

# # THE SOUTH AFRICA WE PRAY4



**THE FABRIC OF FAMILY**



**POVERTY & INEQUALITY**



**ECONOMIC TRANSFORMATION**



**ANCHORING DEMOCRACY**

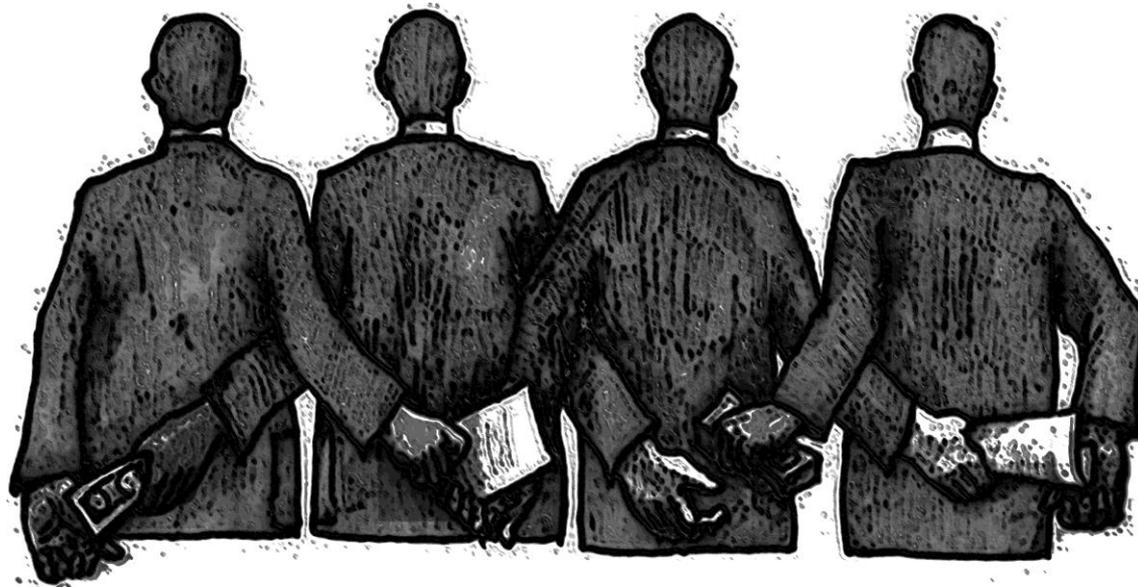


**HEALING & RECONCILIATION**

**CHURCH IN ACTION**



South African Council of Churches



## **State of Capture: Much More Than Corruption**

**“Our experience had made us acutely aware of the possible dangers of a government that is neither transparent nor accountable. To this end our Constitution contains several mechanisms to ensure that government will not be part of the problem” – Nelson Mandela, 1996 –**

# The Power Elite Anchored at the Top

- “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.”  
– **President Zuma, July 2016.**

# 7 Ways The President's Power-Elite Undermines the State

1. Securing control over state wealth, through the capture of state-owned companies by chronically weakening their governance and operational structures.
2. Securing control over the public service by weeding out skilled professionals.
3. Securing access to rent-seeking opportunities by shaking down regulations to their advantage, and to the disadvantage of South Africans.
4. Securing control over the country's fiscal sovereignty.
5. Securing control over strategic procurement opportunities by intentionally weakening key technical institutions and formal executive processes.
6. Securing a loyal intelligence and security apparatus.
7. Securing parallel governance and decision-making structures that undermine the executive.

# #1 & #2: Capturing the SOC's and Weeding out skilled professionals

## Cabinet and SOC board changes

**April 2009:** Jacob Zuma becomes President of the Republic.

**October 2010:** President Zuma removes Public Enterprises Minister Barbara Hogan after she apparently refuses presidential interference into SOC board appointments.

**October 2010:** Vytjie Mentor called to a meeting at the Gupta Saxonwold residence and offered the Public Enterprise Ministry on condition that she drops the SAA flight route to Mumbai. Mentor refuses.

**November 2010:** Malusi Gigaba appointed Public Enterprises Minister. Makes wholesale changes to the SOC boards.

**ESKOM –**  
*Nazia Carrim* wife of Muhammed Noor Hussain, family member of Gupta business associate Salim Essa.

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

**Mark Pamensky** 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-Iqbal Sharma** has brokered Gupta deals and is in business with Gupta associates.

**Tembakazi Mnyaka** is the Chairperson of the Progressive Professional Forum.

# CONT: #1 & #2: Capturing the SOC's and Weeding out skilled professionals

## Cabinet and SOC board changes

**February 2011:** Gigaba appoints Brian Molefe CEO of Transnet. Together with CFO Anoj Singh, they proceed to sign off huge deals. (See next slide).

**May 2014:** President Zuma appoints Lynne Brown as Public Enterprises Minister. Changes to the Denel board, including: Nkopane "Sparks" Motseki who owns a stake in the Gupta uranium mine, Shiva; Dan Mantsha who is adviser to Zuma and Minister Faith Muthambi.

### September 2015:

President Zuma appoints inexperienced backbencher Mosebenzi Zwane into the important position of Mines Minister.

**Seot/Oct 2015:** Minister Brown appoints Brian Molefe as Eskom CEO, a month later, Anoj Singh joins him as Eskom CFO

**October 2015:** Former Deputy Minister of Finance Mcebisi Jonas is offered a R600-million bribe by the Guptas in return for the Ministry of Finance. He refuses.

### December 2015:

President Zuma fires Finance Minister Nhlanhla Nene (reportedly hours after he presented to Cabinet on the unaffordability of nuclear power); replaces him with Des Van Rooyen who arrives flanked by advisors Ian Whitley, Jessie Duarte's son in law, and Mohamed Bobat, former Gupta employee, but is forced to reverse his decision. He appoints Pravin Gordhan.

### March 2017:

President Zuma announces wholesale Cabinet changes, getting rid of Jonas and Gordhan. He replaces them with Malusi Gigaba and Sifiso Buthelezi. Highly experienced civil servants, including Director-General Lungile Fuzile and Deputy Director-General Andrew Donaldson have now left.



## Key players



Malusi Gigaba



Brian Molefe



Mosebenzi Zwane



Lynn Brown



Dan Mantsha



Des Van Rooyen



Sifiso Buthelezi

# #1 & #2: Capturing the SOC's



*Between 2012 and 2019 Transnet announced that it would spend R300bn improving its ageing rail network.*

## **December 2010:**

Malusi Gigaba moves Department of Trade and Industry official Iqbal Sharma (who is in business with the Guptas) to Transnet Board.

**December 2010:** The New Age reports that Brian Molefe will be appointed Transnet CEO.

**March 2011:** Three months later this happens.

**June 2011:** Gigaba creates a Special Board Tender committee, and appoints Sharma chair (this committee oversees tenders of R2.5bn and above)

## **October 2013:**

Transnet announces R50 billion locomotive tender. They appoint 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 Molefe and CFO Anoj Singh)

**February 2014:** One month before the tender is awarded to four train builders, Iqbal Sharma (who adjudicated the tender process), together with Rajesh Gupta and Duduzane Zuma, acquire a stake in VR Laser Services (ostensibly via VR Laser Property), an engineering firm that is positioned to benefit from the Transnet loco tender, (through the supply chain process).



## Key players



Malusi Gigaba



Iqbal Sharma



Brian Molefe



Anoj Singh



Rajesh Gupta



Duduzane Zuma



# #1 & #2: Capturing the SOC's

**March 2014:**  
Transnet awards  
R50bn loco  
tender to four  
train builders.

**2015:** Seemingly in a bid to gain access to the lucrative Regiments consulting contract with Transnet, the Gupta's try to buy Regiments, but fail. They then buy into advisory firm Trillian after which a material portion of the Regiments work is redirected to them, apparently with the help of their friend Eric Wood, a Regiments director, who moved to Trillian shortly thereafter.

Ultimately, according to media reports, Transnet has paid Trillian about R170-million for unexplained consulting work. Evidence has emerged of how Transnet paid both Regiments (apparently non-Gupta linked) and Trillian (Gupta linked) hundreds of millions for the same pieces of consulting work. Regiments is litigating against Trillian & Wood on it on this matter.

Evidence has also emerged of how the proceeds of these contracts have been spirited out of the country through various Gupta-linked shell companies. Trillian Chairman Tokyo Sexwale launched an investigation into the allegations against Trillian but the company was uncooperative and the investigation was stopped.

# #1, #2: Capturing the SOC's



*Denel overhaul between July 2015 and May 2017*

**July 2015:** Public Enterprises Minister Lynn Brown overhauls Denel Board and installs Dan Mantsha as chair. Mantsha then appoints Zwelakhe Ntshepe as CEO.

**January 2016:** 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 Guptas/Zuma access to Denel's intellectual property to develop and sell military products to the Asian market.

**May 2017:** Finance Minister Malusi Gigaba orders the dissolution of VR Laser Asia.



## Key players



Lynn Brown



Dan Mantsha



Zwelakhe Ntshepe



Duduzane Zuma



Malusi Gigaba

### #3 Regulatory shake-down

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 Minister of Mineral Resources Mosebenzi Zwane made this clear when he said: “We are clear that if companies cannot mine safely, they should not be mining at all, and should allow other potential holders, who respect the laws of the country, to continue mining.”

The use of the Health and Safety law, for example, is then used to achieve the firesale of existing assets in favour of sectional business interests.

# #1, #2 & #3: Capturing the SOC's: Coal contracts

How the law appears to have been used in favour of the Guptas.

## *IDWALA & BRAKFORTEIN – No water licence & weeding out of skills*

**2006:** Tegeta Exploration and Resources, Tegeta Resources, Idwala Coal are registered and obtain prospecting rights in Mpumulanga, Limpopo, Free State, KZN.



**2011:** News breaks that Idwala Coal is mining coal near a sensitive wetland on the Vierfontein Farm in Mpumulanga, apparently without the requisite water-use licence.

**2011:** News reports state that despite not having a water licence, Idwala has continued to mine and has by now damaged the area to such an extent that Department of Environmental Affairs documents show that “there exists the possibility that protected species were destroyed.”



**2014:** News breaks that Tegeta's Brakfontein Colliery in Mpumulanga has apparently also started mining coal illegally and that polluted water is draining into an adjacent wetland. The Department of Water Affairs issues a directive to the mine for “failing to take reasonable measures to prevent pollution and for using water without authorisation,” but apparently the company is able to continue its mining without resistance.

**2014:** News breaks that Zola Tsotsi (then Eskom chairman), has approved a R500-million coal supply contract with Idwala Coal in Mpumulanga. The contract doesn't go through after some senior Eskom executives express concern over Idwala's illegal mining operations. Shortly thereafter, President Zuma's Cabinet announces that the entire Eskom board will be replaced, many of whom are Gupta-aligned (see slide 4).

**March 2015:** Three months later, the Brakfontein Mine secures a coal supply contract worth R400-million per year. Despite, apparently not having a water licence, the mine is contracted to supply Eskom's Majuba power station in Mpumulanga for 10 years bringing the total value of the contract to R4-billion.

**10 YEARS**  
**TOTAL VALUE OF CONTRACT**  
**R4-BILLION**



In the lead up to the Brakfontein contract being awarded, the following things happen, according to the media:

- Four laboratory tests show that Brakfontein's coal is not of a high enough quality to use at Majuba power station.
- A fifth test finds the coal to be marginally within specification, but still high risk – Eskom accepts this test and allows Brakfontein to continue supplying the coal.

- However, shortly thereafter, Eskom informs Tegeta that it is suspending the supply contract to investigate quality inconsistencies following problems at Majuba
- Five days later, Eskom lifts the suspension after the Group Executive for Generation Matshela Koko apparently intervenes. The Eskom employees who found inconsistencies with the coal are coincidentally suspended and the two laboratories contracted to test the Brakfontein coal are also suspended.
- While Eskom, it appears, is going out of its way to bend the law to enable the Gupta- owned Brakfontein mine to continue, the power utility is using the full might of the law against one of Eskom's oldest coal suppliers. This is the Tegeta / Optimum scandal and perhaps encapsulates the story of state capture best (see next slide).

# #1, #2 & #3: Capturing the SOC's: Coal contracts

## How the law appears to have been used in favour of the Guptas.

### *TEGETA / OPTIMUM – How one company was forced out of business in favour of a Gupta company*

**July 2013:** Glencore, which owns Optimum Holdings, writes to Eskom because they are losing nearly R1bn per year based on their 1993 coal-supply contract of R150 per ton of coal. They invoke the “hardship clause”, which means that Optimum and Eskom could enter into negotiations if either party felt that the coal-supply contract was no longer in their best interest.

**May 2014** they sign a “Co-operation Agreement”, which paves the way for a new coal-supply contract to stop Glencore’s losses.

**April 2015:** Brian Molefe becomes Eskom’s acting CEO.

**May 2015:** A month after his appointment, Molefe apparently meets with Optimum’s CEO to say that Eskom would continue enforcing the old contract (R150 per ton), despite the losses to Glencore and the serious threat of job losses.

**July 2015:** Four things happen:

- i) Glencore asks Eskom if they will consider paying R300 per tonne of coal until the end of 2018, and then R570 between 2019 and 2023. Instead of considering this request, Eskom imposes a fine of R2,1-billion on Glencore for supplying poor quality coal, **ironically the same month that it lifted the suspension on the Gupta’s Brakfontein Mine which had been found to be of poor quality;**
- 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.



**September 2015:** Mosebenzi Zwane is appointed Mines Minister.

**November 2015:** 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.”

#4 Securing control over the country's fiscal sovereignty and #5 Securing control over strategic procurement opportunities by intentionally weakening key technical institutions and formal executive processes.

- Momentous national decisions are 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 actively suppressed or excluded from consideration. Processes are constructed in a manner that avoids deliberation on basic facts and critical evidence.
- Despite our mounting national debt and slowing economic growth, intense pressure is placed on the National Treasury to fund ill-considered political projects or issue sovereign guarantees that will bind the country to foreign debt for years to come. Guarantees are favoured because they enable the executive to collateralize the country while bypassing parliamentary approval. Often it is argued that large projects will be financed by China or Russia – all that is required is a State Guarantee. What is not explained is that these projects establish permanent obligations to foreign nations without the democratic and transparent scrutiny of parliament. Hence, if you have an irresponsible National Treasury, pursuing narrow interests, the consequences will be catastrophic for the nation.

# #4 & #5: Nuclear as an example

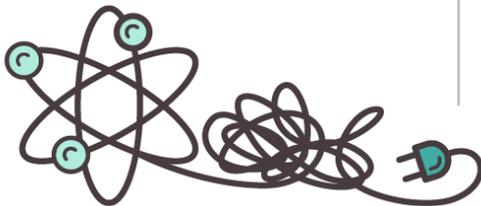
*The proposed 9.6GW nuclear project is one of the largest public investment programmes in South African history. Compared to the size of our economy, it would be one of the biggest investments undertaken by any country in the world. Therefore the decision has to be taken in the best interests of every South African, not sectional business interests. The consequences otherwise would be catastrophic for us, our children and our grandchildren and our great grandchildren for decades to come.*

**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.

**2011:** 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).



# #4 & #5: Nuclear as an example

**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 may never have been submitted to any a 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

**2017:**  
DoE transfers procurement to Eskom

Eskom releases RFI

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



## #6: Securing a loyal intelligence and security apparatus

The current leadership is increasingly and arguably deliberately governing through a national security lense. The use of clandestine forces to influence state operations and undermine constitutional institutions cannot be underestimated.

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

**December 2010:** Nomgcobo Jiba, widely known as a presidential ally, is promoted to Deputy 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.

**Dec 2011:** Menzi Simelane is suspended following a Supreme Court of Appeal decision that his appointment is invalid, based on questions around his independence.

**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 presidential ally, Thoshan Panday. He is subsequently arrested and charged with 116 crimes, including racketeering, murder and attempted murder. The charges are later withdrawn.

**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.

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

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

**December 2014:** President Zuma appoints Tom Moyane as Commissioner of the South African Revenue Service (SARS).

**December 2014:** Police Minister Nhleko suspends respected Hawks Head Anwar Dramat over allegations that he was involved in the illegal deportation of Zimbabwean criminal suspects in 2010. At the time he was apparently 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)



# #6: Securing a loyal intelligence and security apparatus

**January 2015:** Ntsemeza suspends Major General Shadrack Sibiyi, 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), also for alleged links to deportation of Zimbabweans.

**May 2015:** President Zuma “agrees” to let Nxasana resign. He is paid R17 million – the balance of his ten-year contract. Civil society groups file a case to review the R17 million golden handshake. In 2017 Nxasana drops a bombshell in his responding affidavit, effectively claiming President Zuma lied under oath when he said (in his affidavit) that Nxasana wanted to leave out of his own volition. Nxasana said: “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. “

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

**September 2016:** Jiba struck off the roll of South African advocates for her role in a number of politically related cases. She is placed on special leave.

**March 2017:** Hawks head Bernard Ntsemeza 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



# #7 of 7: Undermining of Collective Political Institutions in the Executive

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), as already stated above, and 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).

**In essence, we must ask the question whether Cabinet is still able to function as a forum for honest deliberation on matters of public policy.**