

INDICTMENT SHEET

JACOB GEDLEYIHLEKISA ZUMA (Accused no. 1)

(more comprehensively described in paragraph 1 of the
General Preamble to all charges)

ATUL GUPTA (Accused no. 2)

(more comprehensively described in paragraph 9 of the
General Preamble to all charges)

AJAY GUPTA (Accused no. 3)

(more comprehensively described in paragraph 10 of the
General Preamble to all charges)

RAJESH “TONY” GUPTA (Accused no. 4)

(more comprehensively described in paragraph 11 of the
General Preamble to all charges)

ASHU CHAWLA (Accused no. 5)

(more comprehensively described in paragraph 12 of the
General Preamble to all charges)

NAZEEM HOWA

(Accused no. 6)

**(more comprehensively described in paragraph 13 of the
General Preamble to all charges)**

MOSEBENZI ZWANE

(Accused no. 7)

**(more comprehensively described in paragraph 14 of the
General Preamble to all charges)**

MALUSI GIGABA

(Accused no. 8)

**(more comprehensively described in paragraph 15 of the
General Preamble to all charges)**

FAITH MUTHAMBI

(Accused no. 9)

**(more comprehensively described in paragraph 16 of the
General Preamble to all charges)**

DESMOND VAN ROOYEN

(Accused no. 10)

**(more comprehensively described in paragraph 17 of the
General Preamble to all charges)**

DUDUZANE ZUMA

(Accused no. 11)

(more comprehensively described in paragraph 18 of the General Preamble to all charges)

MATSHELA KOKO

(Accused no. 12)

(more comprehensively described in paragraph 19 of the General Preamble to all charges)

GENERAL PREAMBLE TO ALL COUNTS:

AT ALL TIMES RELEVANT TO THE CHARGES:

1. Accused no. 1 was the President of the Republic of South Africa elected by parliament following the African National Congress victory in the 2009 general election. He was born on 12 April 1942 and has a private residence at Nkandla, Kwa-Zulu Natal, and official residences in Pretoria and Cape Town. He is a South African citizen;
2. He was re-elected in the 2014 election;
3. Accused no 1 is the President of the African National Congress (ANC), the governing political party, and was Deputy President of South Africa from 1999-2005;
4. Accused no. 1 is also referred to by his initials JZ and his

clan name Msholozzi;

5. Accused no. 1 became the President of the ANC on 18 December 2007 after defeating incumbent Thabo Mbeki at the ANC conference in Polokwane;
6. Accused no. 1 was re-elected as ANC leader at the ANC conference in Mangaung on 18 December 2012, defeating challenger Kgalema Motlanthe by a large majority;
7. Accused no.1's close and allegedly corrupt relationship with the Gupta family has been a major source of discontent within both his own party– the ANC – and the South African public;
8. The Public Protector (then Adv Thuli Madonsela), and pursuant to an investigation into allegations of state capture, produced a report entitled "State of Capture" following allegations that Accused nos. 2, 3 and 4 and their business associates including Accused nos. 5 and 6 were said to be close to accused no. 1, his family, including Accused no. 11 and other ANC leaders including Accused nos. 8, 9 and 10;
9. Accused no. 2 was an adult male person residing in Saxonwold Drive, Saxonwold, Johannesburg, currently managing director of Sahara Holdings and has permanent

residence status in South Africa;

10. Accused no. 3 was an adult male person residing in Saxonwold Drive, Saxonwold, Johannesburg, currently director of Vusizwe Media and has permanent residence status in South Africa;
11. Accused no. 4 was an adult male person residing in Saxonwold Drive, Saxonwold, Johannesburg, currently director of Mabengela Investments and Islandsite Investments 255 and has permanent residence status in South Africa;
12. Accused no 5 was an adult male business person, currently chief executive of Sahara Computers and a citizen of the Republic of South Africa;
13. Accused no 6 was an adult male business person, currently an active director in Ubunthu Media Investments, Kerigen, Joviwiz and Farlocel and formerly chief executive officer of Oakbay Investments and a citizen of the Republic of South Africa;
14. Accused no 7 was an adult male, currently Minister of Mineral Resources and a citizen of the Republic of South Africa;

15. Accused no 8 was an adult male, currently Minister of Finance and a citizen of the Republic of South Africa;
16. Accused no. 9 was an adult female, currently Minister of Public Services and Administration and a citizen of the Republic of South Africa;
17. Accused no. 10 was an adult male, currently Minister for Cooperative Governance and Traditional Affairs and a citizen of the Republic of South Africa;
18. Accused no 11 was an adult male, director of *inter alia* Sahara Computers, Mabengela Investments, Islandsite Investment 255, Mabengela Investments, a South African citizen and the eldest son of Accused no. 1;
19. Accused no. 12 was an adult male Group Executive of Eskom (Generation) and later Acting Chief Executive Officer of Eskom, currently on suspension and a citizen of the Republic of South Africa;
20. It was, *inter alia*, alleged that Accused 2, 3 and 4 were offering Cabinet positions to chosen individuals and influencing the running of government;
21. These allegations were made in light of revelations by Deputy Finance Minister Mcebisi Jonas and former MP Vytjie Mentor that they had been offered Cabinet positions

by Accused nos. 2, 3 and 4 at the family's home in Saxonwold, Johannesburg;

22. In the early hours of 31 March 2017, the Presidency announced a major cabinet reshuffle in which Finance Minister Pravin Gordhan and his deputy Mcebisi Jonas were dismissed;
23. Accused no. 8 was appointed as the new Finance Minister. The reshuffle affected 10 cabinet ministers, 5 of whom were dismissed, and 10 deputy ministers;
24. The reshuffle was strongly criticised by Deputy President Cyril Ramaphosa and other senior ANC and South African Communist Party (SACP) leaders, and led to increased calls for Accused no. 1 to resign, including opposition calls for a motion of no confidence and impeachment;
25. The SACP's Second Deputy General Secretary Solly Afrika Mapaila indicated that ANC members of Parliament should themselves raise the prospect of a vote of no confidence in the President;
26. Shortly after the removal of Pravin Gordhan, ratings agency Standard and Poor's downgraded South Africa's sovereign debt to BB+, commonly known as junk status. Partly in response to the dismissal of the Gordhan marches

and protests were held on 7 April 2017 in South Africa's major cities with a total of 60,000 protesters taking part. The largest of the protests occurred in Cape Town with an estimated 80,000 participants and Pretoria with an estimated 25,000 joining protests at the Union Buildings;

27. A series of damning e-mails revealed in a variety of Sunday newspapers of 28 May 2017 show that Accused nos. 2, 3 and 4 have formed a common purpose with Accused no 1 and the other accused to run South Africa;
28. It is clear from the detail and documentation available, as well as the actions of the accused, jointly and severally, that they all owe an allegiance to the Republic of South Africa (the Republic), and that they have violated, threatened and endangered the existence and independence and or security of the Republic, and have challenged, directly or indirectly, the Constitutional structure of the Republic;
29. The evidence confirms allegations of state capture and demonstrate the extent of the control Accused nos. 2, 3 and 4 have over cabinet ministers and parastatal CEOs and board members;
30. The correspondence also demonstrates the role of Accused no. 11 in presidential matters;

31. Accused no. 11 is a close business associate of Accused nos. 2, 3 and 4 and is believed to have made billions through this partnership. He is also the eldest son of Accused no. 1;
32. The documentation and e-mails demonstrate that Accused no 2, 3 and 4 were central to a scheme for Accused no. 1 and his extended family to acquire residency in Dubai in the United Arab Emirates;
33. This in the face of an ever increasing body of evidence implicating Accused no. 1 and members of his family in serious criminal offences, and the spectre of the reinstatement of 783 charges of corruption relating to the Arms Deal;
34. Along with Accused nos. 2, 3 and 4, Sahara CEO Accused no. 5 emerges as a key player in the intricate web of state capture;
35. The documentation reveals that Accused nos. 2, 3 and 4 were sent Accused no. 7's CV a month before he was appointed minister of mineral resources;
36. The documentation reveals that Accused nos. 2, 3 and 4 intervened to have the powers of the then communications minister, Accused no 9, strengthened and were forwarded

a presidential proclamation detailing her powers by Accused no. 9 herself before it was signed by Accused no. 1;

37. The documentation reveals that Accused nos. 2, 3 and 4 received confidential information on cabinet meetings from Accused no. 9;
38. The documentation reveals that Accused nos. 2, 3 and 4 paid for Accused no. 10's trip to Dubai after his appointment to the cabinet in December 2015;
39. The documentation reveals that Accused nos. 2, 3 and 4 paid for a deluxe suite for Accused no. 12 - subsequently appointed acting CEO of Eskom - at the luxurious Oberoi Hotel in Dubai;
40. The documentation reveals that Accused nos. 2, 3 and 4 had staff coach Accused no. 7 on how to handle media conferences, including questions about his relationship with Accused 2, 3 and 4. He flew on a private jet owned by Accused 2, 3 and 4 to Dubai and they paid for his accommodation;
41. The documentation reveals that Accused nos. 2, 3 and 4 have an unjustifiably large say in running South Africa;
42. The documentation reveals that a second home for

Accused no. 1 in Dubai was extensively planned with the assistance of Accused nos. 2, 3 and 4. In support hereof is an extract from an email, the contents of which are self-explanatory - On January 16 last year two draft letters were circulated from to Accused no. 4 to Accused no. 5 and then to Accused no. 11 with subject lines: "JZ letter to Crown Prince AUH" and "JZ letter to Sheikh Mohammed";

43. The documents reveal that In one of the letters prepared for Accused no. 1, he writes to "His Highness Crown Prince of Abu Dhabi, General Sheikh Mohammed Bin Zayed Al Nahyan", congratulating him on initiatives for the developing and planning of Abu Dhabi;
44. In the second letter Accused no. 1 commends "His Highness Vice President and Prime Minister, Sheikh Mohammed Bin Rashid Al Maktoum" for his "dynamic rule and visionary leadership";
45. Accused no. 1 continues to sing both their praises and then requests their "guidance and direction" for making the United Arab Emirates his second home, stating *"It is with this sentiment that I am happy to inform you that my family has decided to make the UAE a second home. It will be a great honour for me and my family to gain your patronage"*

during our proposed residency in the UAE;"

46. Two months after the draft letters, Accused no. 1 added Dubai at the last minute to his Saudi Arabia state visit. There he met Sheikh Mohammed Bin Rashid Al Maktoum, to discuss a "number of regional issues";
47. At the time, sources close to the Presidency confirmed that the Dubai stopover was indeed added at the last minute;
48. The documentations shows that Accused no. repeatedly lied when he stated that he paid for a private trip to Dubai shortly after his appointment to the cabinet in December 2015. At a press conference in April 2016 Accused no. 10 vehemently denied that his December 21 trip was done at short notice, saying it was planned long before his brief appointment (4 days) as finance minister and later minister of cooperative governance and traditional affairs;
49. At the time he said: *"It was a private visit, I paid for that myself. You know I didn't have enough [money]. I was supposed to stay for a week, but you know, it was in and out"*.
50. The e-mail correspondence, however, shows that the trip was sponsored by Accused nos. 2, 3 and 4 and booked just a day before his departure on December 21;

51. Reservations e-mails from the luxurious five-star Oberoi Hotel to Accused no. 5 confirm that bookings were done by a company owned by Accused nos. 2, 3 and 4;
52. Accused no. 10 was chauffeur-driven with a Jaguar XJ L from the airport to the hotel and booked a deluxe suite, at a cost of approximately R6,000 a night. The room reservations from the e-mails indicate that the booking at the hotel was for two adults;
53. Accused no. 5 sent Accused no. 10's reservation confirmation to Salim Essa, an associate of Accused nos. 2, 3 and 4, and who owns shares in several of the family's companies;
54. The Sunday Times reported last year that Accused no. 10's advisers - two days after his appointment as finance minister - leaked confidential cabinet information to Essa, saying "*Gents Finally*";
55. It is widely believed that Van Rooyen's appointment as finance minister was influenced by the Accused nos 2, 3 and 4. Accused no. 10 arrived at the Treasury with two advisers s linked to Accused nos. 2, 3 and 4, Mohamed Bobat and Ian Whitley. The two moved with him to cooperative governance;

56. The Sunday Times also reported that Accused no. 10 visited the compound of Accused nos. 2, 3 and 4 in Saxonwold, Johannesburg, for seven consecutive days before his appointment as finance minister;
57. Documents now available show that Accused nos. 2, 3 and 4 hand-picked Accused no. 7 as mineral resources minister a month before Accused no. 1 appointed him to his cabinet in September 2015;
58. On July 31 2015, one France Oupa Mokoena, from Koena Consulting and Property Developers, e-mailed Accused no. 4 to say: "*Please find attached the CV of Mr Mosebenzi Zwane for your attention*";
59. Three months after his appointment, Accused no. 7 abandoned embassy officials when he left Zurich for Dubai in private jet owned by Accused nos. 2, 3 and 4 on December 2;
60. Accused no. 7, a staunch defender of Accused nos. 2, 3 and 4, was on a working trip in Zurich where he helped to facilitate the sale of the Optimum coal mine in Mpumalanga to a company owned by Accused nos. 2, 3 and 4 and Accused no. 11;
61. E-mail correspondence between Accused no. 5 and the

crew flying the plane belonging to Accused nos. 2, 3 and 4 reveal that Accused no. 7 flew out of Zurich with Essa, Accused no. 4 and other people;

62. This was despite a flight ticket on an Emirates flight being booked by Accused no. 7's department to fly him to Dubai;

63. E-mails from the Oberoi Hotel to Accused no. 5 confirm that Accused no. 7's stay at the five-star hotel overlooking the Burj Khalifa was paid for by Sahara, a company controlled by Accused nos. 2, 3 and 4;

64. Accused no. 7 was chauffeured around in a BMW 7 Series. Accused no. 5 advised hotel reservations to charge the cost of the chauffeur services to a certain Mr Singh;

65. Further evidence of the influence and hold Accused nos. 2, 3 and 4 have over Accused no. 7 is contained in a further e-mail with the subject line reading "Zwane questions", former Oakbay CEO Accused no. 6 e-mailed Accused no. 4 and Accused no 11 on 2 February 2016 saying *"I need some help on some of the answers. I think we should also prepare for a question of his role around the Waterkloof landing. Perhaps I can sit with someone at his side to help me polish and add to the answers. Lets chat when you have a chance to review;"*

66. Accused no. 6 drafted questions that included the following
- *"Given this perfect storm, you have been described as unsuited to the role of minister of mineral resources given your inexperience?"*
67. *"Critics have slammed your appointment as proof of government's alarming lack of urgency in dealing with SA's ailing mining sector and its ambiguous regulatory framework?"*
68. *"Your appointment seems to be really irregular? You were silently moved from MEC for Agriculture to mining minister. what do you think the president saw in you to give him the confidence to appoint you?"*
69. *"Analysts say the mining industry is at its lowest ebb ever and this can be directly attributable to legislation, policies, ideology, corruption, inefficiency, political demagoguing, organisations not adhering to the constitution and draconian labour legislation. What is your comment?"*
70. *"What about the rumours of your being captured by the Guptas and your appointment was made for you to do their bidding?"*
71. *"What is your relationship with the Guptas?"*
72. Accused no. 6 then requested further information and

asked for further input from Accused no. 4 and Accused no. 11;

73. Accused no. 7 was one of the ministers at the forefront of trying to force South African banks to reopen closed bank accounts of Accused nos. 2, 3 and 4 and their various companies;
74. Accused no. 9, a former communications minister, and now the minister in charge of the public service, corresponded directly with Accused no. 4, as well as his staff, on government policy;
75. A series of e-mails demonstrate that Accused no. 9, a close ally of Accused no. 1, alerted Accused nos. 2, 3 and 4 to various changes in government policies relating to her department(s) - even before they had been officially approved by Accused no. 1;
76. An e-mail sent to Accused no. 4 in January 2014 contains a proclamation - which Accused no. 9 says is to be signed by Accused no. 1 - transferring functions under other ministers to herself;
77. They include those under the Electronic Communications Act, the Sentech Act and the Broadband Infracore Act;
78. In July 2014, she sent two e-mails to Accused no. 5. In the

first e-mail, with the subject line "*Proclamation New July 18*", Accused no. 9 writes: "*These sections must be transferred to the Minister of Communications*";

79. The regulations listed in the e-mail give the communications minister wide-ranging power over the Independent Communications Authority of South Africa, including the power to make policies and issue policy direction and oversee applications for electronic communications network licences, radio frequency plans and commercial broadcasting licences;
80. In a second e-mail sent minutes later, with the subject line "*Responsibility for InfraCo and Sentech*", Accused no. 9 writes: "*Sentech's signal distribution must rest with the Ministry of Communications*";
81. Attached to the e-mail mentioned in paragraph 69 is a document transferring powers, functions and duties of the minister of public enterprises in the Broadband Infraco Act and the Sentech Act to herself, Accused no. 9;
82. Both e-mails were subsequently forwarded by Accused no. 5 to Accused no. 11;
83. On July 29 2014, Accused no. 9 sent an e-mail to Accused no. 5, with an attachment containing a memo from

Telecommunications and Postal Service Minister Siyabonga Cwele, in which he expresses concerns about proposed amendments to broadcasting digital migration policy;

84. In her message to Accused no 5 - which was meant for Accused no. 4 – Accused no. 9 writes: "*Despite my request, the cde is determined to table the matter in cabinet tomorrow ... He called me that he was coming to Cape Town this morning ... I hope he still on his way*";
85. Accused no. 5 forwarded the e-mail to Accused no. 4 on the same day;
86. Accused no. 9 was appointed public service and administration minister in March in a midnight cabinet reshuffle. As communications minister, she was accused of allowing the SABC to be plundered and run into the ground;
87. She was widely condemned for failing to halt former chief operating officer Hlaudi Motsoeneng's abuse of power at the broadcaster;
88. Sahara Computers, a company owned and or controlled by Accused no. 2, 3 and 4, paid for Accused no. 12's accommodation at the Oberoi Hotel in Dubai last year. At the time he was the Eskom group executive in charge of

- generating power;
89. Accused no. 12 was chauffeur-driven around Dubai during his one-day visit;
 90. Accused no. 12 checked in on Monday January 4 2016 and left the hotel the following day;
 91. The e-mails show the confirmation of his booking was sent to Sahara Computers CEO Accused no. 5;
 92. Accused no. 12's trip took place a month after another Gupta-owned company, Tegeta Exploration and Resources, took over operations at the Optimum coal mine - supplier of coal to Eskom power stations;
 93. Accused no. 12, who took over as acting group CEO after Brian Molefe's controversial departure last year - is on suspension following allegations that Eskom awarded tenders worth R1-billion to a company where his stepdaughter was a director;
 94. Earlier this month Finance Minister, Accused no. 8, canned a multibillion-rand deal involving a Gupta-linked company;
 95. The deal - in which Accused nos. 2, 3 and 4 were expected to make billions - involved setting up a joint venture between Denel and VR Laser Asia to form a new company called Denel Asia;

96. Denel believed the joint venture would help it "find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles";
97. Gupta business associate Salim Essa is the sole shareholder of VR Laser Asia;
98. He is also a director of VR Laser RSA, a company owned by Accused no. 11 and Accused no. 4, through an entity called Westdawn Investments;
99. Accused no. 3's son, Kamal Kant Singhala, was a director of VR Laser RSA but has resigned.
- 100. It is clear from the above that the Accused, acting jointly and severally, the one with the other, acting in concert with each other in pursuit of a common goal and purpose, have committed the following offences:**

TREASON

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, which conduct violated, threatened and endangered the

existence, independence and security of the Republic of South Africa, or had the effect or potential effect of changing the Constitutional structure of the Republic of South Africa.

**OFFENCES IN TERMS OF THE PREVENTION OF ORGANISED
CRIME ACT OF 1998**

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s2 of the Prevention of Organised Crime Act of 1998:

(1) Any person who-

(a) (i) receives or retains any property derived, directly indirectly, from a pattern of racketeering activity; and

(ii) knows or ought reasonably to have known that such property is so derived; and

(iii) uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of, any enterprise;

(b) (i) receives or retains any property, directly or indirectly, on

behalf of any enterprise; and

(ii) knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;

(c) (i) uses or invests any property, directly or indirectly, on behalf of any enterprise or in acquisition of any interest in, or the establishment or operation or activities of any enterprise; and

(ii) knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;

(d) acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity;

(e) whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;

(f) manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;

or

(g) conspires or attempts to violate any of the provisions of paragraphs

(a) , (b) , (c) , (d) , (e) or (f) ,

within the Republic or elsewhere, shall be guilty of an offence.

(2) The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair.

Definitions in act relevant:

'enterprise' includes 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;

'pattern of racketeering activity' means the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the

commission of such prior offence referred to in Schedule 1;

'proceeds of unlawful activities' means any property or any service advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived;

'unlawful activity' means conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere.

RACKETEERING

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, partook unlawfully and in the manner set out in paragraphs 1 to 100 *supra* in acts of illegal activity carried out as part of an enterprise that is owned and or controlled by the accused or some of the accused.

**OFFENCES IN TERMS OF THE PREVENTION AND
COMBATting OF CORRUPT ACTIVITIES ACT – 12 OF 2004**

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and **specifically the general offence of corruption in terms of s3 of the Act:**

Any person who, directly or indirectly-

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,
in order to act, personally or by influencing another person so to act, in a manner-
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the

course of the,
exercise, carrying out or performance of any powers, duties
or functions arising out of a constitutional, statutory,
contractual or any other legal obligation;

- (ii) that amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules,
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,
- is guilty of the offence of corruption.

Specifically s4 - Offences in respect of corrupt activities relating to public officers

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and That the accused, during the period

2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and **specifically s4 offences in respect of corrupt activities relating to public officers** :

(1) Any-

- (a) public officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or

functions arising out of a constitutional, statutory, contractual or any other legal obligation;

- (ii) that amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
- (iii) designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,
is guilty of the offence of corrupt activities relating to public officers.

(2) Without derogating from the generality of section 2 (4), '**to act**' in subsection (1), includes-

- (a) voting at any meeting of a public body;
- (b) performing or not adequately performing any official functions;
- (c) expediting, delaying, hindering or preventing the performance of an official act;
- (d) aiding, assisting or favouring any particular person in the transaction of any business with a public body;
- (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;
- (f) showing any favour or disfavour to any person in performing a function

as a public officer;

- (g) diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person;
or
- (h) exerting any improper influence over the decision making of any person performing functions in a public body.

Definition of public officer:

'public officer' means any person who is a member, an officer, an employee or a servant of a public body, and includes-

- (a) any person in the public service contemplated in section 8 (1) of the Public Service Act, 1994 (Proclamation 103 of 1994);
- (b) any person receiving any remuneration from public funds; or
- (c) where the public body is a corporation, the person who is incorporated as such,
but does not include any-
 - (a) member of the legislative authority;
 - (b) judicial officer; or
 - (c) member of the prosecuting authority;

(Public body definition:

'public body' means-

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) any other functionary or institution when-
 - (i) exercising a power or performing a duty or function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public duty or function in terms of any legislation;

Specifically s5 - Offences in respect of corrupt activities relating to public officials

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere,

conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and **specifically s5 offences in respect of corrupt activities relating to public officials** :

(1) Any person who, directly or indirectly gives or agrees or offers to give any gratification to a foreign public official, whether for the benefit of that foreign public official or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-

(a) that amounts to the-

- (i) illegal, dishonest, unauthorised, incomplete, or biased; or
- (ii) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(b) that amounts to-

- (i) the abuse of a position of authority;
- (ii) a breach of trust; or
- (iii) the violation of a legal duty or a set of rules;

- (c) designed to achieve an unjustified result; or
- (d) that amounts to any other unauthorised or improper inducement to do or not to do anything,
is guilty of the offence of corrupt activities relating to foreign public officials.

(2) Without derogating from the generality of section 2 (4), **'to act'** in subsection (1) includes-

- (a) the using of such foreign public official's or such other person's position to influence any acts or decisions of the foreign state or public international organisation concerned; or
- (b) obtaining or retaining a contract, business or an advantage in the conduct of business of that foreign state or public international organisation.

'foreign public official' means-

- (a) any person holding a legislative, administrative or judicial office of a foreign state;
- (b) any person performing public functions for a foreign state, including any person employed by a board, commission, corporation or other body or authority that performs a function on behalf of the foreign state; or
- (c) an official or agent of a public international organisation;

Specifically s6 - offences in respect of corrupt activities relating to agents

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and **specifically s6 offences in respect of corrupt activities relating to agents** :

Any-

- (a) agent who, directly or indirectly-
 - (i) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
 - (ii) gives or agrees or offers to give to any person any gratification, whether for the benefit of that person or for the benefit of another

person; or

(b) person who, directly or indirectly-

(i) accepts or agrees or offers to accept any gratification from an agent, whether for the benefit of himself or herself or for the benefit of another person; or

(ii) gives or agrees or offers to give any gratification to an agent, whether for the benefit of that agent or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-

(aa) that amounts to the-

(aaa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bbb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(bb) that amounts to-

(aaa) the abuse of a position of authority;

(bbb) a breach of trust; or

(ccc) the violation of a legal duty or a set of rules;

(cc) designed to achieve an unjustified result; or

(dd) that amounts to any other unauthorised or improper inducement to do or not to do anything,
is guilty of the offence of corrupt activities relating to agents.

'agent' means any authorised representative who acts on behalf of his or her principal and includes a director, officer, employee or other person authorised to act on behalf of his or her principal, and **'agency'** has a corresponding meaning;

Specifically s7 - offences in respect of corrupt activities relating to the legislative authority

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and

specifically s7 offences in respect of corrupt activities relating to the legislative authority:

(1) Any-

- (a) member of the legislative authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the legislative authority, whether for the benefit of that member or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) that amounts to-

- (aa) the abuse of a position of authority;
- (bb) a breach of trust; or
- (cc) the violation of a legal duty or a set of rules;
- (iii) designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,
is guilty of the offence of corrupt activities relating to members of the legislative authority.

(2) Without derogating from the generality of section 2 (4), **'to act'** in subsection (1) includes-

- (a) absenting himself or herself from;
- (b) voting at any meeting of;
- (c) aiding or assisting in procuring or preventing the passing of any vote in;
- (d) exerting any improper influence over the decision making of any person performing his or her functions as a member of; or
- (e) influencing in any way, the election, designation or appointment of any functionary to be elected, designated or appointed by, the legislative authority of which he or she is a member or of any committee or joint committee of that legislative authority.

'legislative authority', means the legislative authority referred to

in section 43 of the Constitution;

Specifically s12 - offences in respect of corrupt activities relating to contracts

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and **specifically s12 offences in respect of corrupt activities relating to contracts:**

(1) Any person who, directly or indirectly-

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or
- (b) gives or agrees or offers to give to any other person any gratification,

whether for the benefit of that other person or for the benefit of another person-

- (i) in order to improperly influence, in any way-
 - (aa) the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or
 - (bb) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or
- (ii) as a reward for acting as contemplated in paragraph (a),
is guilty of the offence of corrupt activities relating to contracts.

(2) Any person who, in order to obtain or retain a contract with a public body or as a term of such contract, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person-

- (a) for the purpose of promoting, in any way, the election of a candidate or a category or party of candidates to the legislative authority; or
- (b) with the intent to influence or affect, in any way, the result of an election conducted for the purpose of electing persons to serve as members of the legislative authority,
is guilty of an offence.

Specifically s13 - offences in respect of corrupt activities relating to procuring and withdrawal of tenders

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and **specifically s13 offences in respect of corrupt activities relating to procuring and withdrawal of tenders:**

1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as-

- (a) an inducement to, personally or by influencing any other person so to act-
- (i) award a tender, in relation to a contract for performing any work,

providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

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

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

(b) a reward for acting as contemplated in paragraph (a) (i), (ii) or (iii), is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.

(2) Any person who, directly or indirectly-

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

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

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

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

relation to that contract, whether for the benefit of that tenderer or for the benefit of any other person, as-

- (i) an inducement to withdraw the tender; or
- (ii) a reward for withdrawing or having withdrawn the tender,

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

Specifically s21 - offences relating to an Attempt, conspiracy and inducing another person to commit offence:

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and **specifically s21 offences in respect of corrupt activities relating**

to an attempt, conspiracy and inducing another person to commit offences:

Any person who-

(a) attempts;

(b) conspires with any other person; or

(c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person,

to commit an offence in terms of this Act, is guilty of an offence.

Specifically s34 - offences related to the duty to report corrupt transactions

That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and That the accused, during the period 2001 to date, and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in paragraphs 1 to 100 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt Activities Act and

specifically s34 offences in respect of corrupt activities relating to the duty to report corrupt transactions:

(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed-

(a) an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or

(b) the offence of theft, fraud, extortion, forgery or uttering a forged document,

involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995, (Act 68 of 1995).

[Sub-s. (1) substituted by s. 21 of Act 10 of 2012 (wef 14 September 2012).]

(2) Subject to the provisions of section 37 (2), any person who fails to comply with subsection (1), is guilty of an offence.

[Date of commencement of sub-s. (2): 31 July 2004.]

(3) (a) Upon receipt of a report referred to in subsection (1), the

police official concerned must take down the report in the manner directed by the National Head of the Directorate for Priority Crime Investigation, appointed in terms of section 17C (2) (a) of the South African Police Service Act, 1995, (Act 68 of 1995), and forthwith provide the person who made the report with an acknowledgment of receipt of such report.

[Para. (a) substituted by s. 21 of Act 10 of 2012 (wef 14 September 2012).]

(b) The National Head of the Directorate for Priority Crime Investigation, must within three months of the commencement of the South African Police Service Amendment Act, 2012, publish the directions contemplated in paragraph (a) in the *Gazette*, during which period any existing notice issued in terms of the Act shall remain in force.

[Para. (b) substituted by s. 21 of Act 10 of 2012 (wef 14 September 2012).]

(c) Any direction issued under paragraph (b), must be tabled in Parliament before publication thereof in the *Gazette*.

(4) For purposes of subsection (1) the following persons hold a position of authority, namely-

- (a) the Director-General or head, or equivalent officer, of a national or provincial department;

- (b) in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
- (c) any public officer in the Senior Management Service of a public body;
- (d) any head, rector or principal of a tertiary institution;
- (e) the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act 69 of 1984);
- (f) the executive manager of any bank or other financial institution;
- (g) any partner in a partnership;
- (h) any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;
- (i) any other person who is responsible for the overall management and control of the business of an employer; or
- (j) any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.
