First Submission to the
Commission of Inquiry Into Allegations of State Capture
[‘Zondo Commission’]

regarding the
Estina/Vrede Integrated Dairy Project

by

Shadow World Investigations

2019
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Executive Summary and Recommendations

1. The following submission is the first of two submissions on the Estina/Vrede Dairy Project. In this submission we highlight the involvement of the Gupta family, their associates and other companies (the ‘Gupta enterprise’) in the conceptualisation, initiation and conduct of the Estina/Vrede Dairy Project, and place such involvement in the broader context of the capture of the Free State government. Our second submission will focus on tracing the disposition of monies paid to Estina by the Free State Department of Agriculture, and unravelling the complicated money laundering networks used to facilitate the diversion of government funds to the ultimate benefit of the Gupta enterprise.

2. Between the 11th of June 2012 and the 5th of May 2016, Estina was paid R280.2m by the Free State Department of Agriculture. These funds were paid to Estina in fulfilment of an agreement that envisaged that Estina would deliver a dairy farm (the Vrede Integrated Dairy Project) in the town of Vrede in the Free State. Estina agreed to invest its own share of funds (R220m), and also oversee the division of shares or benefits in the company to local beneficiaries to uplift the local economy.

3. Of the R280.2m paid to Estina by the Free State Department of Agriculture, only a fraction was ever paid for services or products related to the Vrede Dairy Project.

4. Instead, the vast majority of the funds were transferred from Estina’s bank accounts into accounts controlled by the Gupta family and their criminal network, which we call the Gupta enterprise.

5. The intended beneficiaries of the scheme – the local communities of Vrede and Warden – did not receive any notable material benefit from the project. Instead, the material benefits were received by the Gupta enterprise.

The Criminal Scheme and State Capture

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6. We submit that the entire Vrede Dairy Project, from the moment of its conceptualisation until its conclusion, was a criminal scheme designed to divert money from the government to the benefit of the Gupta enterprise. There was no real attempt to establish a Vrede Dairy Project at the scale promised in Estina’s business proposals, and certainly no meaningful attempt to pass on the benefits of such a project to local beneficiaries.

7. The scheme was aided and abetted by a number of captured government officials. The roles of Peter Thabethe, Mosebenzi Zwane and Ace Magashule are particularly notable in this regard. We also note the many connections between the Gupta enterprise and provincial politicians, including Thabethe, Zwane and Magashule.

8. The Estina/Vrede Dairy Project took place in the broader context of a more systematic capture of the Free State government. Records from the #Guptaleaks and other sources show that the Gupta enterprise was involved in at least four other projects through which they sought to extract funds from the Free State government to which they had no rightful claim. These include:

   a. the sale of laptops to the Office of the Premier by Sunbay Trading Ltd, a company working as an effective front for Sahara Computers, in which the Free State government was massively overcharged;
   b. the intention to initiate a ‘City of Tomorrow’ project, through which a Gupta enterprise entity in Dubai would be entitled to substantive unearned fees;
   c. the decision on the part of large numbers of Free State libraries and schools, and government departments, to place excessive subscriptions with The New Age newspaper, and to direct large amounts of advertising spending to the same;
   d. the provision of mobile medical units by Cureva/Mediosa to the Free State Department of Health, through which Gupta enterprise companies were due to earn enormous undue fees.
9. An examination of these four projects show that the Estina project was one of a number of criminal schemes designed by the Gupta enterprise and that, moreover, the Estina project followed a *modus operandi* developed and perfected through the Gupta enterprises’ capture of Free State government contracts.

10. Further, we note the Estina/Vrede Dairy Project:

   a. was conceptualised and approved within a period of only three months;
   b. was approved on the basis of a business plan and proposal that provided almost no detail as to the feasibility and cost of the project;
   c. was approved on the basis of a business plan and proposal that was found by an independent reviewer to be materially flawed, based on faulty assumptions and unfit for purpose;
   d. was approved without any competitive bidding process;
   e. was approved despite the fact that Estina appeared to have no agricultural expertise;
   f. was approved despite the fact that the sole director of Estina, Kamal Vasram, had no farming experience, but whose previous work experience was as an IT consultant for Intel and Lenovo, and who was invoicing Gupta-controlled entities on a monthly basis from 2011 onwards;
   g. was approved despite the fact that Estina only registered itself with the company’s register as being engaged in agricultural and farming related activities months after the project was approved;
   h. was entered into by the Free State Department of Agriculture by Peter Thabethe a full week before the project had been formally approved by the Provincial expo;
   i. failed to properly account for the ways in which it spent funds received from the Free State government, which itself was delinquent in failing to properly monitor and evaluate the project; and
   j. failed to identify and appoint beneficiaries to the project in a satisfactory manner and made no substantive effort to transfer shares in the Vrede project to the intended beneficiaries.
11. We further note that Estina:

a. secured free use of land on which the dairy was to be located through a highly favourable 99-year lease awarded to it by the Free State government;

b. was paid a total of R280.2m between the 11th of June 2012 and 5th of May 2016, of which only a tiny fraction was paid out to service providers or other companies who could reasonably be assumed to be engaged in agricultural activity;

c. and was paid R106m between May 2015 and May 2016, despite the termination of Estina’s involvement in the Vrede Dairy Project and despite the remedial measures called upon by the Accountant General for payments on the Project to be halted;

12. Further, we note that, despite loud and repeated denials, the Gupta enterprise was deeply involved in all aspects of the Estina dairy project from conceptualisation through to completion. In this regard we note that:

a. The Gupta enterprise had a pre-existing business relationship with Sanjeev Gautam through Indian company Gateway Infrastructure. Sanjeev Gautam held shares in the company alongside Anil Gupta. Sanjeev Gautam was Estina’s signatory to the contracts signed between Estina and the Free State Department of Agriculture in his stated role as Managing Director;

b. Sanjeev Gautam relied extensively on Sahara to secure visas to visit South Africa for himself and for representatives of Paras Dairy. It was during one such trip, secured with the assistance of Sahara, that Estina signed its MoU with Paras Dairy. That MoU was signed by Sanjeev Gautam for Estina and Gajinder Kumar for Paras Dairy, the latter of whom had secured his visa with the assistance of Gautam and Sahara;

c. Kamal Vasram, the sole director of Estina, had a long-lasting association with the Gupta enterprise, which included operating Sunbay Trading in the sale of Sahara laptops to the Free State
government, invoicing Gupta companies for R11 000 a month in 2011 onwards, attending a number of meetings with Tony Gupta, and, as a sales representative for Toshiba, managing the sale of Toshiba products through Sahara Computers;
d. SES Technologies, an Indian-registered company controlled by the Gupta family, was involved in securing the visa for Thabethe’s ‘research trip’ to India, on the basis of which Thabethe claims to have decided to pursue the Vrede Dairy Project with Estina and Paras;
e. Ashok Narayan, a Gupta enterprise employee, was involved in attempting to negotiate a 99-year lease agreement for use of the land in the Phumelele Municipality for Estina/Zayna Investments, and was accompanied by Johan Van Schalkwyk, an employee of the law firm van der Merwe Associates, which was kept on retainer by the Gupta enterprise. At the same time, Narayan was serving as an official advisor to the Premier Ace Magashule;
f. The Project Manager of Estina’s day-to-day farming, Chandrama Prasad, had a pre-existing personal and business relationship with the Gupta enterprise, including serving as a director in a business registered in India and controlled by the Gupta enterprise. In addition, Prasad’s son, Anubhav, was employed by Tegeta, a Gupta-owned mining company, from 2013 onwards;
g. At least one witness testified to the Commission that Tony Gupta attempted to intercede on Estina’s behalf to demand payment of funds that Estina claimed to be entitled to from the Free State Department of Agriculture;
h. Ashu Chawla (see dramatis personae above) and Sahara Computers were involved in securing work visas and necessary waivers from the South African Department of Home Affairs for at least three employees of Estina;
i. Estina’s registered address, as recorded in its two contracts with the Free State Department of Agriculture, was shared with a number of companies forming part of the Gupta enterprise;
j. Estina’s financial accounting servers were hosted on Sahara’s servers, and Sahara’s IT department was responsible for ensuring Estina employees and other individuals gained access to the servers;

k. Certain day-to-day transactions, including a R750 payment to Estina’s accounting firm, were routed through and approved by Sahara employees;

l. At least one employment contract between Estina and an employee listed Ashu Chawla as the proper contact person;

m. On the one notable occasion where Estina did seemingly import equipment from India, they did so from a supplier that had held at least one meeting with Atul Gupta, and relied on Gupta enterprise employees to make the requisite logistical arrangements with UTI South Africa.

13. Further, we note that at least three senior officials overseeing the project – Peter Thabethe, Mosebenzi Zwane and Ace Magashule – shared links with the Gupta enterprise. These links include:

a. When Peter Thabethe made his ‘research trip’ to India to meet with Paras Dairy, Estina’s intended business partner, he was accompanied by Ashok Narayan. Narayan was a member of the Gupta enterprise. Narayan was appointed a Premier’s Advisory Council by Ace Magashule on the 29th of February 2012. Thabethe’s trip to India was supported by SES Technologies, an Indian company owned and controlled by the Gupta enterprise. SES Technologies wrote a supporting letter so that Thabethe could receive a visa, in which it undertook to take care of Thabethe’s needs on the trip. #Guptaleaks records show that Thabethe made at least two trips to the Gupta’s Saxonwold compound in the company of Mosebenzi Zwane;

b. Zwane, who served as the MEC for Agriculture in the Free State during the period in which the Estina/Vrede project was conceptualised and implemented, received direct benefits from the Gupta enterprise. In October 2012, Zwane travelled to India with his gospel choir for an all-
expenses paid tour. This was only a month after he had approved the 99-year lease agreement entered into between the Department of Agriculture and Estina. The tour was paid for by the Guptas; a benefit that Zwane never declared as required by government regulation.¹

The #Guptaleaks revealed that Zwane made five visits to the Gupta’s Saxonwold compound between January and August 2013. Zwane was also an attendee at the wedding of Vega Gupta and Aakash Jahajgarhia.²

c. Ace Magashule appointed the Gupta enterprise employee Ashok Narayan as an advisor in February 2012. Magashule was also mentioned in the #Guptaleaks – one record from October 2012 shows a meeting between Tony Gupta and ‘Gift father.’ ‘Gift father’ is most likely a reference to Magashule, as Gift is the name of his son, Tshepiso.³ Tshepiso was employed as a consultant by the Guptas in at least 2010, and joined the Gupta brothers Ajay, Rajesh, Atul and their families on a three week holiday to New York City and Venice.⁴ Pieter-Louis Myburgh has alleged that Tshepiso lives in a house in the upmarket Johannesburg suburb of Saxonwold that is owned by Confident Concept, a Gupta enterprise company. In October 2019 the allegation was confirmed when it was reported that Tshepiso as evicted from the property by business rescue practitioners.⁵ Property records confirm that Confident Concept owned 18 Avonwold Road in Saxonwold, while #Guptaleaks records show that Gift was acknowledged to be living there. Myburgh further alleges that Ace Magashule held meetings with the Gupta brothers at this address. Tshepiso and another brother, Thato, travelled to Dubai in December

¹ Guptas Paid for Zwane Trip as Reward, Argus, 19 June 2017
² ‘The Sordid Story of Mosebenzi Zwane,’ Daily Maverick, 18 September 2018
³ Magashule’s Son on Luxury Trip to Dubai, Sowetan, 5 June 2017
⁴ ‘Groomed by the Guptas: How Free State Premier Ace Magashule, son Gift were caught and captured’, Biznews, 12 June 2017

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2015 and stayed in a luxury hotel for 8 days. The ‘bed and breakfast’
portion of the bill was covered by Sahara Computers.\(^6\)

14. Estina’s involvement in the Vrede Dairy Project was a shameful exercise of
theft and fraud that stole scarce government resources away from a much-
needed community project. The brazenness of the crime is breathtaking.

**The Enablers of State Capture**

15. The theft, laundering and integration of funds from the Estina project were
only made possible by enabling institutions. In this regard, we highlight
KPMG, Standard Bank, First National Bank and the Bank of Baroda as key
South African institutions that facilitated the rapid and repeated laundering of
funds. Further, Standard Chartered Bank, Mashreq Bank and the Bank of
Baroda are implicated in facilitating the laundering of funds through accounts
held by the Gupta enterprise in Dubai.

16. Of most serious concern, to our mind, are the roles of First National Bank and
the Bank of Baroda. Estina’s FNB account was was used by Gupta enterprise
to receive and launder over R100m in funds from the Free State government
that had been paid to Estina after their role in the Vrede Dairy Project had
been terminated. Bank of Baroda, meanwhile, was absolutely central to the
laundering of funds from the Estina project.

17. The role of enabling institutions, however, has not been dealt with
substantively in this submission. We direct the Commission, instead, to a joint
submission made by ourselves and *Open Secrets*, where the role of enablers
is more clearly outlined and the Estina case examined in more detail from this
perspective. It is worth noting, here, that records from the #Guptaleaks shows
senior Bank of Baroda employees in South Africa received benefits such as
holidays and flights paid for by the Gupta enterprise.

\(^6\) Ibid
Recommendations

18. Based on the evidence put forward in this submission, we recommend that:

17.1 the Commission further investigate and/or make findings of fact regarding:

i. the role of Peter Thabethe in the Estina/Vrede Dairy Project, and, in particular, whether or not his actions constituted a *prima facie* violation of his duties under the Constitution, the PFMA, the Prevention and Combating of Corrupt Activities Act or other relevant legislation;

ii. the role of Mosebenzi Zwane in the Estina/Vrede Dairy Project, and, in particular, whether or not his actions constituted a *prima facie* violation of his duties under the Constitution, the PFMA, the Prevention and Combating of Corrupt Activities Act or other relevant legislation;

iii. the role of Ace Magashule in the Estina/Vrede Dairy Project, and, in particular, whether or not his actions constituted a *prima facie* violation of his duties under the Constitution, the PFMA, the Prevention and Combating of Corrupt Activities Act or other relevant legislation;

iv. the role of Seipate Sylvia Dhlamini in the Estina/Vrede Dairy Project, and, in particular, whether or not her actions constituted a *prima facie* violation of her duties under the Constitution, the PFMA, the Prevention and Combating of Corrupt Activities Act or other relevant legislation;

v. the roles played by enabling financial institutions, in particular the Bank of Baroda, Standard Bank and FNB, in the Estina/Vrede scandal, and whether these institutions failed in their duties to report suspicious activity to the relevant authorities as required by law, in particular the Financial Intelligence Centre Act and the Prevention and Combating of Corrupt Activities Act;
vi. the role of the Gupta enterprise in conceptualising, initiating and benefiting from the Estina/Vrede Dairy Project; and

17.2. the Commission refer the results of these investigations to the relevant law enforcement agencies responsible for criminal prosecution and the institution of civil proceedings to facilitate recovery of assets, where appropriate.
1. Shadow World Investigations (hereafter SWI) is a not-for-profit limited liability company registered in the United Kingdom. SWI was formed by Andrew Feinstein and Paul Holden.

2. SWI's vision is of a global political environment in which those most responsible for the economic despoliation of grand corruption, including both perpetrators and enablers, are fully held to account for their crimes. At the same time, SWI believes that, with the right amount of political will, state institutions can be reformed in ways that inoculate them from the corrupting impacts of dirty money on democratic decision making.

3. SWI's mission, which aims to achieve its vision, is to detail and expose instances of corruption and its impact on democracy, human rights and sustainable development across the world in order to precipitate strong action against it.

4. SWI's staff members have a long history of undertaking complex investigations into politically sensitive issues of grand corruption. Both Paul Holden and Andrew Feinstein have published widely on South Africa’s political economy, democracy and the impact of corruption on South Africa’s social and political fabric. This has included four books written between Holden and Feinstein that have detailed the endemic corruption that tainted the notorious 1999 “Arms Deal.”

5. Andrew Feinstein and Paul Holden were also directors of Corruption Watch UK, the predecessor organisation to SWI. Corruption Watch undertook numerous investigations into grand corruption related to the arms and extractive industries, with a particular focus on exposing the blurring of lines between the state and business.
6. While this submission is made by SWI, the lead author is Paul Holden. His CV is attached as Annexure A. If SWI is called to give oral evidence this will be done by Paul Holden.
Introduction

7. The following submission is made by SWI to the Zondo Commission of Inquiry in terms of Rule 6 of the Rules of the Commission. The submission is intended to provide information to the Zondo Commission to assist the Commission in investigating allegations of state capture.

8. In particular, this submission consists of evidence-based findings regarding the Estina/Vrede Dairy Project, which falls within the ambit and scope of the Commission’s mandate detailed in its terms of reference.

9. This is the first of two submissions on this topic. This submission focuses on establishing the links between the Estina/Vrede Dairy Project and the Gupta criminal enterprise. The second submission details the money laundering systems used by the Gupta criminal enterprise to wash funds emanating from Estina, and provides a detailed description and depiction of how these funds were laundered into accounts controlled by the Gupta enterprise in South Africa and abroad.

10. This submission, as reflected in the Index, is structured as follows:

   a. **Section 1:** A brief preliminary discussion on the sources used and the implications of these sources for the Commission’s work in addition to ancillary matters of housekeeping;
   
   b. **Section 2:** An explanatory note locating the Estina project within our broader understanding of the Gupta network as an example of racketeering and organised crime;
   
   c. **Section 3:** A discussion of the context of the Estina/Vrede Dairy Project, in particular the extent of the Gupta network’s capture of the Free State government machinery and other contracts sought and secured through this state capture network;
   
   d. **Section 4:** An account of the initiation and conduct of the Dairy Project, in which we outline a disturbing number of violations of good
procurement practice, including the Public Finance Management Act, that speaks to corrupt conduct;

e. **Section 5:** A discussion of the conduct of the Vrede Dairy Project during the period in which it was under Estina’s control, and the multiple failures of the Free State government in establishing basic mechanisms of accounting to ensure that Estina was using the funds as stated;

f. **Section 6:** A discussion of the payment of funds to Estina by the Free State government after the cancellation of Estina’s contract with the Free State government;

g. **Section 7:** A detailed discussion of the role played by the Gupta enterprise in conceptualising, initiating, running and profiting from the Estina/Vrede Dairy Farm project, and the connections between the Gupta enterprise and government officials responsible for overseeing the initiation and implementation of the Estina/Vrede Dairy Project;

h. **Section 8:** A discussion of the benefits accruing to Free State government officials, their family or associates from the Gupta family.
Dramatis Personae

Chaturvedi, Vikas: An employee of the Guptas based in India responsible for logistical and administrative tasks such as arranging passports and visas.

Chawla, Ashu: A central cog in the Gupta enterprise. Chawla served as the Chief Operating Officer of Sahara. The #Guptaleaks archive shows that Chawla was intimately involved in the conceptualisation and execution of the Vrede/Dairy Project, as well as the many other Gupta-linked scandals. Chawla was directly involved in monitoring and directing the offshore money laundering networks used by the Guptas in UAE and India. Chawla held directorships in, inter alia, Oakbay Investments (Pty) Ltd, Oakbay Resources and Energy (Pty) Ltd and Sahara Systems (Pty) Ltd. Oakbay Investments was the recipient of a large sum of money ultimately derived from payments made to Estina by the Free State government.

Dhlamini, Seipate: The Chief Financial Officer at the Free State Department of Agriculture when the first payments were made to Estina, which she approved. Both the Accountant General and Public Protector recommended in 2014 that Dhlamini face disciplinary proceedings in relation to the Estina payments. These proceedings were never instituted. Dhlamini was indicted in 2018 for her role in approving payments to Estina. The criminal charges were dropped in late 2018.

Gautam, Sanjeev: An Indian national closely connected to the Gupta enterprise and to Estina. Gautam was the signatory to a number of key contracts signed in the Estina case, notably the two partnership agreements signed between Estina and the Free State Department of Agriculture and June and July 2012. Gautam was recorded as the ‘Managing Director’ of Estina in the contracts. Documents from the #Guptaleaks show that Gautam relied on the logistical support of the Gupta enterprise to secure visas and other assistance. They also show that he was a shareholder in an Indian company, Gateway Infrastructure, alongside Anil Gupta. Anil Gupta and Arti Gupta (the wife of Rajesh Gupta) served as directors in Gateway Infrastructure. Gautam held these shares prior to and during the Estina/Vrede scandal. Documents from the #Guptaleaks also show that Gautam was paid an amount equal to approximately R30 000 on the instructions of Ashu Chawla in June 2019.
2012 – the same month that Estina signed its contract with the Free State Department of Agriculture.

**Grover, Sanjay:** A key Gupta lieutenant based in Dubai. Grover was responsible for managing, overseeing and conducting business through the Guptas offshore money laundering network based in the UAE. Grover was listed as the sole director of a number of these companies, the structure of which is described in more detail in the second submission to be made on Estina.

**Gupta, Achla:** Sister of the three Gupta brothers. Records from the #Guptaleaks show that an amount derived from money laundered from the Estina proceeds was destined to be paid to her.

**Gupta, Ajay:** The oldest Gupta brother.

**Gupta, Arti:** The wife of Rajesh Gupta. Documents from the #Guptaleaks show that Arti was the co-director of an Indian company, Gateway Infrastructure, alongside Anil Gupta. Sanjeev Gautam, Estina’s ‘managing director’, was a shareholder in Gateway Infrastructure prior to and during the Estina/Vrede dairy project. Arti had previously been registered as a director of Confident Concept (Pty) Ltd, the company that owned the house occupied by Tshepiso Magashule.

**Gupta, Anil:** The brother-in-law to the Gupta brothers, married to Achla Gupta. Anil held shares in Gateway Infrastructure alongside Sanjeev Gautam, the ‘managing director’ of Estina.

**Gupta, Atul:** The second oldest Gupta brother. Atul served as the director of, *inter alia*, Confident Concept (Pty) Ltd and Sahara Computers (Pty) Ltd.

**Gupta, Rajesh:** The youngest of the Gupta brothers, also known as Tony. Rajesh served as the director of, *inter alia*, Confident Concept (Pty) Ltd and Mabengela Investments (Pty) Ltd. The #Guptaleaks records show that Tony was frequently informed of the financial position of the offshore network of companies based in the

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UAE that was used to, inter alia, launder and dissipate funds paid to Estina by the Free State Department of Agriculture.

**Gupta, Shivani**: The wife of Ajay Gupta. Records from the #Guptaleaks show that an amount derived from money laundered from the Estina proceeds was to be paid to her.

**Gupta, Vega**: Niece to the three Gupta brothers. Vega Gupta’s married Aakash Jahajgarhia at Sun City in 2013. The lavish ceremony was ultimately paid for with funds paid to Estina by the Free State Department of Agriculture and laundered through the Gupta enterprises’ elaborate offshore network.

**Indurjeeth, Saliesh**: An employee of Sahara Systems, who often controlled the email address ‘admin@sahara.co.za’. Emails from the #Guptaleaks show that Indurjeeth was involved in managing logistics and other matters for Estina. They also show that Indurjeeth controlled and ran the email address accounts@estina.co.za.

**Joemat-Petterson, Tina**: served as the national Minister of Agriculture, Forestry and Fisheries between the 2009 and May 2014. According to an investigation by Scorpio, Joemat-Petterson held a number of meetings with Tony Gupta in 2012. The same investigation notes that these meetings took place contiguous with key developments in the Estina project that had relevance to the national Department of Agriculture. In particular, the meetings took place during the period in which the Free State provincial government was seeking to allocate funds to the payment of Estina, whose transfers would have relied on the approval of the national Department of Agriculture.

**Ju, Lin Yu (Alex)**: $50,000 of the money stolen and laundered from the Estina project was transferred to Ju as a loan.

**Kumar, Gajinder**: An employee of VRS Foods trading as Paras Dairy. Kumar signed a Memorandum of Understanding on behalf of VRS/Paras with Estina in April 2012. The #Guptaleaks archive shows that Kumar’s visa to visit South Africa and sign the MoU was secured with the assistance of Gupta employees.
**Magashule, Ace**: The Premier of the Free State province during the life of the Estina/Vrede Dairy Project. Minutes of Provincial cabinet minutes show that Magashule approved the Estina/Vrede Dairy Project in 2012. In 2014, Magashule was instructed by the Accountant General and the Public Protector to halt payments on the project in 2014. This was not done.

**Magashule, Tshepiso Gift**: Ace Magashule’s son. The #Guptaleaks archive show that Tshepiso was employed by the Gupta-controlled company Mabengela Investments alongside Duduzane Zuma, the latter of whom held a directorship in the company. He also joined the Gupta family on holiday. Tshepiso lived in a Johannesburg home on Avonwold in Saxonwold owned by Confident Concepts, a Gupta-controlled company. Records from the #Guptaleaks show that Confident Concepts paid for the electricity bills at the Avonwold House. Pieter-Louis Myburgh, who has written extensively on State Capture and the Premiership of Ace Magashule, alleges that Ace Magashule held a number of meetings with the Gupta brothers at the Avonwold address. The #Guptaleaks shows meeting with Tony Gupta and ‘Gift Father’ – Ace Magashule – at the Gupta compound in Saxonwold.

**Naidu, Ugeshni**: An employee of Sahara Computers. The #Guptaleaks records show that Naidu was involved in at least one email discussion related to the day-to-day management of Estina’s accounting and payments.

**Narayan, Ashok**: Widely described as a key Gupta lieutenant, Narayan has been implicated in a number of Gupta-linked scandals, including acting as the frontman for ‘Homix’, a company that received success fee payments from Neotel in relation to the award of Transnet contracts. Narayan was appointed to an Advisory Council convened Ace Magashule in February 2012. Narayan also travelled with Thabethe to India to ‘research’ dairy production partners. Narayan served as a director of Linkway Trading, the South African entity through which the Guptas paid laundered Estina funds to settle costs related to the infamous Sun City wedding. In one email emanating from the #Guptaleaks from November 2012 Narayan described himself as ‘Member: Advisory Council, Office of the Premier, Free State Province, Africa.’
Nath, Ravindra: A senior Gupta enterprise employee. The #Guptaleaks emails show that Nath was part of email conversations related to Estina, including sending documents to various banks in what appears to be an attempt to raise loans for the Estina project. Nath was a director in a number of Gupta enterprise companies such as Tegeta Exploration & Resources, Mabengela Resources and Energy and Idwala Coal.

Prasad, Chandrama: An employee of Estina based in Vrede. Prasad served as the Project Manager of the Estina/Vrede Dairy Project in Vrede. Emails from the #Guptaleaks show that Prasad secured work visas and other necessary waivers from the Department of Home Affairs with the assistance of Ashu Chawla. They also show that Prasad had business relationship with the Gupta enterprise that preceded his employment by Estina.

Ragavan, Ronica: A key Gupta lieutenant, who was appointed acting CEO of the Gupta holding company, Oakbay Investments (Pty) Ltd in 2016. Ragavan held directorships in, *inter alia*, Linkway Trading (Pty) Ltd, Oakbay Resources and Energy and Sahara Systems (Pty) Ltd.

Sharma, Iqbal: A key player in the alleged capture of Transnet on behalf of the Guptas. Sharma was appointed to the powerful Board Acquisitions and Disposals Committee at Transnet, which was involved in steering large locomotive contracts to China South Rail. Sharma was also a business partner of Salim Essa, another well-known Gupta lieutenant.

Tak, Evan: A senior Sahara Computers employee. The #Guptaleaks emails show that Tak was involved in at least one discussion regarding the importation of equipment for Estina. Tak served as a director of Sahara Computers (Pty) Ltd.

Thabethe, Peter: The Head of Department for the Free State Department of Agriculture during the conceptualisation and life of the Estina/Vrede dairy project. Thabethe was a key player in driving the conceptualisation and formalisation of the project, and signed the partnership agreements between the Department and Estina in June and July 2012. Both the Accountant General and Public Protector First Submission on Estina/Vrede Dairy Project to the Zondo Commission by SWI 2019
recommended disciplinary hearings be started against Thabethe for his role in the approval of the Estina/Vrede project. Investigations by Treasury also found that he had violated the Public Finance Management Act in approving the project. Thabethe was indicted alongside a number of other individuals in 2018, and was also subject to asset seizures following applications by the NPA and Asset Forfeiture Unit in the same year. The criminal charges were dropped in late 2018, while the asset forfeiture cases were dismissed by the High Court on two occasions in the same year.

**Tuteja, Suresh**: A former employee of JIC, a Gupta-linked and owned company, Tuteja operated in India and provided assistance in managing the Gupta’s offshore companies and banking.

**Vasram, Kamal**: The main frontman for the Estina/Vrede Dairy Project. Vasram was the sole director of Estina (Pty) Ltd and Mohoma Mobung Diary [sic] Project (Pty) Ltd, the latter of which was intended to house shares for the local beneficiaries of the Estina/Vrede dairy project. Prior to directing Estina, Vasram had worked as in IT at Intel and then Lenovo. Documents from the #Guptaleaks show that from at least March 2011, Vasram invoiced Linkway Trading, a Gupta enterprise company, R110 000 on a monthly basis as a consultancy fee. Documents filed by the NPA in asset forfeiture proceedings have shown the Vasram was intimately involved in the extensive money laundering network used to launder funds paid to Estina by the Free State Department of Agriculture, either as an account holder or in approving financial arrangements on Estina’s behalf. Kamal Vasram was also the sole director of Sunbay Trading Ltd, a front for Sahara Computers that was used to sell laptops to the Free State government at massively overinflated prices.

**Zuma, Duduzane**: The son of former President Jacob Zuma. Duduzane earned a monthly salary as an employee and director of Mabengela Investments, in which he held a 45% shareholding. Mabengela Investments also employed Tshepiso Magashule. Rajesh Gupta served as a director of Mabengela Investments alongside Duduzane. Duduzane also served as a director in Sahara Computers.
**Zwane, Mosebenzi:** A key figure in multiple state capture allegations, Zwane served as the Free State MEC for Agriculture during the period in which the Estina/Vrede dairy project was approved and payments were first made. Zwane was subsequently appointed as the Minister for Minerals and Energy, where he allegedly made numerous interventions to benefit the Gupta family and its corporate interests. Zwane, as MEC for Agriculture, approved the initiation of the Estina/Vrede dairy project. Zwane was directed, by the Accountant General, to initiate disciplinary proceedings against Peter Thabethe and Seipate Dhlamini, and to halt payments on the Estina/Vrede project. Zwane implemented neither of these instructions. The #Guptaleaks records show that Zwane, his gospel choir and the future mother of his child, were treated to an all-expenses paid trip to India in October 2012, the same month Zwane approved a highly favourable lease agreement between the Free Department of Agriculture and Estina.
Section 1: Sources, Admissibility and Right to Reply

11. In compiling this submission, we have relied on a number of sources and documents that we believe the Commission already has in its possession. While this indicates that the Commission will be familiar with their content, we continue to undertake an in-depth summary and discussion of these documents. We do this to provide cogency to this submission and to prevent the need to reference material evidence that is not addressed in the body of the text.

12. These documents have already been placed before the Commission, and/or other South African courts and are therefore within the public domain. As such, we do not foresee any issues with establishing their admissibility.

13. In any event, we take this opportunity to highlight our understanding that Commission’s of inquiry are not courts of law and thus the rules of evidence and pleadings are considerably less strict than those of a court. A Commission can therefore inform itself of facts in any way it sees fit, including hearsay evidence, newspaper reports and other submissions. This is because a Commission’s function is primarily designed to uncover the truth of a matter, and discovering the truth of a matter can sometimes be better achieved by a Commission by informing itself from a wide range of sources.

14. The primary sources upon which we rely are:

   a. The ENS/Treasury Report (and the evidence on which it is based);
   b. Documents submitted as part of the asset forfeiture proceedings against a number of individuals and entities related to the Estina/Vrede Dairy Project;
   c. The #Guptaleaks archive of emails and supporting documents;
   d. Testimony led before this Commission;
   e. The provisional and final reports of the Public Protector regarding the Estina/Vrede Dairy Project;
f. Ancillary documents such as departmental annual reports or forensic reports related to other aspects of State Capture; and

g. Newspaper and media reports.

15. As we believe that the majority of these documents are already available to the Commission, we do not attach them here as annexures to this submission. We are happy to furnish these documents to the Commission should this be requested.

16. We do, however, provide a number of annexures, a full list of which is provided above. These annexures have been attached where they may not be easily accessible to the Commission or have not yet been made publicly available.

17. SWI has not approached individuals or companies named in the submission hereunder for comment. We understand that parties implicated by testimony or other evidence are notified and will be called to provide evidence or other information to the Commission at their discretion. The Commission, in addition, has powers of compulsion not available to us, including requiring testimony under oath. In the circumstances, we have opted to follow the Commission’s procedures in this regard, rather than conducting a parallel process of seeking comment from witnesses who may, in any event, be called to provide evidence, and whose evidence would be tested by the Commission.
Section 2: The Context of State Capture and the Gupta Enterprise

2.1. Racketeering and the Gupta Family ‘Enterprise’

18. Before noting the details of Estina case, we believe it is necessary to place it within its correct context in order to provide conceptual rigour.

19. Based on the available evidence, it is apparent that the Estina project is part of pattern of organised criminal activity headed by Ajay, Rajesh (Tony), and Atul Gupta. This organised criminal activity is best understood as a form of racketeering.

20. Racketeering is criminalised in South African law through the Prevention of Organised Crime Act 121 of 1998 (POCA). POCA criminalises a set of activities designed to aid and abet a ‘pattern of racketeering activity.’ A pattern of ‘racketeering activity’ is defined as ‘the planned, ongoing and continuous repeated participation or involvement in any offence referred to in Schedule 1.’ Many of the Schedule 1 offences are relevant to the Gupta enterprise, including, but not limited to:

   a. Any offence contemplated in Part 1 to 4, or Section 17, 18, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004;
   b. Theft, whether under the common law or a statutory provision;
   c. Fraud;
   d. Forgery or uttering a forged document knowing it to have been forged;
   e. Any offence relating to exchange control;
   f. Defeating or obstructing the course of justice;
   g. Perjury;
   h. Subornation of perjury;

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7 Prevention of Organised Crime Act 121 of 1998, Chapter 1,
i. Any offence the punishment wherefor may be a period of imprisonment exceeding one year without the option of a fine;

j. Any conspiracy, incitement or attempt to commit any offence referred to in this schedule

21. POCA further establishes that racketeering can be undertaken by an enterprise. An enterprise is defined as including ‘any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity.’

22. In layman’s term, a racketeering enterprise consists of a collection of individuals, companies and associations that work together towards a common criminal goal. The criminal goal is usually, but not always, the enrichment of the enterprise and its constituent members. This is often to the detriment of the state or the common good more broadly.

23. Obviously, the ‘enterprise’ is not established as a formal legal or juristic entity. POCA acknowledges that an enterprise consists of people ‘associated in fact although not a juristic person or legal entity.’ Instead, it exists by virtue of a set of interlocking interpersonal arrangements, many of which may be fleeting or transitory, and some of which will be codified through personal agreements and absent legal relationships.

24. In *S v Miller and Others* before the High Court, the Honourable Judge Gamble J provides a detailed discussion of how racketeering has been understood in South African law following the passing of POCA in 1998. We do not repeat this discussion in full, but note Gamble J’s observation that

*The term ‘racketeering’ is derived from the American legislation on which POCA is based (The Racketeer Influenced and Corrupt Organizations Act of 1970 or ‘RICO’). While the word as such is not defined in POCA, the*

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8 Ibid, Chapter 1
9 (SS13/2012) [2017] ZAWCHC 124 (4 September 2007)

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Shorter Oxford Dictionary defines a 'racketeer' as “a person participating in or operating a dishonest or illegal business, frequently practising fraud, extortion, intimidation, or violence.” The essence of the dictionary definition then is a criminal business with the emphasis on the latter.\(^{10}\)

25. Gamble J further notes, approvingly, the findings of the Supreme Court of Appeal in \textit{Eyssen v The State}.\(^{11}\) In \textit{Eyssen}, the Supreme Court attempted to provide a degree of rigour in determining the nature of a racketeering enterprise, and how such an enterprise may be established. After noting the definition of ‘enterprise’, the SCA noted that

\begin{quote}
\textit{It is difficult to envisage a wider definition. A single person is covered. So it seems is every other type of connection between persons known to the law or existing in law; those which the Legislature has not specifically included will be incorporated by the introductory word ‘includes’. Taking a group of individuals associated in fact, which is the relevant part of the definition for the purposes of this appeal, it seems to me that the association would at least have to be conscious; that there would have to be a common factor or purpose identifiable in their association; that the association would have to be ongoing; and that the members would have to function as a continuing unit. There is no requirement that the enterprise be legal, or that it be illegal. It is the pattern of racketeering activity, through which the accused must participate in the affairs of the enterprise that brings in the illegal element; and the concepts of ‘enterprise’ and ‘pattern of racketeering activity’ are discreet. Proof of the pattern may establish proof of the enterprise, but this will not inevitably be the case.}
\end{quote}

26. Based on the above, it is apparent that proving the existence and parameters of a racketeering enterprise thus relies on taking a wide view of what may be considered to be individual criminal acts, in so doing identifying any notable patterns of direction and control, and knitting together a set of relationships

\(^{10}\) \textit{Ibid}, paragraph 160 \\
\(^{11}\) [2008] ZASCA 97;[2009] 1 All SA 32
and transactions into a singular whole. Identifying an enterprise is, thus, further, an act of deduction and inference, drawing on often complex developments to construct a view of a comprehensive whole.

27. This approach and reasoning was adopted by the NPA in formulating, *inter alia*, racketeering charges against Mr. Jacob Zuma, Thint Holding (Southern Africa) and Thint (PTY) Ltd. These charges were levied in an indictment served on Mr. Zuma and both Thint entities in December 2007. The Zuma/Thint indictments alleged that Mr. Schabir Shaik ran a group of companies (the Nkobi Group) that appeared to be legitimate businesses but were primarily respectable fronts that would be used to secure government and other contracts through corruption and ‘political connectivity.’ Mr. Zuma was alleged to be an employee of the Nkobi enterprise, receiving regular and consistent payments from the Nkobi enterprise to assist it in its criminal endeavours.

28. The Zuma/Thint indictment sets out the ‘objects and methods’ of the Nkobi enterprise, which can be read as a template of how a racketeering enterprise operates. Indeed, based on our reading of the many cases involving the Gupta family, the Gupta ‘enterprise’ was akin to the alleged Nkobi enterprise described in the Zuma/Thint indictment, as set out in the ‘objects and methods.’ We thus repeat the NPA’s concise description (with contextual excisions) below:

*In addition to the objects set forth in the General Preamble, the objects of the Enterprise included, but were not limited to the following:*

141. *To cultivate and maintain corrupt relationships with persons in positions of political power and high government office... in order to cultivate “political connectivity”;*

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12 Indictment in the Matter of Jacob Gedleyihlekisa Zuma, Thint Holdings(Southern Africa) (PTY) Ltd and Thint (PTY) Ltd
142. To make payments to and on behalf of such persons in return for their services in advancing the interests of the Enterprise as and when required;

143. It was part of the objectives of the Enterprise that it, its employees, and persons and entities associated with it, would conceal or disguise payments to persons of political power and high government office;

144. It was nevertheless also part of the objectives of the Enterprise to procure funding or future funding from potential business partners, through its reliance on political connectivity, with the intention of enabling the Enterprise, its subsidiary and associated companies to maintain the payments to persons of political power and high government office in return for their services in advancing the interests of the Enterprise and its business partners as and when required;

145. To advertise political connectivity to or create the perception of political connectivity in the minds of potential business partners and thereby to induce, persuade or intimidate such partners to enter into, and maintain, joint venture agreements with the enterprise and on terms favourable to the enterprise and thereby also to enable the Enterprise to maintain its payments to persons of political power and high government office;

146. To attempt, through corrupt means, to secure lucrative contracts in the public sphere, either alone or through joint venture partnerships with other business partners;

147. To secure financing in the form of capital investments and loans to fund the operations of the enterprise;

148. To preserve and protect the enterprise, its members and its profits through the use of political connections. Such preservation and
protection included protection against official investigations and/or prosecution;

149. Nevertheless to maintain the appearance that the Enterprise was a legitimate business.\textsuperscript{13}

29. Based on the preceding and the forthcoming, we highlight, here, salient features of the Gupta enterprise that should be borne in mind when reading the remainder of this submission. These features are:

a. The Gupta family enterprise exists \textit{de facto} not \textit{de jure};

b. The existence of the enterprise is inferred from observing a pattern of racketeering activity;

c. The enterprise can (and does in this instance) engage in both legitimate business activity and criminal endeavours;

d. The object of the enterprise was to generate the maximum benefit for the enterprise itself, the Gupta family and its employees and associates;

e. The legitimate businesses included in the Gupta enterprise were used, \textit{inter alia}, to facilitate racketeering activities, including disguising criminal activities behind a veneer of respectability or absorbing and distributing funds derived from criminal activity;

f. The enterprise consists of a wide range of individuals, companies and other associations, some of which appear to be, on the surface, separate and distinct legal service providers but who were, instead, employees or associates of the racketeering enterprise ultimately taking \textit{de facto} direction from the Gupta family or their representatives and associates;

g. These employees and associates must, by logical inference, include those government officials and state employees we identify further below, who were instrumental in awarding the Gupta enterprise government contracts.

\textsuperscript{13} \textit{Ibid}, paragraphs 140 - 149
2.2. The Participants in the Gupta Enterprise and Estina

30. Just like legitimate businesses, racketeering enterprises can change radically in terms of leadership and staffing over time. Unlike legitimate business, these changes are not recorded legally, but must be inferred from available evidence.

31. Nevertheless, the totality of disclosures arising from the #Guptaleaks and media reporting thereon allows us to start drawing an outline of the scale, content and structure of the Gupta enterprise. We note the following elements of it:

a. Family members in the role of shareholders, offices and directors (both \textit{de jure} and \textit{de facto}) for the Gupta enterprise, in particular Rajesh, Ajay and Atul Gupta.\footnote{The role of the Gupta brothers as the heads of the Gupta enterprise has been discussed extensively elsewhere. See, for example, \textit{Betrayal of the Promise: How South Africa Is Being Stolen}, May 2017}

b. Companies: this would encompass ‘legitimate’ companies such as Oakbay Investments (Pty) Limited (“OIL”) and dozens of front companies secretly beneficially owned by the Gupta organization such as Fidelity Enterprises Limited and Accurate Investments.\footnote{As we show in our further submission, Fidelity Enterprises and Accurate Investments formed key nodes in laundering funds from the Estina project. We also show how Oakbay Investments was a major beneficiary of funds from the Estina project.} In this context, ‘legitimate’ does not mean that these companies were only engaged in non-criminal activities, but rather that these companies were designed to appear legitimate and conducted some legitimate business. This legitimacy was used to integrate, distribute and disperse the proceeds of criminal activity so as to disguise its ultimately illicit origin.

c. Employees, Lieutenants and Strawmen:
   a. this includes ‘formal’ (i.e. contractually employed or appointed within a ‘legitimate’ company) and de facto companies. Formal employees would include:
1. Ashu Chawla and Ronica Ragavan\textsuperscript{16}

b. It also includes de facto or undeclared employees or frontmen, who acted as nominal directors for front companies beneficially controlled and owned by the Gupta enterprise, including

1. Ashok Narayan and Sanjay Grover\textsuperscript{17}

32. A racketeering enterprise can also contain \textit{de facto} divisions or business units that focus on specific tasks or competencies. Where this is the case, it is reasonable to expect that different elements of a criminal enterprise become \textit{activated}.

33. Based on the available evidence, we have identified the following individuals and companies from the Gupta family enterprise, that participated or were ‘activated’ in relation to the conceptualisation, initiation, and management of the Estina project, including the process of laundering and integrating proceeds of crime:

a. \textbf{Individuals}

Chaturvedi, Vikas
Chawla, Ashu
Choubey, Santosh
Gautam, Sanjeev
Grover, Sanjay
Gupta, Ajay
Gupta, Arti
Gupta, Anil
Gupta, Atul
Gupta, Rajesh
Gupta, Shivani
Indurjeeth, Saliesh
Khosla, Naresh

\textsuperscript{16} See dramatis personae above
\textsuperscript{17} \textit{Ibid}

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Magashule, Tshepiso Gift
Naidu, Ugeshni
Narayan, Ashok
Nath, Ravindra
Prasad, Chandrama
Ragavan, Ronica
Tak, Evan
Vasram, Kamal

b. **Companies**

Accurate Investments (UAE)
Aerohaven Trading (Pty) Limited (South Africa)
Estina (Pty) Ltd (South Africa)
Fidelity Enterprises (UAE)
Gateway Limited (UAE)
Gateway Infrastructure (India)
Global Corporation LLC (UAE)
Linkway Trading (South Africa)
Oakbay Investments (Pty) Limited (South Africa)
SES Technologies (India)
Sahara Computers Ltd (South Africa)
Vargafield (Pty) Limited (South Africa)
Section 3: The Local Context: The Gupta Enterprise and the Capture of the Free State

34. In the period prior to and during the Estina/Vrede Dairy Project, the Gupta enterprise was engaged in a number of schemes designed to extract resources not due to it from the Free State provincial government. The Gupta enterprise achieved this with the active complicity of Free State government officials.

35. The Estina/Vrede Dairy Project was thus a continuation and embodiment of an extensive process of looting, influence peddling and extraction focused on the Free State, of which the Estina/Vrede Dairy Project was one of the most lucrative. This context helps to explain how and why the Gupta enterprise was able to create the Estina/Vrede Dairy Project with such apparent ease, and extract hundreds of millions of rand in the process.

36. This section briefly examines the evidence of the extent of the capture of the Free State, focusing on four particular case studies.

3.1. The Purchase and Distribution of Laptops by the Office of the Premier by Sunbay Trading and Sahara Computers

37. The documents relevant to the below discussion are attached as Annexure B.

38. In June 2011, Kamal Vasram established Sunbay Trading Pty Ltd.\(^\text{18}\) As we show in more detail below, Kamal Vasram was central to the Estina project as he was the sole director of Estina Pty Ltd.

39. In March 2012, Free State Premier Ace Magashule delivered his annual budget speech. He noted that the province had initiated a ‘Laptops for Bursary

holders program. The program envisioned distributing an unnamed number
of laptops to tertiary learners who had received bursaries to facilitate their
studies.

40. The #Guptaleaks archives show that Sunbay Trading Pty Ltd secured at least
two contracts against this program. The #Guptaleaks records further strongly
suggest that Sunbay, at least in relation to these contracts, acted as a ‘front’
for Sahara Computers.

41. According to investigations by Pieter-Louis Myburgh, emails sent in July 2012
between staff members in the Premier’s Office and the State Information
Technology agency show that the Premier’s Office was interested in
purchasing the first tranche of laptops for the learner program from Sunbay.
As discussed in more detail below, Estina, of which Vasram was the sole
director, had signed its first contract with the Free State government the
month prior.

42. The #Guptaleaks records show that Sunbay transferred R28m to Sahara in
four payments between the 7th and 22nd of September 2012. In a statement
sent to Sunbay Trading by Sahara Computers, the following payments were
recorded.

   a. R3 648 000 on the 7th of September 2012;
   b. R300 001 on the 14th of September 2012;
   c. R4 999 999 on the 14th of September 2012;
   d. R19 000 000 on the 22nd of September 2012

43. The statement further reflected that Sunbay still owed Sahara a further R324
000.

44. While we have not seen direct evidence that these payments related to the
provision of laptops to the Free State government, we submit these payments

First Submission on Estina/Vrede Dairy Project to the Zondo Commission by SWI
2019
should be considered against another important document emanating from the #Guptaleaks

45. As we discuss in considerably more detail later, in December 2012, a Gupta enterprise employee, Ravindra Nath, sent an email to the Chief Executive of the Bank of Baroda in South Africa. The emails appear to be part of an attempt to secure a loan for Estina from the Bank. In furtherance of this plan, Nath attached a number of documents to prove Estina’s suitability for a loan. One of the documents sent by Nath was the CV for Kamal Vasram.

46. The CV records Kamal Vasram as the “Director & Founder” of Sunbay Pty Ltd. It also provides a list of notable successes on the part of Sunbay. The first success is recorded as ‘successfully Bid & Won the supply of 5000 Notebook Computers to the Dept of Education: Successfully executed 48 hour role out plan of 5000 Notebook computers across the Free State province.’

47. The #Guptaleaks records indicate that Sunbay received a second contract in 2014. On the 30th of April 2014, Matshediso Mokoena, the Acting Head of Supply Chain Management in the Office of the Premier, emailed Vasram (kamal.vasram@sunbay.co.za). The email attached a letter directed to Sunbay Ltd by Ms. Mokoena on the letterhead of the Free State Office of the Premier. The letter noted:

Department of the Premier hereby request Sunbay Trading to continue with the procurement of Computer Equipment as per Quote FS1562NB. The Department further commits to pay for the above mentioned items upon receipt thereof. The department is unable to issue out an official order due to the monthly system maintenance. Official order will be issued out at a later stage with the relevant contents.’

48. The letter attached the quotation sent by Sunbay Ltd to the Office of the Premier. The quotation was for a total price of R4 578 810, constituted of:
a. 156 Toshiba 3210M Laptops at a unit price of R12 197.87 (excluding VAT), for a total price of R1 902 867.72 (excluding VAT) and R2 169 269.29 (including VAT)

b. 121 Toshiba 4200M Laptops at a unit price of R12 197.87 (excluding VAT), for a total price of R1 475 942.27 (excluding VAT) and R1 682 574.19 (including VAT)

c. 277 copies of Microsoft Office Pro Plus at a unit price of R2302.13 and a total price of R637 690.01 (excluding VAT) and R726 966.61 (including VAT)

49. The #Guptaleaks emails show that, in this contract, Sunbay effectively acted as a front for Sahara, as evidenced by a number of facts. First, the above confirmation email was forwarded by Kamal Vasram to Ashu Chawla on the same day it was received by Vasram.

50. Second, on the 23rd of May 2014, Ms. Mokoena, writing from her email address at the Office of the Premier, sent an email to ‘wallemusa@gmail.com’ with the subject “FW: Laptops payment.” The #Guptaleaks records show that that ‘wallemusa@gmail.com’ was controlled by Ashok Narayan, who was a central figure in the Gupta enterprise. The email contained proof that the Free State government had paid Sunbay against the invoice above. The proof of payment shows that R4 578 810 was paid to Sunbay.

51. On the same day, Narayan forwarded this email to Ashu Chawla and Evan Tak (a Sahara manager), and noted ‘WAITING FOR IT TO REFLECT IN SUNBAY ACCOUNT. KAMAL WILL RELEASE AS SOON AS IT REFLECTS.’

52. Third, on the 7th of July 2014, ABSA Bank emailed a Sahara Computers bank statement to Ashu Chawla. The bank statement recorded that Sahara Computers was paid R4 263 030 on the 28th of May 2014 with the reference ‘Sunbay Kv001.’ Kv001 almost certainly refers to Kamal Vasram. The payment to Sahara Computers was made six days after Sunbay had received its payment from the Free State government.
53. The #Guptaleaks further show that on the 25\textsuperscript{th} of April 2014, Vasram submitted an invoice for ‘services rendered’ to Sahara Computers. The invoice was sent to Ashu Chawla. Vasram invoiced for an amount of R85 346. [See annexure C]. This payment was made only days before the commitment letter was sent by the Office of the Premier to Kamal Vasram’s Sunbay confirming the order.

54. Fourth, internal Sahara records show that Sahara sold the exact quantities of goods provided by Sunbay to the Free State government to Sunbay. On the 2\textsuperscript{nd} of June 2014, Santosh Choubey, a Sahara employee, sent a file called Accname.xls to Ashu Chawla. The file, an Excel workbook, recorded Sahara sales. The workbook recorded four entries for Sunbay that reflected exactly the units delivered by Sunbay to the Free State government:

- a. 277 units of ‘Officeproplus 2013 OLP NL Gov’, which was retailed at a unit cost of R4500 against a cost to Sahara of R3743.48, recorded on the 15\textsuperscript{th} of May 2014;
- b. 97 units of ‘TOS i5-4200M/4GBBDDR3/500G/15.6/DVD/W8.1’, which was retailed at a unit cost of R9000 against a cost to Sahara of R5806.97 (product code C50-A0254);
- c. 24 units of ‘TOS i5-4200M/4GBBDDR3/1TB/15.6/DVD/W8.1.’, which was retailed at a unit cost of R9000 against a cost to Sahara of R5030.25 (product code C50-A0288);
- d. 156 units of ‘TOS I5-3210M/4GBDDR3/500G/13.3/DVD/W8PRO’, which was retailed at unit cost of R9000 against a cost to Sahara of R7218.91 (product code R930-F0251).

55. Internal Sahara documents strongly suggest that Sahara Computers significantly overcharged Sunbay Ltd for the goods above, which would have increased the costs to the Free State government. We note that, based on Sahara’s internal documents, the 121 units of the 15.6 inch Toshibas were sold to Sunbay at a profit of R3193.03 per unit, a markup of 54%. The 156 units of the 13.3 inch Toshibas were sold at a profit of R1781.09, a markup of 24%.
56. Further internal Sahara documents show that Sunbay Ltd paid considerably more for these laptops than other vendors that purchased the same laptops from Sahara. Another document listing sales from the same time period as the sales to Sunbay recorded that Sahara had sold the laptops with product code R930-F0251 for R7499 to a customer called Innovative Computers and Networks, compared to the R9000 paid by Sunbay. The laptop with the product code C50-A0254 was sold to multiple customers for R6 699, compared to the R9000 paid by Sunbay. The laptop with the product code C50-A0288 was sold to multiple customers for R5999, against the R9000 paid by Sunbay.

57. Sunbay Limited also inflated the price of goods sold to the Free State government. Sunbay’s invoice to the Free State government quoted a unit cost of R12197.87 (excluding VAT) for all laptops even though Sunbay was purchasing the laptops from Sahara for a unit price of R9000.

58. Based on the above, it is possible to calculate the gross profit earned by Sahara on this contract, as reflected in the table below. This table shows that the Free State government was massively overcharged for the items delivered. In total, the FS government, with VAT included, paid R3 851 830.74 against Sahara’s internal cost of R1 795 965.09. This is 114% more than Sahara’s baseline cost.

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost to Sahara</th>
<th>Price paid by FS Govt (excluding VAT)</th>
<th>Price Paid by FS Govt (including VAT)</th>
<th>Profit (excluding VAT)</th>
<th>Profit (including VAT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>156 x Toshiba I5-3210M (R930-)</td>
<td>R1 111 968</td>
<td>R1 902 867.72</td>
<td>R2 169 269.29</td>
<td>R790 899.72</td>
<td>R1 057 294.29</td>
</tr>
</tbody>
</table>
59. It is worth noting that, during this transaction, Kamal Vasram was simultaneously the sole director of Sunbay Ltd and working full-time as a salesperson for Toshiba. Sahara was his primary client. Vasram would thus have been fully aware that the costs charged to the Free State government were excessive.

60. We have not been able to establish whether the May 2014 contract was awarded to Sunbay following a competitive bidding procedure as required by the PFMA. We hope that the Commission might be able to investigate this matter. However, we note that, based on the available evidence, it is highly unlikely that this contract was subject to a competitive bid, as almost any other provider would have quoted considerably lower prices for laptops of similar specifications.

61. The contracts awarded to Sunbay constitute an archetypal version of state capture undertaken by the Gupta enterprise in the Free State. The following features evident in the Sunbay case were repeated in the Estina/Vrede Dairy Project:

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<tbody>
<tr>
<td>97 x Toshiba</td>
<td>R563 271.09</td>
<td>R1 183 193.39</td>
<td>R1 348 836.16</td>
<td>R619 922.30</td>
</tr>
<tr>
<td>I5-4200M</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(C50-A0254)</td>
<td></td>
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<tr>
<td>24 x Toshiba</td>
<td>R120 726</td>
<td>R292 748.88</td>
<td>R333 732.29</td>
<td>R172 022.88</td>
</tr>
<tr>
<td>I5-4200M</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>(C50-A0288)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>R1 795 965.09</td>
<td>R3 378 809.99</td>
<td>R3 851 830.74</td>
<td>R1 582 844.90</td>
</tr>
<tr>
<td>TOTAL PERCENT</td>
<td></td>
<td></td>
<td>88%</td>
<td></td>
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<tr>
<td>PROFIT</td>
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First Submission on Estina/Vrede Dairy Project to the Zondo Commission by SWI 2019
a. The major contracts were placed with front companies (Sunbay and Estina), of which Kamal Vasram was a director, but which was substantively run for the benefit of the Gupta enterprise;
b. Ashok Narayan, a Gupta enterprise lieutenant, was closely involved in mediating communications between the Free State government and the front company, and is seen to be effectively controlling or directing the activities of the front company;
c. The projects were subject to fraudulent invoicing designed to generate undeserved and unearned profits for the Gupta enterprise;
d. The projects were awarded by Free State government officials with close connections to the Office of the Premier and in possible violation of procurement laws/supply chain management policies.

3.2. The Free State Government, New Age Subscriptions and Advertisement

62. In June 2011, Ashu Chawla shared an excel workbook with Joleen Roux, a Sahara employee, named ‘Copy of Free State Schools.xls.’ The document had been compiled by another Sahara employee, Santosh Choubey. The document listed a large number of Free State schools, Further Education institutes and government departments.

63. Pieter-Louis Myburgh, acted on the suspicion that the list referred to subscribers of The New Age newspaper, owned by the Guptas. Myburgh contacted a large number of the schools listed and confirmed that they received copies of The New Age, most of which were left unread. In total, according to Myburgh, over 1300 copies a day of The New Age were delivered to schools, colleges and education institutes; 1000 copies a day were sent to provincial government departments and municipalities; and a further 1770 copies sent to 177 libraries run by the Free State Department Sports, Arts, Culture and Recreation. The largest subscription was for the Office of the Premier.
64. According to Myburgh’s further calculations, he estimates that these subscriptions accounted for an astonishing 75% of all copies of the newspaper sold in the country.

65. The Free State government also directed considerable advertising revenue towards *The New Age*. In 2016, for example, the Free State government spent R4m on adverts in *The New Age*. This was half of the province’s budget for print media.

### 3.3. Nulane and the City of Tomorrow

66. All documents relevant to this section are attached as **Annexure D**

67. On the 2\textsuperscript{nd} of September 2008, the company Nulane Investments 204 (Pty) Ltd was established with registration number 2008/020988/07. On the 17\textsuperscript{th} of September 2008, Iqbal Sharma (see *dramatis personae* above), a well-known member of the Gupta enterprise, took control of Nulane as the sole director. The company was deregistered in August 2016.

68. Documents from the #Guptaleaks strongly suggest that Nulane was materially controlled by the Gupta enterprise, or at least relied on the Gupta enterprise for certain critical services. In December 2012, an employee of Sahara, Jeandre Holstuizen, sent an email to, amongst others, Ashok Narayan and Ashu Chawla. The email confirmed that technical maintenance would take certain services off-line. These included ‘Fincon, Estina and Nulane.’ Fincon was the financial management and day-to-day accounting software used by Sahara and the Gupta enterprise. This email thus shows Nulane’s financial servers were hosted by Sahara and the Gupta enterprise.

69. On the 5\textsuperscript{th} of October 2011, John Thomas (representing the US company P3), Iqbal Sharma (representing Nulane) and Mxolisa Dukwana (alternately Dukoana) signed a ‘Master Plan Agreement.’ Dukwana has claimed that his signature was forged in evidence before the Commission.
70. The Master Plan agreement recorded that the Free State’s Department of Economic Development would appoint a consortium consisting of P3 and Nulane to develop an urban design ‘Master Plan.’ In later documents this would later be referred to as a plan for the ‘City of Tomorrow’, a utopian urban design plan to create a high-tech city in the Free State.

71. The agreement stated the Project Cost as R140m. This was to be paid to the Consortium in five equal monthly instalments. A sixth and final payment would be made sixty days after the final deliverable had been presented and the Project ‘signed off’ by the Consortium.

72. Annexure A to the Agreement provided a summary of the work to be undertaken under the terms of the Agreement. This amounted to a number of workshops and the production of schematic designs.

73. On the 9th of November 2011, Ashu Chawla sent an email to Sanjay Grover (sanjay.grover@hotmail.com). We address Grover’s role in the Gupta enterprise in detail in our second Estina submission, suffice to note here that he served as the Gupta enterprises’ accountant and facilitator in Dubai. Chawla’s email forwarded an original email sent to him by Ashok Narayan. The message sent by Narayan was sent with the subject ‘Agreement with Global.’ Narayan requested that Chawla get Grover to sign the said agreement, which Narayan attached.

74. The attached document was a ‘subcontracting agreement’ between Global Corporation LLC and Nulane Investments 204 (trading as Nulane Management Services). The control and ownership of Global Corporation is addressed in greater detail in our second Estina submission, suffice to note here that Global Corporation LLC was registered in Dubai and was controlled by the Gupta enterprise through Sanjay Grover. Grover took direction from Ashu Chawla. Global Corporation held multiple bank accounts in Dubai.

75. Annexure C to the Global-Nulane agreement provided background to the project. The following was recorded:
This annexure describes the background to the Project, as contemplated in clause [unknown]\textsuperscript{20} of this Agreement, but is included in this Agreement for information purposes only, and does not form part of this Agreement or confer obligations on either Party.

\textbf{Mission Statement}

South Africa’s rich and textured history, inform and guide the City for Tomorrow to be a community that meets the vital human needs of the present, while prepared to meet the needs of the future through balanced ecological, economic, and community systems.

The City for Tomorrow is a safe, healthy, and viable community for human interaction, education, employment, recreation, housing, commerce, and cultural development.

\textbf{Guiding Principles:}

The Free State Province desires the preparation and commissioning of a Master Plan and the schematic design for the City of Tomorrow.

76. Annexure C continued to list a series of high profile deliverables.

77. Annexure E set out a ‘form of statement’ of work to be concluded by Global Corporation. A cursory examination of Annexure E reveals it to be an exact copy of the statement of work (Annexure A) appearing in the purported October 2011 agreement between the Free State government, P3 and Nulane.

78. Annexure D set out the payment schedule envisioned for the project. It was recorded that ‘the total contract value is US$10 million.’ The $10m was to be

\textsuperscript{20} The Microsoft Word document that included this agreement included a broken link at this point, which did not point to a specific contractual clause preceding.
paid in five equal monthly instalments payable to Global in advance every month, with the first payment taking place seven days following Global being given notice by Nulane to proceed. A sixth and final payment was to be made 60 days upon final delivery of the project deliverables. In November 2011, $10m was roughly equivalent to R80m according to the prevailing foreign exchange rates. We note that the payment schedule, and the wording thereof, was a carbon copy of the payment terms and schedules included in the purported October 2011 agreement between the Free State government, P3 and Nulane.

79. As discussed in more detail in our second Estina submission, Global Corporation was largely an administrative and accounting entity that was used by the Gupta enterprise to receive and dissipate funds from various projects through Dubai. This included receiving and dissipating funds paid by the Free State government to Estina Pty Ltd, which were diverted to the overseas accounts of the Gupta enterprise. We submit that Global Corporation LLC, which lacked any major infrastructure or any prior experience in urban design, would have patently been unable to deliver such a project. Instead, we submit that the most reasonable interpretation was that this contract was designed as a cover to allow Nulane to transfer Free State government funds to Global Corporation LLC knowing full well that Global would deliver none of the envisioned services.

80. In the event, the City of Tomorrow project did not materialise. However, this was not due to any lack of effort on the part of the Gupta enterprise. In evidence before the Commission, which we do not repeat in detail, Mr. Mxolisi Dukwana alleged that he was offered a R2m per month bribe, and an upfront payment of R2m in cash, by Tony Gupta. The payments would be made if Dukwana signed the Master Plan agreement noted above. Dukwana further alleged that this offer was made to him in the presence of Ace Magashule and Duduzane Zuma.

81. Dukwana alleged that Tsephiso Magashule, Ace Magashule’s son and an employee of a Gupta enterprise company (Mabengela Investments), had, in
February 2011, forwarded an email originally from Iqbal Sharma. The email included a draft letter, written as if from Dukwana, to Nulane's partner, P3, confirming the Free State government's intention to proceed with the project. Dukwana was asked to send the document to P3's director, but refused.

82. While this project did not materialise, it provides a useful blueprint and precursor for tactics employed in relation to the Estina project. We note the following similarities:

a. Attempts were made to secure the support of Free State officials (Dukwana) through meetings held at the Gupta’s Saxonwold compound;
b. The project was to be undertaken by what amounted to a shell company (Nulane) that featured a Gupta enterprise member (Iqbal Sharma) as the sole director, and which was materially integrated into the Gupta enterprise;
c. The project was to be undertaken as a partnership between a local shell company with no prior experience or capacity (Nulane) and an international partner (P3 in this instance and Paras Dairy in the Estina/Vrede case) that would provide all the requisite expertise and work;
d. A substantial portion of the funds that were to be paid to the South African entity were to be paid out almost immediately to a company controlled by the Gupta enterprise in Dubai (Global), which is precisely what transpired in relation to the Estina/Vrede Dairy Project.
e. The payment made to the Gupta enterprise would be justified by means of a bogus contracting agreement or other invoicing.

3.4. Contracts Awarded to Cureva/Mediosa

83. All documents relevant to this section are attached as Annexure E.
84. On the 23rd of October 2015, Mbulelo James, an official at the Free State Department of Health, emailed Inish Merchant. Merchant was a registered director of Cureva, a company registered in South Africa. The email was sent with the subject ‘DOH (FS) 24/2015/2016’ and attached a PDF file titled Dinovert.pdf. This email was forwarded, on the same day, to Tony Gupta, by Anita Roy, a Cureva employee, who had received the email from Merchant. The same email was also forwarded to Ashok Narayan at his ‘Marketing Quadrant’ email address in Dubai (ashok@tmq.ae). Narayan was forwarded the email by one Sunil Sachdeva, who had received the email from Merchant.

85. The content of the PDF file was a letter sent by the Free State Department of Health to ‘The Owner/Director’ of Dinovert (Pty) Ltd. The letter was signed by Mr MG Mahlatsi, the Accounting Officer for the Free State Department of Health. The letter runs:

\[
\text{DOH (FS) 24/2015/2016: REQUEST FOR PROPOSALS FOR PROVISION OF PRIMARY CARE SERVICE USING A MOBILE MEDICAL SERVICE UNIT (MMSU) FOR DESIGNATED DISTRICTS IN THE FREE STATE}
\]

\[
\text{PERIOD: DATE OF SIGNING OF CONTRACT FOR THREE (3) YEARS}
\]

\[
\text{It is with pleasure to inform you that Dinovert (Pty) Ltd is the successful bidder to render the above-mentioned service to the Department.}
\]

86. The engagement letter confirmed that Dinovert would be paid according to the schedule of costs that had been submitted in their proposal to the Department. The proposal envisaged that Dinovert would be paid R954 for every patient treated/using the mobile medical unit provided by Dinovert.

87. Dinovert (Pty) Ltd was incorporated on the 13th of March 2015 with the registration number 2015/083521/07. Dinovert was subsequently renamed
Cureva (Pty) Ltd in September 2015. The directors of Cureva were Anita Roy and one S Kumar. Cureva was subsequently renamed Mediosa in late 2017.

88. The Free State Province’s Tender Bulletin, published on the 15th of April 2016, confirmed the award of the contract to Dinovert (Pty) Ltd. The bulletin further confirmed that Dinovert (Pty) Ltd would be paid R954 for every patient seen.

89. The contract awarded to Dinovert/Cureva was problematic for a number of reasons. First, there are strong indications that Dinovert/Cureva was a de facto member of the Gupta enterprise. On the 23rd of February 2016, Ashu Chawla emailed Santosh Choubey, attaching an Excel workbook titled ‘copy of 2016-02-17 Sahara Group Companies.xls.’ The workbook listed details, including directorships, shareholdings, incorporation dates and other information for all companies falling within the Sahara Group. The workbook included Cureva Pty (Ltd) (previously Dinovert) as a company in the group, and listed details such as registration numbers and ultimate ownership. This very strongly indicates that Cureva was considered a de facto part of the Sahara group of companies and the broader Gupta enterprise.

90. It is not entirely clear how Sahara exercised control over Cureva. However, we do note that the spreadsheet records that an entity called SAS Global Ltd was the owners of Cureva’s 120 issued shares. SAS Global Ltd was registered in Dubai. Investigations by amaBhungane were unable to find any evidence of the existence of SAS Global at the address provided for it in Dubai, strongly suggesting that it was a corporate shell.

91. That Dinovert/Cureva was a de facto member of the Sahara group of companies is unsurprising in light of the #Guptaleaks archive, which shows that the Gupta enterprise was involved in the very earliest stages of the conceptualisation of the mobile medical unit project, and provided ongoing assistance to Cureva employees and their associates.

92. The #Guptaleaks archives show that Ashok Narayan was in contact with Suman Kar and Sunil Sachdeva as early as July 2014. On the 30th of July
2014, Kar emailed Narayan asking for Narayan’s assistance in securing a visa for Sunil Sachdeva to travel to South Africa on business. Kar opened the email with ‘Greetings from Medanta!!!.’ Medanta is a ‘multispeciality medical institution’ formed in 2009 and based in Delhi. Kar had emailed Narayan from an email address registered to the domain svcl.in (suman.kar@svcl.in). Internet research reveals that SVCL is SV Creditline, a finance provider to new businesses. Sunil Sachdeva is a founder-director of SV Creditline. He was also one of the two founders of Medanta.

93. The #Guptaleaks records show that Ashok Narayan, working with Ashu Chawla, provided invitation letters to Sunil Sachdeva for a South African visa in August 2014 and May 2015.

94. The #Guptaleaks records further show that Ashu Chawla and Ashok Narayan assisted in providing letters of invitation and other logistical help to Anita Roy and Inish Merchant, to secure visas to visit South Africa for business purposes in June 2015.

95. The #Guptaleaks records show that Sunil Sachdeva was invited to the elaborate wedding of Kamal Singhal, the son of Ajay Gupta, in Dubai. Sachdeva was invited at the instruction of Tony Gupta.

96. On the 9th of May 2015, Anita Roy sent an email to Sunil Sachdeva, attaching a PDF file with the title ‘MMU-Final.pdf.’ On the same day, Sunil Sachdeva forwarded this email and PDF to Tony Gupta. The contents of ‘MMU-Final.pdf’ is a detailed outline of a mobile medical service unit provided by an Indian company named ‘Doctor on Call Pvt. Ltd.’ Sunil Sachdeva was listed as a director and founder of ‘Doctor on Call Pvt. Ltd.’ The mobile medical service unit, and its capabilities described, matches almost exactly the services that were envisaged to be provided by Dinovert/Cureva in South Africa.

97. On the 2nd of June 2015, Anita Roy emailed Sunil Sachdeva and two recipients at the Free State Department of Health (motaud@fshealth.gov.za, hodpa@fshealth.gov.za). Roy copied in two individuals from Doctor on Call,
Pankaj Chandna and Gunjan Nagpal. Roy attached a draft Memorandum of Understanding between the Free State Department of Health and Cureva Private Limited, registered in India. On the same day, Sunil Sachdeva forwarded the draft memorandum to Tony Gupta. Sachdeva wrote:

‘Good morning Tony ji, our discussions are progressing very well. We are intending to do MOU pl see this and give ur valuable inputs.’

98. The draft MoU envisaged that Cureva would provide ‘for Health Care Services through a well-appointed Mobile Bus which houses the diagnostic and clinical service.’ At page 3 of the MoU, under Article 3, the services to be delivered and the equipment to be used are listed. These entries are clearly copied and pasted from the Doctor on Call proposal document quoted above. Further detailed services are listed on pages 3 and 4 that would form the ‘standard operating procedure’ of the Mobile Bus. These entries are either copied and pasted, or are briefly summarised text, appearing at pages 8 to 18 of the Doctor on Call proposal document quoted above.

99. The Memorandum of Understanding included another noteworthy provision. In particular, the MoU recorded that the Free State Department of Health would use its ‘domain expertise’ to source the required medical equipment ‘from outside South Africa and more particularly from India.’ The Department of Health was also requested to ‘streamline the process of Manpower entry into the State from India.’ Finally, the MoU requested that the Department of Health would ‘facilitate the provision of medicines through its current process.’ Together, this MoU thus envisaged that the Free State Department of Health would be required to source all equipment and personnel from India, while simultaneously giving Cureva access to medicines purchased by the Free State Department of Health.

100. There are strong indications that the Free State government contracted with Dinovert/Cureva at a considerably inflated cost. On the 20th of June 2015, 18 days subsequent to the circulation of the draft Cureva/FS MoU to Tony Gupta, Sunil Sachdeva forwarded a further email to Tony Gupta. The email
contained a chain of correspondence between Anita Roy, Pankaj Chadna and Sunil Sachdeva regarding the pricing/costing data for the provision of the Mobile Bus to the Free State government. Sachdeva wrote:

*Good Morning Tony ji, how r u and family? I m [sic] sending you the costing sheet pl see this then we can discuss*

101. The costing sheet set out the total cost of providing the Mobile Bus services to the Free State government. The calculations show that the total all-in cost to Cureva to provide the services was R352 per person. This was R602 less than the R954 per patient for which Cureva was contracted by the Free State Department of Health.

102. The Free State Department of Health confirmed to South African media outlets in 2018 that it had paid approximately R25m to Cureva/Mediosa under the terms of its contract with the Department.\(^{21}\) If the costing sheet distributed by Sachdeva and Roy is accurate, this would suggest that the Department had paid R25m to Cureva/Mediosa for services that cost Cureva/Mediosa R9.25m to provide: a profit of 270%.

103. This calculation should be viewed in light of an investigation by *City Press* published in March 2018.\(^{22}\) The investigation alleged that *City Press* had sight of two contracts signed between Mediosa and two Dubai-based companies, HSP Plus and Metric Plus. The contracts envisaged that the two Dubai-based companies would be subcontracted to provide services to Mediosa, for which they were to be paid R650 per patient. The *City Press* article further alleges that the funds were to be used to fund the establishment of a sophisticated medical facility in Dubai.

104. The #Guptaleaks records show that October 2015, Sunil Sachdeva forwarded a chain of correspondence to Tony Gupta. The chain of correspondence...

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correspondence shows that Sunil Sachdeva was exchanging emails with an employee of Bain Capital in India. The emails included a draft PowerPoint presentation that set out the potential profitability of a ‘Dubai Cureva Medicity.’ The PowerPoint presentation was dated the 2nd of October 2015. The PowerPoint was thus drafted in the same month that Dinovert/Cureva was awarded its contract by the Free State Department of Health. The PowerPoint presentation showed that Bain estimated that the Dubai Cureva Medicity could earn $1.55bn in revenue once operational.

105. The Dinovert/Cureva project, and the involvement of the Gupta enterprise, follows the same playbook as used in the Estina/Vrede case, suggesting a tried and tested modus operandi. We note the following similarities:

a. The project was to be undertaken by a local company (Dinovert/Cureva) that had only recently been formed and which was materially integrated into the Gupta enterprise;
b. The project relied substantially on the expertise of an Indian-based company, in this case Cureva Pvt Ltd and/or Doctor on Call, which provided the services through a local company that had had limited local infrastructure;
c. Gupta enterprise employees, Ashok Narayan, Ashu Chawla and Tony Gupta foremost amongst them, were involved in the very earliest stages of the conceptualisation of the project, and ensured that the Gupta enterprise provided logistical assistance to help secure government contracts;
d. The contracts were subject to systematic overcharging, which created an unearned and unjustifiable profit;
e. The unearned and unjustifiable profit would be dissipated almost immediately to companies based in Dubai;
f. The payments made to the Dubai companies would be justified on the basis of bogus and fraudulent subcontracting agreements or invoicing.
Section 4: The Initiation and Approval of the Estina/Vrede Dairy Project and Violations of the Public Finance Management Act

4.1. The Conceptualisation of the Estina/Vrede Dairy Project

106. On the 1st of August 2011, Peter Thabethe was appointed the Head of Department for Rural Development in the Free State Provincial government. The Free State Department of Agriculture merged with the Department of Rural Development in March 2013. Thabethe was appointed as the head of this merged department on the 1st of May 2013.

107. In August 2013, following a report by the Mail & Guardian into potential irregularities in the Estina/Vrede Dairy project, Treasury appointed ENS Forensics to investigate the conceptualisation, award and conduct of the Estina/Vrede Dairy Project.

108. ENS investigators interviewed numerous officials from the Free State Department of Agriculture, however only Mr. Thabethe was recorded as being able to speak to the origin and conceptualisation of the project. ENS investigators suggested that Mr. Thabethe acted alone in conceptualising the project, although, based on the involvement of elements of the Gupta network as described below, this may not have been entirely accurate.

109. According to Mr. Thabethe’s version, at some undisclosed point, he became aware of a report compiled by the National Agriculture and Marketing Company. The report allegedly highlighted the suitability of the Free State for dairy farming, suggesting that it was the second most suitable province after KwaZulu-Natal. Mr. Thabethe had also become additionally concerned about the cost of transporting dairy products to Johannesburg for processing.

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23 State Capture Commission Transcripts, 15 August 2019, Day 145, p. 17
24 Ibid, p. 18
thus considered it appropriate to create an integrated dairy farming project, in which farmed dairy could be processed for sale on site.\textsuperscript{26}

110. In 2017, Mr. Thabethe deposed to an affidavit submitted in court hearings related to the forfeiture of assets flowing from the Estina/Vrede Dairy Project. Mr. Thabethe states in this affidavit that the dairy project he had conceived would fall under the ambit of the Free State’s Mohuma Mobung (“plough in the soil”) agricultural strategy adopted by the Free State Department of Agriculture.\textsuperscript{27} Mr. Thabethe repeated this evidence in his testimony before the Commission.

111. It is pertinent to note that we have not been able to locate any company by the name of the National Agricultural and Marketing Company; it is possible that Mr. Thabethe was actually referring to the National Agricultural Marketing Council (NAMC).\textsuperscript{28} We have additionally been unable to identify any publication by the National Agricultural Marketing Council making any such recommendation in 2011 or 2012. The only relevant document we could discover was a desktop study of the South African Dairy Value Chain, published in September 2012, a number of months subsequent to the initiation of the Estina dairy project. The report additionally makes no specific mention of the Free State.\textsuperscript{29} We wrote to the NAMC on the 15\textsuperscript{th} of November 2018 [attached as Annexure F] to establish whether any other contemporary report was published that would fit Thabethe’s description but have not received a response.

112. Thabethe indicated that he was originally intent on establishing the dairy farm in the Sasolburg region. However, Thabethe changed his mind after speaking to Mosebenzi Zwane, then a Member of Executive Council in

\textsuperscript{26} Ibid, paragraph 2.2.3
\textsuperscript{27} Affidavit of Samson John Schalkwyk in the ex parte application of the National Director of Public Prosecutions in re: an application in terms of Section 38 of the Prevention of Organised Crime Act, No. 121 of 1998 concerning certain property listed in Annexure A, 8 December 2017, paragraph 98.1
\textsuperscript{28} See: www.namc.co.za

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the Free State. Thabethe reported that Zwane had advised him that there was land available for such a project in the Vrede region of the Free State. Zwane’s home town is in Vrede.

113. After deciding to pursue the project, Mr. Thabethe states that he undertook research into a potential international partner. Thabethe claims to have researched the dairy industries in Sweden, Germany and India online. After rejecting Sweden and Germany (as first world countries, he considered them unsuitable for the South African environment), Thabethe focused on India. Mr. Thabethe states that he was particularly impressed by the Paras Dairy, an integrated dairy producer in India.

114. Despite repeated requests on the part of National Treasury and ENS, Thabethe failed to provide any evidence of this research. In a second interview, Thabethe claimed he had done all his research online and could provide website addresses – which he also failed to do. In his 2017 affidavit, Mr. Thabethe yet again failed to indicate the websites he consulted. Thabethe failed to indicate particular websites in his evidence before the Commission.

115. Between the 29th of February and 4 March 2012, after this research and contiguous with his appointment as Head of Department. Mr. Thabethe visited India. Thabethe also ‘informed ENS that he was the only official from the department to visit India on this assignment.’ He also confirmed, after repeated questioning, that Paras was the only producer he visited during the trip to India. Thabethe repeated this evidence before the Commission.

116. Thabethe extended this version of events in his affidavit filed in 2017. In his 2017 affidavit, Thabethe claimed that he was joined on the trip to India by a Mr. Narayan, ‘an advisor to the office of the premier [Ace Magashule] at

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30 Report on the Investigation into the Vrede Integrated Dairy Farm Project, National Treasury/ENS Forensics, February 2014, p. lii, paragraph 2.2.5
31 Ibid, paragraph 2.2.7
32 Ibid, paragraph 2.2.8
33 Ibid, paragraph 2.2.8

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the time. Mr. Narayan referred to Ashok Narayan, whose role in the Gupta enterprise has been discussed above. Narayan was a director of Linkway Trading, the Gupta-linked entity that, as we show later, was central to laundering funds from the Estina Project to pay for the “Sun City wedding”, and which was openly acknowledged served as a consultant on the Estina project.

117. Documents from the Gupta leaks show that Narayan had direct access to the office of Ace Magashule and purported to act on Mr. Magashule’s behalf. In this regard, it is worth noting an email dated the 26th of November 2012 (attached as Annexure G) drawn from the #Guptaleaks. The email was sent from a Gmail account controlled by Ashok Narayan [wallemsa@gmail.com] to one Urvashi [urvashi@excluzen.com]. The subject of the email was ‘Invitation to the CM to Visit SA.’ The body of the email read:

Dear Urvashi ji,

I am writing to you from the Office of the Premier, Free State Province, South Africa.
Enclosed please find the invitation to the CM to visit South Africa from the Premier of the Free State Province.
The invitation was sent directly to the offices of the CM but I am enclosing it again in case it was not received by yourselves.
Please let me know if you require any further information in this regard.

Best Regards
Ashok Narayan
Member: Advisory Council
Office of the Premier
Free State Province, South Africa

34 Affidavit of Samson John Schalkwyk, op Cit, paragraph 98.5

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118. Attached to this email was a further email titled ‘Invitation from the Hon. Premier of the Free State Province, South Africa.’ The email was sent by Janet Kay [janetkay@premier.fs.gov.za] to cm-uk@nic.in and dated the 26th of November 2012. Janet Kay, at the time, was the Chief of Staff in the office of Ace Magashule. The body of the email ran:

*Please find attached an invitation to the Hon. Chief Minister of Uttarakhand.*

119. Attached to this email was a PDF scan of an invitation letter, dated the 26th of November 2012, on the letterhead of the Premier of the Free State Province and signed by E.S. Magashule. The letter was addressed to Mr. Vijay Bahaguna, the Chief Minister of Uttarakhand, and requested that Mr. Bahaguna plan a visit to the Free State between the 20th and 24th of December 2012.

120. It is common cause that Mr. Narayan acted as an advisor to Ace Magashule. In March 2012, Ace Magashule announced that he had appointed a ‘Premier’s Advisory Council.’ Ashok Narayan was included on the 13-member panel. Narayan had been appointed to the panel by letter from the Premier’s office on the 29th of February 2012 with effect from the 1st of March 2012. The appointment thus took place on the same day that Narayan and Thabethe travelled to India together to visit Paras.

121. Following a trip to South Africa by the CEO of Paras Dairy, Paras entered into a Memorandum of Understanding with Estina on the 11th of April 2012. The MoU was signed by Mr. Sanjeev Gautam on behalf of Estina (Pty) Ltd and Mr. Gajinder Kumar (Mr. Kumar) on behalf of VRS Foods Limited trading as Paras India. According to Thabethe, the signing of the MoU happened contiguous with the CEO of Paras travelling to South Africa to view the Vrede area, although Thabethe was unable to provide the name of the

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36 ‘Cash cows and computers – Ace Magashule’s Laptop Deals with Gupta’s Vrede Dairy Man; Joemat-Pettersson’s Saxonwold Meetings’, *Daily Maverick*, 23 July 2019

37 Report on the Investigation into the Vrede Integrated Dairy Farm Project, National Treasury/ENS Forensics, February 2014, p. lli, paragraph 2.2.10

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CEO to ENS investigators. In evidence before the current Commission, he confirmed that the CEO was one Mr. Kumar.

122. The above narrative should be read in light of Section 7, which sets out material emanating from the #Guptaleaks archives. This material shows that:

a. Mr. Sanjeev Gautam had a business relationship with the Gupta enterprise preceding the Estina agreement;
b. Mr. Sanjeev Gautam relied on the Gupta enterprise to secure visas for himself, his family members and Mr. Gajinder Kumar to visit South Africa, the latter of whom appears to have travelled to South Africa in order to sign the MoU with Estina; and
c. Mr. Thabethe’s visa to travel to India for his ‘research trip’ was secured by means of a supporting letter issued to the relevant Indian consulate on the letterhead of SES Technologies, a company controlled by the Gupta enterprise, and which letter further recorded that the company would take care of his ‘requirements’ while in India.

123. Estina had originally been founded in June 2008 as a shelf company. On the 1st of August 2008, the lone director, Anthony Last, resigned from Estina and was replaced by Kamal Vasram, who would go on to be a director of Estina during the life of the dairy project. Vasram had no previous farming expertise. He had, however, previously worked in sales for Lenovo, an IT company. As we show in more detail later, the #Guptaleaks records show that Vasram was invoicing the Gupta enterprise on a monthly basis from at least 2011 onwards. As noted above, Kamal Vasram served as the sole director for Sunbay Limited, and as an employee for Toshiba. In the latter role, Sahara was his primary client.

124. Estina was originally registered as a general-purpose company. Estina changes its core business registration to ‘agriculture, farming and related

38 Ibid, paragraph 2.2.13 – 2.2.15

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activities’ on the 19th of October 2012 – a number of months after it enters into formal agreements with the Free State government, as we show below.39

125. The role of Paras Dairy is of particular importance to the Estina case. As is shown below, Estina won the award of the Free State contract based, in part, on the claim, made by Thabethe to Provincial Exco, that Paras would actively partner with Estina to deliver the project, a claim that is not borne out by the underlying contractual material. However such a partnership was not implied by the Memorandum of Understanding signed on the 11th of April 2012. In particular, the MoU stated that:

The company hereby appoints ESTINA as its Agent for identifying and securing opportunities for Dairy Projects in the Territory.

The parties hereby agree and acknowledge that they are independent contractors. No partnership, joint venture or employment is created or implied by this MoU.40

126. In May 2012, a project proposal (dated the 15th of May 2012) was submitted by Estina to the Department of Agriculture.41 The ENS investigators were able to locate three separate and slightly different copies of the business proposals from various Free State employees. The difference in the proposals was identified late in the day by the ENS investigators, and was thus not probed, and we return to the consequence of this below. Regardless, each of the proposals explicitly stated that

‘ESTINA PTY LTD is proud to inform the Department of Agriculture and Rural Development that it has signed a Memorandum of Understanding with PARAS DAIRY, the largest private milk producer in India, to deploy a flagship Dairy Project in Vrede.’42

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39 Affidavit of Samson John Schalkwyk, op Cit, paragraph 66 - 68
40 ENS Report, op cit, paragraph 2.2.10
41 Ibid, paragraph 2.2.16
42 Ibid, 2.2.19

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127. The proposal continued to list the various ‘strengths’ of Paras and how these would assist Estina deliver the project.\textsuperscript{43}

128. Access to the #Guptaleaks archives has provided us with greater insight into the initial conceptualisation and formalisation of the Estina project. In particular, it appears that the version of events provided by both Thabethe and Paras was incomplete and disingenuous, and served to hide the clear reality of the involvement of the Gupta enterprise in the very earliest stages of the Estina/Vrede Dairy Project. We discuss this in finer detail in Section 7 below.

4.1.2. Material Concerns Regarding the Estina Business Proposal

129. The content of the business proposals submitted by Estina to the Free State Department of Agriculture in securing support for the project appeared to be seriously lacking in rigour and content. As part of their investigation, ENS Forensics supplied copies of the proposals submitted by Estina to an independent consultant, Dawie Maree. Maree completed his review in December 2013, focussing on three specific documents: the project proposal, business plan and feasibility study.\textsuperscript{44}

130. We do not explore every problem that Maree identified with the documentation submitted by Estina; suffice to note that Maree indicated that all three documents were profoundly problematic. With regards to the project proposal, Maree concluded that there were indications that the costs supplied by Estina were potentially inflated:

\textquote{The need for the dairy project is not disputed, however it can be concluded that some of the costs of the project is unreasonable [sic] high, e.g. cow prices, equipment etc. If the latter is the case the principal should

\textsuperscript{43} ibid
\textsuperscript{44} Review of the Vrede Dairy Integrated Project, Commissioned by ENS Forensics, Dawie Maree, December 2013, p. 4

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do an in-depth cost-benefit analysis on the impact of the proposed project in the region."\(^{45}\)

131. Also worth noting was Maree’s comment on the business model proposed, namely, a commercial venture that relied on government grants. Maree indicated that this was a contradiction in terms:

‘Estina plans to fund the project, but it is requesting government to commit to grants to make the project sustainable and commercially viable. If a project is not commercially viable without grants, it should not continue and definitely not with government grants. The Business Plan indicates that the project will be profitable after the first year. If this is the case, grants are not necessary.’\(^{46}\)

132. With regards to the business plan, Maree noted that:

“the business plan is inconsistent, talking on one page of a 500-cow dairy project yet on the very next page referring to 1 000 cows in-milk. In addition, many of the initial assumptions are unrealistic and it will be difficult to attain. It can therefore be concluded that the business plan is not realistic and should be revisited.”\(^{47}\)

133. The feasibility study, perhaps the most important of all the documents, was also criticised:

‘The Feasibility Study which was reviewed is very academic in nature, with no clear findings and recommendations. There is no detail on the costing of the equipment, which makes a proper analysis difficult. Furthermore the feasibility study only focussed on the primary production side of the project, although a processing plant is also foreseen. With regards to the latter, there is only limited information on the processing plant and related costs, but there is no

\(^{45}\) Ibid, p. 5
\(^{46}\) Ibid
\(^{47}\) Ibid, p. 6

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further information such as a marketing study for the products to be produced. A complete cash flow projection is also absent from the feasibility study.\textsuperscript{48}

134. Reviewing the project concept as a whole, Maree found that the intended project was irredeemably flawed:

‘Given the current trends and realities in the South African dairy sector, the most appropriate investment in the dairy industry would be in the coastal areas, where the conditions for production are more favourable. An investment of this magnitude in the Free State province is considered too risky and not sustainable... 

In conclusion, it is not recommended to continue with the project in its current state since government will not receive value for money. The costs are not reasonable or market related.\textsuperscript{49}

135. Mr. Maree confirmed his readings of the proposal in his testimony before the Commission.

4.1.3. Failure to Investigate the Desirability and Necessity of the Project

136. The Estina proposal was concerning for one more reason: it appears that the Estina proposal was based on a misrepresentation of the extent of the Free State government’s research into the desirability of such a project. The proposal noted that ‘DoARD [Department of Agriculture and Rural Development] had recently commissioned a detailed study which validates the implementation of such a Project. The DoARD subsequently commissioned a high-level team to visit India... to explore the possibilities of attracting investments in this area.’\textsuperscript{50} However, as the ENS report notes, 

\textsuperscript{48} Ibid, p. 10  
\textsuperscript{49} Ibid, p. 12 - 13  
\textsuperscript{50} ENS Report, paragraph 2.2.18
‘the department could not provide us with a copy of the detailed study it commissioned and we suspect that this may refer to the Internet research completed by Mr Thabethe. Further, it appears that the high-level ‘team’ that visited India consisted solely of Mr. Thabethe.’ ⁵¹

137. Thabethe appeared to indicate in his testimony before the Commission that ENS’ understanding was accurate: the study referred to above was, indeed, the desktop research he had conducted from his office, and of which there are only limited recordals.

138. As noted above, it appears that at least two copies of the business proposal circulated amongst Free State officials, from whom the ENS team recovered the documents. The proposals were identical save for differing statements as to overall cost. The first proposal, signed by Gautam of Estina, listed the costs as R570 million including VAT, of which Estina would input R228 million and the Department R342 million. The second proposal, unsigned, did not include a legible total cost estimate, but projected a R500 million injection by the Department and Estina respectively.

139. While it appears that the project proposal agreed upon tallied with the first proposal’s estimates, it is concerning that multiple project proposals were being circulated amongst government officials. This raises the possibility that certain officials may have been misled as to the total value and cost of the project. Even more concerning is the possibility that the proposal was circulated in the hope of receiving feedback as to ‘reasonable’ costs from Free State officials, which could then be inserted into the final project proposal – a concerning case of insider access.

4.2. Approval of the Estina/Vrede Dairy Project

140. On the 27th of May 2012, 12 days subsequent to the date indicated on Estina’s formal business proposal, Thabethe addressed a letter to Gautam of

⁵¹ Ibid
Estina. The letter is titled ‘Acceptance Letter: Project Proposal for Vrede Integrated Dairy Agribusiness.’ According to the ENS Report, Thabethe indicated that he ‘accepted’ the project proposal. It is unclear exactly what legal obligations were incurred through such an acceptance, or if this was a pro forma indication that the proposal was not subject to further queries.

141. Shortly thereafter, a Partnership Agreement was entered into between the Free State Department of Agriculture and Estina. The Partnership Agreement was signed by Gautam of Estina on the 5th of June 2012 and by Thabethe on the 7th of June 2012. As discussed below, this Partnership Agreement was formalised prior to any such agreement being put before the requisite provincial approvals board. The Partnership Agreement was titled ‘A Partnership Agreement Between the Department of Agriculture and Estina in relation to the Implementation of a Dairy Project at Vrede, through Special Purpose Vehicle (SPV) created to fulfil stipulated AgriBEE business norms, called Zayna Investment Pty Ltd trading as Mohoma Mobung Dairy Project.’

### 4.2.1 Partnership Agreement Concluded Without Following Due Process

142. The Partnership Agreement set out the structure, obligations and cost of the project. As suggested by its title, the Project was to be structured such that a BEE entity, Zayna Investments (trading as Mohoma Mobung Dairy Project), owned 51% of the shares. This entity was supposed to house the shares on behalf of beneficiaries identified by the Department. At this stage the Department had made no effort to properly identify or organise potential beneficiaries into a legal entity. The remainder of the shares were to be held by Estina, which would act as the Implementing Agent for the Project.

143. The financial arrangements were codified in the Partnership Agreement. The total cost of the project was stipulated as R570 million. Of

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52 Ibid, paragraph 2.2.20
53 Ibid
54 Ibid, paragraph 2.2.21
55 Affidavit of Samson John Schalkwyk, op Cit, paragraph 51.1
56 Ibid, paragraph 52.2 and 52.3
this, R228 million (including VAT) was to be invested on a phased basis by Estina. The remainder, R342 million (including VAT), was to be invested by the Department `over a period of two to three years."\(^{57}\) The project would be kick-started by means of an immediate grant of R30 million.\(^{58}\)

144. Thabethe’s signature to the Partnership Agreement on the 7\(^{th}\) of June preceded any formal approval by the requisite provincial structures. Indeed, this approval was only sought on the 13\(^{th}\) of June 2012, when a Cabinet memorandum setting out the project was approved by the Provincial Executive Council (Exco).

145. The Provincial Exco included the Premier (Ace Magashule) and Provincial MECs. However, even this appears to have lacked due consultation or consideration; Thabethe told ENS investigators that he had prepared and delivered documents for approval to the Provincial Exco on the 12\(^{th}\) of June, a day before the Cabinet memorandum was approved.\(^{59}\)

146. In the Cabinet memorandum, the request is made that Exco ‘considers and approves the implementation of the proposed Integrated Vrede Dairy agri-business Project."\(^{60}\) The Cabinet memorandum also laid out the financial model, which was approved by the Exco. The financial model stated that the government would invest R113 million per year for three years [this was an error, as the cost was actually R114 million per year for three years], which would fund the dairy; the remaining investment by Estina would fund the processing plant.

147. The memorandum further stated that the Department had R30 million immediately available, which could be invested, but that a further R84 million should be sourced from Treasury. This R30 million payment, and the approval thereof, is an issue of concern in its own right, which we deal with further below. The Cabinet memorandum approved by Exco included the request that

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\(^{57}\) *Ibid*, paragraph 54.3 and 54.4
\(^{58}\) *Ibid*, paragraph 54.4
\(^{59}\) ENS Report, *op cit*, paragraph 2.2.22 – 2.2.25
\(^{60}\) *Ibid*, paragraph 2.2.24

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the Exco ‘supports the sourcing of additional funding of R84 million for this current financial year from the province.’

4.2.2. Provincial Treasury Refuses to Approve Payment

148. On the 15th of June, two days after Exco approval, the Provincial MEC for Agriculture approached the MEC for Finance at a function, requesting that the R30 million be paid urgently to Estina, and that the Provincial Treasury make the payment on the same day. Ms. Anna Fourie, the Provincial Accountant General, was called into assist with the payment. She refused to make the payment as the Provincial Treasury did not have the funds. She also was concerned that no procurement processes had taken place, and that the underlying Partnership Agreement between Estina and the Free State government may have been legally flawed. Fourie thus referred her concerns to the Office of State Attorney, in particular Advocate Ditira.

149. On the 19th of June, Advocate Ditira responded to Fourie. He stated that ‘it appears that the procurement process was not followed’ and that ‘the contract may be invalid due to a number of reasons.’ He recommended that the Treasury Committee send all the relevant documents for review.

150. Subsequent to this exchange, the Office of the Attorney General was drafted in to assist the Free State Department of Agriculture. It is worth noting ENS was frustrated when it attempted to probe this matter. Advocate Ditira indicated that he could only answer questions if Thabethe waived the Department’s legal privilege. ENS requested Thabethe to do so, which he refused, effectively preventing ENS from discussing the issues with the State Attorney.

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61 Ibid, 2.2.25 and Affidavit of Anna Susan Fourie in CAS200/07/2017, attached as ASF01 to the Affidavit of Annie Susan Fourie submitted to the Commission on State Capture, paragraphs 5 - 8
62 Ibid, paragraph 2.2.28
63 Ibid, paragraph 2.2.29
64 Ibid, paragraph 2.2.31

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4.2.3. Estina Project Continues and New Agreements Signed

151. The ultimate impact of the State Attorney’s involvement was to rewrite certain aspects of the legal agreement between the Free State Department of Agriculture and Estina. With these amendments made, the Free State Department of Agriculture submitted a second request for approval from the Provincial Exco for the project to take place on the 5th of July 2012.

152. The memorandum is titled ‘Approval to Accept the Proposal for the Establishment of an Integrated Dairy in Vrede From Estina.’ According to ENS, the importance of this document was that, because it was approved by Thabethe, it effectively constituted an approval to deviate from procurement regulations – the implications of which we deal with below.

153. On the same day, the Department entered into its second agreement with Estina. This agreement was similar in content to the previous agreement, although certain aspects of their legal agreements were more cogently set out. Nevertheless, ENS investigators were damning of the second agreement:

‘ENS noted that the second agreement concluded between the FSDA and Estina was more comprehensive in regulating the legal relationship between the department and Estina but the contract contains very little with regard to project specifications and deliverables. The contract does not provide details on precisely what Estina would deliver in return for R342 million. Mr. Thabethe was questioned about the lack of clarity in the agreement and that it is unclear regarding the project deliverables. Mr. Thabethe’s response was that he signed the agreement in its current state on the advice of the State Attorney’s Office.’

154. Thus, by July 2012, the Estina project had received formal approval and had been formally established.

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65 Affidavit of Samson John Schalkwyk, op Cit, paragraph 45 - 46
66 ENS Report, op Cit, paragraph 2.2.30

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4.3. **The Problematic June 2012 Payment**

155. At paragraph 3.3.1 of the ENS report, it is recorded that:

> ENS has established that a total of R114m has been paid to the service provider. The payments made by Provincial Treasury to FSDA&RD [Free State Department of Agriculture and Rural Development] in respect of this project are as follows:

- On 12 June 2012 a payment of R30 million

156. In November 2014, the Public Protector completed a provisional report on the Estina/Vrede dairy matter titled *Lack of Oversight*. At paragraph 6.3.2.12 of the report is recorded that:

> The Department was requested to submit copies of all invoices submitted by ESTINA to the Department with reports in line with the Project plan and payment documentation for the invoices paid. The department submitted documentation on 6 bulk payments made to ESTINA. The substantiating documentation attached to the payment authorisation included only the project proposal and agreement signed between Estina and the Department. The following payments were by the Department to Estina made [sic].

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<th>Payment Date</th>
<th>Amount</th>
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</tr>
</tbody>
</table>

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67 ENS Report, *op Cit*, paragraph 3.3.1
69 *Ibid*, paragraph 6.2.12, our emphasis for Number 1 in table

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157. The timing of the payments from the Department to Estina, and from the Provincial Treasury to the Department, are disturbing. In particular, we note that:

a. Estina was paid by the Department on the 11th of June 2012, prior to the project receiving the requisite EXCO approval, which was only granted on the 13th of June 2012;

b. Provincial Treasury paid the Department on the 12th of June 2012, prior to the project receiving Exco approval on the 13th of June 2012, and before the matter was approved by the Provincial Accountant General.

4.4. The Estina-FSDA Lease Agreement

158. On the 12th of June 2012, Peter Thabethe, as part of a delegation from the Free State Department of Agriculture, addressed a Special Council meeting of the Phumelela Municipality. Thabethe outlined the dairy project. According to Moses Moremi, then Municipal Manager, the delegation prevailed upon the Phumelela Municipality to make the farm Krynauswslust 275 available for use for the dairy project.70

159. An ordinary council meeting of the Phumelela Municipality was convened on the 19th of June 2012, at which resolution number 1 of 19 June 2012 was passed. The resolution noted that the Free State Department of Agriculture had requested use of land owned by Phumelela Municipality for the Estina/Vrede Project. It was resolved that 'Estina Pty Ltd / Paras Dairy Company are hereby permitted to use the 4,400ha of agricultural land in the

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70 Affidavit of Moses Moremi, 26 October 2018, Bloemfontein, attached as MM1 to the Affidavit and Annexures of Moses Moremi to the Commission of Inquiry on State Capture, paragraph 5.
Phumelela Local Municipality, for use in conjunction with a dairy production facility.\textsuperscript{71}

160. The resolution passed by the Phumelela Municipality was concerning as it was recorded that ‘the Council take note that the Municipality will hold a stake of four percent (4%) shareholding in the business for the use of Municipal Land which will be used for the development of infrastructure of different forms in the community.’

161. On the 6\textsuperscript{th} of July 2012, Moremi wrote to Thabethe. Moremi indicated ‘the proposed 4% allocated to shareholding to Phumelela in a private company is a matter that must first be discussed with both COGTA and National Treasury from a compliance point of view and council therefore resolved not to accept the 4% shares pending the outcome of these discussions.’\textsuperscript{72}

162. As should be clear from the preceding and foregoing, at no stage was Phumelela Municipality granted the 4% shareholding in Estina, nor was any attempt made to codify this arrangement. It is thus arguable that the resolution passed by the Phumelela council was based on a material misrepresentation or misunderstanding, and that the failure to secure the 4% shareholding was to the detriment of the spirit of the resolution and the economic wellbeing of Phumelela Municipality.

163. On the 26\textsuperscript{th} of June 2012, Moremi wrote to Thabethe to indicate that the Municipality would make the farm available to the Project.\textsuperscript{73} Moremi also informed Thabethe that the farm was currently leased to four different commercial farmers.

164. We pause here to note that the effect of terminating these tenancy agreements, when seen against the dire performance of the Estina/Vrede

\textsuperscript{71} Annexure MM13, Ibid
\textsuperscript{72} Annexure MM15, Ibid
\textsuperscript{73} MM10, Ibid
Dairy project, was to end existent economic activity and replace it with an unproven and eventually unsuccessful project. The implications for the local economic wellbeing of Vrede are obvious.

165. It is also worth noting Moremi’s email to the provincial law advisor, amongst others, regarding the legality of a proposed lease agreement between Phumelela Municipality and Zayna Investments. Moremi commented that the rental income earned (worth just under R1m) from the land it intended to lease to Zayna was of great importance to the income of the municipality. Moremi commented that ‘Phumelela is a municipality with a very low tax base and forfeiting R1m annual income (excluding escalations) from the renting of this farm as is the case now will have a negative impact on its future cash flow and ability to provide basic services (maintenance of roads etc.).”

166. On the 17th of July 2012, Moremi, Ashok Narayan, Frans Mokoena (who controlled Zayna Investments) and Johann Schalkwyk (a lawyer from van der Merwe Associates, the law firm retained by the Gupta family) held a meeting in Vryheid. At the meeting, Moremi was presented with a draft version of a lease agreement between Phumelela Municipality and Zayna Investments. Moremi indicated that the agreement would have to be referred to the state law advisor.

167. On the 18th of July 2012, Ashok Narayan wrote to Moremi by email. Narayan clarified that the intended lease agreement would be for 99 years and on a rent-free basis. Narayan further suggested that rates and taxes ‘should be paid for the Municipality as the owner of the property. The Municipality is getting a 4% stake in the business in lieu of rentals.”

168. The prejudice to the Municipality under the terms of this proposed agreement is obvious: it would lose rental income, gain a 4% stake in an unproven business with no commercial value, and be responsible for paying rates and taxes.

74 MM35, Ibid
75 Supplementary Statement and Annexures of Moses Moremi, TMM-SUP-38

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169. On the 23 of July 2012, Adv Ditira wrote to Moremi regarding a proposed lease agreement between Phumelela and Zayna, raising a number of problems. This included finding that there was no provision in law for Phumelela to hold a 4% shareholding in a private company.

170. The total effect of the above correspondence was to end any attempt on the part of Zayna to lease land from the Phumelela Municipality. Instead, focus moved towards the Department securing the use of the land on its own terms from Phumelela, after which it could be leased to Estina.

171. On the 12th of September 2012, Ace Magashula signed a Declaration of Authority in favour of MJ Zwane, then the MEC for the Free State Department of Agriculture, which delegated Zwane authority to enter into arrangements between the Department of Agriculture with the Phumelela Municipality, on which the Vrede Farm was to be established. Zwane then signed a further Declaration of Authority, devolving this authority to Thabethe.76

172. On the same day, Thabethe (as HoD for the Department) and Moremi (as Municipal Manager) signed an ‘assignment agreement’ between the Department and Phumelela Municipality. The agreement assigned the rights and obligations of the Municipality with regards to extant lease agreements with commercial farmers on Krynauswslust to the Department. This had the effect of ‘transferring’ the lease agreements between the commercial farmers then occupying the land and Phumelela to the Department. The Department, for its part, agreed to compensate Phumelela for the lost income (R958 800) by transferring the anticipated rental income (whether derived from rental payments or not) to Phumelela Municipality.

173. It is concerning that the Department agreed to pay just under R1m in compensation to Phumelela. While Phumelela was undoubtedly due this

76 ENS Report, op Cit, paragraph 2.2.51

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income, the payment of R1m in compensation to Phumelela, which was undertaken in order to assist Estina access land on extremely favourable terms, was to the prejudice of the Department of Agriculture. In effect, the Assignment agreement amounted to a R958 000 subsidy designed to assist Estina secure access to land required for the Project.

174. On the 18th of December 2012, the Free State Department of Agriculture (represented by Thabethe) entered into a lease agreement with Estina (represented by Kamal Vasram, who had delegated power of attorney to one Melani Anderson). The lease agreement granted Estina use of the land for 99 years, against which no rent would be charged. The agreement also stipulated that the agreement could only be terminated if both the lessor and lessee agreed to its termination. The effect of the lease agreement was thus to hand Estina, for free, legal control over a sizeable asset for 99 years, which Estina could refuse to relinquish should it refuse to do so as cancellation required the agreement of both parties.77

175. It is worth noting that, when ENS investigators questioned Thabethe about the lease agreement, Thabethe behaved in a manner that suggested he recognised the problematic nature of the lease agreement, and as a result, sought to deny its existence. Indeed, during his initial interview with ENS, Thabethe was insistent that no such lease agreement existed. At his second interview, ENS confronted Thabethe with the lease agreement, which had been given to ENS by a different official in the Provincial government. Thabethe then refused to admit that he had previously denied the existence of the lease agreement.78

176. The developments with regards to the lease agreement were disturbing, and revealed a clear pattern of showing remarkable favour to Estina to the detriment of the Department. It is particularly galling that Phumelela, a cash-strapped Municipality charged with servicing an embattled community, lost valuable rental income. It is also concerning that the

77 Affidavit of Samson John Schalkwyk, op Cit, paragraph 120
78 ENS Report, op Cit, paragraph 2.2.54

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Phumelela Municipality received no further compensation equal to the 4% shareholding as the Municipal Council had initially approved the lease agreement on this understanding.

177. The timing of the above chronology is also deeply concerning. In particular, we note that:

a. The June 2012 agreement between Estina and the Department was signed by Thabethe a week prior to Thabethe even beginning to request the use of local land from the Phumelela Municipality;

b. The Estina/Vrede Dairy Project was approved by the Provincial Exco on the 13\textsuperscript{th} of June 2012, whereas Phumelela Council only resolved to begin the process of arranging access to Krynauswslust on the 19\textsuperscript{th} of June 2012;

c. Estina was paid R30m on the 11\textsuperscript{th} of June 2012 to ‘kick-start’ the project, even though the process of securing land for the project had not yet begun;

d. The attempt to arrange a lease agreement between Zayna (as minority shareholder in the Vrede project) and Phumelela Municipality had faltered by the 23\textsuperscript{rd} of July following an adverse legal opinion from the provincial law advisor;

e. In the event, it was only in September 2012 that the Department secured the rights and obligations of the existing tenancy agreements held by Phumelela with local farmers, and only in December 2012 that the Department entered into the lease agreement with Estina.

178. Thus the Vrede Dairy Project was approved in June 2012 despite Estina having secured no access to any suitable farm land. The above also shows that Estina was paid a full R30m prior to Estina securing access to any land to deliver the Vrede Dairy Project. The fervour with which Thabethe and others attempted to secure further payments to Estina in 2012 is also additionally remarkable in light of the failure of Estina to legally secure access to the land until December 2012.
4.5. Violations of the Public Finance Management Act (the PFMA)\textsuperscript{79}

179. The PFMA, in particular Section 16A of the Treasury Regulations formulated as part of the PFMA, set outs that provincial departments are required to implement proper procurement systems through, amongst other things, supply chain management policies.

180. The Vrede/Estina project should have thus fallen under the Free Statement Department of Agriculture’s supply chain management policy. The Department’s supply chain management policy set out that competitive bids had to be sought for all procurement above R500 000.\textsuperscript{80}

181. This requirement could only be waived in exceptional circumstances, and then with requisite approval. The circumstances were, firstly, in the case of emergency or other urgent situation where competitive bids would be impractical, secondly, when there is only a single service provider suitable for a project and thirdly in exceptional cases such as urgent repairs and maintenance.\textsuperscript{81}

182. Based on the available documentation, it is clear that the Estina Project did not adhere to these two requirements for deviation from the supply chain management policy. Moreover, it is also clear that there was no competitive bid process or evaluation for the project. This may have been acceptable if this project was a Public Private Partnership, but this would have required Treasury support and registration, which was never sought.

183. Thabethe’s response to ENS’ questioning in this regard was disturbing. According to ENS, during his interview, Thabethe ‘confirmed that no procurement process was followed in appointing Estina.’ He also ‘confirmed that he did not procure the services of Estina through a competitive

\textsuperscript{79} The Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) (as amended by Act No. 29 of 1999)

\textsuperscript{80} \textit{Ibid.}, paragraph 2.2.37

\textsuperscript{81} \textit{Ibid}
bid process. Instead, Thabethe had effectively agreed to deviate from the normal procurement processes by signing the acceptance letter of 5 July 2012 describe above, which counted as a de facto approval of a decision to disregard the supply chain management processes.

184. Thabethe’s reasoning in explaining his approach was not credible. He claimed that it was not necessary to follow a procurement process because, during an agricultural road show, no other local suppliers had indicated interest in the dairy project. Thabethe alleged that he had conducted presentations about the dairy project and other matters in late 2011 or early 2012.

185. During his evidence before the Commission, Thabethe again reiterated that he had attempted to interest local companies in the project, but failed to do so. We believe that this evidence was not credible, and that many local companies would have leapt at the opportunity to receive substantial government funding and backing to operate a business that would, in the long-term, generate substantial profits. Either Thabethe did not make these offers, or they were made in such a way as to obscure the clear value proposition to potential partners.

186. The ENS Report lays the majority of the blame for the PFMA violations involved in the Estina/Vrede Dairy Project at the feet of Peter Thabethe. We concur. However, as we show in the following section, Ace Magashule was equally responsible for allowing the project to continue in the face of explicit recommendations made by the Accountant General in January 2014 and February 2014. While these did not constitute PFMA violations per se, they speak to extremely poor governance.

4.6. The Roles of Seipate Dlamini and Takisi Masiteng

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82 Ibid, paragraph 2.2.39
83 Ibid, paragraph 2.2.40
187. Seipate Dhlamini served as the Chief Financial Officer for the Free State Department of Agriculture at the time that the Estina contracts and the first payments were approved. Takisi Masiteng served as the general manager.

188. According to Pieter-Louis Myburgh, Dhlamini maintained a close collegial relationship with Mosebenzi Zwane, whom she joined at the Department of Minerals and Energy upon Zwane’s appointment as the Minister of that portfolio.

189. We note that the NPA filed a criminal indictment with regards to the Estina matter, indicting Dhlamini and Masiteng, along with Peter Thabethe, for violations of the PFMA.84

190. The criminal indictment was subsequently withdrawn by the NPA on a provisional basis. The NPA noted that the case could not proceed as the NPA was still awaiting the receipt of additional information. Although not explicitly stated, the NPA’s insistence that the withdrawal was provisional indicates that it may pursue criminal charges in future.

191. We do not, however, have any further insight into their specific roles in the project, excepting that we note that the NPA has recorded that Dhlamini, as Chief Financial Officer, had approved the contract between Estina and the Free State Department of Agriculture. The Public Protector’s 2014 provisional report also found that Ms. Dhlamini “should have ensured that she did not disburse funds to Estina without ensuring that the proper financial oversight controls were in place.”85

192. We bring this to the attention of the Commission in order to remind it that the NPA appears to have made the determination that it had sufficient evidence to prosecute these individuals for criminal conduct. It is clearly within

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84 This indictment has subsequently been withdrawn following, inter alia, the failure of the Asset Forfeiture Unit’s attempts to seize funds stolen from the Estina project.

85 Lack of Oversight: Provisional Report of the Public Protector, November 2014, paragraph 6.4.1.7.2
the Commission’s interests to pursue this matter further, and to clarify the precise nature of the evidence held by the NPA against both Dlamini and Masiteng.
Section 5: ‘Gross Irregularity and Maladministration’\textsuperscript{86}: the Conduct of the Estina/Vrede Dairy Project

193. Between June/July 2012\textsuperscript{87} and either April or August 2014 (the reason for the confusion around the later dates will become clearer later), Estina held its contract with the Free State Department of Agriculture, and began implementing the Vrede Dairy Project.

194. During this period, Estina was paid a total of R173 950 000 in six bulk payments. Considering the size of this outlay, a reasonable person would expect (and the law demand) that the project would be subject to rigorous oversight, and that Estina would invest these funds prudently in the Project it had sold to the Department. Unfortunately, neither of these reasonable expectations was met.

5.1. The January and February 2014 Accountant General Reports

195. In November 2014, the erstwhile Public Protector, Advocate Thuli Madonsela, completed a provisional report detailing her investigation into the Estina/Vrede Dairy Project.\textsuperscript{88} The report was titled \textit{Lack of Oversight}. This report, previously confidential, was recently released following a successful High Court challenge to overturn the report of the current Public Protector, Busisiwe Mkhwebane, which she finalised in 2018.

196. During Advocate Madonsela’s investigation, she was informed that the Estina/Vrede Dairy project had been investigated by the Accountant General at the instance of the National Treasury. The ultimate result of that investigation was the ENS Report, completed and distributed in February 2014, which we quote from in detail above. However, prior to the finalisation of this report, the Accountant General had already completed a draft report,\textsuperscript{89}

\textsuperscript{86} \textit{Lack of Oversight: Provisional Report of the Public Protector}, November 2014, Executive Summary, paragraph (viii)(bb)

\textsuperscript{87} As noted above, Estina and the Department entered into two contracts. The first, in June, was seemingly replaced by a second contract signed in July, after the intervention of the State’s attorney. Estina, however, had received its first payment on the project on the 11\textsuperscript{th} of June 2013.

\textsuperscript{88} \textit{Ibid}

\textsuperscript{89} First Submission on Estina/Vrede Dairy Project to the Zondo Commission by SWI 2019
dated January 2014\textsuperscript{89}, which had been distributed to, amongst others, the Office of the Premier and the Free State MEC for Agriculture and Rural Development.\textsuperscript{90}

197. We do not traverse the full findings of both the January 2014 and February 2014 Accountant General’s reports, which, in summary, found that the initiation and conduct of the Estina/Vrede Dairy Project failed to meet the required procurement, accounting and governance standards. What is important to emphasise, however, is that the January and February 2014 reports made clear and unambiguous recommendations, which the Public Protector summarised as follows:

6.4.1.7 The Accountant General made the following recommendations to the Department:

6.4.1.7.1 That disciplinary action is taken against Mr Thabethe (the Accounting Officer) for his part in concluding this agreement with Estina/Paras. Mr Thabethe did not adhere to the requirements of the PFMA and no supply chain management process was followed prior to entering into the agreement with Estina. Further, Mr Thabethe committed the department financially without ensuring that the department had the funds available to fund this project. The effect of this is that the department is currently struggling to meet its financial commitments in respect of this project.

6.4.1.7.2 That disciplinary action is taken against Ms. Dhlamini the Chief Financial Officer of the Department. As the head of the Department’s finance division, Ms. Dhlamini should have ensured that she did not

\textsuperscript{89} The Public Protector’s Provisional report sometimes refers to this report as being dated January 2013 and, at others, January 2014. This was addressed in Tolmay J’s judgment in Democratic Alliance v Public Protector; Council for the Advancement of the South African Constitution v Public Protector (11311/2018; 13394/2018) [2019] ZAGPPHC 132; [2019] 3 All SA 127 (GP); 2019 (7) BCLR 882 (GP) (20 May 2019). At paragraph 14 Tolmay suggests that January 2013 was a ‘typographical error, as the report itself stated that Treasury was requested on 12 June 2013 to investigate the possibility of procurement irregularities... It would seem the correct date of the report must be January 2014.’

\textsuperscript{90} Ibid, paragraphs 6.4.1.7, our emphasis

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disburse funds to Estina without ensuring that the proper financial oversight controls were in place.

6.4.1.7.3 That no further funds are invested in the project until all of the risk factors set out in this report are addressed.

5.2. The 2014 Provisional Report of the Public Protector and the ‘Gross Negligence’ of the Free State Government

198. The Public Protector initiated her investigation into the Estina/Vrede Dairy Project following two complaints made regarding the Project’s potential for prejudice to the public purse. Advocate Madonsela’s office conducted a detailed investigation (sadly the same cannot be said for the office of Advocate Mkhwebane91) of the project. In the main, Advocate Madonsela’s findings and recommendations both repeated those appearing in the Accountant General’s reports from January and February 2014, while also making further additional findings as to the gross misconduct of the Free State government in failing to monitor the Project.

199. We do not traverse the detail of all of these findings and recommendations in full (although we will address one specific aspect in more detail below), but respectfully draw the Commission’s attention to the following summary of findings and recommendations included in the Public Protector’s Executive Summary:

The evidence provided by the Department in respect of the process followed to conclude the agreement with ESTINA supported the conclusion that the prescripts in respect of the procurement of the agreement was not adhered to. This was confirmed by the Accountant General’s report dated January 2013 [actually 2014] and constitutes maladministration

The Accountant General informed the Public Protector that a report on the Vrede Dairy Project was drafted and submitted for comments during January [2014] to the Minister of Finance, the Free State Premier and the Member for the Executive Council: Free State Department of Agriculture and Rural Development. The accounting officer of the Department proceeded after the recommendation of the Accountant General to pay a further R143, 950 million to ESTINA in respect of the project. This amounted to gross irregularity and maladministration.

The evidence discussed above, which includes failure to adhere to Treasury prescripts in respect of procurement and specifically the conclusion of a PPP leaves me with no option other than to conclude that the Department did not maintain a procurement system that is fair, equitable, transparent, competitive and cost effective as required by section 217 of the Constitution and Treasury regulations on SCM. It did not comply with the above basic supply chain management requirements, and thus rendered the conclusion of the agreement improper.

The conduct of the accounting officer in concluding the agreement amounts to improper conduct, abuse of power and maladministration. This was confirmed by the report of the Accountant General dated January 2014...

No documents and/or policies or measures were provided by the Department that proper financial control and risk management of the project were in place. I could find no evidence or indication that the accounting officer invoked the provisions of the agreement in respect of the control over the project and this raises serious concern. This concern was supported by the report of the Accountant General and the lack of controls amounts to gross negligence and maladministration.

No supporting evidence in the form of actual invoices/receipts was submitted to substantiate the expenditure as claimed in the financial statements submitted. In fact the payment vouchers for the disbursement
of the R173, 950 million to ESTINA were substantiated only by the project proposal of ESTINA/PARAS and the agreement concluded between the Department and ESTINA.

From the above it is clear that this amounts to gross negligence, maladministration and ultimately irregular expenditure in terms of Treasury prescripts....

The independent evidence submitted indicates that the prices of the processing equipment and the cows were considerably higher than the current market prices. The evidence further confirms that the accounting officer of the Department had no measures in place to ensure proper procurement procedures in acquiring assets for the project.

The lack of proper monitoring and control measures to ensure value for public money expended is the reason for the discrepancies and this amount to gross negligence, maladministration and resulted in irregular and fruitless expenditure.\(^{92}\)

200. As a result of the above, the Public Protector ordered a number of remedial measures:

The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with the view of addressing systemic procurement management deficiencies in the Department and the irregular expenditure incurred, is the following:

(a) The Premier of the Free State Province to:

(aa) The Premier of the Free State Province ensures, in terms of Treasury Regulation 4.1.3, that the Executive Authority of the Department initiates an investigation into the conduct of the accounting officer of the Department.

\(^{92}\) Ibid, Executive Summary, paragraphs vii
(bb) The Premier of the Free State Province ensures the findings of the Accountant General are noted and the recommendations as mentioned in his report of January [2014] are implemented.

(b) The Member of the Executive Council for the Free State Department of Agriculture and Rural Development to:

(aa) Initiate an investigation into the conduct of the accounting officer of the Department in terms of Treasury Regulation 4.1.3 with the view of taking disciplinary measures.

(bb) Ensure that the findings of the Accountant General are noted and the recommendations as mentioned in his report of January [2014] are implemented.

(c) The Head of the Free State Department of Agriculture to:

(aa) Improve the Supply Chain Management System of the Department to ensure that all Treasury legislation and other prescripts are adhered to

(bb) Ensure that the officials of the SCM Division and the members of Management of the Department are trained on the prescripts of the National and Provincial Treasuries in respect of procurement and specifically in respect of deviations.

(cc) Take corrective measures to prevent a recurrence of the failure in the Management process referred to in this report.

(dd) Ensure that all Departmental staff involved in the implementation and execution of projects are properly trained and capacitated to manage projects assigned to them.
5.3. The Failure to Suspend Payments on the Vrede Dairy Project or Implement Remedial Measures and the Officials Responsible

201. The Public Protector’s Report was explicit in recommending that the findings and recommendations of the Accountant General’s January and February 2014 reports be implemented. She recommended, to both the Premier of the Free State and the MEC for the Department of Agriculture, that ‘the findings of the Accountant General are noted and recommendations mentioned in his report of January 201[4] are implemented.’

202. However, the recommendations of the Accountant General made in January 2014 and February 2014, and in the Provisional Public Protector’s report in late 2014, were ignored by those responsible for heeding them.

203. We note that the Accountant General and Provisional Public Protector’s Report were not legally binding: we are advised that reports of the Accountant General are advisory, while the Provisional Public Protector’s Report would only have force once finalised. However, we submit that the findings of the Accountant General in January and February 2014, and the implied actions so clear, that those called on to implement certain actions could not reasonably have ignored them.

204. The Provisional Public Protector’s Report is notable in that it confirms that the findings of the Accountant General’s February 2014 report were reiterated and supported, and confirms that these findings were delivered to, amongst others, Ace Magashule and Peter Thabethe.

205. We note that:

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93 Ibid, Executive Summary, paragraph ix (a) and paragraph ix (b)
a. No disciplinary proceedings were instituted against Peter Thabethe;
b. No disciplinary proceedings were instituted against Seipate Dhlamini;
c. Payments on the Project were not suspended and, indeed, Estina was paid a further R30m on the 21st of July 2014;
d. Payments continued to be made to Estina in 2015 and 2016, even though, as we discuss in more detail in the following section, the Department had cancelled its contract with the company.

206. Ace Magashule served as the Premier of the Free State during the period in which the Accountant General made its January and February 2014 recommendations, and during which the Public Protector made her 2014 findings and recommendations.

207. Peter Thabethe served as the Head of Department for the Free State Department of Agriculture during the period in which the Accountant General made its January and February 2014 recommendations, and during which the Public Protector made her 2014 findings and recommendations.

5.4. The Vrede Dairy ‘Beneficiaries’

208. In the midst of the multiple procurement irregularities, PFMA violations and money laundering, it is often difficult to recall that the ultimate beneficiaries of the Vrede Dairy Project were supposed to be members of the community of Vrede and its aspiring agriculturalists.

209. But, as with all other aspects of the Vrede Dairy Project, this aspect of the transaction was handled in such a desultory manner as to suggest that it was of limited, or even no, importance to the officials overseeing the Project and the controlling minds behind Estina.

210. As noted above, the empowerment of the local community was supposed to be achieved through the creation of a special purpose vehicle. Estina would hold 49% of the shares, while the remaining 51% of the shares
were to be distributed, according to Estina’s funding proposal, to ‘at least three selected Grant recipients.’

211. The June 2011 Partnership Agreement signed between the Free State Department of Agriculture and Estina contained the explicit provision that Estina would implement an ‘Agri-BEE business model’ in which a second entity called Zayna Investments, but trading as Mohoma Mobung Dairy Project (MMDP), would house shares in the project along the lines stipulated in the business proposal. In the list of obligations and services to be performed by Estina it is recorded that Estina would be responsible for, *inter alia*:

‘Setting up of a BEE entity as per the Agri BEE Business norms stipulated by Government called Zayna Investments Pty Ltd, trading as Mohoma Mobung Dairy Project to be the beneficiary of grants envisioned in this agreement.’

212. This requirement was repeated in the second contract signed between Estina and the Department the following month. Under the heading ‘obligations of Estina’ it was recorded that

*Estina ensure that the beneficiaries own 51% of the AGRI BEE entity the remaining shares belongs to Estina. Provided that should Estina decide to sell its shares, the Department will have the right of first refusal.*

213. In the same contract, it is further recorded that the obligations of the Department would include the requirement that the Department

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94 ENS Report, paragraph 2.2.19
95 Partnership Agreement Between the Department of Agriculture (DoA) Free State Province, South Africa and Estina PTY Ltd in Relation to the Implementation of a Dairy Project at Vrede’, attached as an unnumbered exhibit to Annexure SJ3 to the Affidavit of Samson John Schalkwyk in Case 1778/2018
96 Agreement Entered Into and Between The Department of Agriculture and Estina (PTY) Ltd, 5 July 2012, clause 6.3, attached as Exhibit 11 to the ENS Report. The ENS Report and all its exhibits were attached to affidavit of SJS Schalkwyk in case 1778/2018 as Annexure SJS3.

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214. From the above, it is clear that the division of duties was that (a) Estina would create a special purpose vehicle hold the 51% shareholding of the local beneficiaries of the project and that (b) the Department would identify those beneficiaries that were to hold the 51% shareholding and participate in the project.

215. The Commission has heard extensive testimony from Ephraim Dlamini and Jun David Mahlaba regarding the process by which beneficiaries were ‘selected’ following meetings between community members, Thabethe, Zwane and others. We do not traverse these details in full again. We do, however, highlight that, regardless of these meetings taking place and multiple promises being made, at no stage was any meaningful attempt made to transfer shares in Estina/Vrede to any local beneficiaries.

216. Jun David Mahlaba has testified that in or around June 2012, he, as an elected representative of the community liaison team, signed a ‘beneficiary agreement’ with the Department. The agreement established a framework through which the Department could provide ‘Project Funds/Assets as required in terms of this agreement and may contract a mentor... to provide the necessary support to the beneficiary.’

217. A close reading of the beneficiary agreement, however, shows that it made only the most broad comittments on the part of the Department to fund the Vrede project. It made no specific plan, or incurred no specific obligations, to ensure that the beneficiaries – who do not appear to have been incorporated into a legal entity in any event – received shares in the Estina project.

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97 Ibid, clause 7.3
98 Beneficiary Agreement Entered Into Between Department of Agriculture Free State and Vede Dairy Project 2013/2014, attached as Annexure JDM1 to the Affidavit of Jun David Mahlobo to the Commission of Inquiry on State Capture, JDM-15, paragraph 9.3

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218. It is curious that the Department sought to engineer this agreement, in light of the fact that, according to its own MoU with Estina, it placed the obligation to transfer shareholding to beneficiaries on Estina. Why the Department was seeking to enter into a separate mechanism to manage identified beneficiaries is unclear.

219. It is also notable that neither the Vrede Dairy Project, nor the role of Estina, is mentioned explicitly in the beneficiary agreement. This strongly suggests that this agreement was a template that had been used previously by the Department and subject to minimal amendment in this instance.

220. Returning to the failure to identify and arrange formal inclusion of beneficiaries: as late as August 2013, a representative of the National Department of Agriculture, Fisheries and Forestry (DAFF), conducted a site visit at the Vrede Dairy Project. The site visit was part of the requirements imposed by DAFF as result of the fact that a portion of the funds used to by the Free State government to pay Estina was derived from CASP funding. CASP funding was overseen by DAFF, which was required to ensure that the funding was spent fruitfully and in line with contractual agreements.

221. Following the site visit by the DAFF representative, the DAFF grants co-ordinator, Elder Mtshiza, recommended to the DAFF Director General that the CASP grant be withheld from the project.\footnote{ENS Report, paragraph 4.1.1} The CASP grant would only be released once a series of recommendations had been implemented. The recommendations were that:

\begin{itemize}
  
  \item[(i)] The province must conduct a proper feasibility study;
  \item[(ii)] The province must develop a business plan for the project;
  \item[(iii)] The province must conduct a biological impact study;
  \item[(iv)] The province must get approval for water rights for the project;
  \item[(v)] The province must outline clearly who the 100 smallholder farmers are and mobilize and structure them accordingly;
\end{itemize}

\footnote{ENS Report, paragraph 4.1.1}
(vi) The R53 million allocated from CASP in 2013/2014 be withdrawn from the project and be directed to incomplete projects in the province and to smallholder farmers.

222. This evidence was reiterated and clarified in Ms. Mtshiza’s evidence to the Commission.

223. The Department compiled a list of 80 individuals who could be beneficiaries of the project, along with their ID numbers. There were no discriminating criteria applied to who could make this list. According to the provincial product coordinator, Ms Meyer, it became her task to remove individuals who would not be entitled to become beneficiaries based on five criteria:

- The beneficiaries must not be government officials
- They should not have criminal records
- There should be no double-dipping
- The beneficiaries should be of a suitable age to farm
- They should be South African citizens that reside in Vrede, Memel or Warden areas

224. This process of excluding beneficiaries was still ongoing by the time that ENS investigators finalised their report in February 2014. Thus, a full year and 8 months following the initiation of the project, the Free State Department of Agriculture had still yet to identify a final list of beneficiaries on the project.

225. There is contradictory evidence regarding as to whether Estina fulfilled its obligations to create a special purpose entity. According to provisional report of the Public Protector, an Agri-BEE entity ‘was registered originally as Zayna Investments Pty Ltd.’ The CIPC number of the entity was 2012/035726/07. The name of this entity was changed to Mohoma Mobung

\[\text{Ibid}\]

\[\text{Ibid, paragraph 4.1.4}\]

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Dairy Project (Pty) Ltd in August 2012.\textsuperscript{102} Frans Oupa Mokoena was registered as the ‘custodian’ of 51% shareholding in Zayna Investments.

226. According to Pieter-Louis Myburgh, Frans Mokoena (spelt France by Myburgh) was a businessman from Vrede. His company, Koena Property Developers, had previously earned R25m through housing contracts issued at the time Mosebenzi Zwane served as the Free State MEC for human settlements. The #Guptaleaks records show that on the 1\textsuperscript{st} of August 2015, Mokoena sent Zwane’s CV to Tony Gupta at his Sahara email address. Tony Gupta forwarded the CV to Duduzane Zuma’s email address the following day. Zwane was appointed Minister of Mineral Resources on the 23\textsuperscript{rd} of September 2015.\textsuperscript{103}

227. For some unknown reason, it appears that a different special purpose vehicle was created, distinct from Zayna Investments/Mohoma Mobung Dairy Project. According to the Exhibit 16 of the ENS report, attached as \textbf{Annexure H} to this submission, a new entity was registered on the 11\textsuperscript{th} of October 2013. The entity was called Mohoma Mobung Diary [sic] Project (Pty) Ltd. The CIPC registration number provided was 2013/189418/07 (clearly different from the registration number of Zayna Investments). The sole director of the company was listed as Kamal Vasram.

228. It is not clear, from the available material, why two entities sharing the same name (accounting for the typographic error in the spelling of dairy) were created in 2012 and 2013. It is also not clear, from the available material, which of these entities was intended as the special purpose vehicle that would hold the shares of identified beneficiaries.

229. Based on the above, we submit that:

a. the Department was dilatory in initiating the process of identifying and including potential beneficiaries on the Project despite this being (a)

\textsuperscript{102} \textit{Lack of Oversight}, op Cit, paragraph 6.3.2.5
\textsuperscript{103} See Annexure AA
contractually required and (b) one of the primary rationales that the
Free State government committed funds to support the project.
b. the limited steps taken towards identifying and including beneficiaries
produced no notable results, in that no shares in the project were ever
distributed to local beneficiaries;
c. the attempt to identify beneficiaries was desultory and haphazard;
d. by the time the Department had cancelled its agreement with Estina,
no firm steps had been taken to constitute the beneficiaries into a
single legal entity, nor had arrangements been made for the shares in
Estina to be transferred to such a legal entity.

230. We submit that the ineluctable impression created in this regard is not
just that the Department and Estina were incompetent and haphazard in
including potential beneficiaries, but that the inclusion and empowerment of
beneficiaries was a mere afterthought.
**Section 6: Payments to Estina Made After Public Announcements of Contract Cancellation**

231. Estina continued to receive payments from the Free State government in 2015 and 2016. These payments were made after it was announced that all contracts with Estina had been terminated.

232. The effect of the payments in 2015 and 2016 was to compound the multiple failings of the Free State government described in the preceding sections, and to effectively reward Estina despite the company’s total failure to deliver on its Project commitments and its outright theft of scarce government resources.

### 6.1. Cancellation of the Estina contracts and the Role of the Free State Development Corporation

233. On the 28th of April 2015, the Acting MEC for Agriculture and Rural Development in the Free State government provided answers to questions posed by in the Free State legislature by the Democratic Alliance. In the answers (attached as Annexure I), it is made clear that the Free State government terminated its contract with Estina in August 2014:

> ‘2.2. On what date was the contract cancelled?

*Answer 2.2)* The DEPARTMENT cancelled the agreements with ESTINA (Pty) Ltd on the 13 August 2014.

234. The MEC confirmed, additionally, that, at the time of answering the question, Estina had instituted no claims against the Department:

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105 *Ibid*
2.3. Whether any claims were made by Estina against the Provincial Government regarding the cancellation of this contract; if so, (a) what was the nature of the claim, (b) the amount?

Answer 2.3) No claim has been made by Estina since the cancellation of the contract\(^{106}\)

235. Finally, the answer confirmed that Vrede project would receive no further funds from the national government due to the ENS Forensics/Treasury investigation into Estina:

2. Whether the national government has ceased investment in this project, if so, what were the reasons given for this.

Answer 2) Yes, due to National Treasury investigations\(^{107}\)

236. These answers do not tell the whole story. As noted above, in November 2014, the erstwhile Public Protector, Advocate Thuli Madonsela, completed and distributed a provisional report on the Estina/Vrede Dairy Project titled Lack of Oversight\(^{108}\).

237. In her investigation into the matter, Advocate Madonsela was provided with copies of multiple letters and documents from the Free State Department of Agriculture. Four documents are of note here, which were described as follow in the provisional report:

a. '25 April 2014- Letter from Estina to the Free State Department of Agriculture referring to a letter dated 24 April 2014 cancelling the agreement in terms of Clause 15.3 of the agreement. Clause 15.3

\(^{106}\) Ibid
\(^{107}\) Ibid
\(^{108}\) 'Lack of Oversight', op Cit
indicates that ESTINA shall be entitled to payment in full for services delivered. The letter demands payment of R136,252,652.00.

b. 19 May 2014 – Submission to the Free State Executive Council to transfer the Vrede Integrated Dairy Project to the Free State Development Corporation by the Member of the Executive Council of the Free State Department of Agriculture and Rural Development;

c. 22 May 2014 – Letter from the Head of the Free State Department of Agriculture to the Chief Executive Officer of the Free State Development Corporation referring to EXCO Resolution 62/2012 dated 13 June 2012 to implement the project. The letter submits that after EXCO revisited the project it was decided on 16 April 2014 that the project must be transferred to the Free State Development Corporation.

d. 27 May 2014- Free State Development Corporation Board Meeting minutes, item 01/2014/80. The Board approves the take-over. The Company Secretary and Acting Chief Financial Officer instructed to conduct a high-level due diligence of the project and table a report at the next meeting. The Board will then decide on an appropriate business model.\textsuperscript{109}

238. While we have not reviewed these letters and documents, their content appears clear and self-evident from the description provided in the report, namely, that, on the 24\textsuperscript{th} of April 2014, the Free State Department of Agriculture wrote to Estina with regards to terminating its agreement, and that, the following month, the Free State Department of Agriculture agreed to appoint the Free State Development Corporation [FDC] to manage the project, replacing Estina as the implementing agent..

239. We have reviewed the Annual Reports of the FDC. The reports confirm that FDC have since taken over management of the project (although on-the-ground management is performed by a third-party). For example, in the FDC’s

\textsuperscript{109} Ibid, paragraphs 4.4.1.21 – 4.4.1.23

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2014/2015 Annual Report (an extract of which is attached as **Annexure J**), the Chief Executive Officer’s Overview stated that:

> ‘During the period under review the FDC took over management of the Vrede Integrated Dairy Farm Project on request from the Provincial Executive Committee. The farm is not yet operating at the optimum level but we are confident that with measures that we have put in place such as internal controls, supply chain, cost management controls and improved operations management, we will be able to see positive change within two years.’\(^{110}\)

240. Further Annual Reports also mention the Vrede project explicitly. The 2017 Annual Report (an extract of which is attached as **Annexure K**) noted that:

> ‘by the end of the financial year, there was an improvement in the management of the Vrede Integrated Dairy Project. The production of milk improved significantly and the main objective is to achieve financial sustainability without depending on a subsidy from the Provincial Department of Agriculture and Rural Development.’\(^{111}\)

241. The FDC Annual Reports also confirm that the cash balance of the Vrede Dairy Farm project formed part of the FDC’s cash and equivalents line item. The Project was listed has having R3.518m cash-on-hand in 2016 and R3.063 cash-on-hand in 2015.\(^{112}\)

242. The Commission has already heard evidence further confirming that the FDC was tasked by the Department of Agriculture to become the implementing agent for the Project.

### 6.2. Continued receipt of funds following cancellation

\(^{110}\)Free State Development Corporation Annual Report 2014/2015, p. 8  
\(^{111}\)Free State Development Corporation Annual Report 2017, p. 21  
\(^{112}\)Free State Development Corporation Annual Report 2016, p. 115

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243. Estina continued to receive large payments from the Free State Department of Agriculture for at least two years after the stated cancellation of their contract in August 2014.

244. Estina’s bank statements show that they received payments in 2015 and 2016 totalling over R100m:

   a. On the 8th of May 2015, Estina’s First National Bank (FNB) Bank Account was credited with a payment of R60 million with the reference number BASI01 FS AGRIC DBNO 150508442NP5990.\textsuperscript{113}

   b. On the 5th of May 2016, Estina’s FNB Bank Account was credited with a payment of R46 252 652 (R46 million) with the reference number BASI01 FS AGRIC DBNO 1605054442NP6071.\textsuperscript{114}

245. As we show in our future submission, these funds were transferred from Estina’s accounts to Gupta-linked accounts within days of receiving these two amounts.

246. The provincial budget for the Free State Department of Agriculture confirms that these two payments were made out of the Province’s Agricultural budget. The 2014/2015 Departmental budget it is recorded that ‘R60 million will be channelled to the Vrede Dairy Mega Project, as part of the Mohoma Mobung Programme which is expected to be completed in the 2016/2017 financial year.’\textsuperscript{115}

247. The 2016/2017 Estimates of Revenue and Expenditure for the Department shows that the Vrede Dairy was allocated and paid an adjusted amount of R46,253m. This is exactly the amount reflected in Estina’s FNB bank account on the 5th of May 2016.\textsuperscript{116}

\textsuperscript{113} Mradla Affidavit, paragraph 150
\textsuperscript{114} Ibid, paragraph 156 - 158
\textsuperscript{115} Vote 11 – Agriculture and Rural Development, Free State Department of Agriculture and Rural Development, 2015/2016, p. 4
\textsuperscript{116} Vote 11 – Agriculture and Rural Development, 2016 Adjusted Estimates of National Expenditure, p. 17
248. In 2015/2016 and 2016/2017, the payments to the Vrede Project (in reality Estina) were taken from the province’s Infrastructure Enhancement Allocation (IEA). The IEA is a line item controlled solely by the Free State government, and the Department of Agriculture specifically.

249. Cumulatively, this suggests that Estina was paid a total of R106 million by the Free State Department of Agriculture in 2015 and 2016, despite having no role in the project, and, indeed, after having their contract with the Department cancelled in 2014.

6.3. Estina’s Letter of 25 April 2014 – The Reason Why They Continued to Be Paid?

250. According to the Public Protector’s 2014 provisional report on Estina/Vrede that Estina had, on the 25th April 2014, written to the Free State Department of Agriculture. The letter from Estina was written in response to a letter dated the 24th of April of April from the Free State Department of Agriculture about terminating the contract between Estina and the Department. The following is recorded in the 2014 provisional report:

*The Department did submit a letter from ESTINA dated 24 April 2014 claiming an amount of R136, 252, 652 as the shortfall which according to the letter they are entitled to as a result of the cancellation of the agreement. Clause 15.3 of the agreement states that ESTINA shall be entitled to payment in full for the services delivered. The shortfall was explained in the letter as follows:*

<table>
<thead>
<tr>
<th>Date</th>
<th>Commitment</th>
<th>Received</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 July 2012</td>
<td>114,000,000.00</td>
<td>30,000,000.00</td>
<td>84,000,000.00</td>
</tr>
<tr>
<td>18 April 2013</td>
<td>114,000,000.00</td>
<td>113,950,000.00</td>
<td>50,000.00</td>
</tr>
<tr>
<td>1 April 2014</td>
<td>114,000,000.00</td>
<td>0</td>
<td>114,000,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>342,000,000.00</strong></td>
<td><strong>143,950,000.00</strong></td>
<td><strong>198,050,000.00</strong></td>
</tr>
<tr>
<td><strong>Invoices submitted</strong></td>
<td><strong>280,202,652.00</strong></td>
<td><strong>143,950,000.00</strong></td>
<td><strong>136,252,652.00</strong></td>
</tr>
</tbody>
</table>
The agreement states that ESTINA must carry out their obligations in line with the Department’s policies, procedures, protocols and directives. The Department was requested to submit proof of measures in place and executed to ensure adherence to the agreement as well as adherence to the Treasury requirement of value for money during procurement of state assets. No supporting evidence in any form was submitted by the Department.\textsuperscript{117}

251. We pause here to note the utter brazenness and gall of Estina’s 24 April 2014 letter. As we will show in more detail our further submission, by the time of this letter, Estina and the Gupta enterprise had already received, laundered and dissipated tens millions of rand from the Free State Department of Agriculture on expenditure utterly unrelated to the Estina project. This included paying for the infamous Sun City wedding. Moreover, Estina and the Gupta enterprise had invested little to none of their own money in the Vrede dairy farm. Instead, Estina and the Gupta enterprise had deployed sophisticated money laundering tactics to create the impression that they had invested moneys, when the funds were, in actual fact, ultimately derived from the Free State Department of Agriculture.

252. The evidence of Mr. Basson before the Commission is also relevant.\textsuperscript{118} Basson has testified that, while conducting work on the farm, he became familiar with the farming practices and the equipment used on the farm. Basson has claimed that the farm was exceptionally poorly managed, and that certain primary equipment that had been delivered was used and rusty.\textsuperscript{119} Basson also recalled that a large number of cows had died as they had not been fed.\textsuperscript{120} Basson’s testimony indicates that any claim Estina may have made that they delivered services to the value of close to R300m was totally unsubstantiated and preposterous on the available evidence.

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\textsuperscript{117} Lack of Oversight, op cit, paragraphs 6.3.2.13 – 6.3.2.14
\textsuperscript{118} Transcript of Day 141 of the Commission of Inquiry into State Capture, 26 July 2019
\textsuperscript{119} Ibid, p. 19
\textsuperscript{120} Ibid, p. 31

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253. The Commission has also heard evidence regarding two site visits by Free State Department of Agriculture officials that reported their findings in January 2013 (the 'Myburgh Report') and May 2013. Both reports indicated that only very limited work had been performed on the project and that progress was 'sluggish' at best.121

254. During his evidence before the Commission, Thabethe appeared to suggest that Estina was paid the R106m as envisaged by their April 2014 letter in order to reimburse Estina for the cost of a milk processing plant that had been installed.122 We do not address this fully here, but note that, in our future submission, we highlight that the total amounts paid to Star Engineers, responsible for providing and installing the milk processing facilities installed by Estina, was considerably less than R106m. If this was the basis upon which the Department paid the R106m, it was profoundly mistaken in doing so, which would have been discovered with only the most cursory investigation.

255. We do not know if the Department referred the matter to the State’s Attorney or other legal advisors. That no such referral or document was provided to the Public Protector prior to the finalisation of her provisional report in November 2014 would suggest that it was not. Further, no evidence has been led before the Commission to suggest that this matter was referred to counsel.

256. We do know, however, that the Department continued to pay Estina. This strongly suggests that the Department agreed with, or failed to challenge, Estina’s assertion that it was due money under the terms of its contract with the Department. Certainly, this was the evidence tendered by Thabethe before the Commission.

121 Transcript of Day 181 of the Commission of Inquiry into State Capture, 16 October 2019
122 Transcript of Day 183 of the Commission of Inquiry into State Capture, 28 October 2019, p. 80

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257. This assumption is borne out by a simple calculation that indicates that the Department, inexplicably, agreed with Estina’s claim as to the amounts due to it. As noted above, Estina claimed in April 2014 that it was due to receive a further R136,252,652.00 from the Free State government. On the 21st of July 2014, Estina was paid R30m. Deducting this figure from Estina’s April 2014 claim leaves an outstanding obligation of R106,262,652.00. This is the exact amount that Estina was paid by the Department between 2015 and 2016.

258. We have reviewed the agreement between Estina and the Free State Department of Agriculture signed on the 5th of July 2012.\textsuperscript{123} The entirety of Clause 15 runs as follows:

15. **Termination**

15.1 **Non-Default Termination**

15.1.1. *This agreement shall automatically be terminated on the termination date, unless it has been terminated earlier in accordance with the provisions of this agreement.*

15.2. **Breach**

15.2.1. *A party commits a breach if he fails or refuses to perform as agreed in terms of the provisions of the agreement.*

15.2.2 *Should any Party (the “guilty party”) commit a breach of this Agreement and fail or refuse to rectify that breach within 14 (FOURTEEN) days after receipt of a written notice from the other Party (the “innocent party”), calling upon the guilty party to rectify that breach, the innocent party shall be entitled, without prejudice to any other of his*

\textsuperscript{123} Agreement Entered Into and Between The Department of Agriculture and Estina (PTY) Ltd, 5 July 2012, attached as Exhibit 11 to the ENS Report. The ENS Report and all its exhibits were attached to affidavit of SJS Schalkwyk in case 1778/2018 as Annexure SJS3.
rights, to forthwith cancel this Agreement by written notice to the guilty party.

15.3. Exhaustion of Funds

It is also agreed that should funds no longer be available or the execution of the Project, the Department may terminate this Agreement in its own discretion or temporarily suspend all or part of the Project by notice to Estina who shall immediately make arrangements to stop the performance of the Project and minimize further expenditure. Provided that Estina shall thereupon be entitled to payment in full for the services delivered, up to the date of termination or suspension."\textsuperscript{124}

259. Estina’s reliance on Clause 15.3 to require continued payment is confusing. Clause 15.3 very clearly establishes that, should no funds be available, the Department may terminate the Agreement entirely at ‘its own discretion’ or ‘temporarily suspend’ the project for the same reasons. National Treasury’s injunction to stop all payments on the projects in February 2014 report would have applied in this instance and should have, at the very least, led to a suspension of the Project, which the Department was entitled to do.

260. It is possible that Estina was relying on the element of Clause 15.3 that stated that they were entitled to payment ‘for services delivered... up to the date of termination of suspension.’ For this to be justifiable, Estina would have to have spent or delivered products and services to the total value of the entire Free State Department of Agriculture allocation by the April 2014.

261. However, according to Estina’s own version of events, as reflected in the Public Protector’s provisional report, Estina had invested a total of R42,365,999.00 by December 2013. Of this, R21,200,000.00 had been withdrawn in December 2013, leaving a total investment of R21,165,999.\textsuperscript{125}

\textsuperscript{124} Ibid
\textsuperscript{125} Ibid, paragraph 6.3.2.10

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Financial statements submitted by Estina covering the period 2013/2014 show that Estina had made no further investments by April 2014.126

262. It is possible that Estina claimed that the value of services, when added to the value of investments, was equal to the amount that they claimed from the Free State Department of Agriculture. However, this would suggest, remarkably, that by the April letter, Estina had delivered services to the exact and specific Rand value that they were claiming. This is simply not credible, especially in light of the considerable evidence that has indicated that the on-the-ground delivery of services was sluggish and of poor quality.

263. More importantly, as we will show in our further submission, the banking records for Estina in the period between 2012 and 2014 show that Estina’s claim that it had incurred costs or delivered services of R280,202,652.00 by the date of its April 2014 letter was farcical and fraudulent. Indeed, as we will show in our further submission, the amount that can be legitimately linked to expenditure on the Vrede Dairy Project from Estina’s bank statements was a fraction of the R280m that Estina claimed.

264. We also highly doubt that that the investment figures provided by Estina and reported in the Provisional Public Protector’s Report are accurate. Indeed, as we will show our further submission, the vast majority of funds deposited into Estina’s accounts during the period 2012-2016 were not funds raised independently by Estina, but, instead, constituted Free State government funds that had been laundered and recycled so that their ultimate origin – the public fiscus – was disguised.

265. Estina’s letter of 25 April 2014 thus amounted to an attempt to interpret Clause 15.3 as suggesting that Estina was entitled to receive the grant from the Free State government, whether the contract was cancelled or not, on the basis that it had provided services that it had not delivered.

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126 Ibid, paragraph 7.2.14
266. The Department, for its part, made no attempt at any stage to establish the validity of the costs that Estina had claimed to have incurred. It, instead, relied entirely on Estina’s statement to that effect. In the circumstances, it is impossible to see how the Department could have made any reasonable or reliable calculation as to the amount, if any, Estina was due under terms of Clause 15.3 of its contract.

6.4. Comment on the Public Protector’s Report of 2018

267. On the 9th of February 2018 the Public Protector, Busisiwe Mkhwebane, published her final report on the Estina/Vrede matter.\(^\text{127}\) This report was distinct from the provisional 2014 report drafted by her predecessor, Advocate Thuli Madonsela. In May 2019, Advocate Mkhwebane’s 2018 report was set aside as unconstitutional. The Courts were particularly critical of Advocate Mkhwebane’s failure to conduct a meaningful investigation into matters falling under her purview.

268. The Public Protector’s 2018 Report regarding Estina and Vrede is silent on the payments made to Estina in May 2015 and May 2016. According to the Public Protector’s 2018 Report:

‘the department was requested to submit copies of all invoices submitted by ESTINA to the Department with reports in line with the project plan and payment documentation for the invoices paid. The Department submitted documentation on 6 bulk payments made to Estina. The substantiating documentation attached to the payment authorisations included only the project proposal and agreement signed between Estina and the Department.’\(^\text{128}\)


\(^{128}\) Ibid, paragraph 5.2.15

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269. The last payment details provided to the Public Protector by the Department show a final payment made on the 21st of July 2014, and total payments of R173 950 000.

270. It is possible that the Department only submitted these amounts to the Public Protector, in which case they were clearly misleading the Public Protector.

271. Equally, it is possible that the Public Protector failed to evaluate the accuracy of these disclosures against the publicly available Provincial budgets, which would tell a different story. Certainly, by the time the Public Protector report was published in February 2018, the NPA and Asset Forfeiture Unit had already filed their papers in their attempt to seize Gupta assets. A cursory reading of the NPA and AFU affidavits would reveal the 2015 and 2016 deposits in the Estina accounts.

272. This is a matter requiring further investigation. However, on the basis of the evidence before us, we believe that the most likely inference to be drawn is that the Department knew about the difficulties it would have in accounting for the 2015 and 2016 payments, and wilfully hid their disclosure from the Public Protector.

273. The Public Protector, meanwhile, failed to note the payments in documents available through other legal processes and national budgetary filings. If this is an accurate summation of events, this would tend to support the proposition that these payments were simply inexplicable.

274. Both of these explanations are consistent with the clear evidence that Estina was shown repeated favouritism by the Free State provincial establishment, and with the High Court’s decision to set aside the Public Protector’s 2018 report.
6.6. Estina’s Banking Facilities at FNB

275. It is striking that FNB tolerated the banking activities of the Estina account to continue despite the fact that, by the time these payments were made, the Estina case had reached national prominence.

276. We are not aware of whether FNB made any suspicious activity reports about the Estina transactions to the relevant authorities. This is a matter we believe the Commission should investigate with urgency. If FNB failed to do so, this shows that they were delinquent in their duties to detect and prevent suspicious banking activity.

277. In the event that FNB filed any suspicious activity reports, but these were not acted on, the inactivity of the Financial Intelligence Centre should be examined.

278. We believe that the prevailing context of the Estina project, in particular the project’s clear links to politically-exposed individuals, corruption and state capture, should have incurred an additional obligation on FNB: to report the payments from the Free State government, and their immediate dissipation, to a police official as required by the Prevention and Combating of Corrupt Activities Act.

279. We put these issues to FNB in September 2019. FNB responded by stating:

*Due to client confidentiality, FNB cannot comment on specific bank accounts.*

*In instances where the bank is required to comply with external legal or judicial processes, the bank will adhere to such requests.*
6.7. Investigate the Roles Played by Messrs Thabethe and Magashule Regarding the Continued Payments Made to Estina

280. Based on the foregoing, we believe that there existed no good reason, either in law or in common sense, for the Free State Department to continue to make payments to Estina in 2015 and 2016. That they continued to do so is an affront to South Africa’s citizenry.

281. That the Department continued to make these payments compounded the Department’s failure to suspend payments on the project as recommended by the Accountant General in February 2014 and reiterated by Public Protector in November 2014.

282. The ineluctable impression created is that at every stage of the contract, from its approval to its ‘termination’, the Free State Department of Agriculture, and the Free State government as a whole, sought to pay Estina funds to which it was not entitled, for which it failed to ever meaningfully account, and for which it appears to have delivered marginal if any returns to the community of Vrede. At the same time, the Department flouted good governance, and ignored the recommendations of the Accountant General and the Public Protector.

283. Estina, for its part, sought and succeeded in

a. misleading the Department as to the true cost of the Vrede Dairy Project;

b. developing a money laundering system designed to disguise the fact that it was failing to make its own contractually stipulated investments into the project.

284. That this reflects poorly on the Department, on the Free State government, and on Messrs. Thabethe, Zwane and Magashule is the most drastic understatement.
Section 7: The Estina/Vrede Dairy Project as a Project By and for the Benefit of the Gupta Enterprise

7.1. The Multiple Roles of the Gupta enterprise in the Estina Project

285. In June 2013, following reports of the Guptas' involvement in the Estina scandal, denials of any Gupta involvement were swiftly issued. Responding to a query from the Mail & Guardian, for example, Vasram stated that 'as far as the Gupta family's involvement in the project is concerned, I wish to categorically state that they are not involved in any manner in this project.'129 Gary Naidu, the spokesperson for the Gupta family, also denied that the Gupta family was involved in the project, save for consultancy contracts worth R138 000 awarded by Estina to a Gupta-linked company, Linkway.130

286. Nothing could be further from the truth. In reality, the Gupta enterprise was intimately involved in all aspects of the Estina dairy project from its inception until the company received its final payment in 2016. Moreover, the Gupta enterprise was the primary beneficiary of the entire Estina/Vrede Dairy Project, siphoning funds deposited from the Free State government into its own accounts and for its own purposes.

7.1.11 The Benefits Accruing to the Gupta Enterprise through the Control and Dissipation of Estina's Assets

287. In our future anticipated submission, we describe, in detail, the manner in which funds from the Estina project were laundered and distributed. Two features of this are salient here. First, the laundering network was run by key Gupta lieutenants and reported to the Gupta brothers. Second, we can trace conclusively that a substantial portion of the funds from the Estina project ended up in the hands of the Gupta enterprise and associated entities such as Oakbay Investments and Linkway Trading. This, perhaps above all, provides

129 ‘Guptas' Farm Cash Cows in Free State’, Mail & Guardian, 6 June 2013
130 ‘Guptas Linked to Farming Scheme’, City Press, 26 May 2013

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clear and incontrovertible proof that the Estina project was a *de facto* project of the Gupta enterprise.

7.1.2. Kamal Vasram's Previous and Contemporaneous Connections to the Gupta Enterprise and Work with the Free State Government

288. The #Guptaleaks archives show that Kamal Vasram, the sole director of Estina, was involved in a number of aspects of the Gupta enterprise, both before and during the life of the Estina project.

289. The relationship between Kamal Vasram and Sahara Computers stretches back to at least 2008. The first record of contact between Sahara and Vasram included in the #Guptaleaks is from the 31st of March 2008. The email shows that Vasram was in contact with Sahara employees regarding the sale of Intel products. Vasram was, at the time, an employee of Intel.

290. In November 2010, Kamal Vasram was invited to attend a Diwali celebration hosted by Sahara and the Guptas.

291. Calendar entries show that Tony Gupta, Ashu Chawla and Evan Tak were due to meet ‘Kamal Intel’ on the 12th of April 2011.

292. Calendar entries show that Tony Gupta, Ashu Chawla, Evan Tak and Ashok Narayan were due to meet ‘Kamal Intel’ on the 15th of July 2011.

293. Calendar entries show that Tony Gupta and Ashu Chawla were due to meet ‘Kamal Intel’ on the 28th of February 2012.

294. Calendar entries show that Tony Gupta and Ashu Chawla were due to meet ‘Kamal Ex Intel’ on the 3rd of April 2012.

295. Calendar entries show that Tony Gupta, Ashu Chawla and Evan Tak were due to meet ‘Kamal (Ex Intel) + Ashok’ on the 27th of July 2012.
296. Calendar entries show that Tony Gupta, Ashu Chawla and Evan Tak were due to meet ‘Kamal & Ashok’ on the 7th of August 2012.

297. Calendar entries show that Tony Gupta, along with Ashu Chawla and intermittently Evan Tak, were due to meet ‘Kamal’ on the 15th of August 2012, 9th of October 2012, ‘Kamal’ on the 1st of November 2012, 30th of January 2013, 1st of February 2013; 9th of April 2013; 4th of June 2013, 25th of June 2013, 27th of June 2013, 19th of September 2013, 11th of October 2013, 14th of October 2013, 9th of January 2014, 15th of March 2014, 14th of May 2014, 2nd of June 2014. It is possible that the ‘Kamal’ referred to in these entries could have been Kamal Singhala, Ajay Gupta’s son; it is also possible that they may have referred to Kamal Vasram. We hope that the Commission may be able to investigate the identity of this Kamal in the course of its investigations.

298. The #Guptaleaks archives show that from at least March 2011 (a month before the first recorded meeting between Tony Gupta and Vasram) until September 2012, Vasram submitted monthly invoices to Linkway Trading for undescribed ‘services rendered.’ Vasram charged R11 000 for the ‘services rendered.’ [See annexure C]

299. One of the invoices, titled ‘may kvasram.doc’, was sent by Kamal Vasram from his Estina email address [vasram@estina.co.za] on the 2nd of June 2011. The invoice was sent to Ashu Chawla, who directed a Sahara accountant to make the payment from Linkway Trading. The email was signed by with Kamal Vasram’s name and featured Estina’s logo.

300. On this evidence, it is thus plausible that Estina was being used as a vehicle by Kamal Vasram in his business dealings with the Gupta enterprise a full year prior to the initiation of the Vrede Dairy Project. That Estina was being used to conduct business prior to the Vrede Dairy Project is borne out by Estina’s Audited Financials [attached as Annexure M], according to which Estina earned R850 000 in revenue in the financial year ending April 2012.
301. As an aside, it is worth highlighting, here, that not only did Kamal Vasram have no known experience in agriculture, but Estina’s revenue prior to the Vrede Integrated Dairy Project was, according to Kamal Vasram, derived from non-agricultural work. As discussed prior and in more detail below, on the 26th of November 2012, Ravindra Nath emailed a Mr. Prasad at the Bank of India, seemingly about the prospect of a loan being granted to Estina. Attached to the email was a breakdown of the Estina Dairy Project’s projected financials, and Kamal Vasram’s CV [attached as Annexure N].

302. Vasram’s CV listed his past employment, all within the IT sector. It also included an entry for ‘Estina Pty Ltd’, of which he was identified as ‘Director & Founder.’ Under work completed, the CV noted that Estina had

- Developed an automated in house safe solution with ARAM SA Pty Ltd for day to day cash disbursement at South African post offices to reduce theft and security risk.
  - Implemented across 38 sites in South Africa
  - Successfully reduced cash in transit insurance by 80%

303. Notably, the CV confirmed that, from February 2012 until the date of the CV’s completion (presumably November 2012), Vasram was employed as the ‘Retail Manager’ for Lenovo Corporation. The #Guptaleaks emails further show that, from at least January 2014 onwards, Kamal Vasram was employed as a sales manager at Toshiba. We have also reviewed the LinkedIn profile of Kamal Vasram, attached as Annexure Z. According to his LinkedIn profile, Vasram was employed by Toshiba as the Head of Sales and Marketing, based in Johannesburg, from January 2013 to July 2014.

304. Thus, during the entire period in which the Vrede Dairy Project was being delivered, the sole director and shareholder in the company was simultaneously employed as an IT salesperson. This undoubtedly raises concerns about the ability of Estina and its employees and directors to deliver an agricultural project of the magnitude and importance of the Vrede Dairy Project.
305. As noted previously, Vasram’s CV also recorded his role as the Founder and Director of Sunbay. In this role, Vasram acted as a front-man for Sahara Computers in securing lucrative contracts to supply laptops to the Free State government.

306. From the above, we submit it is reasonable to conclude that Kamal Vasram, the sole director of Estina Pty Ltd during the active life of the Vrede Dairy Project:

a. Held multiple meetings with Tony Gupta and Ashu Chawla, which were intermittently also attended by Evan Tak and Ashok Narayan;

b. Had a business relationship with the Gupta enterprise and Sahara Computers for at least a year prior to the initiation of the Vrede Dairy Project, which included submitting monthly invoices for opaque ‘services rendered’;

c. Sent at least one invoice as part of this relationship from his Estina email address, suggesting that Estina was already being used as a vehicle through which Vasram was engaging with the Gupta enterprise;

d. Served as a director in the same company as Ashok Narayan;

e. Worked as a salesperson/retail manager for Lenovo and subsequently Toshiba for the majority of the period in which the Vrede Dairy Project was running;

f. Secured two orders from the Office of the Premier in late 2012 and mid-2014 for the sale of Toshiba laptops, which #Guptaleaks records show were sold by Sunbay to the benefit of Sahara Computers, showing that Vasram maintained his parallel IT business relationship with the Gupta enterprise during the life of the Vrede Dairy Project.

7.1.3. The Guptas, Sanjeev Gautam and the Initiation of the Project

307. All #Guptaleaks emails and documents relevant to this section are attached as Annexure O.
308. Mr. Sanjeev Gautam, an Indian national, was central to the initiation and formalisation of the project.

309. On the 11th of April 2012 a MoU was signed between Estina and VRS Foods Limited Trading as Paras India. The MoU was signed by Mr. Sanjeev Gautam on behalf of Estina.131

310. In May 2012, Estina submitted a business proposal regarding the Vrede Dairy Project. It was on the basis of this proposal that the contract with Estina was approved by the Free State provincial Exco. Mr. Sanjeev Gautam signed on behalf of Estina. His role was listed as ‘Managing Director.’132

311. On the 5th of June 2012, Estina signed its first contract with the Free State Department of Agriculture, creating the Vrede Dairy Project and committing the Department to investing funds for its realisation. Mr. Sanjeev Gautam signed ‘for and on behalf’ of Estina. He was identified as the Managing Director of the company.133

312. On the 5th of July 2012, Estina signed its second contract with the Free State Department of Agriculture following an intervention by the State’s Attorney. Mr. Sanjeev Gautam signed the contract on behalf of Estina. He was identified as the Managing Director of the company.134

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131 Report on the Investigation into the Vrede Integrated Dairy Farm Project, National Treasury/ENS Forensics, February 2014, p. lii, paragraph 2.2.10
132 Project Proposal: Vrede Integrated Dairy Agribusiness Project: Proposed Integration of Dairy and other elements of production and processing with the emphasis on value-addition and beneficiation, such as a range of processed dairy products aligned with Agri-BEE norms stipulated by Govt’, attached as Exhibit 5 to Annexure SJ3 to the Affidavit of Samson John Schalkwyk in Case 1778/2018
133 Partnership Agreement Between the Department of Agriculture (DoA) Free State Province, South Africa and Estina PTY Ltd in Relation to the Implementation of a Dairy Project at Vrede’, attached as an unnumbered exhibit to Annexure SJ3 to the Affidavit of Samson John Schalkwyk in Case 1778/2018
134 Agreement entered into between the Department of Agriculture (the “Department”) and Estina PTY Ltd (“Estina”), attached as Exhibit 11 to Annexure SJ3 to the Affidavit of Samson John Schalkwyk in Case 1778/2018

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313. The #Guptaleaks emails show that Mr. Sanjeev Gautam was closely linked to the Gupta enterprise, and relied on its services to establish the project.

314. On the 6th of May 2011, ‘Sunny’ Gautam [sunnygautam9@yahoo.com] wrote to Ashu Chawla at Sahara [ashu@sahara.co.za]. Mr. Gautam wrote: ‘Dear Sir, kindly issue a invitation letter for me also Txs Sunny.’ ‘Sunny’ Gautam attached his passport to the email, revealing that ‘Sunny’ Gautam was Mr. Sanjeev Gautam. Mr. Gautam’s passport indicates he was born on the 9th of July 1975.

315. Also attached to the email was a letter addressed to ‘Mr. Ashu’ on the 6th of May 2011. The letter was signed by Suyash Prasant for Winson Perfumes & Cosmetics, and was written on a Winson Perfumes & Cosmetics letterhead. Sayush Prasant was also, simultaneously, an employee of SES Technologies, a Gupta-controlled entity registered in India. The letter asked that ‘Mr Ashu’ ‘kindly issue an invitation letter for our managing director as per the details below’, and listed Mr. Sanjeev Gautam’s passport details and credentials.

316. On the 12th of May 2011, Ashu Chawla forwarded this email to another Sahara employee Joleen Roux [joleenr@sahara.co.za]. Joleen Roux was was responsible for, amongst other things, organising travel and visa logistics on behalf of Sahara.

317. On the 11th of September 2011, Ashu Chawla [ashu@sahara.co.za] sent an email to ‘Sunny’ Gautam [sunnygautam9@yahoo.com]. The subject of the email was ‘FW: invitation letter.’ Attached to the email was a letter signed by Joleen Roux, who was identified as being responsible for ‘Guest relations’ for Sahara Computers. The letter was written on a Sahara letterhead and addressed to the South African Embassy, New Delhi. The letter requested of the South African embassy that it ‘please kindly assist with issuing a three (3) month business visa for Mr. Sanjeev Gautam.’ The letter further confirmed that ‘Sahara will be assisting with all requirements needed during his stay.’
318. On the 22\textsuperscript{nd} of May 2012, Ashu Chawla wrote to one Sunil [sunil@aircharterservices.com], copying in amarjeet007@gmail.com and semoun@aircharterservices.com. Chawla wrote:

‘Sunil Ji

As discussed the flight for Dehradun will be leaving at 8h00 in the morning and departure from Dehradun will be at 20h00.

Passenger will be as follows:

Mr. Rajesh Gupta  
Mrs. Arti Gupta  
Mr. Sanjeev Gautam  
Mr. Abishek Chaudhary.

Thanks  
Ashu

319. Other emails from the #Guptaleaks archives suggest that Mr. Gautam was involved in facilitating contact between Siddharth Buildwell Ltd and Sahara Computers with regards to developing a potential business relationship. Umesh Kumar Agarwal, the Managing Director of Siddharth Buildwell, had written to Ashu Chawla at Sahara Computers on the 20\textsuperscript{th} of May 2012 requesting that a delegation be allowed to ‘visit your HQs to get to know your work area at close quarters.’ The letterhead to this letters shows that Siddharth Buildwell was based in Dehradun.

320. On the 24\textsuperscript{th} of June 2011, the Chief Executive of Bank of Baroda’s South African branch, M.L. Sharma, sent an email to Rajesh [Tony] Gupta [tony@sahara.co.za]. Sharma wrote:

Good day,
I am forwarding here with details of **LUV SHARMA. S/O RAJENDRA KUMAR SHARMA**

*Admission in JAYPEE INSTITUTE OF INFORMATION TECHNOLOGY*

**SECTOR 62, NOIDA**

**BRANCH** **ELECTRONICS**

**AIEEE ROLL NO.** **26202570**

321. We do not know what connection existed between the Chief Executive of the Bank of Baroda in South Africa and Luv Sharma, although we do note that they shared the same surname.

322. On the 24th of June 2011, Tony Gupta forwarded this email to Ashu Chawla’s Sahara address with the instruction ‘Pls forward to sunny gautum’, to which Chawla replied ‘OK’ on the same day. Attached to this email, and presumably emanating from the email of ML Sharma *supra*, was a copy of Luv Sharma’s ‘All India Engineering/Architecture Entrance Exam’ results.

323. Just over fifteen minutes later, Ashu Chawla forwarded this email to Sunny Gautam, introducing it by noting ‘As discussed with Tony Bhai I am forwarding you this details.’ An hour later, Ashu Chawla sent a further email to Sunny Gautam, attaching Luv Sharma’s secondary school marks.

324. The exact intent of this chain of emails regarding Luv Sharma is difficult to discern. Regardless, the emails do show that Sanjeev Gautam, Ashu Chawla and Rajesh Gupta were in active contact and that Rajesh Gupta had directed communication to Sunny Gautam.
325. On the 25th of August 2011, Ashu Chawla sent an email from his Sahara address to Sunny Gautam’s Yahoo email address. The email subject line is ‘Fw: Invitation letter Mr Gautam, Tegeta.’ We cannot discern, from these emails, what connection Mr. Gautam had to Tegeta. Attached to the email was a letter on a Sahara Computers letterhead and addressed to the South African embassy in Delhi, signed by Sahara’s Joleen Roux and dated the 24th of August 2011. The letter requested that the South African embassy assist with a three month tourist visa to South Africa for Kaushal Kishore Gautam. The visa was to be issued as Kaushul Gautam ‘will be coming to South Africa to make a personal visit to see Mr Ajay Gupta.’ Sanjeev Gautam’s passport, attached to the email of 12 May 2011, shows that Kaushul Gautam was Sanjeev Gautam’s father. Sanjeev Gautam had previously sent a copy of Kaushal Gautam’s passport page to Ashu Chawla on the 25th of May 2011.

326. On the 28th of March 2012, Sanjeev Gautam sent an email from his Yahoo address to Ashu Chawla’s Sahara email address. The email subject was ‘Fwd: Passport Copy – Mr. Gajinder Kumar.’ Sanjeev Gautam requested that Chawla ‘please issue invitation letter’, clearly for Gajinder Kumar. The significance of this exchange was that Mr. Kumar was, at the time, an employee of Paras Dairy. He was also the signatory to the MoU signed between Estina and VRS Foods/Paras in April 2012.

327. On the 31st of March 2012, Ashu Chawla sent an email from his Sahara email address to Sanjeev Gautam’s Yahoo email address, attaching a scan of an invitation letter issued on a Sahara letterhead, dated the 31st of March 2012, requesting that the South African Embassy in New Delhi assist with a 3 month business visa for Gajinder Kumar Nagar.

328. We submit that the timing and content of the emails regarding Gajinder Kumar suggests that Ashu Chawla, and the Gupta enterprise more generally, helped secure Gajinder Kumar’s visa for a trip to South Africa, and that, during that trip, Gajinder Kumar signed the MoU between Estina and Paras.
The Gupta enterprise was thus intimately involved in this fundamental aspect of the Vrede Project.

329. On the 12th of June 2012, a week following the signing of Estina and the Free State Department of Agriculture’s first partnership agreement, Sanjeev Gautam wrote to Ashu Chawla’s Sahara email address from his Yahoo address. Gautam copied Ashok Narayan into the email. Sanjeev Gautam asked Ashu Chawla to assist with an invitation letter for one Mr. Biswas. Gautam indicated that ‘he will stay 20 days in South Africa for dairy project.’ Attached to the email was a scan of the passport of Mr. Nitai Biswas. An article from Paras Dairy’s website indicates that Mr. Biswas was the CEO of Paras Dairy.

330. On the same day, Ashu forwarded the requested invitation letter for Mr. Biswas to Sunny Gautam and Ashok Narayan. As with previous invitation letters, it was written on Sahara stationery.

331. On the 28th of June 2012, the same month that Estina formalised its relationship with the Free State Department of Agriculture and received its first R30m investment, Ashu Chawla sent an email from his Sahara email address to nareshk@reliancemobile.blackberry.com and khosla_naresh@hotmail.com. The email subject was ‘FW: Sanjeev payment.’ The body of the email ran:

Naresh Ji,

Please pay Rs. 190,242 to below account

Bank account details are as follows:

Sanjeev Gautam
State Bank of India


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332. The purpose the payment to Sanjeev Gautam is not disclosed. In June 2012, RS190,242 was equivalent to just under ZAR30,000.

333. In addition to the above emails showing that Sanjeev Gautam was in close contact with the Gupta enterprise, and relied on it extensively, records from the #Guptaleaks indicate that he was also a shareholder in a company that formed part of the extended Gupta enterprise: Gateway Infrastructure, registered in India.

334. On the 26th of November 2012, one Piyush Shah [piyush.shah@sesindia.com] wrote to Ashu Chawla’s Sahara email address, copying in one Naresh Khosla [naresh.khosla@sesindia.com]. SESIndia.com was the email server for SES Technologies, an Indian company controlled by the Gupta enterprise. The email to Ashu forwarded an extended email chain that served to transmit the details of ‘Gateway Infrastructure’ to be submitted as part of its annual return filings, presumably in India. Attached to the email was a Microsoft Excel worksheet titled ‘Gateway Infrastructure BS PL 2012.xls.’ The worksheet is self-evidently an annual report filing as required by Indian company law. The fourth worksheet of the workbook, titled ‘4, share capital’, shows that at both the 31st of March 2011 and 31st of March 2012, Mr. Anil Gupta held 5,100 (51%) Gateway Infrastructure shares, while Sanjeev Gautam held 4,900 (49% shares). Anil Gupta was the brother-in-law to the Gupta brothers. Worksheets 1 and 2 to the same document indicates that Anil Gupta and Arti Gupta were the directors of Gateway Infrastructure. Arti Gupta is Rajesh Gupta’s wife.

335. Further emails in the #Guptaleaks show that Sanjeev Gautam held his proportion of shares in Gateway Infrastructure until at least 2014.

336. Finally, one email appears to indicate that Sanjeev Gautam drew a salary from SES Technologies, a Gupta enterprise company, or at the very First Submission on Estina/Vrede Dairy Project to the Zondo Commission by SWI 2019
least, SES Technologies claimed as much in correspondence with Indian tax authorities. On the 25\textsuperscript{th} of November 2015, Suresh Tuteja forwarded financial details to various accountants. The substance of the correspondence appears to relate to the tax liability assessment of SES Technologies. The email attached a range of Excel spreadsheets setting out the financial records of the company. One of the documents attached was titled ‘Salary details.xls.’ The document consisted of a single spreadsheet headed ‘Details of Salary for the year 2011-12.’ Sanjeev Gautam is listed under ‘employee name’ against the figure of 190242. This is likely Rs190242, which would be equivalent to R39 000.

337. From the foregoing, we submit that it is reasonable to infer that the Gupta enterprise was central to the initiation and formalisation of the Estina/Vrede Dairy Project. We note:

a. Estina was represented by Sanjeev Gautam, who signed all relevant legal documentation for Estina in the initiation and formalisation of the Estina/Vrede Dairy Project, and identified himself as the Managing Director of Estina;

b. Gautam relied on the Gupta enterprise company Sahara Computers to secure visas for himself and his father, in the latter instance so that Sanjeev Gautam’s father could have a meeting with Atul Gupta;

c. Gautam relied on the Gupta enterprise to secure visas for employees of Paras Dairy to visit South Africa, and that, during those visits, Estina entered its MoU with VRS Foods/Paras Dairy;

d. Gautam engaged with the Gupta enterprise regarding other business ventures, facilitated these contacts, and flew with Rajesh Gupta and his wife via chartered aircraft to the location of an intended business meeting between Rajesh Gupta and a company by the name of Siddharth Builders;

e. Gautam was paid just under R30 000 in June 2012, the month the Estina/Vrede Dairy project contracts were signed, on the instructions of Ashu Chawla;
f. Gautam was included in emails ultimately emanating from the Chief Executive of the Bank of Baroda and sent to Gautam by Ashu Chawla on the instructions of Rajesh [Tony] Gupta;
g. From at least March 2011 to March 2014, the period in which the Estina/Vrede project was initiated and formalised, Gautam held a 49% share in Gateway Infrastructure, the other 51% shareholding held by Anil Gupta. Arti Gupta and Anil Gupta were listed as directors of Gateway Infrastructure;
h. Documents submitted by SES Technologies to Indian tax authorities reflect that Gautam received a salary from SES Technologies of 190242 rupees in the year 2011/2012.

7.1.4. The Connections between the Gupta Enterprise and Peter Thabethe

338. As noted above, at the end of February and beginning of March 2012, Mr. Peter Thabethe travelled to India to conduct his ‘research’ into potential Indian partners for the Vrede Dairy Project. Mr. Thabethe conceded in interviews with ENS investigators that the only supplier he met with was Paras Dairy.

339. Emails emanating from the #Guptaleaks show that the Gupta enterprise was intimately involved in the ‘research’ trip taken by Mr. Thabethe to India, and in facilitating the visit of at least one employee of Paras Dairy to South Africa. We attach these emails and attachments thereto as Annexure P.

340. The #Guptaleaks emails include an email from Ashu Chawla (ashu@sahara.co.za) to one Chris Kgarose (chrisk@sahara.co.za). The email is sent on the 25th of February 2012 at 06:00AM.

341. Attached to the email was a document entitled ‘SES L Head.doc.’ This was a letter dated the 24th of February 2012 from Ashu Chawla and addressed to the ‘Visa Counsellor, High Commission of India, Johannesburg, South Africa.’
The body of the letter runs:

Re: Invitation letter for Peter Thabethe

Dear Sir/Madam,

Please could you assist with issuing 3 month business visa for the above mention guests?

They would like to visit India for business opportunities.

They are due to arrive between 29th February to 3rd March 2012.

Below are the passport details:

Mr. Peter Thabethe

Passport No E00003819
Date of issue: 25.08.2009
Date of Expiry 24.08.2014

SES Technologies Ltd will assist with all their requirements while stay in India
If require any further details please do not hesitate to contact me.

Thanks
Regards

Ashu Chawla

The letter was written on the letterhead of SES Technologies Limited, which listed its address as SES House, Plot No. 70, C Cross Road, MIDC, Moral Indl Area, Andheri (East) Mumbai – 400093, India.
344. SES Technologies was controlled by the Gupta family. Moreover, emails from the #Guptaleaks show that members of the Gupta enterprise, Ashu Chawla in particular, were involved in monitoring and running the financial management of SES Technologies. We do not attach these emails to this submission as they are substantive, but can do so should the Commission require.

345. The date of the visa letter is interesting light of the evidence of Thabethe before the Commission. The documentary evidence showed, and Thabethe agreed, that the trip he took to India required approval from the Office of the Premier. Thabethe received this approval on the 28th February 2012. This was four days after the date of the letter drafted by Ashu Chawla to the Indian High Commission in support of a visa for Thabethe. Narayan and Thabethe departed for India on the 29th of February 2012. We submit that it would not have been possible for Thabethe to secure a visa for his India trip in the time between the approval of the trip on the 28th and his departure on the 29th. The more plausible explanation is that Thabethe had already put the wheels in motion to secure the visa for his trip to India by at least the 24th, and certainly some time prior to the approval being granted for his trip.

346. According to Thabethe’s own version in his 2018 affidavit, when he made his trip to India to meet with Paras and conceptualise the project, he was accompanied by Ashok Narayan. Thabethe confirmed before the Commission that Narayan’s air ticket was paid for by the Department following approval from the Office of the Premier, which additionally approved the inclusion of Narayan on the trip.

347. Ace Magashule had appointed Narayan as a specialist ICT advisor on the 29th of February, with effect from the 1st of March. Narayan’s ticket was thus purchased before Narayan had been appointed as an advisor. Narayan

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136 See, for example, '#Guptaleaks: How Sahara Handed SA Jobs to Foreigners', News24, 20 September 2018
137 Proceedings of the Commission of Inquiry into State Capture, Day 146, 16 August 2019, p. 16 - 17
was thus also only appointed an advisor on the day he departed for India, and this position only took effect while Narayan was already on the trip.

348. In testimony before the Commission, Thabethe claimed that he was told to include Narayan on the trip by Mosebenzi Zwane. However, in the same testimony, Thabethe failed to satisfactorily explain why Narayan, an ICT specialist, was joined on his trip to India to review an agricultural project. Thabethe indicated that did not question Narayan’s inclusion or why he was chosen, selecting, instead, to accept the instruction: ‘Chair, I should have questioned… But I didn’t question,’ Thabethe commented.\textsuperscript{138}

349. The #Guptaleaks records suggest that, in fact, Thabethe knew the identity of Narayan prior to this trip, and was aware of Narayan’s involvement with, at the very least, Sahara Computers. Ashok Narayn sent an email to Peter Thabethe’s personal email address (pthabethe@hotmail.com) on the 5\textsuperscript{th} of January 2011. Narayan had sent the email from his Sahara Computers email address, and copied in Sahara Computer’s Joleen Roux, who was responsible for Sahara and Gupta enterprise logistics. The email attached an invite to a New Age ‘Friendship Celebration’ that was to honour ‘150 years of friendship between India and South Africa in the company of H.E. MR. JACOB ZUMA.’

350. A second attachment set out the details of the public New Age celebration to take place during an International Pro20 cricket match between South Africa and India in Durban.

351. The body of the email strongly suggests that Narayan and Thabethe had already discussed the invitation:

\emph{Dear Peter,}

\emph{As discussed, please find enclosed the invitation to the two events in Durban over this weekend.}

\textsuperscript{138} Proceedings of the Commission of Inquiry into State Capture, Day 145, 15 August 2019, p. 126

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Unfortunately, we are unable to offer accommodation since all hotel rooms have already been allocated.

You may reach me on my cell on 076 792 8332 when you reach Durban.

I look forward to meeting with you there.

Best Regards,

Ashok Narayan

352. The #Guptaleaks records show that Thabethe was scheduled to visit the Gupta’s Saxonwold compound on a number of occasions during the life of the Vrede Dairy Project. The relevant calendar entries in the #Guptaleaks include:

The 2nd of November 2012, where Tony Gupta is scheduled to meet ‘Peter HOD Agric’ in Saxonwold;
The 31st of January 2013, where Tony Gupta is scheduled to meet ‘Peter HOD Agric’ in Saxonwold;
The 18th of July 2013, where Tony Gupta is scheduled to meet ‘Zwane and Peter’ in Saxonwold.¹³⁹

7.1.5. The Involvement of Ashok Narayan and van der Merwe Associates in Negotiating Lease Agreements with Phumelela Local Municipality

353. As discussed previously, in July 2012, discussions were ongoing related to the leasing of the farm land owned by the Phumelela Municipality to Zayna Investments.

354. On the 17th of July 2012, Moses Moremi, the Municipal Manager for Phumelela Municipality, was called by Elsabe Rockman. Moremi was told that

¹³⁹ Cash cows and computers – Ace Magashule’s Laptop Deals with Gupta’s Vrede Dairy Man; Joemat-Petterson’s Saxonwold Meetings’, Daily Maverick, 23 July 2019
a ‘delegation from India’ was interested in meeting him to discuss investment in Vrede. The ‘delegation’ duly met Moremi in his office. The mayor, John Motaung, joined the meeting after five minutes.

355. Moremi testified that the two primary interlocutors from the delegation were Ashok Narayan and one Mr. Van Schalkwyk. Emails submitted by Moremi to the Commission show that this was one Johann Schalkwyk. Johann Schalkwyk represented the law firm van der Merwe Associates. The #Guptaleaks records show that van der Merwe Associates was retained by the Gupta enterprise to provide legal advice on a wide range of matters.

356. At the meeting, Van Schalkywk and Narayan presented a draft lease agreement that would allow Zayna Investments to lease the Krynauwslust farm from Phumelela Municipality. The terms of the lease agreement were extremely favourable to Zayna and detrimental to Phumelela. It envisaged that Zayna would secure the lease for 99 years, pay no rent, and that Phumelela Municipality would be required to pay rates and taxes on the property as function of it receiving a 4% shareholding in the Vrede Dairy Project.

357. On the 18th of July 2012, the day following the meeting, Narayan wrote to Moremi to clarify certain issues arising from the proposed lease agreement.

358. It is extremely unusual and almost certainly irregular that Narayan was representing Zayna (and by extension Estina) in negotiations with Phumelela Municipality while, simultaneously, acting as an advisor to Premier Ace Magashule.

359. More importantly, the #Guptaleaks show that Narayan was employed by the Gupta enterprise. In this regard, it is notable that Narayan was, at the time, operating his Sahara email address (ashok@sahara.co.za). The #Guptaleaks further shows that from at least June 2012, Narayan invoiced

Transcripts of the Commission of Inquiry on State Capture, Day 143, p. 62
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Tegeta Resources on a monthly basis. Narayan invoiced R50 000 per month. The services provided were described as ‘IT consulting… Flat Fee.’

360. The above thus shows that a senior Gupta enterprise official, Ashok Narayan, was directly involved in negotiating the terms of a proposed lease agreement that would grant land for the Vrede Dairy Project to Zayna (and thereby Estina) on extremely favourable terms. The lease agreement, moreover, was presented to Moremi by Johann Van Schalkwyk, a representative of van der Merwe Associates, the law firm retained to provide regular services to the Gupta enterprise.

7.1.6 Tony Gupta Meeting Free State Officials to Urge Payment of Monies ‘Due’

361. Elsabe Rockman, the former MEC for Finance for the Free State, has testified before the Commission that she attended a meeting with Tony Gupta in April 2013. This was one of a number of meetings that Rockman confirmed took place with Tony Gupta before and after this meeting. During previous meetings, Rockman attended in her capacity as Director General in the Free State Office of the Premier. Rockman confirmed that Premier Magashule was aware that she attended the meetings with Tony Gupta.

362. During the April 2013 meeting, Tony Gupta raised the fact that Estina had not been paid the anticipated full amount for the first year of the Vrede Project’s operation. Estina had, for various reasons, been paid only R30m of a much larger anticipated amounted.

363. Importantly, Rockman recalled that Gupta had told Rockman that ‘we [the Free State government] owed them money.’ We submit that the content of the meeting, and the phrasing of how the matter was raised, shows that Tony Gupta believed that Estina was an entity under his control, or, alternatively, that Tony Gupta believed that he was, in some way, a member or associate of Estina.
364. It is strange that Rockman did not query Tony Gupta’s interest in the payment or his authority in doing so on behalf of Estina. One interpretation of this is that Rockman was already aware that Estina was, in effect, a Gupta-controlled entity.

7.1.7. Sahara and Ashu Chawla Involved in Securing Work Visas and Other Waivers for the Director and Employees of Estina

365. See Annexure Q for copies of all emails and documents referred to hereunder.

366. On the 10th of August 2012, Ashu Chawla sent an email to SandeepD@sahara.co.za. Attached to the email were three further emails titled: Documents for Ramjeet Sharma, Documents for Chandrama Prasad and Documents for Parth Yadav.

367. Ramjeet Sharma, Chandrama Prasad and Parth Yadav were three of the very small handful of Estina employees who worked directly on the Vrede Dairy farm. Chandrama Prasad acted as the most senior project manager responsible for the implementation of the project.

368. Each email contained letters of motivation for the issuance of work visas for Messrs Prasad, Sharma and Yadav to take up employment with Estina. The email chains contained in each separate email show that the letters were sent to Ashu Chawla by the Sahara employee Beverly Hardie. The letters listed Ashu Chawla as the intended signatory.

369. Each email also contained letters of motivation requesting that South Africa’s Department of Home Affairs waive the need for Messrs. Prasad, Sharma and Yadav to register with the relevant professional body, and to waive the need for a certificate from the Department of Labour.

370. On the 21st of August 2012, the Sahara employee Beverly Hardie wrote to Ashu Chawla’s Sahara address. She requested that an attached
letter be put on an Estina letterhead. On the same day, Ashu Chawla sent an email to kamal.vasram@gmail.com. Attached to the email was a document titled ‘Estina LETTER OF AUTHORISATION – 3 Applicants.docx.’ The body of the letter reads:

**DEPARTMENT OF HOME AFFAIRS**
**TEMPORARY PERMIT SECTION**

August 2012

**LETTER OF AUTHORIZATION**

I, Kamal Vasram (Identity Number: 790625 5178 080) hereby give Beverley Hardie (Identity No: 791221 0107 081) permission to apply for work permits for the following persons on behalf of Estina (Pty) Ltd:

<table>
<thead>
<tr>
<th>NAME</th>
<th>PASSPORT NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHANDRAMA PRASAD</td>
<td>E8653817</td>
</tr>
<tr>
<td>PARTH YADAV</td>
<td>G5313888</td>
</tr>
<tr>
<td>RAMJEET SHARMA</td>
<td>G3979215</td>
</tr>
</tbody>
</table>

Attached herewith please find the identity documents as required. Please feel free to contact me should you have any further queries on (011) 542 - 1000.

371. From the above, it is clear that the Gupta enterprise, Sahara Computers in particular, was involved in securing the work visas for three of the very small number of Estina employees who worked on the Vrede Dairy Project.

7.1.8. Chandrama Prasad’s Prior Connections to the Gupta Enterprise

372. The Commission has already heard considerable evidence regarding the role of Chandrama Prasad in the Estina project. It is common cause that Prasad served as the on-the-ground Project Manager in charge of the project.
Mr. Basson testified that his interactions with Prasad suggested that Prasad was ill-equipped to run a dairy farm and that he lacked basic knowledge of, for example, how to feed cattle. Thabethe disputed this version, stating that Prasad had agricultural experience in India.

373. The #Guptaleaks (see Annexure R attached) shows that Prasad had a relationship with the Gupta enterprise preceding the initiation of the Estina enterprise. It is this prior relationship, we submit, which best explains the decision to appoint him to this role.

374. The first mention of Prasad in the #Guptaleaks appears on the 27th of March 2011, when Ashu Chawla emailed ‘pathak1105@gmail.com.’ The #Guptaleaks archives show that this email address belonged to DC Pathak, a former Indian intelligence and police officer, but was additionally used to correspond with and send documents of relevance to Prasad. In the body of the email, Ashu Chawla provided a detailed itinerary for Ajay Gupta for a trip to India from the 30th of March 2011 to 3rd of April 2011.

375. Further emails show that Chawla and Prasad were in frequent contact to make visa and travel arrangements:

a. On the 3rd of January 2012, Ashu Chawla sent an email to pathak1105@gmail.com with the subject ‘FW: Invitation – business visa – Mr Chandrama Prasad.’ The email attached a letter in PDF format. The letter, written on a Sahara Computers letterhead and addressed to the South African Embassy in Delhi requested that a 3 month business visa be granted to Chandrama Prasad. A second letter attached to the same email also sought a 3 month business visa but for one Praveen Agrawal. Indian company records show that Agrawal and Prasad later formed a company together in India in August 2012 called Trans-Sudoku Coal and Mines Private Limited. Both were listed as directors;
b. On the 30th of January 2012, Ashu Chawla wrote again to Chandrama Prasad to inform Prasad of an itinerary for an upcoming trip to be taken to India by Ajay Gupta;

c. On the 4th of February 2012, Ashu Chawla wrote to Bidair VIP Operations to request that Bidair provide an arrival and pickup service for Prasad and Agrawal;

d. On the 7th of June 2012, Prasad wrote to Ashu Chawla’s SES India email address. He requested that Chawla provide an invitation letter that Prasad could use to secure a visa to visit South Africa for the 3rd week of June 2012;

e. On the 8th of June 2012, Chawla forwarded a letter on Sahara Computer’s letterhead to Prasad. The letter requested that Prasad and one Satyen Yadav be granted multiple entry business visas. The letter noted that Prasad was ‘coming to South Africa to visit Mr. Rajesh Gupta, in Johannesburg, for discussions of Business [sic] opportunities.’ It also recorded that ‘Sahara Computers will take repatriation guarantee for the duration of their stay in SA.’ It noted that Prasad would be residing at 302 Spur Road, Kyalami, a property owned by the Gupta enterprise.

f. On the 17th of July 2012, Prasad requested Chawla to provide an invitation letter for a visa for one Parth Brat Yadav;

g. Two days later, Prasad requested that a further letter be issued for a chef that was to accompany the visit of Prasad and his associates. The note stated that Prasad was to visit in the 3rd week of July 2012.

376. The date of the final correspondence noted above is interesting as, a month later, the Gupta enterprise was involved in securing long-term visas for Prasad as an employee of Estina. It is plausible that Prasad’s employment would have been discussed and confirmed during the July 2012 visit.
377. The #Guptaleaks show that Prasad shared a business relationship with the Gupta enterprise. The following emails are indicative:

a. On the 1st of November 2011, Ashu Chawla sent an email to Suresh Tuteja, an employee of SES Technologies. The email included a balance sheet for LCR Investments Private Limited, an Indian company controlled by the Gupta enterprise. The balance sheet recorded that Chandrama Prasad had been loaned 3.8m rupees, which was recorded as being outstanding as of the 31st of March 2010. This amount was later reflected as remaining outstanding throughout the financial year ending March 2013;

b. Attached to the same email was a balance sheet for Sahara Computers & Electronics Limited registered in India. The balance sheet recorded that RNC Education Trust owed 260 000 rupees to Sahara Computers & Electronics. RNC Education Trust’s website records Prasad and his son, Aanubhav [alternately rendered elsewhere as Anubhav] as Trustees of RNC Education Trust141;

c. On the 4th of March 2013, Anubhav Yadav (Prasad’s son), emailed Ashu Chawla, attaching a photograph of Prasad’s FNB account details held at FNB in Vrede. Chawla forwarded these details to Sahara’s Ugeshni Naidu. The following day, R20 000 was transferred from Tegeta to Chandrama Prasad from Tegeta’s ABSA account;

d. On the 6th of March 2013, Ashu Chawla wrote to Ugeshni Naidu directing that a loan of R100 000 be paid to Prasad’s account;

378. Prasad’s son, Anubhav Yadav, also shared a relationship with the Gupta enterprise. On the 22nd of December 2012, Ashu Chawla sent an email from his SES India email address to Naresh Khosla of SES India with the subject ‘FW: MEGA MINING DOCS.’ The attached documents recorded that Anubhav Yadav replaced Aati Gupta as a director in the company Mega Mining, registered in India. Other emails in the #Guptaleaks, which are too

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141 http://www.rnctrust.org/aboutus.php
voluminous to include here but can be provided to the Commission if it requires, show that Mega Mining was effectively controlled by the Gupta enterprise, and, in particular, SES India.

379. On the 14th September 2012, Ashu Chawla forwarded Sahara employee Sandeep Dupey an email from Chadrama Prasad’s email address. The email included the passport and other details of Anubhav, which were to be included on an invitation letter to help secure a visa for Anubhav.

380. Three months later, in January 2013, Ashok Narayan directed Sandeep Dupey to issue a further invitation letter for Anubhav. This invitation letter, however, was to be placed on an Estina letterhead. This was duly done and distributed.

381. On the 5th of March 2013, Ankur Sharma, an employee of Tegeta, wrote to Ashu Chawla and Tony Gupta. Sharma noted that ‘Mr Anubhav son of Mr CP yadav [sic] has joined tegeta [sic]. He don’t have work permit at present. Mr Anubhav will take first 2-3 months management training at brakfontein [sic] for that he need letter from company to mine manager that he is an employee of tegeta which we can’t issue.’ Tony Gupta responded the same day by saying ‘lets wait.., until visa.’

382. On the 27th of March 2013, Ankur Sharma emailed Tony Gupta attaching ‘work progress report’ for Tegeta for March 2013. The progress report recorded that ‘amongst our new appointees, Anubhav has officially joined Tegeta’s offices on 11 March 2013.’

383. On the 24th of April 2013, Sahara’s Beverley Hardie emailed the Department of Home Affairs requesting that Anubhav be granted the requisite waivers that would allow him to secure a work visa. The email attached documents confirming that Tegeta had employed Anubhav. The #Guptaleaks show that, from at least the 5th of September 2013, Anubhav controlled a Tegeta email address, aanubhavprasad@tegeta.com. Emails were sent to and from this address until at least February 2016.
Together, the above shows that Chandrama Prasad and his relatives had a long-lasting business relationship with the Gupta enterprise that preceded the Estina project and continued during its life. Prasad or companies in which he served as director were granted loans by Gupta-controlled companies in India. The documents also show that Prasad’s son, Anubhav, served as director in a Gupta controlled entity, Mega Mining from at least 2011 onwards. Further, in 2013, at the very time that Chandrama Prasad was managing the Estina project, Anubhav was employed by Tegeta.

7.1.9. Estina’s Registered Address

Shortly after Kamal Vasram was appointed as the sole director of Estina, the company changed its registered address to Block A, 1st Floor, Grayston Ridge, 144 Katharine Street, Sandton. This was the same office block occupied by a number of Gupta companies, including Mabengela Investments. Mabengela is co-owned by Duduzane Zuma, Jacob Zuma’s son, and employed Tshepiso Magashule, Ace Magashule’s son.

7.1.10. Estina’s Financial Servers Hosted on Sahara Servers

We refer the Commission to Annexure S, which includes all relevant emails to the discussion hereunder.

Emails from the #Guptaleaks show clearly that Estina’s financial and accounting records, referred to as Estina Fincon, were installed and run by Sahara Computers, the Gupta company.

In December 2012, for example, Sahara’s Jeandre Holstuzen sent an email copied to the IT departments at Sahara and TNA Media, as well as key

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142 ‘Guptas’ Farm Cash Cows in the Free State, Mail & Guardian, 31 May 2013
143 Ibid

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Gupta lieutenants Ashok Narayan and Ashu Chawla. The email let everyone know that the Estina database would be shut down for maintenance.144

Another email chain from December 2014 shows that Sahara's IT employee, Jonathan Leong-Colom had upgraded Sahara servers, and advised Sahara’s Administration and Ashok Narayan that Estina’s Fincon server had been moved. The head of Sahara’s Administration team, Saliesh Indurjeeth, wrote back confirming that Estina Fincon had been installed on his laptop and was working.145

7.1.11 Gupta Enterprise Involvement in Estina’s Day-to-Day Transactions

One email chain, attached as Annexure T, dated November 2014, shows that Ugeshni Naidu, Sahara employee, was approving payments out of Estina’s accounts. One email dated 4 November 2014 is from Saliesh Indurjeeth from an Estina email asking for approval to make a payment of R750 to Estina’s accountant, copied to Ashok.146 Interestingly, Saliesh Indurjeeth appears in other Gupta emails writing from a Sahara administrator’s account. This would suggest that a Sahara employee, either current or former, was running Estina’s accounts, and asking a Gupta lieutenant to make payments from Estina’s accounts, and copying in another Gupta employee, Ashok.

7.1.12 Estina employment contracts listing Ashu Chawla as contact

One email included an attached employment contract between Estina and Kavya Kannoth Shaji (attached as Annexure U), the latter employed as a ‘senior official.’ The contract included the stipulation that ‘the employee will

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144 Email from #Guptaleaks, 12 December 2012, Subject: International Priority 1-Server 122-WSUS Maintenance
145 Emails from #Guptaleaks, December 2014, Subject: RE: Estina Fincon
146 Email from #Guptaleaks, 4 November 2014, from accounts@estina.co.za to Ugeshni Naidu, Subject: Payment to be made. See Annex M

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contact Mr. Ashu Chawla on his Cell Number: 082 857 8904 for any queries related to the terms and conditions of his employment services.\textsuperscript{147}

7.1.13. Atul Gupta’s Involvement in Meeting Supplier of Dairy Equipment/Star Engineers and the Gupta enterprise’s involvement in arranging the logistics of dairy equipment imports

392. We refer the Commission to Annexure \textbf{V}, which contains copies of all documents relevant to the discussion hereunder.

393. The #Guptaleaks emails show that on the 19\textsuperscript{th} of February 2012, Deepak Bansal directed a letter to Ajay Gupta. Deepak Bansal’s letter was sent on the letterhead of Star Engineers. The body of the letter reads:

\begin{quote}
At the outset of this letter I take the opportunity to express my heartfelt gratitude and thanks for providing me pretty good time, sparing from your most precious and time-bound schedule on 11-2013 during your visit to Saharanpur which is indeed a great personal and affectionate favour to me.

In addition to the above I am also highly grateful to you for taking interest in our line of production of super quality dairy equipments at our Factory at Saharanpur and Bhagwanpur near Roorkee and discussing about the scope of our supply in India and abroad as well. At the same time it was very nice of you to assure to extend all possible guidance, help and support in establishing our dairy equipments business in South Africa and further more in other countries wherever it may be possible as we envisage a great scope for the same there. Your kind personal attention and patronage will be of great help to the undersigned, as assured.
\end{quote}

\textsuperscript{147} Employment Contract Between Estina Pty Ltd and Kavya Kannoth Shaji, undated

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394. As has been widely reported, Star Engineers invoiced Gateway Limited, a Gupta enterprise company based in Dubai, for the supply of a milk pasteurisation plant. This would suggest that one of the few times Estina funds may have been used to buy actual dairy equipment, Ajay Gupta was directly involved in identifying and meeting with the supplier.

395. Emails exchanged between various Sahara employees in January 2014 show that Sahara employees, in particular one Evan Tak and Ashu Chawla, were directly involved in attempting to resolve logistical issues faced by Star Engineers in shipping products to South Africa via the logistics company UTI.

7.1.14 Emails Sent on Behalf of Estina to Bank of Baroda, Bank of India and ICICI Bank

396. See Annexure W for the documents discussed hereunder

397. Emails emanating from the #Guptaleaks show that between October 2012 and November 2012, Gupta employees sent a number of emails to the Bank of Baroda, ICICI Bank and the Bank of India regarding the Estina project. The emails sent and documents attached were:

a. On the 19th of October 2012, Ravindra Nath (nathr@jic.co.za), an employee of the Gupta-controlled entity JIC, emailed one abishek.ba@icicibank.com. Nath attached a documented titled ‘CMA – Estina dairy project.xls’

b. Between at least the 29th of October 2012 and 8 November 2012, Ravindra Nath emailed one boi.johannesburg@bankofindia.co.in on a number of occasions clarifying certain aspects of the Estina project. In one email, Nath attached a document titled ‘Estina – Detailed Break-up of Project Cost.docx


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c. On the 16\textsuperscript{th} of December 2012, Ravindra Nath emailed an email address recorded as Bank of Baroda and copied to ‘Chief Executive [South Africa].’ The email attached large number of documents, including:

a. Detailed Break-up of project cost.docx; Estina- CV -CP Yadav.docx; Estina Dairy Project- PR CMA.xls; Estina Dairy Project- write up .doc; Estina Dairy Project-CMA 01.11.2012.xls; Estina- Kamal.CV.docx; Estina-CV-Parth.doc; Estina-CV-RJ Sharma.doc; NPV_Calc_.xlsx

398. The purpose of the emails is not entirely clear from their immediate content. However, we submit that the materials indicate suggest that, for some unknown reason, Estina was seeking to take out loans from the three banks. To do so, Estina provided details of the project, as well as detailed estimates of the Project costs and projected profits and cash-flow.

399. The involvement of the Gupta enterprise in accessing Estina materials and seeking banking assistance is clear from these emails.

400. As an ancillary matter that may be of interest to the Commission, we draw the Commission’s attention to two documents in particular, namely, the documents titled ‘Estina Dairy Project – write up.docx’ and ‘Detailed Break-up of project cost.docx.’ With regards to the file ‘Estina Dairy Project – write up.docx’, two points are worth noting.

401. First, the write-up, which describes the Estina projects and its prospects for success, makes no mention whatsoever of the Free State Department of Agriculture’s involvement, or the intended involvement of the promised ‘beneficiaries’ of the project. Certainly, no indication is provided that the Department had made funds available to the project. This omission is curious considering that it should have improved the viability of the project in the eyes of a potential funder.
402. Secondly, the write-up included, at point 8, a table setting out the total anticipated costs of the Estina/Vrede Dairy Project. The table read:

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>Cost ZAR in Mn</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Acquired</td>
<td></td>
</tr>
<tr>
<td>Development of Land</td>
<td>4.50</td>
</tr>
<tr>
<td>Main Dairy Building</td>
<td>35.00</td>
</tr>
<tr>
<td>Ancillary Dairy Building</td>
<td>8.00</td>
</tr>
<tr>
<td>Farm Implements</td>
<td>10.00</td>
</tr>
<tr>
<td>Tractors</td>
<td>15.00</td>
</tr>
<tr>
<td>Clinical Equipment</td>
<td>0.60</td>
</tr>
<tr>
<td>Reproduction Unit Equipment</td>
<td>0.50</td>
</tr>
<tr>
<td>Dairy Equipment with Data base system</td>
<td>4.30</td>
</tr>
<tr>
<td>Milk Parlour</td>
<td>5.53</td>
</tr>
<tr>
<td>Power Unit</td>
<td>1.75</td>
</tr>
<tr>
<td>Animal Purchase Cost</td>
<td>15.00</td>
</tr>
<tr>
<td>Workshop Equipment</td>
<td>0.50</td>
</tr>
<tr>
<td>Cattle Feed Plant</td>
<td>1.60</td>
</tr>
<tr>
<td>Office Building (Admin)</td>
<td>3.40</td>
</tr>
<tr>
<td>Residential Building</td>
<td>6.50</td>
</tr>
<tr>
<td>Water Management (bore well, Dams etc.)</td>
<td>6.70</td>
</tr>
<tr>
<td>Roads</td>
<td>6.72</td>
</tr>
<tr>
<td>Preliminary &amp; Pre-operative</td>
<td>10.00</td>
</tr>
<tr>
<td>Contingency (10%)</td>
<td>12.56</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>148.16</strong></td>
</tr>
</tbody>
</table>

403. Self-evidently, the project costs detailed by Estina for the life of the project in its correspondence with the Bank of Baroda are considerably lower than those provided in its proposal to the Free State government – a full
R411.84m less than the R570m costs stipulated by Estina in its May 2012 proposal and in the July 2012 contract between Estina and the Department.
Section 8: Benefits Accruing to Free State Government Officials Overseeing the Estina/Vrede Dairy Project Arising from the Gupta Enterprise

Evidence from the #Guptaleaks, media reports and court filings show that there were a number of clear and direct links between the Gupta enterprise and government officials from both the national government and the Free State responsible for overseeing the Estina/Vrede Dairy project. Further, certain officials or their families, Mosebenzi Zwane and Ace Magashule in particular, accepted benefits from the Gupta enterprise during the life of the Estina/Vrede Dairy Project. We submit that the consistent favour shown to Estina by Free State government officials in awarding and funding the Estina/Vrede Dairy Project must be seen in this light.

8.1. Mosebenzi Zwane

As noted above, Mosebenzi Zwane served as the MEC for Agriculture during the initiation and approval of the Estina/Vrede Dairy project until his departure from the Department in early 2014. Zwane engaged with or provided the following approvals in relation to the Estina/Vrede project:

a. Recommend Vrede as the location for the Dairy Project to Peter Thabethe;
b. Attended a number of community meetings where the Project was discussed and presented;
c. Sat on the Provincial Expo that received and approved the project proposal for the Estina/Vrede Dairy Project on the 13th of June 2012;
d. Delegated authority to Peter Thabethe to enter into an assignment of rights between the Phumelela Local Municipality and the Department on the 12th of September 2012.

Mosebenzi Zwane secured direct benefits for himself and his associates from the Gupta enterprise during the period in which he delegated...
authority to Thabethe for the Department to enter into its 99 year lease agreement with Estina. The direct benefits took the form of an all-expenses paid trip to India for Zwane and members of his gospel choir.

408. On the 13th of September 2013, Ashok Narayan emailed Ashu Chawla with the subject ‘Planning for October India trip.’ The email ran as follows:

Ashubhai:

**Number of persons travelling:**
Choir Group: 25
Add MEC + Official + Ashok Narayan: 3
**Total persons: 28**

**Hotel Booking required:**
Choir Group: 14 Rooms
Add MEC + Official + Ashok Narayan: 3
**Total Rooms required: 17 Rooms**

**Tentative date of travel:**
Depart from JHB: Oct 13, 2012
Return to JHB: Oct 20, 2012

**Air tickets required only for Choir Group: 25 persons**

409. The date of the above email exchange is striking in light of developments with regards to Estina’s access to Krynauswslust farm. As noted above, only a day prior to this email exchange, on the 12th of September 2012, Zwane had delegated authority to Thabethe to enter into an agreement between the Department and Phumelela Municipality. The agreement was also entered into on the 12th of September 2012. The agreement envisaged the Department paying just under R1m to Phumelela to compensate for lost rental income, which could also be interpreted as an effective subsidy paid to assist Estina deliver the Vrede Dairy Project.
longer term consequence of this agreement was to clear the way for Estina to be granted rent-free access to the land on which the Project was to be based.

410. On the 15th of September 2012, Ashu Chawla forwarded an email from Beverly Hardie (a Sahara employee) to gtshiloane@flyexpress.aero. The domain name suggests that the recipient of the email worked for SA Express, a subsidiary of South African Airways. Subsequent emails show that the choir group purchased tickets to India via SA Express.

411. On the 28th of September 2012, Ashu Chawla emailed one Ms. Hinduja at the Oberoi Hotel Group (smriti.hinduja@oberoigroup.com). Chawla indicated that he was sending ‘the names for the guest [sic].’ Chawla forwarded the 25 names of Zwane’s choir group. Chawla also listed, as the first three entries, Mosebenzi Zwane, Mrs. Innocentia Tshegofatso and Ashok Narayan.

412. Further emails indicate that Mrs. Innocentia Tshegofatso was also referred to as TI Motaung by Ashu Chawla and others. Documents from the Department of Agriculture show that Motaung also went by the name ‘Tshegofatso Inno Motaung.’ This was the name that was used for her visa application, a receipt of which was forwarded to Ashok Narayan. Online research shows that Motaung was an employee of the Free State Department of Agriculture. In March 2013, Motaung forwarded a letter to Ashok Narayan with the subject ‘Message from “MEC.”’ The attached letter was a letter of invitation from the office of Mosebenzi Zwane to Mr. Shivpal Yadav, the State Minister of Public Works & Irrigation in Utter Pradesh, India. The letter directed enquires to ‘Motaung Inno’ at motaungti@fs.agric.za. The Fundudzi Report on ‘Various Allegations at Transnet and Eskom’, in particular Chapter II on McKinsey, Trillian and Regiments, noted that ‘Motaung confirmed that she and Zwane have a child together.’


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413. On the 8th of October 2012, Hinduja responded by attaching a Pro Forma invoice for the travelling party to stay at The Oberoi, Gurgaon and The Oberoi Amarvilas: all hotels in India. The hotels invoiced the charges to Westdawn Investments, a Gupta enterprise company.

414. On the same day, Ashu Chawla emailed Sandeep Dubey (a Sahara employee) and Naresh Khosla, an employee of the Gupta-owned SES India. Ashu Chawla directed Khosla to purchase rail tickets from Delhi to Dehraduhn, the Gupta brothers’ hometown, leaving on the 16th of October and returning the following day. Chawla directed Khosla to purchase tickets for Tony Gupta, Videsh Proothveerajh, Ashok Narayan, Mosebenzi Zwane and Innocentia Tshegofatso.

415. On the 9th of October 2012, Sandeep Dubey emailed Ashu Chawla. He attached the itinerary for the India trip as a Word document. The itinerary showed that the choir group, and Zwane, were expected to use the trip to go river rafting, tour the Taj Mahal and visit the Kingdom of Dreams. It also included a dinner for the group at ‘Mr. Gupta house,’ presumably Tony Gupta.

416. On the 11th of October 2012, Ashu Chawla emailed Hinduja once more. The email followed an exchange in which Chawla asked the Oberoi Hotel Group to arrange the Taj Mahal tour, and Hinduja had discussed the invoicing arrangements. Chawla sent Hinduja the American Express card details for Tony Gupta (R K Gupta) to cover the costs.

417. On the 27th of September 2012, Ashu Chawla emailed nsingh@thelalit.com. The Lalit provided one of the hotels used by the choir group. Chawla directed that he required 15 double rooms to be booked between the 19th and 20th of October. Chawla forwarded the names of the choir group to nsingh@thelalit.com on the 3rd of October 2012. On the 4th of October 2012, nsinh@thelalit.com emailed Chawla an invoice, which recorded that the bookings would be billed against Sahara Computers in South Africa. Further emails show that Naresh Khosla supplied credit card details to Lalit to complete the bookings.
We have used the #Guptaleaks records to calculate, where possible, the costs incurred by the Gupta enterprise in sending Zwane and his associates to India. Certain costs could not be located, such as air fare for Zwane and the costs of food and entertainment. Nevertheless, based on the documents at our disposal, our calculations show that the trip cost at least R568 019. Those costs we have identified are set out below:

<table>
<thead>
<tr>
<th>Item/Description</th>
<th>Invoiced To</th>
<th>Rupee Amount</th>
<th>Rand Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 Rooms at The Lalit, Mumbai for 21 October 2012</td>
<td>Sahara Computers Pty Ltd</td>
<td>Rs 128 573.55</td>
<td>R20 571.76 @ Rs1:R0.16</td>
</tr>
<tr>
<td>Multiple rooms for multiple nights at the Oberoi, Gurgaon</td>
<td>Westdawn Investments Pty Ltd</td>
<td>Rs 1 310 406</td>
<td>R209 664.96 @ Rs1:R0.16</td>
</tr>
<tr>
<td>13 double premier rooms and 5 single premier rooms, both with breakfast, at The Oberoi Amarvilas, Agra</td>
<td>Westdawn Investments Pty Ltd</td>
<td>Rs 485 988</td>
<td>R77 758.08 @ Rs1:R0.16</td>
</tr>
<tr>
<td>25 economy class return tickets to Delhi @ R10401 p/p</td>
<td></td>
<td></td>
<td>R260 025</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>R568 019.80</strong></td>
</tr>
</tbody>
</table>
According to the Democratic Alliance, Zwane did not declare this as required by the register of members' interests.\textsuperscript{150}

The \#Guptaleaks reveal that Zwane made six visits to the Gupta compound in between September 2012 and January 2014. In total, Zwane held meetings at the Gupta compound in.\textsuperscript{151} Peter Thabethe accompanied Zwane to those meetings on at least two occasions.\textsuperscript{152} The visits all took place during the period in which Zwane, as MEC for Agriculture, would have had oversight over the Estina/Vrede project. The relevant diary entries were:

The 16\textsuperscript{th} of September 2012, when Tony Gupta is scheduled to meet ‘MEC Agric’ at Saxonwold;
The 5\textsuperscript{th} of January 2013, when Tony Gupta is scheduled to meet ‘MEC Agric’ at Saxonwold;
The 1\textsuperscript{st} of February 2013, when Tony Gupta is scheduled to meet ‘Zwane + DG’ at Saxonwold;
The 18\textsuperscript{th} of July 2013, when Tony Gupta is scheduled to meet ‘Zwane and Peter’ in Saxonwold;
The 17\textsuperscript{th} of January 2014, when Tony Gupta is scheduled to meet ‘Zwane’ in Saxonwold;
The 31\textsuperscript{st} of January 2014, when Tony Gupta is scheduled to meet ‘Zwane’ in Saxonwold.\textsuperscript{153}

Mr. Zwane was an attendee at the wedding of Vega Gupta and Aakash Jahajgarhia at Sun City. \#Guptaleaks records suggest that Zwane was roomed at The Palace for the wedding, at a cost of R7500 per night. As we address in our further submission, the Sun City wedding was expensed

\textsuperscript{151} ‘Cash cows and computers – Ace Magashule’s Laptop Deals with Gupta’s Vrede Dairy Man; Joemat-Petterson’s Saxonwold Meetings’, \textit{Daily Maverick}, 23 July 2019
\textsuperscript{152} High profile Gupta visits verified, Business Day, 12 June 2017
\textsuperscript{153} Cash cows and computers – Ace Magashule’s Laptop Deals with Gupta’s Vrede Dairy Man; Joemat-Petterson’s Saxonwold Meetings’, \textit{Daily Maverick}, 23 July 2019
against funds that were laundered from the Estina/Vrede Dairy Project by the Gupta enterprise.\textsuperscript{154}

422. Zwane continued to maintain a close connection with the Gupta enterprise after his departure from the Free State Department of Agriculture. We do not address them all here, but do note that Zwane has been shown through the #Guptaleaks and other investigations to be central to the Gupta enterprise’s activities in the mining sector. The Gupta leak emails further indicate that Zwane was appointed to the position of Minister after Tony Gupta had forwarded Zwane’s CV to Duduzane Zuma, presumably for transmission onto his father.\textsuperscript{155} Zwane’s CV was also sent to Tony Gupta by Frans Oupa Mokoena. Mokoena was the original custodian of shares in Zayna Investments, which was anticipated to house the shares of the Vrede community beneficiaries.

423. It was clearly inappropriate for Zwane to accept benefits from the Gupta enterprise, including the Indian choir trip, while he was actively involved in overseeing the implementation of the Estina/Vrede Dairy Project. Indeed, we submit that the timing of the award of the benefits, and Zwane’s involvement at key points in the Estina/Vrede Dairy Project as MEC, could constitute a violation of the Prevention and Combatting of Corrupt Activities Act (PRECCA).

424. We thus strongly recommend that the Commission investigate and establish whether Zwane committed \textit{prima facie} criminal violations of PRECCA, and, if so, that these findings are forwarded to the Hawks and the NPA.

8.2. \textit{Ace Magashule}

425. See \textbf{Annexure Y} for all relevant documents referred to in this section.

\textsuperscript{154} ‘The Sordid Story of Mosebenzi Zwane,’ \textit{Daily Maverick}, 18 September 2018
\textsuperscript{155} Duduzane Zuma, ‘Kept and Captured’, amaBhungane and Scorpio, 1 June 2017

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426. Ace Magashule was involved in the Estina/Vrede Project as Premier in the following ways:

   a. Approving Peter Thabethe’s ‘research trip’ to India, at which Thabethe was accompanied by Ashok Narayan;
   b. Approving, as part of the Provincial Expo, the Estina/Vrede project on the 13th of June 2011;
   c. Delegating authority to Mosebenzi Zwane to allow Zwane to delegate authority to Peter Thabethe to enter into the 99-year lease agreement;
   d. Receiving, and failing to act on, the draft Accountant General Report of January 2014, the final Accountant General report of February 2014, and the provisional findings of the Public Protector, all of which recommended that payments to Estina be halted immediately.

427. As noted previously, Ashok Narayan, a central player in the Gupta enterprise and the theft of Estina funds, was appointed as an ICT advisor by Magashule on the 29th of February 2012. Narayan was appointed on the same day that he and Thabethe were to arrive in India to conduct ‘research’ into a potential partnership with Paras.

428. The #Guptaleaks shows that, on more than one occasion, Narayan arranged invitations to visit the Free State on official visits to numerous Indian dignatories. Narayan arranged for the invitations to be sent from the Office of the Premier.

429. The #Guptaleaks show that Magashule was scheduled to visit the Gupta compound on at least two occasions. The first was scheduled as ‘Lunch Meeting ACE’ on the 10th of April 2011. The second was recorded as a meeting with ‘Gift Father’ on the 2nd of October 2012. Magashule’s son, Tshepiso, was also known as Gift.

430. Ace Magashule’s sons secured a number of direct benefits from the Gupta enterprise. Tshepiso was employed as a consultant by the Guptas in at least 2010, and joined the Gupta brothers Ajay, Rajesh, Atul and their families.
on a three week holiday to New York City and Venice.\textsuperscript{156} According to documents from the \#Guptaleaks and Pieter-Louis Myburgh, Tshepiso was employed by the Guptas from at least November 2010. One spreadsheet in the \#Guptaleaks shows that Tshepiso worked as a consultant for Mabengela Investments, a Gupta enterprise company part owned by Duduzane Zuma.

431. Tshepiso and another brother, Thato, travelled to Dubai in December 2015 and stayed in a luxury hotel for 8 days called the Oberoi. The \#Guptaleaks records show that Ashu Chawla instructed the Oberoi that Sahara would cover the cost of the brother’s ‘bed and breakfast.’\textsuperscript{157}

432. The \#Guptaleaks archives show that, on the 6\textsuperscript{th} of May 2014, Moside Motsemme sent an email to Tshepiso’s email \texttt{tgmagashule@gmail.com}. The email attached a list that Motsemme described as ‘a list of FS ANC party agents in need of airtime, they all use MTN. It will be appreciated if airtime amounting to R120 per person could be loaded today.’ Motsemme indicated that the email was sent ‘as per directive of FS ANC Chairperson.’ At the time, Ace Magashule was the Chairperson of the ANC in the Free State. According to Pieter-Louis Myburgh, Ace Magashule and Motsemme had two children together. The document attached to the email listed 362 individuals and their cellphone numbers. The cost of the requested airtime would total R43,440.

433. The list and the email exchange between Motsemme and Tshepiso was forwarded to Tony Gupta’s Sahara email address on the same day, the 6\textsuperscript{th} of May. The mail was forwarded by Kabelo Nthongoa. According to Pieter-Louis Myburgh, Nthongoa was Ace Magashule’s daughter-in-law. She had married Tshepiso in 2014.

434. Myburgh also notes that Tshepiso and Nthongoa lived at an address on Avonwold Road in Saxonwold, and that the house was owned by Confident Concept, a Gupta enterprise company. Property records confirm

\textsuperscript{156} ‘Groomed by the Guptas: How Free State Premier Ace Magashule, son Gift were caught and captured’, \textit{Biznews}, 12 June 2017

\textsuperscript{157} \#Guptaleaks: The ‘Gift’ That Keeps on Giving’, \textit{amaBhungane}, 5 June 2017

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that Confident Concept Ltd owned 18 Avonwold Road in Saxonwold.\textsuperscript{158} Myburgh further alleges that Ace Magashule used the property on Avonwold Road to meet up with the Gupta brothers in Johannesburg.

\textsuperscript{158} See Annexure L attached

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