *Gupta-linked company set to score R800-million in Transnet IT solution tender deal*. [Online] Available: amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal.

before. In response to questions from the media, Transnet said that "suppliers appoint subcontractors at their discretion".[80] But in the bid documentation, SAP suggested the choice lay with Transnet, saying: "Should Transnet have a preference of an additional specific partner to engage with, SAP will be happy to review their skills and their resource matrix." Oakbay Investments said in response to questions from amaBhungane: "The notion that a global multinational such as SAP, which has almost 300 000 customers in 190 countries and reports over €20-billion in annual revenues, could be pressured, is quite preposterous."[81]

Transnet's technical team also appeared confused by the choice of Global Softech Solutions. Minutes of a January 2016 meeting between Transnet and SAP representatives to discuss SAP's bid quoted by amaBhungane note: "SAP to use GSS [Global Softech Solutions] for local supplier development. Why only one entity? Where [is] GSS track record? Not provided."[82] The minutes proposed a meeting to discuss supplier development between Transnet's BEE manager Abdool Lutchka and 'Sunil' from SAP, understood to be Sunil Geness, SAP Africa's director of government relations.

Global Softech Solutions is led by Leela Yemineni, who, according to his LinkedIn profile, was educated in India and worked for Transnet as a SAP consultant for two years before starting Global Softech Solutions in 2010. In July 2014, he was joined by an Indian citizen, Mukul Teckchandani. According to his LinkedIn profile, Teckchandani was the general manager of Sahara Systems since March 2014. On 8 September 2015, when the close corporation was converted to a company, Sahara Systems was allotted half the shares, with Yemineni retaining the other half. On 26 May 2016, Sahara Systems transferred its shares to a company called Futureteq. This was the same day Transnet's internal audit called a stop to the initial contract award process. According to amaBhungane, Futureteq appears to operate from Gupta company premises in Midrand. Fehmeda Jeena, who owns 50 percent of Fututreteq, is the ex-head of new business development for Sahara Systems, and Himanshu Tanwar, their digital transformation consultant, is a former marketing manager for Sahara Systems.

Treasury's bulwark: Declaratory order

In the course of 2016, and providing the clearest signal that the Guptas are breaching financial regulations, South Africa's 'Big 4' banks, as well as auditor KPMG and advisor Sasfin, ended their relationships with the Guptas.

While they have not given detailed reasons, this research project has established that the at least some of the banks took a decision based on serious financial regulatory breach associated with the family. On 14 October 2016, former Finance Minister Pravin Gordhan filed an affidavit showing how R6.8 billion in 'suspicious and unusual transactions' may have contributed to the decision by South Africa's major banks to close accounts associated with the Gupta family.

The payments – made by the Gupta family and their companies over the past four years – were listed in a Financial Intelligence Centre report attached to court papers filed in the Gauteng division of the High Court in Pretoria. Gordhan, who was the sole applicant in the case, was asking the court for an order declaring that he cannot interfere with the banks' decision to close the Gupta accounts. Gordhan had been under immense pressure to intervene, both from Gupta representatives and from within government.

According to court documents, the Gupta companies and their executives have claimed that they are the victims of an 'anti-competitive and politically-motivated campaign' and that the banks have provided 'no justification whatsoever' for closing their accounts. Correspondence attached to Gordhan's application showed that between April and September 2016, then Oakbay CEO Nazeem Howa sent repeated letters trying to persuade Gordhan to influence the banks to reopen their accounts.

At the end of July 2016, Gordhan wrote to both the Financial Intelligence Centre and the Registrar of Banks at the South African Reserve Bank asking if there was any evidence they could legally share that would indicate the banks were right to be concerned about the Guptas' financial dealings.

In response, Financial Intelligence Centre Director Murray Michell compiled a report listing financial transactions by Gupta family members and entities that banks had reported. The list includes 52 transactions ranging from R5 000 to R1.37 billion, totalling R6.8 billion. It also includes 20 multiple transactions for which no amounts were given. Michell wrote that the legislation did not permit him to give details of the banks' reports, but referred to the possibility of them being submitted to court.

Separately, Registrar of Banks Kuben Naidoo wrote to Gordhan that Standard Bank informed the Reserve Bank's financial surveillance department about "a particular foreign exchange transaction involving VR Laser Asia, an associated company of Oakbay, which could form the basis of an exchange control related investigation by that department".[83]

The correspondence attached to Gordhan's affidavit also gives insight into a behind-the-scenes tug-of-war over the inter-ministerial committee that Cabinet appointed in April to 'engage' with the banks on the Guptas' behalf. The committee was led by the Minister of Mineral Resources Mosebenzi Zwane, a Gupta loyalist.

80. AmaBhungane Centre for Investigative Journalism. 2016. *Gupta-linked company set to score R800-million in Transnet IT solution tender deal*. [Online] Available: amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal.
81. AmaBhungane Centre for Investigative Journalism. 2016. *Gupta-linked company set to score R800-million in Transnet IT solution tender deal*. [Online] Available: amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal.
82. AmaBhungane Centre for Investigative Journalism. 2016. *Gupta-linked company set to score R800-million in Transnet IT solution tender dea*l. [Online] Available: amabhungane.co.za/article/2016-07-24-00-gupta-linked-company-set-to-score-r800-million-in-transnet-it-solution-tender-deal.
83. Comrie, S, Sole, S and Brümmer, S. 2016. Gordhan blows whistle of Guptas; R6,8bn "suspicious and unusual payments". [Online[Available: https://www.dailymaverick.co.za/article/2016-10-15-amabhungane-gordhan-blows-whistle-on-guptas-r6.8bn-suspicious-and-unusual-payments/#.WSNELxQRqT8

Gordhan, his affidavit shows, sought legal advice on whether there was any basis for him as Minister of Finance to intervene with the banks.

A resulting legal opinion, from advocates Jeremy Gauntlett and Frank Pelser, warned that not only was there no legal way he could intervene, but that the planned meeting between ministers and the banks could have 'unintended consequences' and create 'adverse perceptions' about political interference in the banking sector. This was echoed in a letter Lesetja Kganyago, Governor of the Reserve Bank, sent Gordhan. He wrote: "We caution against the unintended consequences of this being viewed as undue political interference in banks' operations ... This could introduce heightened levels of uncertainty and pose a risk to South Africa's financial stability."

The court case is ongoing.

In March 2017, the media reported that the Bank of Baroda, which appears to be one of the last financial institutions with exposure to the Guptas, were closing their accounts.[84] The status of this is unclear; Oakbay denied the claim. Closing client bank accounts can take up to several months due to administrative and regulatory procedures.

Buying a bank

With the Gupta's access to the domestic and the global financial system increasingly constrained, they engaged in what was perhaps a desperate and last ditch attempt to externalise the proceeds of their deals: an ambitious bid to buy Habib Overseas Bank, through Gupta-linked Vardospan.

On the day, perhaps not coincidentally, that Gordhan and former Deputy Finance Minister Jonas were removed from their positions, Vardospan filed an urgent High Court application in Pretoria to compel regulators to rule on its application for a banking licence. Vardospan owners Hamza Farooqui and Salim Essa were seeking an explanation for why the Reserve Bank, the Registrar of Banks and the Minister of Finance had delayed their application for seven months. Ultimately the application was rejected after the courts ruled it was not an urgent matter.

The attempted purchase of the bank by the Guptas should be viewed for what it is: an attempt to circumvent and evade established financial regulatory requirements designed to protect South Africa from illicit financial behaviour. This group of researchers has been told that Habib Bank became concerned about the identity and modus operandi of Vardospan after the buyer apparently offered to increase the purchase price by a considerable amount on condition that Habib helped to expedite the sale. Habib never accepted this.

Conclusion

This chapter has provided details that were reported in the media, courts and other investigations for some of the more well-known deals executed by the Gupta family over the past decade. These deals would not have been possible without the political leverage they could deploy to engineer these deals that have, in turn, greatly enriched them and their collaborators. To this extent their modus operandi fits the classic model of broker-cum-fixer rather than the image of all-powerful puppeteer. Their aim is to convert political leverage into commercial gain, while simultaneously guarding against overdependence on a political marketplace they cannot directly control. To manage their risk, they either increase control where they can by ensuring others depend on them, or diversify their portfolio beyond their narrow Zuma-centred network (which is, in turn, highly risky). Their aim is to ensure others become increasingly dependent on them, hence the establishment of transnational financial networks. As the Zuma-centred power elite came to depend more and more on a symbiotic relationship between the constitutional and shadow states, they became increasingly dependent on the Gupta networks for getting things done.

The information and reports provided in this chapter makes it possible to identify a specific modus operandi that the Guptas tend to follow when they set out to achieve an outcome. The first step is to create a legitimate commercial vehicle, usually with Zuma family members as key beneficiaries. This enables two things: they can present themselves as BEE compliant, and they can bully those they deal with by claiming – often quite explicitly – that they have political endorsement at the highest level (i.e. 'without us this deal won't go through').

Once they have established a negotiating position for themselves, they then use their access to change the rules of the game (the use of Homix as a facilitator between Transnet and Neotel is a clear example of this – the most obvious question being why Transnet, with one of the biggest and most experienced treasury teams in the country, and Neotel, a national telecoms company with a R4 billion turnover, needed an obscure shell company to broker an information technology contract between the two large companies?) This is either through insider information on forthcoming policy/regulatory changes that they can either anticipate or manipulate to their own advantage or by ensuring that the right decision-makers are in place in the right structure to make decisions that are favourable to them. To achieve any of these moves, they are prepared to offer payments of various kinds – from straight bribes to payments for services rendered and so-called 'commissions'. Having access to large amounts of money in cash makes this all viable. It also ensures future cooperation and pliability as recipients become 'locked in' to their network as a result. Finally, they are masters at fronting, obfuscation, denial, intimidation and lying. That they act with such impunity points to their belief that they enjoy powerful political protection.

84. Mkokeli, S., Bonorchis, R. & Antony, A. 2017. Bank of Baroda beings closing Gupta-linked accounts. [Online] Available: https://mg.co.za/article/2017-03-02-bank-of-baroda-begins-closing-gupta-linked-accounts.

A 2011 response by former Gupta spokesperson Gary Naidoo, when the media confronted the family with questions over a deal in the steel sector, gives an interesting retrospective insight into the shallowness of their word and the irony of the current political moment because of their theft of our nation. Naidoo said on behalf of the Guptas:

It would seem that there are forces at play which are determined to find fault with the relationship between the president, the government and the Guptas. For the umpteenth time, let us repeat: a friendship has existed between the family and the president for many years and it goes back to way before the current president's ascent to power. For the record the family took a decision in 2007 to forgo all government tenders and contracts to stop the continuous insinuation of an improper relationship between government and the Guptas.

These attacks have intensified since the launch by the family of a national English daily newspaper and [the family's] entry into the highly contested mining sector. We remain surprised by some quarters of the media's continuous and malicious attacks on the president, the family and its business partners in the face of not a single shred of evidence. Rather, these attacks are based on conjecture and insinuation and innuendo. We are even more surprised by your focus on trying at all costs to find something improper in the family's entrepreneurship, rather than to recognise its innovation in creating jobs and growing foreign direct investment into South Africa. Finally, for the record, the family subscribes to the highest standards of governance and ethics (including proactive management of conflicts) in business and the continuous suggesting of impropriety is both tiresome and defamatory.

Betrayal of the promise: How the nation has been stolen

In less than a decade, the Zuma and Gupta families have managed to position themselves as a tight partnership that coordinates a power elite to manage the rent seeking that binds the constitutional and shadow states.

How the Gupta's have established themselves in SA

1993 Gupta family members arrive

2001 Gupta's meet Zuma at a Sahara function

2007 Polokwane: Zuma is elected ANC president

2009 **July:** Zuma family get jobs in Oakbay companies

c. November: Gupta's register Oakbay Resources and Energy

2010 **December:** The New Age publishes its first edition

2011

2012

2013 Waterkloof landing for wedding

2014 Gupta's list Oakbay, but at a listing price by more than double its valuation (through getting a business associate in Singapore who bought pre-listed shares well above valuation). This provided them with the cash to pay off an IDC loan but ultimately devalued IDC's equity in Oakbay by more than half (ultimately a loss of about R120-million) to the state owned entity.

2015

2016 Banks close Gupta accounts apparently based on financial regulation concerns.

Zwane prematurely announces IMC, which he chairs, to investigate bank cloures.

Gupta's want Gordhan to intervene on their behalf with the Banks. Gordhan refuses and applies to the courts for a declaratory order in this regard

2017 Gupta's attempt to buy Habib International Bank, which Gordhan does not sign approval for prompting the Gupta's to apply for an urgent but ultimately failed, interdict to try and force him.

How the Gupta's tried to capture nuclear

2010 **May:** Oakbay and Duduzane Zuma's company, Mabengela, buy Uranium One's Dominion Mine – later named Shiva Uranium for USD37-million through an Industrial Development Corporation loan.

Context: *Observers were surprised by how much the Gupta's paid for what was described in the media as "one of the most notorious dogs in the entire South African mining sector." Little did the nation know that Zuma and his benefactors seem to have already set their sights on a large-scale nuclear programme.*

2013 Intergrated Resource Plan 2010-2030 published which stated that nuclear should be delayed until 2035 and not promulgated at all if costs run over $6500/KW. Current estimates put nuclear at $8000//KW

2015 **July:** Former Finance Minister Nhlanhla Nene and Tina Joemat-Pettersson former Energy Minister, accompany Zuma to the Brics Summit in Russia where Nene is presented with a letter, in his name, from the Russians to sign his support for nuclear. He refuses.

December: Cabinet approves R1-trillion nuclear deal, having never received a business case. Nene is fired hours after making a presentation to the same cabinet meeting on costing unfeasibility of nuclear.

2016 DoE transfers procurement to Eskom

Eskom releases RFI

2017 Court ruling declares the nuclear procurement plan invalid because government did not follow due process.

How the Gupta's have captured cabinet

2009 **October:** Malusi Gigaba replaces Barbara Hogan as Public Enterprises Minister.

Context: *: Just prior to this, Vytjie Mentor is allegedly offered the Public Enterprises portfolio by the Gupta's at their Saxonwold residence on condition that she drops SAA's Mumbai flight route in favour of one of their companies.*

2015 **September:** Unknown backbencher Mosebenzi Zwane appointed as Mines Minister

October: Former Deputy Finance Minister Mcebisi Jonas offered Finance Ministry by the Guptas in return for a R600m bribe. He refuses.

December: Former Finance Minister Nhlanhla Nene fired and replaced by backbencher Des Van Rooyen.

Pravin Gordhan replaces Van Rooyen after three days .

2016 Gordhan is targeted by law enforcement throughout his time in the treasury. Hawks attempt to charge him, linked to SARS allegations. These are dropped.

2017 **March:** Zuma removes Gordhan and Jonas and replaces them with Gigaba and Sifiso Buthelezi.

How the Gupta's have captured the SOE's

Late 2012: Gupta's reportedly attempt to influence PRASA train deal (R51bn) via South China Rail, which they represented.

Context: *They fail but probably because of the refusal of then CEO Montana to relent to them. He wrote a letter to then Prasa chair Sifiso Buthelezi describing the brazen inteference of the Gupta's in the course of the negotiations..*

July: Public Enterprises Minister Lynne Brown overhauls Denel Board and installs alleged Gupta loyalists Dan Mantsha as chair. Mantsha then appoints ally Zwelakhe

Janaury: Ntshepe announces the formation of Denel Asia, jointly owned by Denel and VR Laser Asia owned by the Gupta's and Duduzane Zuma (and registered in Hong Kong).

Pravin Gordhan calls out the formation of Denel Asia as illegal in terms of the PFMA as neither he nor Brown had given the necessary authority.

The purpose of the Denel deal seems to have been to give the Gupta/ Zuma duo access to Denel's highly confidential intellectual property to develop and sell military products to the Asian market.

May: Finance Minister Malusi Gogaba orders the dissolution of VR Laser Asia.

Context: *Between 2012 and 2019 Transnet would spend R300bn improving its ageing rail network.*

December: Gigaba moves Mid-level DTI official Iqbal Sharma to Transnet Board.

The New Age reports that Brian Molefe will be appointed Transnet CEO

March: Three months later this happens in what appears to be have been a pre-determined decision

June: Gigaba tries to make Sharma chairman of Board but Cabinet refuses based on his proximity to the Gupta's. Gigaba creates a Special Board Tender committee to circumvent Cabinet concern and appoints Sharma chair (this oversees tenders of R2.5bn and above)

October: Transnet announces R50-bn loco tender.

Appoints McKinsey to advise on deal structure and funding.

McKinsey agrees to subcontract part of the work to Regiments after which the original fixed contract for R35m balloons to nearly R100m (signed off internally by Brian Molefe and CFO Anoj Singh).

February 2015: One month before the tender announcement, Iqbal Sharma (who oversaw the tender adjudication) together with Rajesh Gupta and Duduzane Zuma acquire a stake in VR Laser Services, an engineering firm that will benefit from the Transnet loco tender, (which stipulates that 60% of component parts must be locally supplied).

March: Transnet awards R50bn loco tender to four train builders:, including China South Rail and China North Rail

Early 2015: The Gupta's buy into another firm Trillian and manage to have lucrative Regiments work redirected to them, with the help of their friend Eric Wood, a Regiments director, who moved to Trillian shortly thereafter.

December: Eric Wood was caught up in advising Des Van Rooyen and privy to highly confidential treasury information.

December: Ultimately, Transnet pays Trillian R170-million for unexplained consulting work.

Evidence emerges of how proceeds of these contracts spirited out of the country through various Gupta-linked shell companies.

Context: *The Gupta's were close to Regiment's director Eric Wood and it seems they were using him as a conduit to try and gain entry into the lucrative Regiments-Transnet work. When they failed to buy Regiments, they bought Trillian, using their middle man Salim Essa, and then used this company, together with Eric Wood, to triangulate the Regiments work into Trillian. This required the help of insiders in Transnet and evidence has emerged of how Transnet paid both Regiments and Trillian hundreds of millions for the same pieces of consulting work.*

The Regiments-Trillian-Transnet triangulation is now the subject of an ongoing court dispute, including fraud allegations against Wood and Trillian.

Gupta-owned Tegeta Exploration and Resources is registered.

Gigaba makes wholesale changes to the Eskom board with many incoming board members linked to the Gupta's.

July: Glencore, which owns Optimum Coal Holdings, writes to Eskom invoking the "hardship clause" in their coal-supply agreement because the fixed price of R150 per tonne of coal, negotiated in 1993, means they are losing nearly R1bn p/a. Parties enter into negotiations.

April: Molefe appointed acting CEO

May: Molefe meets with Glencore and refuses to offer increased price – enforces 1993 contract.

July: Anoj Singh appointed CFO.

August: Glencore is forced to place Optimum into business rescue.

September: Zwane travels to Switzerland and meets with Glencore, with the Guptas present .

Upon his return Glencore agrees to sell the mine to Tegeta for R2,1bn.

The Public Protector's report says: "the only party who probably stood to benefit from [Optimum] being financially distressed...would be a prospective suitor. In this case, the prospective suitor was Tegeta."

Having refused to assist Glencore by raising the value of their supply contract, Eskom awards Tegeta a R700m contract to supply Arnot power station. At R470 p/t, this is one of Eskom's most expensive contracts.

April: Eskom special board tender committee led by Molefe gives Tegeta a R586m pre-payment, allegedly for the Arnot coal contract, which actually turns out to be a loan to finalise payment for Optimum. This amounts to potential fraud under the PFMA. According to the public protector: "It appears that the conduct of the Eskom Board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of Optimum, in severe violation of the PFMA"

3 Repurposing Governance

Introduction

This section starts by returning to the notion of radical economic transformation as a way of understanding why procurement and SOEs have become so central to the political project of the Zuma-centred power elite. We will then argue that the notion of radical economic transformation has been radicalised by proponents who have started to argue that the constitutional framework and the National Treasury are obstacles to transformation. In this regard, from 2011 onwards the power elite has shown itself to be increasingly prepared to break the law and violate the constitution. We see this clearly at Transnet and Eskom, in both cases under the leadership of Brian Molefe. There is a growing shadow security state emerging, relying on intelligence agencies to destabilise opposition and to neutralise potential threats from those state institutions that have the mandate and capacity to investigate and prosecute wrongdoing, including the Hawks, SARS and the National Prosecuting Authority of South Africa. With a coherent political outcome in mind, the discourse of radical economic transformation increasingly becomes an ideological cover for a small power elite to pursue their personal interests through extra-legal means, using the state as a personal resource.

From conviction to ideology

The Polokwane revolt in the ANC was informed by a conviction that economic transformation as pursued after 1994 had produced an anomaly, if not a perversion: a small black elite beholden to white corporate elites, a vulnerable and over-indebted black middle class and a large, African majority condemned to unemployment and dependent on welfare handouts to survive. The rise in the Gini coefficient between 1994 and 2009 lends credence to this view.

Since the adoption of the GEAR strategy in 1996, most people in the ANC and the Alliance believe that the RDP had been jettisoned. "Few," noted Ben Turok in 2009, "seem to have accepted arguments such as those advanced by Minister of Finance Trevor Manuel, immediately before the [Polokwane] Conference, that 'GEAR was the ANC government's macro-economic programme to implement the RDP").[1] GEAR was widely slated as a self-imposed programme of structural adjustment. As a Cosatu briefing document from 2002 put it: "The movement [...] sharply warned against the danger of promoting the interests of a new elite over and above that of the majority who stood to benefit from national liberation".[2]

The repudiation of the Mbeki administration at Polokwane was absolute. All six of the most senior ANC and government officials lost their positions. After Polokwane, the earliest expressions of this conviction as a set of policy proposals came from the ANC Youth League.

Articulating a vision of 'Economic Freedom in our Lifetime' – an adaptation of the famous slogan from the 1940s – Malema, then president of the league, recalled the Freedom Charter's categorical imperative: "The national wealth of our country, the heritage of South Africans, shall be restored to the people". At the League's first National General Council in August 2010, he explained that "**Nationalisation of Mines** is but one of the components of realising economic freedom in our lifetime, and we should never compromise on that principle [emphasis added]"[3]

Nationalisation was not the only alternative to the market-friendly approaches pursued after 1994. Cosatu, for example, was exploring how the economy could be reconstructed using an investment strategy that differentiated between six types of capital: publicly owned fiscal resources, publicly owned resources in the hands of parastatals, public sector financial institutions, socially controlled resources, retirement funds, private capital.[4] The first two and especially the second – capital held by parastatals – would come to form the main pillars of what would later be called radical economic transformation. The battle to transform the economy was shifting away from the economy itself to the state and, in particular, to who controlled government's procurement budgets.

Radical economic transformation and public procurement

The idea of using government's procurement budget to realise social and economic outcomes is not a new one.[5] It was the backbone of South Africa's racially exclusive 'developmental state' in the 1930s and formed a key platform of the apartheid project, especially in relation to cultivating a class of Afrikaner capitalists (national capitalists) in relation to English-speaking capitalists (imperial capitalists).[6] Today, moreover, the international development literature frequently extolls the virtue of such a policy. From Turkey to Mexico,[7] governments and development agencies seek ways to leverage their procurement spend to create or nurture local industries. "If developing country governments are shown to possess significant purchasing power in imperfectly

1 Turok, B. 2008. From The Freedom Charter to Polokwane: The Evolution of ANC Economic Policy. New Agenda: South African Journal of Social and Economic Policy.
2. *Cosatu. 2002. Theory of Transition.* [Online] Available: http://amadlandawonye.wikispaces.com/Theory+of+the+Transition%2C+COSATU%2C+Feb+2002.
3. ANC Youth League. 2010. Political report. [Online] Available: http://www.ancyl.org.za/docs/reps/2010/politicalreportk.html .
4. Cosatu. 2002. Theory of Transition. [Online] Available: http://amadlandawonye.wikispaces.com/Theory+of+the+Transition%2C+COSATU%2C+Feb+2002.
5. McCrudden, C. 2004. Using public procurement to achieve social outcomes. *Natural Resources Forum: A United Nations Sustainable Development Journal* 28(4):249-348.
6. See the famous edition of the *Review of African Political Economy*, June 1976.
7. Silva, M. & Scott, G. 2014. E*mpowering small and medium-sized enterprises (SMEs) by leveraging public procurement.* [Online] Available: https://www.iisd.org/sites/default/files/publications/empowering-smes-eight-big-ideas-mexico.pdf

competitive markets," suggest some scholars, "a menu of traditional and non traditional procurement contracts that can support economic development to become viable"[8]

We will see in a moment that similar ideas had informed the redesign of South Africa's system of public procurement in the 1990s. The focus was on government's purchase of goods and services to incentivise the emergence of black-owned small- and medium-sized enterprises. It was a key idea in the New Growth Path and the economic vision issued by the Economic Development Department, and it gave meaning to the notion of South Africa as a developmental state.[9] These ideas were clearly in wide circulation at that time because it is specifically mentioned by Gigaba after his appointment of Minister of Public Enterprises in 2010.

In a document from 2011, however, the dti complained that Broad-based Black Economic Empowerment (B-BBEE) considerations hardly figured in state procurement practices.[10] This was about to change. In December 2011 the cabinet approved the Preferential Procurement Regulations to align them with the B-BBEE Act. At stake, noted **the dti**, was the possibility of using R846 billion in public investment programmes for transforming the economy.

During this time much of the thinking around preferential procurement was coming from **the dti**. From 2009 it was a key member of the Advisory Council established in terms of the BBBEE Act. It also acted as Secretariat to this council.

Table 2: Value of South African SOE procurement (2010–2011)

	State Owned Enterprise	SOE Procurement Expenditure	% of Total Government Procurement Expenditure
1	**ACSA**	R 2,200,000,000.00	0,26%
2	**City Power**	R 1,500,000,000.00	0,18%
3	**CSIR**	R 700,000,000.00	0,08%
4	**Denel**	R 1,600,000,000.00	0,19%
5	**Eskom**	**R 74,000,000,000.00**	**8,75%**
6	**IDC**	R 226,000,000.00	0,03%
7	**PetroSA**	R 12,000,000,000.00	1,42%
8	**SAA**	R 14,800,000,000.00	1,74%
9	**SAPO**	R 6,000,000,000.00	0,7%
10	**SARS**	R 2 700 000 000.00	0,32%
11	**SITA**	R 6 000 000 000.00	0,7%
12	**TELKOM SA**	R 13 000 000 000.00	1,5%
13	**TRANSNET**	**R 70 000 000 000.00**	**8,3%**
	TOTAL	**R 212 726 000 000.00**	**25%**

Source: DTI, 2011

8. Taylor, T.K. & Yülek, M. A. Leveraging international public procurement in support of economic development: Forecasting public sector expenditures and market size in Turkey. [Online] Available: http://www.ippa.org/IPPC5/Proceedings/Part9/PAPER9-6.pdf . Pg: 2436.
9. Economic Development Department. 2011. *The New Growth Path*, Pretoria: Economic Development Department.
10. DTI. 2011. *Leveraging public procurement. Annual small business summit.* [Online] Available: http://www.thedti.gov.za/sme_development/sumit/Leveraging%20Public%20Procurement%20as%20a%20Market%20for%20Small%20Enterprises.pdf. Pg:9.

There was more than R200 billion in SOE spending to leverage in the interests of black economic empowerment in 2010/11. The lion's share was in only two companies: Eskom and Transnet. They made up more than two-thirds of the total procurement expenditure in SOEs at R144 billion or 17 percent of government's total procurement budget.

In 2014 Deputy Minister of Trade and Industry Mzwandile Masina announced that the department would seek to create 100 'black industrialists' over the next three years. The idea had first been mooted in 2012 by the Presidential Advisory Council on B-BBEE. Masina noted that this formed part of government's "radical economic transformation programme"[11] This may have been the first time the expression was used in a government policy document.

Over the next five years, a host of working opportunities will become available to South Africans. For example, a new generation of Black industrialists will be driving the re-industrialisation of our economy. Local procurement and increased domestic production will be at the heart of efforts to transform our economy, and will be buoyed by a government undertaking to buy 75% of goods and services from South African producers.[12]

In other words, radical economic transformation referred to an ambitious project, not simply to create black-owned small- and medium-sized enterprises, but to control the leading heights of the economy. Here was a vision of economic transformation that was not contingent on the reform of white business and that did not depend on the goodwill of whites to invest in the economy, to employ black people and to treat them as equals.

It is not difficult to see how and why this vision of radical economic transformation was and is compelling, even virtuous.

When he was still Minister of Public Enterprises, Gigaba addressed the Black Management Forum. He told the audience: "As government we are committed to the creation of a new generation of black industrialists who are 'creators', 'producers', 'strategists' and 'decision-makers'". He added, "This is more than just an economic imperative but a **moral requirement** [emphasis added]", concluding that "a strong black industrial class is a prerequisite for robust entrepreneurship and innovation in Africa at large."[13]

If the vision was bold, its execution would have to be audacious. For radical economic transformation required the following:

- Exercise of control over state procurement budgets.
- Repurposing state institutions to focus on economic transformation, apart from their official mandates.
- Displacing established white-managed and -owned companies from a variety of sectors.

The SOEs would be at the forefront of this initiative. Vast sums of money were concentrated in only 13 organisations with the balance of R600 billion splintered across thousands of government procurement points

Procurement reform (1994–2012)

Historically, South Africa, following what was then traditional international practice, operated a centralised procurement system. This was reflected nationally in the establishment of a State Tender Board. Each of the four provinces had their own tender board, though these only enjoyed advisory powers. In addition, the larger municipalities made their own procurement arrangements, generally centred on their own tender boards. SOEs also had autonomous procurement powers.

The first major study of the politics of procurement in South Africa noted that the initial trigger for reform after 1994 was the desire to effectively include emerging small- and medium-sized enterprises in government contracts. Traditionally these contracts had gone to established and big white-owned businesses. "Procurement reform was therefore centrally predicated upon and explicitly justified as an attempt to merge the two sides of South Africa's 'dual economy', procurement being utilised as a lever to help include previously disadvantaged business-owners in the mainstream."[14]

In the 1980s concerns about the inefficiencies in developing country procurement practices converged with the 'good governance' agenda, informed by the move to New Public Management. In South Africa specifically, central tender boards were regarded as both "out-dated, cumbersome and unwieldy, both bad procurers and a bottleneck placed across the effective discharge of government responsibilities".[15] This conclusion by the Procurement Forum dovetailed with similar proposals and opinions emerging from both the Department of Public Service and Administration and the National Treasury. The result was the major decentralisation of the tendering system.

The process of decentralisation only really started in 2003. Originally the Green Paper on Public Sector Procurement Reform envisaged a Procurement Compliance Office to oversee procurement centres in each department or agency. It would be the lynchpin of the new system, exercising high-level control over education and training, and enjoying robust powers to monitor, audit, investigate and sanction. Yet the office was not established, falling victim to policy differences between the National Treasury and the Department of Public Works. Indeed, something resembling this office would only be created in 2012 – the Office of the Chief Procurement Officer – in the National Treasury. In this context, there was a proliferation of procurement points across the state, with wide discretion to buy goods and services from the private sector in the absence of proper oversight. Whereas in the 1990s there were maybe a dozen points of procurement, tens of thousands of

11. DTI. 2014. The ***dti*** to create 100 *Black industrialists in three years*. [Online] Available: https://www.thedti.gov.za/editmedia.jsp?id=3106v.
12. DTI. 2014. The ***dti*** to create 100 *Black industrialists in three years*. [Online] Available: https://www.thedti.gov.za/editmedia.jsp?id=3106v.
13. Gov.za. 2014. Minister *Malusi Gigaba: Black Management Forum business breakfast*. [Online] Available:http://www.gov.za/address-minister-malusi-gigaba-mp-occasion-business-breakfast-hosted-black-management-forum-bmf.
14. Public Affairs Research Institute. 2014. *The Contract State: Outsourcing and Decentralisation in Contemporary South Africa*. Johannesburg: Public Affairs Research Institute. Pg 16. Also see Brunette, R. Forthcoming. Zumaism as Machine Politics Radicalised and Brunette, R., Klaaren, J. & Nqaba, P. Forthcoming. The Contract State: Towards a Fiscal Sociology of Public Procurement from South Africa.
15. Public Affairs Research Institute. 2014. *The Contract State: Outsourcing and Decentralisation in Contemporary South Africa*. Johannesburg: Public Affairs Research Institute

procurement points emerged as decentralisation proceeded from 2000 onwards following the abolishment of the State Tender Board.

The effects were quickly felt. The Auditor General reported year-on-year increases in wasteful and irregular expenditure. Corruption levels were rising. The system was out of control. From the perspective of the protagonists of radical economic transformation the dissolution of the State Tender Board in 2000 must have been viewed as a shocking mistake. It eliminated a centre from which hundreds of billions of Rands could have been controlled.

Whereas the move to public management and the creation of the Senior Management Service Programme, in particular, provided a vehicle through which the public administration could be politicised, it also massively constrained opportunities to pursue economic nationalism.[16] It is hardly surprising, therefore, that one of the highlights of the ANC's 2014 election manifesto was the call for a State Tender Board. Explaining the ANC policies at the time, President Zuma said:[17]

The state must buy at least 75% of its goods and services from South African producers. The state's buying power will support small enterprises, co-operatives and broad-based black economic empowerment.

We will ensure that large public entities such as Eskom and Transnet buy specified goods for the infrastructure build programme locally […] to further prevent corruption, tender processes will be centralised under a central tender board.

In effect two competing models of 'bringing corruption under control' were emerging. The first was driven by the National Treasury that sought to reinvigorate the idea of a Procurement Compliance Office by establishing the Office of the Chief Procurement Officer in 2013. Work done by the Public Affairs Research Institute in 2012 had shown that the corruption was increasingly related to vulnerabilities in the procurement system.[18] The Office of the Chief Procurement Officer was not intended to be new state tender board, but rather to oversee the system so that, in the words of its first officer, Kenneth Brown, "the procurement of goods, services and construction works is conducted in a fair, equitable, transparent, competitive and cost effective in line with the Constitution and all relevant legislation"[19]. The office has focused on ensuring 'fair value' in contracts, in open and effective competition, ethics and fair dealing, accountability and reporting and, lastly, equity. The latter was the office's term for discussing preferential procurement. It is not difficult to see that the Office of the Chief Procurement Officer, like the Constitution, was based on the belief that BEE could be reconciled with fair value in tendering and competitive bidding.

The second was driven by the power elite, with key actors like Molefe and others who were less confident that the fight against rent seeking could be reconciled with radical economic transformation by relying on the Office of the Chief Procurement Officer or the National Treasury. They viewed the problem as the procurement framework, more generally the Public Finance Management Act and beyond that, the Constitution. Their solution was not to try to eliminate competitive corruption to access rents, but to repurpose state institutions to establish a centralised rent-seeking system that would cut out the lower-level rent seekers who were prone to getting caught, making mistakes and, in the process, compromising wider networks (as was the case with Malema in the Limpopo Province or with Montana in PRASA, for example).

Radical economic transformation and the shift to extra-legal means

It is common in today's South Africa, in public and academic discourse, to discuss the Zuma presidency and its associated networks simply in terms of corruption. Tom Lodge, Professor of Peace and Conflict Studies at University of Limerick and well-known political sociologist, for example, suggests that "increasingly within the ANC, leadership behaviour appears to be characterized by neo-patrimonial predispositions and, while formal distinctions between private and public concerns are widely recognized, officials nevertheless use their public powers for private purposes"[20]. In South African law, the use of public office for private gain is the definition *par excellence* of corruption. Lodge mobilises several arguments to explain this turn of events.

The first is historical: "From the 1950s the ANC was drawn into extra-legal and armed opposition, processes which led its leadership to incorporate criminal groups into its networks".[21] The second is financial: "The ANC believed it needed massive funding to win its first election and this set expectations for future contests in which it began to rely on resources generated by party-controlled enterprises or by politically motivated contracting".[22] Thirdly, he proposes that as the ANC Youth League displaced the trade unions as the organised base of the party, so it "became increasingly amenable to a politics in which authority is manifest in the exercise of personal power, conspicuous consumption, and individual generosity".[23]

These are useful insights. They explain corruption as a consequence of the ANC's history, of structural constraints on its finances and of its organisational culture. However, what we see from 2011 is a presidency and new appointees to state institutions increasingly prepared to play fast and loose with the law and the Constitution, not simply out of self-interest, but out of **political conviction**. Let us return to **the dti** document from 2011 discussed above.

16. Chipkin, I. 2016. *The State, Capture and Revolution in Contemporary South Africa*. Johannesburg: Public Affairs Research Institute.
17. Politicsweb.co.za. 2014. *On the ANC's 2014 election manifesto* - Jacob Zuma. [Online] Available: http://www.politicsweb.co.za/news-and-analysis/on-the-ancs-2014-election-manifesto--jacob-zuma.
18. Technical Assistance Unit. 2012. *Diagnostic research report on corruption, non-compliance and weak organisations*. Prepared by the Public Affairs Research Institute. [Online] Available: http://www.pari.org.za/wp-content/uploads/Diagnostic-corruption-TAU-PARI-FINAL-24Oct2012-2.pdf.
19. Office of the Chief Procurement Officer. n.d. *About us*. [Online] Available: ocpo.treasury.gov.za/About_Us/Pages/The-Chief-Procurement-Officer.aspx.
20. Lodge, T. 2014. Neo-Patrimonial Politics in the ANC. *African Affairs* 113(463):1.
21. Lodge, T. 2014. Neo-Patrimonial Politics in the ANC. *African Affairs* 113(450): 57.
22. Lodge, T. 2014. Neo-Patrimonial Politics in the ANC. *African Affairs* 113(450): 57
23. Lodge, T. 2014. Neo-Patrimonial Politics in the ANC. *African Affairs* 113(450): 57.

The department looked forward to a change in the Preferential Procurement Framework to bring it into line with the B-BBEE Act. At stake was the requirement to include empowerment criteria in the evaluation of tender bids, so that price was not the sole consideration. There were two imperatives at work, not necessarily in contradiction, but theoretically distinct.

1. A '*good governance*' measure that required that procurement matters be considered against a standard of fiscal probity, efficiency and effectiveness.
2. A *political* criterion that sought to privilege the racial transformation of the economy.

We see precisely this tension expressed in the Constitution. Section 217 deals with procurement. It is worth quoting the full text of subsections 1 and 2.[24]

1. When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
2. Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –
   a. categories of preference in the allocation of contracts; and
   b. the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

Reading these clauses together, the full force of the dilemma becomes apparent. The Constitution assumes that there is no major tension or contradiction between, on the one hand, procuring goods and services in a way that is *fair, equitable, transparent, competitive and cost-effective* and, on the other, giving *preference* and *protection* to black South Africans. It is precisely this assumption that the protagonists of radical economic transformation have called into question.

While in theory these imperatives could be reconciled by finding suitably capable and cost-effective black-owned companies, in practice – and given the history of apartheid – they worked against each other. At least, this was the claim. As the head of the Black Management Forum, Dumisani Mpafa, complained in 2016: "Any black entrepreneur would tell just how hard it is to penetrate the private sector because of long-established relationships, over and above the deliberate bias towards white-owned companies."[25]

As long as price and experience were the overriding criteria for awarding tenders, **the dti**, the Black Management Forum and others, including Mzwanele Manyi's Progressive Professionals Forum insisted that the 'rules of the game' were rigged against black businesses. At the National Broad-based Black Economic Empowerment Summit in 2013, for example, delegates complained that the Public Procurement Policy Framework Act was:[26]

A major impediment in advancing the objective of B-BBEE in the public sector […] The PPPFA [Public Procurement Policy Framework Act] makes it impossible for black-owned companies to compete fairly with large companies. The Act puts in place a weighting of 80% on price and 20% on B-BBEE score for smaller tenders, and 90% weighting on price, with 10% weighting on B-BBEE for larger tenders.

Earlier in 2010, the Black Management Forum had proposed that considerations of race count for 50/100 points on the B-BBEE scorecard. Underpinning this narrative was a clear conviction that the economy was dominated by white business.

The project of radical economic transformation was cast in binary terms: black economic empowerment was obstructed by the insidious forces of what became increasingly to be referred to as white monopoly capitalism. Chris Malikane, the Wits-based economist who followed Malusi Gigaba into the finance ministry as an advisor argued, for example, that after 1994 white monopoly capital had enjoyed "unfettered dominance [...] over all levers of power in all spheres of society"[27] He suggested that this control extended to the "private sector," but also to "all apparatuses of the state such as government, the universities, the courts, the press, the security forces and political parties"[28]. What he calls credit-based BEE and affirmative action strengthened the hold of white monopoly capitalism by creating a black middle class and a black capitalist class beholden to it. However, Malikane also describes a second black capitalist class brought into existence through the state procurement system.

The battle that is now raging over the removal of the Finance Minister in particular, is led by white monopoly capital together with this credit-based black capitalist class, whose ownership and control of the state and the ruling party is being threatened by the rise of the tender-based black capitalist class, which also has links with the leadership of political parties by winning tenders with the State.[29]

Malikane portrays a tender-based capitalist class as locked in a life-and-death struggle with white monopoly capital (and its credit-based BEE allies) to overcome the colonial class structure. However, for this project to proceed, the protagonists of this position have increasingly depicted the existing legislative and institutional framework, including the National Treasury and the Reserve Bank, as fundamental obstacles. Malikane therefore calls for a broad front of workers and youths and progressive whites to support tender-based capitalists to

24. Republic of South Africa. 1996. *The Constitution of the Republic of South Africa*. Pretoria: Republic of South Africa. Section 217 (1), (2).
25. The Sunday Independent. 2016. *Treasury rules continue to betray black entrepreneurs*. [Online] Available: http://www.pressreader.com/south-africa/the-sunday-independent/20160703/282054801349421.
26. DTI. 2013. *The national broad-based black economic empowerment summit. A decade of economic empowerment – (2003-2013) Summit Repor*t. [Online] Available: http://www.dti.gov.za/economic_empowerment/docs/National_Summit_Report.pdf.
27. Malikane, Chris. (2017). *Concerning the Current Situation*. [Online] Available: http://blackopinion.co.za/2017/04/26/concerning-current-situation-proposal-professor-chris-malikane/.
28. Malikane, Chris. (2017). *Concerning the Current Situation*. [Online] Available: http://blackopinion.co.za/2017/04/26/concerning-current-situation-proposal-professor-chris-malikane/.
29. Malikane, Chris. (2017). *Concerning the Current Situation*. [Online] Available: http://blackopinion.co.za/2017/04/26/concerning-current-situation-proposal-professor-chris-malikane/.

smash these institutions.

The project of radical economic transformation has increasingly been set up against key state institutions and the Constitutional framework on the basis of a critical reading of South Africa's political economy and of the constraints that the transition imposed on economic transformation. This was an analysis emerging from within the DTI and on the fringes of the ANC. It resonated closely with the neo-Fanonian readings of South Africa's post-colonial situation, widely in discussion on university campuses in 2015 and 2016, in the Black First Land First grouping and in ultra-left critiques of South Africa's 'elite transition'. However, it was not the position of the ANC itself.[30]

The National Treasury: Empowerment and guarantees

There were two major reasons why the National Treasury posed a significant obstacle to the project of radical economic transformation. Firstly, we have seen that its constitutional mandate placed it on the horns of a very sharp dilemma. In South Africa, the terms of public procurement are not defined simply in statute (subject to legislative revision) but are inscribed in the ground law of the country. South Africa's constitutional drafters were prescient, perhaps, about the significance that procurement would assume in the post-apartheid era.

The National Treasury, itself a creature of the Constitution, had to try to reconcile BEE with considerations of fair value for the fiscus and for citizens.

When the protagonists of BEE thus insisted that 30 percent of government contracts, especially in SOEs, be set aside for black-owned companies, irrespective of their experience, capacity or the price at which they offered to provide services or goods, the National Treasury baulked. Indeed, the more the institution insisted that government entities proceed in a way that was "fair, equitable, transparent, competitive and cost-effective", the more controversial it became.

The second area where the National Treasury caused ructions was over its control of guarantees. In terms of the Constitution any withdrawal from the National Revenue Fund must be approved by Parliament. Hence a state subsidy would need parliamentary approval. This, in effect, is what the B-BBEE caucus was demanding; a subsidy given to black companies for doing business.

The bar, however, for guarantees was much lower. It only needed a letter from the Minister of Finance. With a guarantee, state entities could borrow from private lenders/banks (though not foreign governments) to finance their investment plans and pay the growing number of black-owned sub-contractors. This is, indeed, how SOEs in South Africa have tended to finance their investments. If government entities default on interest payments, banks have a 'first call' on the South African fiscus. In effect guarantees shift the risk from the lending institution to the fiscus. It is not hard to understand, therefore, why the banks liked them.

In principle, therefore, guarantees are issued on the basis that the borrowing institution has a sound business plan, a secure and adequate revenue stream and is reliably managed. In other words, they are issued by the Minister of Finance on the basis that the loans will never be 'called-in'.

The table below is drawn from Chapter 7 of the National Treasury's 2017 Budget Review. It shows the exposure of the fiscus to loans taken out by various state entities between 2014 and 2017.

Table 3: South African government guarantee exposure (2014/15–2016/17)

	2014 / 15		2015 /15		2016 / 17	
R billion	Guarantee	Exposure[2]	Guarantee	Exposure[2]	Guarantee	Exposure[2]
Public institutions	**469.6**	**220.9**	**469.9**	**255.8**	**477.7**	**308.3**
of which:						
Eskom	*350.0*	*149.9*	*350.0*	*174.6*	*350.0*	*218.2*
SANRAL	*38.9*	*27.4*	*38.9*	*27.2*	*38.9*	*30.1*
Trans-Caledon Tinnel Authority	*25.6*	*20.8*	*25.8*	*21.2*	*25.7*	*20.7*
South African Airways	*14.4*	*8.4*	*14.4*	*14.4*	*19.1*	*17.9*
Land and Agricultural Bank of South Africa	*6.6*	*2.1*	*6.6*	*5.3*	*11.1*	*5.4*
Development Bank of Southern Africa	*12.9*	*4.1*	*13.9*	*4.4*	*12.7*	*4.2*
South African Post Office	*1.9*	*0.3*	*4.4*	*1.3*	*4.4*	*3.9*
Transnet	*3.5*	*3.8*	*3.5*	*3.8*	*3.5*	*3.8*
Denel	*1.9*	*1.9*	*1.9*	*1.9*	*1.9*	*1.9*
South African Express	*1.1*	*0.5*	*1.1*	*0.5*	*1.1*	*1.0*
Industrial Development Corporation	*1.6*	*0.3*	*2.0*	*0.2*	*1.9*	*0.2*
South African Reserve Bank	*7.0*	–	*3.0*	–	*3.0*	–
Independent power producers	**200.2**	**96.2**	**200.2**	**114.0**	**200.2**	**125.8**
Public-private partnerships3	**10.1**	**10.1**	**10.3**	**10.3**	**10.9**	**10.9**

Source: Budget Review 2017

30. See for, example, the ANC's 2017 organisational renewal document that argues that during the Mbeki period there was "marked progress towards a National Democratic Society." This was because economic growth was relatively quick, fiscal expenditure on social and other services grew dramatically and civil society activism was strong. Most noteworthy is that the ANC suggested that "institutions tasked with defending and promoting the Constitution sought to play their role, with the judiciary standing out among them in asserting its independence and a progressive interpretation of the provisions of the Constitution". This was a far cry from the suggestion that the Constitution was an obstacle to progressive transformation in South Africa. (See ANC. 2017. *Organisation renewal and organisational design discussion document*. 5th National Policy Conference 30 June - 5 July 2017, Gallagher Convention Centre, Midrand, Gauteng, South Africa.

Eskom has by far the largest exposure to the banks at R218 billion in 2016/2017. SAA's exposure has increased to R17.9 billion in 2016/2017 from less than half that in 2014/2015. Generally South African ministers of finance have been careful in issuing guarantees, balancing the country's exposure with an assessment of the borrowing organisation's financial viability, for should this deteriorate the risk increases that the fiscus would be required to purchase the original debt. The National Treasury has, therefore, been loathe to extend further guarantees to SAA. The company is effectively bankrupt. So too is the South African Broadcasting Corporation.

It is not hard to see the why the National Treasury has until now been preoccupied with how state entities, especially Eskom, are governed and beyond that, with the sovereign reputation of the State. If Eskom's debts became repayable it could bankrupt the economy. South Africa came close to this towards the end of 2016 when the World Bank threatened to call on its loans to Eskom after Spain complained that the company was reneging on its commitment to sign the independent power producer contracts. The crisis was averted when the Deputy Minister of Finance intervened undertaking to convince the Minister of Energy to get Eskom to sign the contracts. In April both the Deputy Minister of Finance and Minister of Energy lost their jobs, and these contracts had not been signed at the time of writing (early May 2017).

Also related to energy, Nhlanhla Nene and later Pravin Gordhan were major obstacles to the nuclear build programme, when they made it clear that they would not approve the requisite loan guarantees.[31] Both subsequently lost their jobs.

There is an important subtlety to note here. Radical economic transformation via the SOEs is not devoted to any *particular* investment project, but rather is focused on continuing investment. In this regard, the nuclear deal is not so much about nuclear energy as it is an excuse for massive industrial expenditure. This is a clear example of repurposing an institution or a project for a goal that, at best, may or may not align with government policy and, at worst, may fly in its face. The nuclear deal is again a good example. No referenced research has contradicted the findings of the Centre for Scientific and Industrial Research that argues overwhelmingly in favour of renewable energy for South Africa as the cheapest and safest route to meeting the country's base-load needs.[32] In other words, nuclear power is undesirable because it is both unaffordable in current circumstances and it is the wrong energy solution, regardless of its safety risks.

Radical economic transformation in practice

As this concept of radical economic transformation gained momentum with parts of Jacob Zuma's power elite, the National Treasury increasingly became the object of frustration. The trigger may have been the perceived insincerity of the Minister of Finance in respect of changes to the National Treasury's regulations about preferential procurement.

There were steps taken in 2009 to align this framework with the codes of B-BBEE and particularly to bring the SOEs under the auspices of the B-BBEE codes.[33] In 2009, the National Treasury announced that with the DTI it had revised its preferential procurement regulations to align with the B-BBEE Act. On 6 June 2011, Minister Pravin Gordhan promulgated corresponding National Treasury regulations. On the same day he extended the remit of these regulations to include SOEs.[34] Yet six months later, almost to the day, he reversed his decision: "I, Pravin Gordhan exempt the institutions [listed in Schedules 2, 3B and 3D of the Public Finance Management Act] from the provision of the Preferential Procurement Regulations".[35]

The schedules in question listed all major public entities, including the very companies that **the dti** saw as the advance-guard of economic transformation, as well as government business enterprises. In other words, Gordhan had excluded the SOEs from the remit of B-BBEE.It must have seemed a clear signal to the Zuma-centred power elite and the protagonists of radical economic transformation that the National Treasury was not prepared to play ball.

There have been regular and major changes to the Zuma cabinet – almost as if the President is experimenting with different configurations of people, alliances and departments. Between October 2010 and March 2017 there have been 10 cabinet changes, with rapid turnover in the three years between 2012 and 2014; of special importance was Public Enterprises, the shareholder of Ministry of Transnet and Eskom respectively. On 31 October 2010 Barbara Hogan[36] was removed as the Minister of Public Enterprises, to be replaced by Malusi Gigaba. Gigaba was an early, vocal supporter of using the procurement budgets of SOEs to pursue economic transformation.

SOEs: Transnet and Eskom

Brian Molefe became CEO of Transnet in 2011. Right from the start of his tenure there was a move to commission large-scale industrial

31. Given the secrecy around the deal, this was hardly surprising. As we write the High Court in South Africa has ruled that all current initiatives to procure nuclear power are unconstitutional and, therefore null and void. The court's major objection seems to have been the way negotiations bypassed parliament and the lack of public consultation and scrutiny around their terms.
32. See the CSIR report: Wright, J., Bischof-Niemz, T., Calitz, J. & Crescent, M. 2016. *Least-cost electricity mix for South Africa until 2040*, CSIR Energy Centre, Johannesburg: Presentation at a Nelson Mandela Foundation dialogue, 14 November 2016.
33. National Treasury. 2009. Supply chain management: Request for public comments. Draft preferential procurement regulations, 2009 aligned with the aims of the Broad-based Black Economic Empowerment Act and its related strategy. [Online] Available: http://www.treasury.gov.za/divisions/ocpo/sc/PPPFA/letter%20dep%20bbbee0001.pdf.
34. Government Gazette. 2011. *R. 501 Preferential Procurement Policy Framework Act (5/2000)*: Notice in terms of Section 1 (iii) (f). [Online] Available: http://www.treasury.gov.za/divisions/ocpo/sc/PPPFA/1-34350%208 6%20NatTreas.pdf.
35. Government Gazette. 2011. R. 1027 *Preferential Procurement Policy Framework Act (5/2000): Exemptions from the application of the Preferential Procurement Regulations, 2011*. [Online] Available: http://www.treasury.gov.za/divisions/ocpo/sc/PPPFA/1-34832%207-12%20NatTreas.pdf.
36. She had gone on record saying that as Minister of Public Enterprises she had come under political pressure to broker a Gupta-related deal with SAA.

projects, procure key services and goods from private companies, and displace established, ostensibly 'white' firms from government work in favour of selected beneficiaries.

Together with the Chief Financial Officer, Anoj Singh, bold plans were announced to procure new locomotives for the transport of coal and iron ore to Richards Bay. The project was worth R51 billion.

The tender was published in October 2013 and the process was to be overseen by Iqbal Sharma, head of the Board Tender Committee. Sharma himself had been introduced to Transnet by Gigaba who brought him over from **the dti**, where he had been a senior official. Gigaba had originally earmarked him as chair of the board, but the proposal was shot down by a Cabinet that was worried by his close links to the Gupta family. It was only after more cabinet reshuffles that cabinet-level resistance to Gupta-linked appointments died away.

A key aspect of the tender was that it required that 60 percent of the locomotive components be sourced locally. It was a major opportunity for local manufacturing companies. VR Laser, a company that already had a long-established relationship with Denel and that specialised in the fabrication of all types of vehicle hulls was a strong contender. In December 2013, Sharma approached VR Laser on behalf of himself and on behalf of Salim Essa, a close business associate of the Guptas, to buy the company. When investigative journalists at aMaBhungane exposed the conflict of interest, Sharma insisted that he only had a stake in the VR Laser Property Services, the company that owned the site where the manufacturing company was based. Price Waterhouse Cooper was later asked to investigate the matter but the findings have not been made public.

What was important about this case is that it set the pattern for other and larger deals. There were four steps that have become a kind of 'repurposing *modus operandi*':

- A new minister changes the board composition of a SOE, in this case Transnet.
- The SOE announces a major new acquisition or build project.
- People brought on to the board are either strongly in favour of radical economic transformation and/or have close personal links to some of the bidders.
- The tender is awarded in circumstances where there is a clear conflict of interest.

One of the most flagrant examples of this manipulation of the procurement process happened at Eskom in 2014. In December 2014 there was another cabinet reshuffle. This time Gigaba was moved to Home Affairs and Lynne Brown was installed as the Minister of Public Enterprises. Brown proceeded to change the Eskom board, also bringing Molefe over from Transnet as the CEO.

The Public Protector noted that almost all the new appointees to the Eskom board had links to the Gupta family.[37] Nazia Carrim is the wife of Muhammed Sikander Noor Hussain, a family member of Salim Essa. Romeo Khumalo was a director alongside Essa at Ujiri Technologies. Mark Pamensky was a former director of the Gupta's Oakbay Resources and Exploration. Kuben Moodley was a special advisor to the Minister of Environmental Affairs; Mosebenzi Zwane was a director of one of Pamensky's companies. Marriam Cassim used to work at Sahara Computers – owned by the Guptas. Ben Ngubane was also a director with Salim Essa at Gade Oil and Gas. As the board chair of the South African Broadcasting Corporation he had overseen controversial deals between the broadcaster and ANN7, the Gupta's television station. Devapushum Viroshini Naidoo was also Kuben Moodley's partner. Those board members who were not part of the right network were quickly removed.[38] The Eskom board, in other words, was a tangled web of mostly undeclared, personal and business associates, all linked to Salim Essa and the Gupta family.

In this context, Eskom began to renegotiate some its coal-supply contracts. Apart from the Koeberg nuclear power station and the still modest renewable energy programme, most electricity in South Africa is generated from coal. One of the suppliers was Optimum mine, owned at the time by Glencore/ Exarro. Optimum mine was contracted to deliver 5.5 million tons of coal a year to the Hendrina power station at a price of R161 a ton (according to the Denton report). This was on the low-end of what Eskom paid; most prices were in the range of R200-R400 a ton. There were also concerns about the coal coming from Optimum. The mine had shifted 30 kilometres from its original shaft and the quality of the asset was declining. When international coal prices began to decline, the sustainability of the Optimum mine was called into question. Glencore's business model until then had been to use revenues from coal exports to effectively subsidise the cost of the local coal.

In 2013 Glencore/Exarro invoked the 'hardship clause' in its contract with Eskom to trigger negotiations about a new contract. The company wanted an additional R115 per ton to make the Optimum mine viable. It was losing R100 million a month. Following lengthy negotiations, a proposal was submitted to the Eskom board on 15 April 2015. The decision was referred to CEO Brian Molefe who refused to approve the proposed new terms. On 10 June he again refused any deal with Glencore and on 31 July 2015 the company went into business rescue. Glencore/Exarro looked to sell the mine and met with the Guptas in Switzerland in September 2015 – the infamous meeting arranged and facilitated by Mosebenzi Zwane, the freshly appointed Minister of Mineral Resources with close ties to the Gupta brothers. The deal was finalised on 10 December 2015. The Optimum Coal Mine was sold to Tegeta, an Oakbay Investments subsidiary. Oakbay was the holding company for numerous Gupta enterprises, among others Sahara computers, Ann7, the *New Age* and, of special interest here, the mining company Tegeta.

Reports suggest that Molefe had driven the mine to bankruptcy so that it could be bought by Oakbay. Beyond this, Tegeta did not actually have the R659 million needed to purchase the Optimum

37. Public Protector South Africa. 2016. State of Capture. [Online] Available: http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf.
38. Public Protector South Africa. 2016. State of Capture. [Online] Available: http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf.

mine. On the evening of 11 April 2016, the Eskom board met and agreed to a R659 million prepayment to Tegeta for coal supplies. The Oakbay company was essentially paid to provide a service from an asset that it did not yet even own. The transaction was of dubious legality.

During this period, the Public Protector found that Molefe had called Ajay Gupta no less than 44 times. Ajay Gupta had called Molefe a total of 14 times. Even more dramatically in the run-up to the signing of the Tegeta deal, between August and November 2015, Molefe could be placed in the Saxonwold area on 19 occasions.[39] Given the obvious conflicts of interest and that Jacob Zuma's son, Duduzane Zuma, had a major stake in the company (through his 45 percent share of Mabengela Investments, which, in turn owned 28.5 percent of Tegeta), the whole deal was likely unlawful.

The *Business Day* reported on 21 April 2017, claiming sight of a document from the Office of the Chief Procurement Officer, that the "fiscus wants the prepayment to be declared irregular expenditure and Eskom to be investigated for failure to prevent irregular and fruitless expenditure". [40]

The document also suggested that Molefe be investigated for misleading the fiscus. At the time of the deal he had given written assurances that the coal in question met Eskom's requirements. It seems that it did not, and findings to this effect were suppressed by the Group Executive for Generation Matshela Koko. What did happen was that the price of coal supplied by Tegeta rocketed from the R161 per ton paid to Glencore/ Exarro to R550 per ton (R700 per ton with transport). We see this in the massive expansion of contracts granted to Tegeta and other Oakbay mines, including Koornfontein, during 2016.

The Office of the Chief Procurement Officer's website provides information about contract deviations and expansions. It currently only has information for 2016. In the second quarter of the year it records that with respect to Eskom, a Tegeta contract to supply the Majuba Power Station was increased from R3 794 748 750 by an additional R2,9 million. Another Tegeta contract to supply coal to the Arnot Power station rose by R854 955 000, in addition to the original contract value of R235 021 150. Koornfontein mine, owned by Tegeta, with a contract to provision the Komati Power Station had its contract increased by a further R341 544 200. In the third quarter of 2016, the Koornfontein mine saw the value of its contract increase by a further R6 955 200 000, in addition to the original amount of R341 544 200 – a 2000 percent escalation. In effect, as the Denton report makes clear, Eskom was paying massive rents to third parties for the same coal it had previously bought cheaply. Undoubtedly, some of this money was for self-enrichment. Based on research by the Public Affairs Research Institute elsewhere, however, it is plausible that some of it went into the coffers of the ANC or, more precisely, the Zuma faction to fund its internal campaigns and struggles in the organisation.[41] This is why it was so important to manage these rent-seeking practices. We shall return to this shortly.

What happened at Eskom was nothing short of audacious. The SOE had leveraged its procurement budget to displace an established corporation in favour of a newcomer with strong links to the proponents of radical economic transformation. As much as this smacked of corruption, from the perspective of these proponents the Guptas were a useful 'battering ram' to displace white monopoly capital. The trouble was that Glencore/Exarro was a largely black-owned and controlled firm.

The National Treasury's insistence that SOEs conduct themselves lawfully and award procurements based on fairness, equity, transparency, competitiveness and cost-effectiveness made the institution a permanent thorn in the side of the Zuma administration. The first moves against it started in December 2015 when then Minister of Finance Nhlanhla Nene was unceremoniously dismissed and replaced by an unknown party backbencher Des van Rooyen with links to the Gupta family. After a tumultuous weekend, Pravin Gordhan was restored to the finance portfolio.

The measure was intended to restore confidence in the government and in the Rand after precipitous falls in both. Much has been written about these events and this is not the place to repeat them. For the proponents of radical economic transformation, Gordhan's return represented a temporary setback. On 30 March 2017, he was fired again and replaced by someone sympathetic to the project –Gigaba, the very person who, as Minister of Public Enterprises, had restructured a number of SOE boards to manage the type of rent-seeking practices described above at Eskom.

Fragmenting the political centre

As long as the project of radical economic transformation was pursued within the framework of the Constitution and the law, then it was possible to use the architecture of government and the institutions of the state to discipline its great variety of actors and coordinate its multiple moving parts: Boards of SOEs, their CEOs and their officials and staff at many levels, ministers, the Cabinet, and the ANC.

But historically and into the transition this is a role that the ANC has wanted for itself. In numerous organisational reports and various strategic documents the ANC insists that it is a movement, rather than simply a political party, precisely because of its special duty to 'lead society'. This goes a long way to explaining the dramatic politicisation of the public service in South Africa after 1998, principally through the expansion of the Senior Management

39. Public Protector South Africa. 2016. *State of Capture*. [Online] Available: http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf. Pgs:301-302.
40. Phillip, X. 2017. *Tegeta advance 'must be converted to loan'*. [Online] Available: https://www.businesslive.co.za/bd/companies/mining/2017-04-21-tegeta-advance-must-be-converted-to-loan/.
41. Public Affairs Research Institute. 2016. *State capture at a local level*. [Online] Available: http://pari.org.za/wp-content/uploads/Crispian-Olver_State-Capture-at-a-Local-Level-Case-of-NMB_Working-Paper_Nov-16.pdf.

Service Programme.[42] Originally intended to have a maximum of 3 000 members, it comprised 7 283 people by 2005, most of them in national departments. By expanding the size of the programme, the ANC tried to establish political control of the state. Indeed, the limited political control of the state was the major problem that the 2017 organisational renewal document identified: the ANC's influence was waning.[43] Three strategic decisions, in particular, had gone awry:

- The shrinking of the influence of Head Office and the ceding of certain responsibilities to government.
- The establishment of coordination structures at various levels.
- The setting up of 'governance committees' in all legislatures. In this context, the ANC complained of "insidious internal strife" and "factional battles for power, the loss of 'organisational capabilities", growing distance from the 'masses' and the tendency of the organisation to be focused on fund-raising instead of implementing its policies.

As the ANC weakened and fragmented the prospect of managing radical economic transformation through the ANC became a chimera. Indeed, Jacob Zuma's presidency has seen a precipitous decline in the organisation's electoral fortunes and is witnessing a major revolt from within the ANC – especially from members committed to democracy and the constitutional framework.

These divisions have also weakened the Cabinet as a stable centre of political control. The clearest and most disturbing indicator that the South African rent-seeking system tends towards chaos is the collapse of the cabinet system as the core of the executive branch of the state. Cabinet meetings are badly managed and poorly chaired, and they have been informalised. Partly as a result of this, cabinet decisions are no longer regarded by independent-minded professional uncorrupted senior officials in departments as strategically significant. Decisions are only regarded as significant if they have been endorsed by a specific network with reference to the wishes of President Zuma. When asked to consider an initiative by a network, Zuma invariably supports it thus diluting the value of his strategic judgement. It is also well-known that the last person to brief the President is what the President will support. Hence the competition to access him just before Cabinet meetings, or key public appearances. Everyone knows that it is easy to say they have Zuma's support. What really matters is not so much what he personally supports or what Cabinet has resolved, but what a particular network wants to see happen and as such is backed by Zuma. In other words, Zuma does not support initiatives as such; he anoints particular networks that can then activate initiatives in his name in return for rents. Zuma's role includes activating actions to penalise those who do not conform (including the use of bogus intelligence reports, cutting off access to rents, removal and sidelining).

Cabinet approval is secured only when needed, and not because there is a wider strategic plan that it sees itself implementing. Cabinet, moreover, is no longer supported by a strong professional policy support unit like the Policy Coordination and Advisory Service headed by Joel Netshitenze in the Mbeki era. This unit filtered what went through to Cabinet, and managed the integration process as best it could. Although the Department of Planning, Monitoring and Evaluation (as it was called after the 2014 NMOS) came closest to this unit, its mandate was too broad and unwieldy, and it was never allowed to play the same role regarding Cabinet.

When issues come to Cabinet that do need further attention and resolution, Zuma's preference is to establish ad hoc inter-ministerial committees populated invariably by a group of loyalists and members of the state security establishment. These committees effectively ratify what the Zuma-anointed networks want to see happen, thus endowing them with a veneer of Cabinet/executive authorisation. When a committee brings a matter for decision to Cabinet, it is invariably rubberstamped and hardly ever debated.

On numerous occasions, issues have been brought to Cabinet for decisions and Cabinet ministers confront the issue for the first time, such as in the closing of the Oakbay accounts. In these cases, supporting documentation has not been circulated beforehand and it has not been filtered by key agencies (e.g. the National Treasury, Department of Planning, Monitoring and Evaluation or even a professional specialist unit in the relevant department) to inform the decision. There is a generally understood assumption that if the issue has come via a member of a particular 'in-group' and Zuma supports it in ways that the in-group seems to understand, then the role of Cabinet is to rubberstamp a decision already taken elsewhere. Cabinet approval of the nuclear deal is a case in point. At no time during the process had a plan been presented to Cabinet in respect of the nuclear deal. The only documentation presented to Cabinet was a nuclear costing presentation by former Finance Minister Nene – a few hours before he was called by Zuma to a meeting and fired.

In this context, political power in South Africa has fragmented across the state and society, condensing momentarily in fleeting and fluctuating networks, few with formal power, most operating in the shadows and all heavily contested. In this context of unstable political relations, the Gupta-Zuma nexus has come to be a relatively constant site of authority. It is an attractive one, moreover, because it can marshal substantial resources and is armed with the capacity to undertake propaganda. In other words, the Guptas serve as 'fixers' in a project that is always at risk of spinning out of control. Saxonwold, however, hosts only one of the 'kitchen cabinets' through which contemporary political power in South Africa is exercised. There are others, including the Premier

42. Chipkin, I. 2015. *The State Capture and Revolution in Contemporary South Africa*. [Online] Available: http://pari.org.za/wp-content/uploads/The-State-Capture-and-Revolution-in-Contemporary-South-Africa-1.pdf. Pgs:13-14.
43. ANC. 2017. *Organisation renewal and organisational design discussion document*. 5th National Policy Conference 30 June - 5 July 2017, Gallagher Convention Centre, Midrand, Gauteng, South Africa. Pg:35.
44. ANC. 2017. *Organisation renewal and organisational design discussion document*. 5th National Policy Conference 30 June - 5 July 2017, Gallagher Convention Centre, Midrand, Gauteng, South Africa. Pgs:90, 134, 135, 136.

League of provincial barons and networks in parts of the state and police intelligence agencies.

Ballooning of the Senior Management Service Programme

The fragmentation of power across the State and its retreat into shadowy networks outside the formal architecture of government has been compounded by the ballooning of the public service in the Zuma period. Vinothan Naidoo has recently finished a methodologically innovative study of what he calls the 'machinery of government'.[45] Tracking the number of national government departments and entities from 1994 he finds, unsurprisingly, that there is growth and also fluctuation in the number of departments and entities in the Mandela period as the new administration experiments with different configurations. In 1999 the number of departments and entities peaks at 30 and then settles at just below that figure..

There was tremendous stability in the number of departments (below 30) and entities during the Mbeki era. The number of public entities proliferated growing from less than 100 in 1998 to more than 250 in 2008. This coincides with the influence of the new public management thinking on the organisation of the state and the move to introduce 'business principles' in the structuring of government to improve efficiency.

In 2009, two years after the Polokwane conference, and the year that Jacob Zuma is sworn in as President, the number of government departments and entities spikes sharply. New departments are established and several are split in two. The Department of Provincial and Local Government is divided into two departments – the Department of Cooperative Government and the Department of Traditional Affairs. Likewise, two separate administrations are hived off from the Department of Education – the Department of Basic Education and the Department of Higher Education and Training. The same happens to the Department of Environment and Tourism. Sometimes new departments are renamed and sometimes entirely new institutions are created – the Department of Performance, Monitoring and Evaluation, the Department of Women and the Economic Development Department. All in all, there were 15 'big bang organisational events' with Zuma's coming into power, as compared to 14 such events for the entire period since 1994. There has been a commensurate multiplication of ministers, deputy ministers, and director generals and the proliferation of government administrations.

"The rationale for expanding the number of national departments was officially based on a strategic assessment of policy and functional demands," notes Naidoo. He adds that "there is [...] reason to doubt the integrity of this view, based on heightened patronage pressures exerted on President Zuma following an acrimonious succession from Mbeki, coupled with questionable rationale behind the creation of some departments".[46]

In other words, it is far from clear that the ballooning of government departments was motivated by the desire to improve the effectiveness of government. Such a large growth of the government system, with a huge expansion in the Cabinet, has compounded already severe problems of coordination across government. It is accompanied, not surprisingly, with the growth of the shadow state and the move to find more manageable centres of control and management outside the State in more personalised networks - what we have called 'kitchen cabinets'.

What is more, the organisation of the state comes to be based less on functional criteria than on political ones, and has been accompanied by the politicisation of state administrations. Of central importance in this regard has been the Senior Management Service Programme. Established in 2001 to transform the civil service from a bureaucracy into one organised on the model of public management, it quickly became the preferred route of bringing the public service under political control. Never intended to be more than 3 000 people, by 2005 it employed more than 7 000 and may have swelled to more than 10 000 people today.[47] Work done by the Public Affairs Research Institute indicates that turbulence and dysfunctionality in government administration is often related to competition between different ANC, government and constitutional bodies competing for the right to appoint officials to key state positions.[48] In other words, the ballooning and politicisation of the state has come at the great expense of state functionality.

Investigations and prosecutions

As the Zuma administration radicalised, it became dependent on managing increasingly complex relations, many of them involving people engaged in unlawful activities. Zuma moved to establish control over key state institutions, especially those involved in criminal investigations and prosecution: SARS, the Hawks and the National Prosecuting Authority.

In September 2014 Jacob Zuma appointed Tom Moyane as the new head of SARS. Nene was summarily informed by Zuma that Moyane would be the next SARS Commissioner. SARS was one of the major achievements of the ANC government, developing into a highly efficient revenue service, dramatically increasing tax compliance after 1998 and frequently delivering 'windfall' taxes to finance the growing welfare state. SARS had worked both to simplify tax paying procedures and to improve customer service while, simultaneously, building the agency's capacity to detect and pursue delinquent tax payers.[49] By 2014 the agency was beginning

45. Naidoo, V. 2017. *Tracking South Africa's expansionary state, 1994-2010: re-tooling the machinery of government*. Cape Town: Department of Political Science, University of Cape Town.
46. Naidoo, V. 2017. *Tracking South Africa's expansionary state, 1994-2010: re-tooling the machinery of government*. Cape Town: Department of Political Science, University of Cape Town. Pg:24
47. Chipkin, I. 2016. *State, Capture and Revolution*. Johannesburg: Public Affairs Research Institute. Pg:13.
48. Phadi, Mosa, Pearson, Joel and Lesffre, Thomas. (forthcoming in 2017). 'The Seeds of Perpetual Instability: The Case of Mogalakwena Local Municipality' in *Journal of Southern African Studies* (JSAS).
49. For a brief overview of the history of SARS, see Hausman, David. (2010). *Reworking the Revenue Service: Tax Collection in South Africa, 1999 – 2009*, Princeton University: Innovations for Successful Societies.

to run up against politically connected persons involved in a variety of illicit activities, some of them associates of the president and his family, as well as businessmen known to be financial contributors to the ANC.[50]

A dossier appeared in October 2014 alleging that senior investigators at SARS, located in the Special Projects Unit, constituted a 'rogue unit'. Among other things, it was said that they were illegally spying on the president. Poor journalistic standards at the *Sunday Times* saw these allegations printed in more than 30 articles in the newspaper between August 2014 and April 2016. The *Sunday Times* has since issued an apology.[51] It was also found guilty by the Press Ombudsman for "inaccurate, misleading and unfair" reporting.[52] These reports were, nonetheless, used by the new SARS Commissioner to launch an investigation into 'rogue' activities at SARS and to suspend the former (acting) commissioner Ivan Pillay, as well as most of the agency's investigative staff led by Johann Van Loggerenberg. In so doing numerous high-profile and politically sensitive cases have simply stagnated or never been closed.

Berning Ntlemeza was appointed the Acting Head of the Directorate of Priority Crime Investigation (the 'Hawks') in 2014, following the suspension of his predecessor Anwar Dramat. The circumstances around his appointment are complicated and need not detain us here other than to note certain similarities with the events at SARS. Likewise, senior Hawks officials, including General Booysen in KwaZulu-Natal and General Sibiya, head of the Hawks in Gauteng, were suspended following the appearance of 'dossiers' implicating them in wrongdoing. General Booysen was accused of running a 'hit squad' in Cato Manor – charges that have routinely been thrown out of court. Sibiya was accused of being implicated in the illegal rendition of Zimbabweans back to their country of origin. Both were involved in high-profile investigations, together with officials from SARS against people with links to the president and his family. Dramat was suspended on the same grounds as Sibiya. When the Independent Police Investigative Directorate, under Robert McBride, cleared Dramat of wrongdoing, McBride himself was illegally suspended by Police Minister Nathi Nhleko. The decision was later overturned in a landmark judgement by the Constitutional Court, which confirmed the independence of the directorate relative to the police and the police minister.[53] Dramat, in turn, decided to take early retirement for which he received R3 million. This left a vacuum that was filled by Berning Ntlemeza.

Ntlemeza was an extremely controversial choice. A High Court had already found him to be a liar and an unreliable witness, evidence that was simply ignored by Minister Nhleko and the president when they considered him for the position. These facts would later be the basis of a successful challenge to his appointment by the Helen Suzman Foundation and by Freedom Under Law, both civil society organisations focused on defending South Africa's Constitution.[54]

What stands out is that Ntlemeza wasted no time in pursuing criminal charges against the Minister of Finance, Pravin Gordhan (and the individuals implicated in the so-called SARS 'rogue' unit).

The charges seemed frivolous for a priority crime unit to pursue, namely that as Commissioner of SARS Gordhan committed fraud by unlawfully approving an early retirement payment to Ivan Pillay.[55] As it turns out the Hawks had either overlooked or withheld vital evidence that exonerated both the minister and Pillay. Ultimately the National Prosecuting Authority, despite a very public announcement to the contrary, declined to go to trial.[56] The prospect of a trial evaporated and, with it, the excuse to remove Gordhan from the finance portfolio.

In all these proceedings, there is the shadow of South Africa's intelligence services. In 2014, Jane Duncan described how "conveniently leaked intelligence reports, or documents that are claimed to be intelligence reports, have been used to smear those that are considered threats to the current political establishment".[57] She saw this as part of "the creeping use of security services to suppress social and political dissent" in what she called a developing "national security state". [58] Indeed, the first report of a 'rogue unit' appeared in an article by Jacques Pauw describing an illegal intelligence unit that had sought to discredit Glynnis Breytenbach. "According to a recording in the possession of the City Press," the article noted:

Members of the Special Operations Unit concocted a story that Breytenbach was a former agent of Israeli intelligence agency Mossad. They then leaked the information to the media to discredit her. The information was repeated by her National Prosecuting Authority bosses when motivating why she should be charged with corruption.[59]

Curiously, Pauw's piece appeared on the same day that the *Sunday Times* ran with its own story of a 'rogue unit' – this time at SARS. There is an uncanny similarity between details, raising the prospect that the original story had been 'spun' to displace attention from

50. Van Loggerenberg, J. & Lackay, A. 2016. *Rogue: The Inside Story of SARS's Elite Crime-busting Unit*, Johannesburg and Cape Town: Jonathan Ball Publishers.
51. Timeslive.co.za. 2016. *SARS and the Sunday Times: our response*. [Online] Available: http://www.timeslive.co.za/sundaytimes/opinion/2016/04/03/SARS-and-the-Sunday-Times-our-response1.
52. Thamm, M. 2015. *Press Ombudsman's rulings against Sunday Times vindicate Pillay and van Loggerenberg*. [Online] Available: https://www.dailymaverick.co.za/article/2015-12-16-press-ombudsmans-rulings-against-sunday-times-vindicate-sars-officials/.
53. South Africa Constitutional Court. 2016. *McBride v Minister of Police and Another (CCT255/15)*. [Online] Available: www.saflii.org/za/cases/ZACC/2016/30.html.
54. Mg.co.za. 2017. *Court sets aside appointment of Berning Ntlemeza*. [Online] Available: mg.co.za/article/2017-03-17-breaking-court-sets-aside-appointment-of-berning-ntlemeza.
55. Despite the long investigation, it seems that there is still insufficient evidence on the basis of which to which would support any charges being lodged in relation to the 'rogue unit' allegations.
56. Since 2010 the National Prosecuting Authority has been the site of major contestation regarding its leadership and the cases it has chosen to prosecute or not. Much of this was related to Zuma's own criminal charges arising from the notorious arms deal. Some, however, may have been related to cases of illegality stemming from procurement violations and/or illegality from radical economic transformation.
57. Duncan, Jane. 2014. The Rise of the Securocrats. The Case of South Africa. Johannesburg: Jacana Media. Pg:3.
58. Duncan, Jane. 2014. The Rise of the Securocrats. The Case of South Africa. Johannesburg: Jacana Media. Pg:32.
59. Pauw, Jacques. 14 August 2014. 'How Spy Unit Nailed Mdluli Foes' in City Press. see http://www.pressreader.com/south-africa/citypress/20140810/281638188364837

the State Security Agency.

Pauw's story was especially credible given the context. In 2008, then Minister of Intelligence, Ronnie Kasrils had commissioned an investigation into the various services. The concern at the time was that "politicians and intelligence officers can abuse [their] powers to infringe rights without good cause, interfere in lawful politics and favour or prejudice a political party or leader, thereby subverting democracy".[60] The report by Joe Matthews, former National Assembly speaker Frene Ginwala and Laurie Nathan found severe shortcomings in The National Strategic Intelligence Act (1994), which created opportunities for abuse by defining the notion of 'national security' too broadly.

The report found that there were no rules regulating counterintelligence work making it easy for "interference in politics and infringing rights without sufficient cause"[61] to occur. In a finding that surely calls into question the rationale of the Hawk's own 'Crimes Against the State' unit, Mathews, Ginwala and Nathan noted that "in a democracy it is wholly inappropriate for an intelligence service to make judgements on whether lawful activities are threats to the constitutional order". [62]

The Minister of Intelligence after Kasrils, Siyabonga Cwele, sought to suppress this report. Its recommendations were certainly not implemented. By 2014 Piet Coetzer, Stef Terblanche and Garth Cilliers, writing for the *Intelligence Bulletin*, were describing the State Security Agency as in 'disarray'.[63] This is the context in which the various intelligence-like dossiers discussed above started to appear.

The formal link to the State Security Agency is suggested by the story of Mandisa Mokwena. She had been recruited into the senior management of SARS from the National Intelligence Agency. Ivan Pillay subsequently charged her with fraud, though the case has never come to court. She subsequently returned to the intelligence fraternity. Mokwena was likely one of the authors of the infamous 'Spiderweb report' alleging a conspiracy by Gordhan, Pillay and van Loggerenberg, among others, to marginalise black staff at the agency. In a further twist, Mandisa Mokwena is married to Barnard Mokwena, the former human resources manager at Lonmin, who played a central role in driving a labour dispute at the mine into the worst massacre of the post-apartheid period. It later emerged that he too was an intelligence operative.[64]

The role that the National Prosecuting Authority plays in enforcing the law (particularly in respect to holding public servants to account for fraud or corruption) cannot be understated. Since Shaun Abraham's appointment as National Director of Public Prosecutions in June 2015, there are several questionable decisions and actions that have been made, over and above the frivolous charges laid against Gordhan. These include the charges laid against Robert McBride, which were taken to court and then also dropped due to insufficient evidence and the withdrawing of charges of perjury against the Deputy National Director of Public Prosecutions Nomgcobo Jiba who is currently still on 'special leave' after being struck off the roll of advocates in September 2016.[65] The charges of perjury were laid in relation to statements that Jiba made under oath about the initiation of criminal charges against General Booysen. As highlighted in an amaBhungane article:[66]

Jiba was roundly criticised by judges in three separate cases during her tenure as acting prosecutions head – all of them politically sensitive – leading to accusations that she was protecting President Jacob Zuma or his allies.

In the most recent controversy, Abraham's predecessor, Mxolisi Nxasana, filed an affidavit in response to a case filed by civil society organisations that related to the review of his R17 million pay-out on leaving the National Prosecuting Authority. It was Nxasana who instituted the charges against Jiba, following which the president initiated an inquiry into Nxasana's fitness to hold office. In his affidavit, Nxasana directly contradicts the affidavit previously filed by President Zuma that stated that Nxasana wanted to leave of his own volition. Nxasana said under oath that "It was never my intention to make a request to leave the office, nor did I ever make such a request to the President" and that "The president's version in this regard is false."[67]

Taken together, the events at SARS, the Hawks and the National Prosecuting Authority suggest that as the Zuma administration radicalised resorting increasingly to extra-legal means to pursue radical economic transformation it was driven to 'capture' and weaken key state institutions. The political project of the Zuma-centre power elite has come at a very heavy price for the capability, integrity and stability of the South African state.

Conclusion

This chapter has traced the emergence of the notion of radical economic transformation, arguing that it privileges the use of the state procurement system to advance a form of BEE that is not dependent on the established and white-owned and -managed companies. We have seen how these ideas were incubated in the Black Management Forum and the DTI.

We have argued that after 2011 this project radicalises and becomes increasingly sceptical that economic transformation can be achieved within the framework of the law and Constitution.

60. Ministerial Review Commission on Intelligence. 2008. *Intelligence in a constitutional democracy*. [Online] Available: cdn.mg.co.za/uploads/final-report-september-2008-615.pdf. Pg:10.
61. Ministerial Review Commission on Intelligence. 2008. *Intelligence in a constitutional democracy*. [Online] Available: cdn.mg.co.za/uploads/final-report-september-2008-615.pdf. Pg:16.
62. Ministerial Review Commission on Intelligence. 2008. *Intelligence in a constitutional democracy*. [Online] Available: cdn.mg.co.za/uploads/final-report-september-2008-615.pdf. Pg:134.
63. The Intelligence Bulletin. 2014. *Political abuse has State Security Agency in disarray*. [Online] Available: http://www.theintelligencebulletin.co.za/articles/security-watch-1812.html.
64. Marinovich, G. 2016. *Murder at Small Koppie. The Real Story of the Marikana Massacre*. Cape Town: Penguin Books. Pgs:56-58.
65. Van Wyk, P. 2016. *NPA's Nomgcobo Jiba and Lawrence Mrwebi struck off the roll of advocates*. [Online] Available: https://mg.co.za/article/2016-09-15-npas-nomgcobo-jiba-and-lawrence-mrwebi-struck-from-the-roll-for-advocates.
66. Sole, S. 2016. *Willie's shock gambit ups the stakes at NPA*. [Online] Available: amabhungane.co.za/article/2016-02-05-willies-shock-gambit-ups-the-stakes-at-npa.
67. Thamm, M. 2017. *Zuma committed perjury, former NPA head Nxasana claims in affidavit*. [Online] Available: https://www.dailymaverick.co.za/article/2017-04-13-zuma-committed-perjury-former-npa-head-nxasana-claims-in-affidavit/#.WQofKhN9600.

These ideas start to inform governance decisions, especially in the SOEs during the tenure of Molefe as CEO of ESKOM and Gigaba as Minister of Public Enterprises. We see massive rents being charged on government contracts, with spectacular efforts made to displace established companies and to contract with others, usually those with Gupta links.

We have seen too that radicalisation brought with it daunting problems of political management. The problem was that the Zuma administration could not rely on the law and the institutions of the State to discipline the procurement process. Nor, however, could it rely on the ANC itself. As numerous internal reports show, many of them candidly, the organisation is riven by disputes and contradictions – hardly an effective apparatus to bring control to the state or manage an out-of-control rent-seeking system. With Zuma preferring to operate through highly personalised networks of kitchen cabinets, political power has become fragmented and its exercise capricious.

Radical economic transformation has increasingly come to be a fig-leaf for the enrichment of a small power-elite, as well as the means through which this group finances its political operations. In this context, the Zuma-centred power elite has weakened the institutional fabric of the state and undermined its formal, rational-legal infrastructure.

The implications are that Zuma's political project, legitimised by a rhetorical commitment to radical economic transformation, is both undermining the democratic and constitutional form of the South African state as well as weakening the capability of government and of public institutions – the very administrations that progressive policies, for example, in health or education need for effective implementation.

The state, in short, is being turned into an *undevelopmental* mishmash of apparatuses connected via the networks that manage the symbiotic relationship between the constitutional and shadow states.

TEGETA / OPTIMUM –

"It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of Optimum Coal Holdings and is thus in severe violation of the Public Finance Management Act." State of Capture report, 2016.

July 2013
Owner of Optimum Coal Holdings, Glencore, writes to Eskom to invoke the "hardship clause" in their contract to enable the parties to renegotiate the coal-supply contract, which was leading to losses of about R1-billion for Glencore.

May 2014
They sign a "Co-operation Agreement", which paves the way for a new coal-supply contract to stop Glencore's losses.

March 2015
Eskom's Executive Procurement Committee approves a new contract for Glencore but defers final approval to new Acting CEO Brian Molefe.

April 2015
Brian Molefe becomes Eskom's acting CEO.

May 2015
Molefe informs Glencore that he rejects new terms and he suspends all negotiations

July 2015
Several things happen -

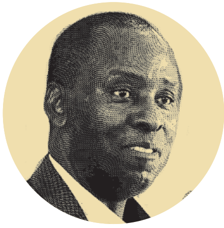
i) Eskom imposes as R2.5-billion fine on Glencore for supplying poor quality coal, penalties are rarely applied by Eskom and appear to have been done selectively in Eskom's case and probably contributed to Optimum's financial difficulties

ii) Glencore then announces that it has to retrench 380 employees because of its financial troubles;

iii) KPMG approach Glencore with an offer from an "anonymous client" – later confirmed to be the Guptas – offering to buy Optimum for R2-billion. Optimum turns the offer down.

August 2015
Glencore announces that they are placing Optimum Coal Holdings and Optimum Coal Mine under business rescue.

According to the Public Protector's report: "The only individuals/entities who stood to benefit from [Optimum] not being awarded a revised contact by Eskom was the subsequent prospective suitors who could now purchase an entity in business rescue."

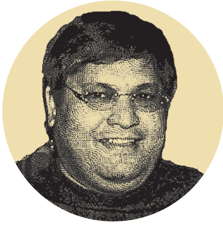


September 2015
Mosebenzi Zwane is appointed Mines Minister.

November 2015
Two things happen -

i) Department of Mineral Resources places work stoppages on Glencore mines, worsening their financial position.

ii) Zwane travels to Switzerland to meet Glencore's Ivan Glasenberg. Thuli Madonsela's State of Capture report cites an "independent source" saying that Rajesh Gupta and Salim Essa were present at the meetings.
Days after Zwane's return, Optimum's business rescue practitioners conditionally agree to sell the mine to Tegeta for R2,15-billion.



In her report, Madonsela notes: "It is potentially unlawful for the Minister to use his official position of authority to unfairly and unduly influence a contract for a friend or in this instance his boss's son at the expense of the state. (Duduzani Zuma is a shareholder in Tegeta). This scenario would be further complicated if his actions were sanctioned by the President."

December 2015

Glencore agrees to sell Optimum. At the time, several board members are conflicted, according to the Public Protector:

- Ben Ngubane (chair) – co-director at Elgasolve (part-owner of Tegeta)
- Mark Pamensky – interests in entities related to or part-owning Tegeta
- Viroshini Naidoo – director of Albatime which part-funded the Tegeta purchase of Optimum
- Molefe (CEO) was in frequent phone contact with the Gupta family (owners of Tegeta) during the period of the sale, and in contact with Ms Ragavan (director at Tegeta) during the final month.

January 2016:

Two things happen -

i) Tegeta given easier terms for Hendrina

ii) Tegeta given lucrative contracts to supply Arnot

February 2016

i) Tegeta given another lucrative contract to supply Arnot (in total these contracts amount to R1.6-billion).

Public Protector states: "It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of [Optimum Coal holdings] and is thus in severe violation of the PFMA."

April 2016

A few things happen -

i) April 11: Tegeta is short of R600million to buy Optimum and banks refuse bridging finance to the company.

ii) April 11: The Eskom board approves another R600-million contract for Tegeta, plus prepayment.

iii) April 13: Eskom makes the payment.

iv) April 14: Tegeta's full funds transferred to buy Optimum.

v) April 21: Eskom give Tegeta another lucrative Arnot contract.

vi) April 24: Tegeta attempt to access mine rehabilitation fund

May - September 2016

Mine rehabilitation funds at a Bank of Baroda account are being used the Public Protector's report shows that once the fund for Optimum and Koornfontein had been moved from Standard Bank to Bank of Baroda, they were not ring-fenced and the interest was not reinvested, suggesting that it may have been used for other purposes, which is illegal.

4

How the capture of the state is structured: A brief note

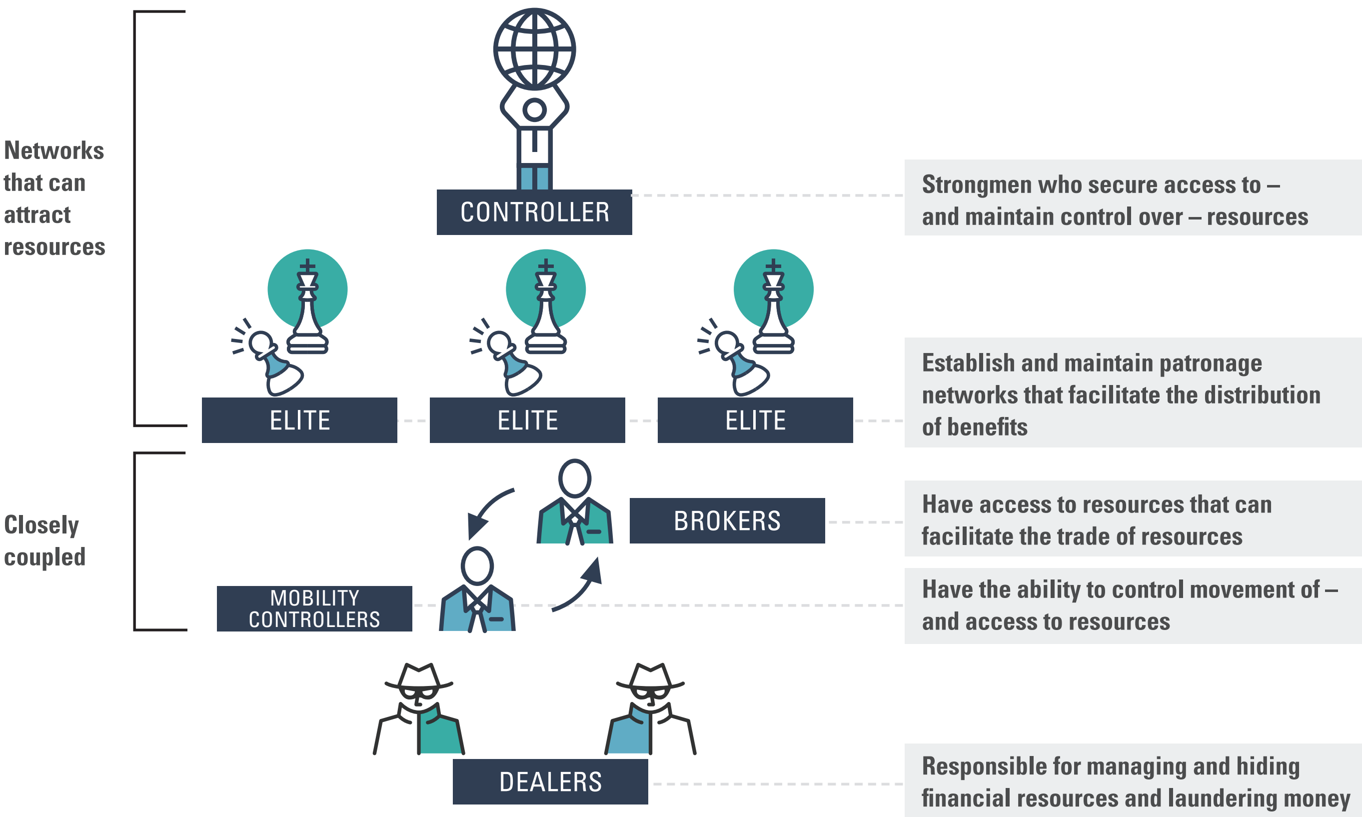
Introduction

The symbiotic nexus between the constitutional and shadow state requires the integration of a range of skillsets similar to what exists in most international corporations. The composition of the Zuma-centred power elite is in many respects highly organised, following the structure of what in academic terms is called a 'war economy'.[1] In a war economy, the 'shadow state' establishes a number of informal structures (see below), which produce systems of "profit, power and protection",[2] and which, in turn, serve to further their operations making it possible to have continued preferential access to resources and power through an exploitative economic system. The cycle can, therefore, continue.

One of the key requirements in establishing these shadow structures is the ability to secure a system of command and control over how the resources are accessed, moved and distributed. At the outset, control must be established over the sources of extraction, including the ability to flexibly respond to any changes in the operating environment.[3] Once access to the source of extraction is secured, networks of middlemen or brokers must be established that can move resources within the network to sustain loyalty (this is critical to ensuring the survival of the network) and externally, usually transnationally. The ability to transact within this network is facilitated through the establishment of political market places, where support is traded through the provision of access to resources.

The skillsets of this patronage network is localised within a number of groups. These are indicated in the following figure and expanded on below.

Figure 2: Generalised model of a patronage network that extracts and administers rents



1. Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University. Pg:3.
2. Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University. Pg:3.
3. Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University. Pg:121.

- The controllers: These, also known as patrons of resources (e.g. Zuma and the Guptas), sit at the apex and are usually the strongmen directly responsible for predation and exploitation. Their function is to secure access and maintain control over resources.[4] A patron or controller typically favours one group over another (or others), resulting in the exclusion of those out of favour and the inclusion of those within favour. This sets up a competitive set of nodes with the network around the patron or controller, which has the ultimate effect of rendering elites (the next layer down) unable to cooperate effectively as they fear being ousted by their partners, or falling out of favour with the patron.
- The elites: The elites (e.g., Ace Magashule, Faith Muthambi, Malusi Gigaba, Brian Molefe, Mosebenzi Zwane and Anoj Singh) are responsible for establishing and maintaining patronage networks, which facilitate the distribution of benefits.
- The entrepreneurs: These are also known as brokers (e.g., Iqbal Sharma, Eric Wood, Salim Essa and Ashok Narayan). Broker networks consist of middlemen who facilitate the movement of funds, information and/or goods both domestically and across transnational networks, and make use of "recruitment networks, lending networks, remittance networks and smuggling networks" to do so.[5] The following requirements are necessary for broker activity:
  - Networks of brokers are required to secure domestic and cross-border networks through which resources can be moved to international clearing hubs and enter legitimate trade activities.
  - Brokers are often of a different nationality or ethnicity – usually a minority – so that they cannot mount a significant challenge to the controller or patron.
  - Brokers have commercial ties to different clusters of communities through which they are able to achieve networked competence.
  - Brokers have access to ports of entry.
  - Brokers and ports are 'choke points' for intervention in patronage networks.[6] If brokers are identified and their ability to operate is significantly reduced, then the patronage network is weakened and may collapse.
- The dealers: Groups that are able to move the money transnationally (e.g., the professional money laundering syndicates in Hong Kong, the United Arab Emirates and elsewhere).[7]

Securing and establishing cross-border networks is an essential requirement of this network to navigate illicit proceeds into international clearing hubs where it enters the legitimate trade and accrues value to the members of the network.[8] In many instances these networks use clandestine methods to mask the origins of resources in order to protect its members from external scrutiny.[9]

From an operational perspective, these networks of brokers and dealers must perform a number of functions, including:

- Collusion with customs or corrupt officials to create false records pertaining to the types of goods traded, quantities and the identities of parties involved in the transactions.
- Providing licences for others to obtain illicit goods in violation of the law.
- Laundering cash generated from illicit activities in collusion with formal financial institutions in order to establish legitimate business entities that can generate funds.
- Using shell companies in order to hide ownership details and move assets offshore (e.g., the Gupta entities: Homix, Regiments Asia, Morningstar International, etc.)
- Exchanging one potentially traceable commodity, such as oil or timber, for another less traceable one – also known as trade misinvoicing.
- Purchasing legitimate goods outside of the country with the proceeds of illicit activities, and then importing the legitimate goods back into the country to generate 'clean revenues'.[10] The R200 million temple the Guptas are building in India and their R448 million villa in Dubai, reportedly the most expensive house in the United Arab Emirates, may fall into this category.

Ultimately, the key to realising the full potential of control over resources is the ability to strip assets and convert them into monetary resources – typically through money-laundering – that can fund the patronage operations.[11]

The conversion of such assets also requires the existence of an appropriate infrastructure for handling and moving such assets, including banking, "alternative remittance systems … import-export firms that participate in false invoicing schemes, precious metal markets, and the use of trusts, international business companies, and non-transparent jurisdictions as mechanisms to hide funds"[12]

Money-laundering procedures

Money laundering is the process of transforming illicit money into ostensibly legitimate assets. Thus money laundering through formal channels typically follows a three-stage process: placement, layering and integration. Placement involves moving funds into activities or accounts from where they can be legitimised through layering (i.e. blended with legitimate funds, recycled through

4. IPIS. 2002. Supporting the *War Economy in the DRC: European Companies and the Coltan Trade*. Antwerp: International Peace Information Service.
5. Sandoval, G. 2013. Shadow Transnationalism: Cross-Border Networks and Planning Challenges of Transnational Unauthorized Immigrant Communities. *Journal of Planning Education and Research*, 33(2):1–18.)
6. Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.
7. Le Billion, P. 2008. Diamond Wars? Conflict Diamonds and Geographies of Resource Wars. *Annals of the Association of American Geographers*. 98(2):345-371.
8. Le Billion, P. 2008. Diamond Wars? Conflict Diamonds and Geographies of Resource Wars. *Annals of the Association of American Geographers*. 98(2): 361.
9. Le Billion, P. 2008. Diamond Wars? Conflict Diamonds and Geographies of Resource Wars. *Annals of the Association of American Geographers*. 98(2):361.
10. Winer, J.M., Roule, T.J. (2003). 'Follow the Money: Finance of Illicit Resource Extraction,' In Natural Resources and Violent Conflict: Options and Actions, Ian Bannon and Paul Collier (Eds), World Bank, Washington.
11. Winer, J.M., Roule, T.J. (2003). 'Follow the Money: Finance of Illicit Resource Extraction,' In Natural Resources and Violent Conflict: Options and Actions, Ian Bannon and Paul Collier (Eds), World Bank, Washington.
12. Winer, J.M., Roule, T.J. (2003). 'Follow the Money: Finance of Illicit Resource Extraction,' In Natural Resources and Violent Conflict: Options and Actions, Ian Bannon and Paul Collier (Eds), World Bank, Washington.

cash-based operations, moved into 'legitimate companies', or moved around in complex transactions, etc.). These funds are then integrated back into the revenue stream of the money launderer (i.e. often through purchasing property and other goods).

The laundering process often necessitates financial systems with lax regulation and controls. Rents are also often distributed in cash, and indeed this may be preferable in many instances, but there are likely limits to how beneficiaries can make use of cash in formal transactions because large cash dealings can trigger high-risk alerts with banks. The benefit of cash is that it can be moved overseas, through both formal and informal channels, including the use of diplomatic immunity to traffic large sums of cash across borders (which could raise further questions over the Gupta's seeming preferential access to the Waterkloof Airforce Base) and the use of informal money exchange networks such as the hawala network, respectively.

The broker network in action: Transnet and Hong Kong transactional flows

With the patronage network model in mind, the Gupta's apparent access to lucrative Transnet work and the subsequent movement of related funds, both domestically and transnationally, is instructive.

Controller/patron and elite stages

Zuma appointed Gigaba as Minister of Public Enterprises in November 2010 about 18 months after he became president. This was after he had removed Barbara Hogan from the position in October 2010, coincidentally following her pushback against alleged presidential interference in state-owned company board appointments, and after Vytjie Mentor refused an offer for the position thereafter, apparently made to her at the Gupta's Saxonwold home on condition she would drop the SAA flight route to Mumbai.

Brokers established

In December 2010, Gigaba appointed Iqbal Sharma to the Transnet. His proximity to the family is by now, in our view, indisputable (see Chapter 2). In February 2011 Gigaba appointed Molefe as CEO of Transnet. In about June 2011, Gigaba wanted Sharma appointed Transnet Board chair, but the Cabinet apparently vetoed this on the grounds that he was too close to the Guptas. Seemingly to circumvent Cabinet's veto, Transnet later created a new structure, called the Board Acquisitions and Disposals Committee, to supervise the planned pipeline of future large-scale infrastructure spending (all tenders worth more than R2.5 billion). Sharma became chair of this committee. It was at this point that Gupta-linked entities began benefitting from Transnet tender opportunities.

Brokers at work: extracting the resources

- R51 billion locomotives deal: While he chaired the Board Acquisitions and Disposals Committee, Sharma oversaw the adjudication of the R51 billion tender for the purchase of 1 064 locomotives, which was ultimately split between four companies: China North Rail (232 diesel locomotives at R7.8 billion), China South Rail (359 electric locomotives at R14.6 billion), General Electric (233 diesel locomotives at R7.1 billion) and Bombardier (240 electric locomotives at R10.4 billion).

  The Gupta's proximity to China South Rail is documented in former Prasa CEO Lucky Montana's letter (see Chapter 2) in which he lays out how they apparently aggressively represented China South Rail (one of seven bidders then vying to supply Prasa with 600 commuter trains). Such representatives often earn large success fees, sometimes described as commissions. While they were not successful in their bid to position the rail company in this instance, the Chinese company's success in the Transnet locomotives deal appears to have benefitted the Guptas. Transactions seen by this group of researchers suggest that the Chinese company, now called China South Locomotive & Rolling Stock Corporation Limited following a merger with China North Rail, has been paying large sums of money into Gupta-linked entities based in Hong Kong. Our research in this regard is ongoing, but the circumstantial evidence of a triangulated link between China South Rail winning a portion of the tender, the Gupta's apparent brokering of the rail company in South Africa, and the offshore transactional flows from the rail company to Gupta-linked entities, is compelling. Just before the successful bidders of the locomotives tender were announced, Sharma emerged as a buyer of VR Laser Property, which owns the property upon which VR Laser Services is situated (owned by the Guptas and Duduzane Zuma) and which was arguably in a highly advantageous position to benefit from supplying component parts to the successful bidders in the locomotives deal (which were required by state procurement policy to source a large proportion of their components from South African subcontractors). Additionally, the size of the locomotive deal meant that financial arranging and corporate structuring advice was necessary. As explained in Chapter 2, after a series of highly questionable events, a Gupta-linked company, Trillian Asset Management, ultimately benefitted from this opportunity to the value of at least R170 million.
- Information technology: Chapter 2 details how a national multi-billion Rand telecoms company, Neotel, benefitted from significant Transnet work, but seemingly only as a result of an obscure Gupta-linked entity, Homix, which acted as a broker between Neotel and Transnet. Additionally, global software giant SAPS, was strongly encouraged by Transnet to partner with a Gupta entity, Global Softech Solutions, in order to win Transnet work (Chapter 2).
- Procurement: German maker of cranes and Transnet supplier Liebherr Africa was reportedly pressured by Transnet to partner with Burlington Strategy Advisors, which is a subsidiary of Regiments Capital (see Chapter 2), and which also ultimately paid money into a Gupta-linked entity (Homix).

Brokers at work: moving the resources

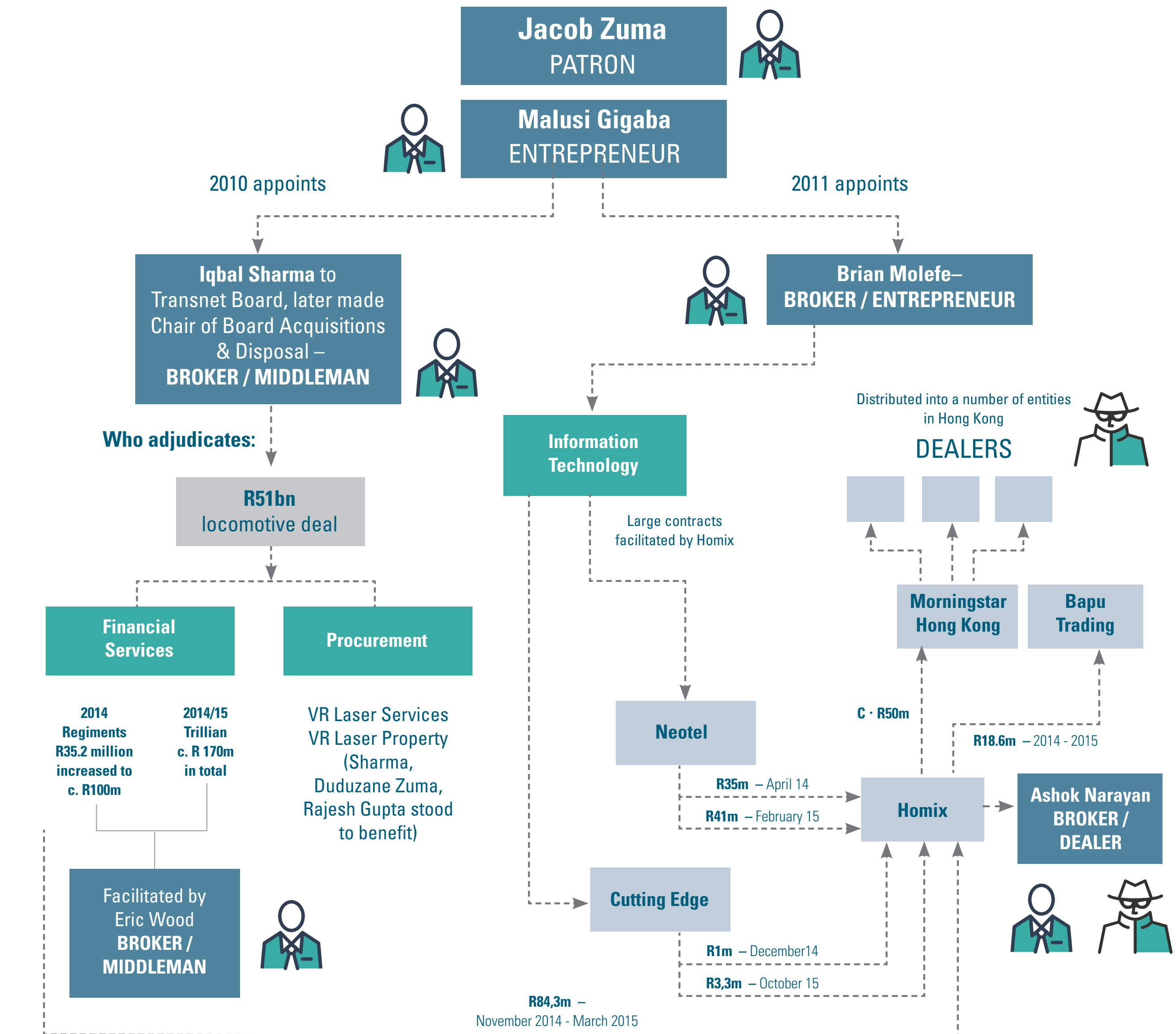
In July 2015, the first detailed analysis of how the Guptas allegedly launder the proceeds of their business activities was presented by amaBhungane. Their operation in this regard centres on a Gupta-controlled shell company called Homix. Shell companies, by virtue of the ownership anonymity that they provide, are classic vehicles for money laundering and other illicit financial activity. According to the Financial Crimes Enforcement Network:[13]

The term 'shell company' generally refers to limited liability companies and other business entities with no significant assets or ongoing business activities. Shell companies – formed for both legitimate and illicit purposes – typically have no physical presence other than a mailing address, employ no one, and produce little to no independent economic value.

Between 2014 and 2015, Homix moved R166 million through its accounts, primarily from five companies, mostly linked to Transnet work, according to an amaBhungane investigation.[14] As is characteristic of shell companies, Homix has no discernible office infrastructure or staff commensurate with a company processing such large sums of money. Bank records obtained by amaBhungane, and other bank records observed by this group of researchers, show that as the money came into the Homix bank account, it went straight out again, to an equally obscure entity called Bapu Trading.

This pattern displays the three classic money laundering characteristics of placement, layering and integration where placement is the movement of cash from its source (the five companies), followed by placing it into circulation (layering) through, among other mechanisms, financial institutions and other businesses (for example Homix), and finally integration, the purpose of which is to make it more difficult to detect and uncover by law enforcement.

The Broker Network in Action: Transnet



13. Department of the Treasury Financial Crimes Enforcement Network. 2006. The role of domestic shell companies in financial crime and money laundering: Limited Liability Companies. [Online] Available: https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.

14. Brümmer, S., Comrie, S., McKune, C. & Sole, S. 2016. *State capture - the Guptas and the R250 million "kickback laundry"*. [Online] Available: http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full.

In moving their money transnationally, the Guptas appear to have made extensive use of Hong Kong, whose financial system is infamous as a money-laundering capital and where during the 1960s, 1970s and 1980s money launderers and couriers made a living from providing access to underground financial services. While regulations have significantly tightened this practice, professional money-laundering networks remain active in the country.

The Gupta's movement of their money through Hong Kong is likely to prove to be only a subset of the full extent of their transnational organisation and movement of rents. The four Gupta-linked companies that feature most prominently in the Hong Kong movement of money are Regiments Asia Ltd (unrelated to the SA company Regiments), Tequesta Group Ltd, and Morningstar International Trade Ltd. Morningstar International Trade Ltd shares a Hong Kong address with three of Salim Essa's companies (where he is listed as the director): Regiments Asia, Tequesta Group and VR Laser Asia. As stated above, and although circumstantial at this stage, funds passing through these Hong-Kong based companies appear to be linked to the R51 billion locomotives deal (see Chapter 2 and Chapter 3).

Table 4: Table of known outflows from Gupta-linked companies and individuals

Dates	From	Destination	US$ (million)	R (million)
December 2012–May 2016	Gupta-linked South African entities	Gupta family members and Gupta-linked entities	485.7	6 800
Late 2014– early 2015	Homix (see next section)	Bapu Trading (R186 million)	13.57	190
May 2015	Homix (see next section)	Morningstar (R66-R14 million)	3.71	52
April–September 2016	Homix, Tequesta, Morningstar and Regiments Asia	A group of Hong Kong companies (new information; not in the public domain)	240	3 370

Conclusion

While a complete analysis of Gupta transactions has not been performed in this section, and it relies mainly on publicly available information, there is already enough to give a sense of the severity and extent of rent-seeking practises that have burgeoned within the shadow state in recent years.

What is most telling about the transactions accounted for in this section, is that they far outweigh the claims that the Gupta family have made regarding their revenue streams. Generally speaking, there should be some level of parity between inflows to Gupta-linked companies and outflows, and some level of agreement between declared revenues from the state and actual revenues flowing to Gupta-linked companies. Yet there is little parity to speak of.

For example, according to the *State of Capture* report, Ajay Gupta claimed, in a meeting with the then Deputy Minister of Finance Mcebisi Jonas, that the Gupta family had already accrued R6 billion in proceeds from contracts with state agencies[15] and wanted to increase that to R8 billion. The Deputy Minister told the Public Protector that at this meeting Ajay Gupta offered him the position of Minister of Finance, in exchange for opening up access to the National Treasury (offering R600 million to be deposited in an account of his choice and R600 000 to be paid immediately). He rejected the offer. By the Gupta's own account of their business activities and revenues to the Public Protector,[16] revenues for 2016 amounted to R2.6 billion. Government contracts, they reported, accounted for only R235 million of their total revenues. This is considerably less than the R6 billion claimed by Ajay Gupta and suggests that additional revenue generation may be moving through unofficial channels.

Separately, in 2017, the former Finance Minister Gordhan submitted evidence to the courts obtained from the Financial Intelligence Centre that revealed 72 suspicious transactions over the course of 2015 and 2016 related to Gupta-linked accounts, totalling R6.8 billion. Taken together, the aforementioned reports and actions make a compelling case for asking questions related to how much money the Guptas are earning from the state, how much of this is declared and how much is being moved offshore and therefore remains unproductive to the South African economy. This warrants further official investigation and scrutiny, which this research team is undertaking.

15. Excerpt from the State of Capture report, Page 94: "Mr Ajay Gupta continued to speak. He disclosed names of "Comrades" they were working with and protecting. He mentioned that collectively as a family, they "made a lot of money from the State" and they wanted to increase the amount from R6 billion to R8 billion and that a bulk of their funds were held in Dubai;" Public Protector South Africa. 2016. *State of Capture*. [Online] Available: http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf.
16. Excerpt from the State of Capture report: "According to a letter submitted to my office, total revenues from their business activities for the 2016 financial year amounted to R2,6 billion, with government contracts contributing a total of R235 million of the revenues." Public Protector South Africa. 2016. *State of Capture*. [Online] Available: http://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf. Pg: 85.
17. Treasury.gov.za. 2017. Minister of Finance vs Oakbay Investments and Others (2016), The High Court of South Africa (Gauteng Division, Pretoria), Case Number 80978/16, 14 October 2016. [Online] Available: http://www.treasury.gov.za/comm_media/press/2017/2017021001%20-%20ARGUMENT%20IN%20THE%20OAKBAY%20MATTER.pdf.

5 Conclusion and Recommendations

This report documents the systematic repurposing of state institutions in accordance with a political project mounted by the Zuma-centred power elite. It was demonstrated that the purpose of this political project is systemic illegal and/or unethical rent-seeking action. These pre-meditated and co-ordinated activities are designed to enrich a core group of beneficiaries,to consolidate political power and to ensure the long-term survival of the rent-seeking system that has been built by this power elite over the past decade. To this end a symbiotic relationship between the constitutional state and the shadow state has been built and consolidated.

At the nexus of this symbiosis between the constitutional and shadow states are 12 companies and 15 individuals connected in one way or another to the Gupta-Zuma family network. The way this is strategically coordinated constitutes the shadow state. Decisions made within this nexus about what happens within the constitutional state are executed by well-placed individuals located in the most significant centres of state power (in Government, SOEs and the bureaucracy). The official testimony to the Public Protector by former Deputy Minister of Finance Mcebisi Jonas – that has not been successfully and credibly contested – is about how he was offered a place in this network with a R600 million bribe. This transaction reveals the clear modus operandi of those who operate within the shadow state and how this has made it possible for them to gain control of the constitutional state. Crucially, we in turn have no idea how many others accepted these kinds of unimaginably enormous bribes. Those who resist this agenda are systematically removed, redeployed to other lucrative positions to silence them, placed under tremendous pressure, or hounded out by trumped up internal and/or external charges and dubious intelligence reports.

It has been argued in this report that the Zuma-centred power elite has sought to centralise the control of rents to eliminate lower-order rent-seeking competitors from about 2012 onwards. The ultimate prize was control of the National Treasury because this gives this power elite control of the Financial Intelligence Centre (which monitors illicit flows of finance), the Chief Procurement Office (which regulates procurement and activates legal action against corrupt practices), the Public Investment Corporation (the second largest shareholder on the JSE) and the power to issue guarantees (which is essential for making the nuclear deal work). The cabinet reshuffle in March 2017 made possible final control of the National Treasury.

The capture of the National Treasury, however, followed four other processes that consolidated power and centralised control of rents: the ballooning of the Senior Management Service in the public service to create a compliant politically dependent bureaucratic class; the routing of the good cops from the policy and intelligence services and their replacement with loyalists prepared to cover up illegal rent seeking (with some forced reversals, eg. McBride); redirection of the procurement-spend of the SOEs to favour those who are prepared to deal with the Gupta-Zuma network of brokers (those that don't - don't get the contract, even if they have better BEE credentials and their price is lower); and the consolidation of the Premier League as a network of party bosses to ensure that the NEC of the ANC remains loyal because it is implicated in the flow of large amounts of cash to keep this political Ponzi scheme going.

At the epicentre of the political project mounted by the Zuma-centred power elite is a rhetorical commitment to RET. Unsurprisingly, although the ANC's official policy documents on RET encompass a broad range of interventions that take the National Development Plan as a point of departure, what is emphasized by the Zuma-centred power elite is the role of the SOEs and, in particular, the procurement spend of the SOEs. ESKOM and TRANSNET, in turn, are the centre-pieces of this strategic focus on SOEs as the drivers of RET. This is because ESKOM is regarded as key to ensuring that the nuclear deal happens, and TRANSNET because it is regarded as key to ensuring that the mining industry is captured and the Transnet properties released to a select group of private companies. In short, instead of becoming a new economic policy consensus, RET has been turned into an ideological football kicked around by factional political players within the ANC itself and the Alliance in general who use the term to mean very different things. Crucially, RET is used to give ideological legitimacy to what is essentially a political project to manage the symbiotic relationship between the constitutional and shadow state.

To resolve the current crisis, three things need to happen:

Firstly, the Gupta-Zuma network comprising 12 companies and 15 individuals that holds the symbiotic relationship between the constitutional and shadow state together needs to be broken and dismantled. This will require political action within and outside the tripartite alliance to dislodge Zuma as the kingpin of the symbiosis, coupled with legal action to criminalise and bringthe perpetrators of state capture to justice. To this end, the Public Protector's recommendation that a Judicial Commission of Inquiry be established must be an urgent priority. It will also require bold action by the banking sector and the Reserve Bank to expose and shut down the financial mechanisms that the shadow state uses. The closing of the Oakbay accounts was a brave step, but does not go farenough. The Gupta-Zuma networks have rapidly reconfigured and found ways to circumvent these restrictions. The signing of the FICA amendment bill, for example, grants false comfort because implementation could be thwarted because of the fractured and weak nature of the law enforcement agencies. The purchase of the Habib bank must obviously be prevented by the regulators concerned. Furthermore, every effort must be made to protect the information technology systems of the Independent Electoral Commission (IEC) from being taken over by a Gupta-Zuma linked company. If this happens as some suggest may be the case, the ANC elections in December and the General Elections in 2019 have very little chance of being truly free and fair.

Secondly, a new national economic consensus is required. This has never been given serious attention beyond setting out multiple policy frameworks,and bureaucratic processes. The short-lived post-1994 Reconstruction and Development Programme developed by the Presidency was unilaterally replaced by GEAR in 1996 – a policy framework developed by the Ministry of Finance and adopted without approval of the Alliance partners. At the same time the Department of Labour's Presidential Labour Market Commission came up with a social plan. A few years later ASGISA was also adopted without full consensus. The adoption in 2002 of the 'developmental state' framework came closest to a consensus, but it lacked substance and focussed primarily on a weakly defined industrial policy framework that has failed to induce confidence in the economy; and public investment in infrastructure as a way of 'crowding in' private investment. The adoption of the New Growth Path later on did not improve matters, especially when this was interpreted by Gigaba after he was appointed Minister of Public Enterprises in 2010 as a license to transform the governance of the SOEs. The economic policies inscribed in the National Development Plan also never enjoyed full support of the Alliance partners, not least because the NDP is pessimistic about the future of manufacturing, saying virtually nothing about de-financialisation and is vague when it comes to achieving employment-centred development in an environment where trade unions have policy influence. While the external environment in the wake of the global financial crisis has had adverse effects on South Africa's growth outlook, governance failures and policy uncertainty have inflicted the most damage. Promises made by the ANC to Alliance partners after the final draft of the NDP was published that further work will take place to strengthen the economic policies of the NDP were never implemented. The DTI's industrial policy framework adopted in 2007 was resisted by National Treasury who argued against 'picking winners' thus thwarting the implementation of industrial policy in South Africa.

In short, there has never really been a broadly shared and fully supported economic policy framework. RET is already a factional political football. One can speculate that a positive outcome of this political crisis would be the adoption, for the first time ever, of a new economic consensus that can both unite the different factions of the Alliance by giving real substance to RET while enjoying broad stakeholder support in the business community, labour sector and civil society. Without this, the Zuma-centred power elite will be able to co-opt RET to mask ongoing rent-seeking practices via the manipulation of SOE procurement spend. This is unlikely to crowd in private investment. The nuclear deal will likely be justified in terms of RET, masking how ESKOM's procurement system and the issuing of a sovereign guarantee will be used to effectively hand over the South African economy to foreign interests: The open secret, of course, is that this is intended to be the Russians. The nuclear deal is the ultimate 'big and shiny' capital intensive project that reinforces the Mineral-Energy-Complex (MEC), crowds out investment in the cheapest energy available (which is renewable energy), increases indebtedness to foreign lenders and of course benefits the cohort of rent-seeking corrupt insiders.

A new economic consensus will have to address the core challenge of investment. As argued in Chapter 1, after 1994 the combination of the shareholder value movement, BEE and financialisation redirected surpluses away from productive employment-creating investments. Since they were adopted in 2007, industrial policies have not had much success beyond defending the position of the automotive sector and limited successes in the clothing and textile sector. These two sectors remain vulnerable in the face of global competitive challenges from other developing countries as well as risks around the longevity of AGOA which has been a boon for the auto sector. The introduction of 100 Black Industrialists programme by then Deputy Minister at DTI has diverted focus implementing good industrial policy strategies. It would seem the Black Industrialist scheme, as good as it seems on paper, has been poorly administered, with very little value created thus far..

Since 1994, compared to its peers in the rest of the world, South Africa has been an anomaly. High returns on investment are usually associated with high investment levels, as it is the case with China. In South Africa, returns on investment have been similar to China's, but investment levels – and therefore employment creation rates – are low. This is partly caused by market concentration that gives large conglomerates too much market power to extract higher margins than would have been possible in a more competitive environment, and partly by a low level of confidence in the post-1994 democratic project by a business class that remains dominated by white decision-makers. Even international financial institutions such as the International Monetary Fund have underlined the concentration of product markets as problematic, and in need of deep reforms.

Using SOE procurement spend has tended to reinforce investment in large 'big and shiny' capital-intensive projects concentrated within the MEC. This reinforces a pattern of job-starved economic growth in an economy with one of the highest unemployment rates in the world. What is therefore really needed is employment- and livelihood-creating investments across a wide spectrum of small and medium enterprises capable of absorbing large numbers of unskilled and semi-skilled workers. This, however, will need to be supported by a proliferation of innovations that emerge from what are often referred to as 'triple helix' innovation networks (i.e. partnerships between enterprises, knowledge institutions, and state institutions) which connects knowledge, market opportunities with investment flows and an enabling regulatory environment. Innovative policy, which 'creatively destroys' to engender new forms of economic development, lies at the heart of true inclusive economic growth. This kind of strategy, however, will only be realizable if the financialisation of the economy is complemented by, for example, channelling more public funds through South Africa's well-developed Development Finance Institutions (DFIs) and redirecting the investments of the DFIs away from blue chip companies and/or capital intensive projects into higher risk employment- and livelihood-creating enterprises located in both the private and non-profit sectors.

Thirdly, all stakeholders, in particular the political actors that will replace the Zuma-centred power elite at some point in the future, must commit to realizing the vision of a new economic consensus within the framework of the Constitution and relevant legislation. The recent trend to regard the Constitution and the rule of law (such as the PFMA) as an obstacle to RET is dangerous and needs to be stopped. Transformation is perfectly compatible with the Constitution and respect for the Judiciary. Indeed, without this the necessary trust that is required for 'triple helix'-type employment- and livelihood-centred economic development will not materialise. A new trust compact is required if stakeholders are going to work together in meaningful ways.

In short, the promise expressed by President Nelson Mandela during his inauguration address in 1994 continues to be what all South Africans aspire to achieve. It is a promise that all South Africans expect Government to understand and fully support across every sector. It is, however, a promise that has been betrayed by the Zuma-centred power elite. In the process, the ANC has been marginalised from realising the promise, made explicit by the fact that the so-called 'top six' of the ANC did not support the April reshuffle nor the re-appointment of Brian Molefe as ESKOM CEO. It is, nevertheless, a promise that can still be achieved if a new economic consensus emerges to realise authentic and truly inclusive radical economic transformation. It is time, therefore, that political conditions are created that enable and catalyse the realisation of our founding promise.

What is clear is that state capture by shadowy elites has profound implications for state institutions. It destroys public trust in the state and its organs; it weakens key economic agencies that are tasked with delivering development outcomes; and it erodes confidence in the economy. When there is no trust in public institutions, there is little goodwill to express solidarity through tax, large companies are predisposed to sit on cash rather than reinvest profits towards productive use, criminality proliferates exploiting weaknesses in intelligence and crime enforcement authorities, and both capital and skills flee the country. The majority of South Africans will bear the brunt of these corrosive developments. Worryingly, large-scale corruption enables much wider corrupt activities to go undetected at the lower tiers of government. Under such conditions, it is impossible to achieve transformative objectives that could improve livelihood of the majority of South Africans.

Notes