

#PRASALEAKS

Rig, Conceal, Destroy and Falsify: How State Capture Happened at PRASA.



Summary of the #PRASALEAKS document compiled by the #UniteBehind Metrorail Monitoring Project: December 2017

#UniteBehind is a coalition of people's movements and their support organisations. We are supported by trade unions, faith-based organisations, community groups, women's organisations and individuals.

#UniteBehind works for a just and equal South Africa where all people share in the country's wealth and participate in the decisions that affect their lives, and where the environment is sustainably protected for future generations.

#PRASALEAKS

Introduction

The history of corruption, maladministration and financial mismanagement in PRASA is well documented through independent investigations and court documents. However, little or no action has been taken against those clearly implicated or to rectify the disastrous state of South Africa's passenger rail service.

In the case of Passenger Rail Agency of South Africa (PRASA), state capture directly disrupts and threatens the lives and livelihoods of people every day on a scale that represents a national crisis. In the 2016/2017 Railway Safety Regulator report it was estimated that close to 500 passengers died and over 2000 have been injured while commuting in trains¹. These accidents and crimes have cost the rail operators almost a billion (R961 million)². On average over 73% of trains are late and around 7% of all trains are cancelled. As a result, over 43% (~248 500) of passengers in the Western Cape have stopped using Metrorail³. During 2015-2017 in the Western Cape, there has been a 400% increase in train cancellation and up to 57% of trains have been cancelled during certain weeks on the Central Line that serves the greatest number of commuters (including Langa, Bonteheuwel, Gugulethu, Mitchell's Plain and Khayalitsha) and those who are most dependent on trains⁴. In December 2017, Metrorail suspended all services on the Cape Town Central Line for more than six weeks and has only resumed a limited serviced to date⁵. The reason given was vandalism but it is clear that failure to upgrade, maintain and protect the service is at the heart of the problem.

A large proportion of the mismanagement and looting outlined below involves tenders that should have resulted in a modernised, efficient and safe passenger rail service. They include tenders for new trains, improved signalling systems and access controls. Billions of rands (one estimate is R14 billion looted) have been spent while the passenger rail service descends day by day into more and more of a dysfunctional mess. The train delays and cancellations have created a life of anxiety, stress and depression as commuters are constantly worried about whether they will arrive at all, let alone make it to work on time or home at a reasonable hour.

SOURCES

The findings summarised below are derived from two general sources. The first source is the documentation arising from the 'Swifambo' case in which the judge ruled that the contract was unlawful, declaring that "*Corruption will triumph if this court does not set aside the tender.*"⁶ The second source is the set of 193 reports of forensic investigations commissioned by National Treasury and focused on all contracts PRASA entered into after 2012 with a value in excess of R10 million. These investigations were undertaken by Treasury in fulfilment of a requirement in the then Public Protector Advocate Thuli Madonsela's report on the passenger rail service entitled *Derailed* (2015). It should be noted that, although these investigative reports were

¹ Railway Safety Regulator. State of safety Report 2016-2017. Available: <http://www.rsr.org.za/infohub/knowledgehub>

² Bratton, L. Railway's R1 billion accident and crime bill. (GroundUp, 2017). Available: <https://www.groundup.org.za/article/sa-railways-r1-billion-accident-and-crime-bill/>

³ TDA Cape Town. Comprehensive Integrated Transport Plan 2017-2022. (Report by City of Cape Town Transport and Urban Development Authority 2017), pg.41.

⁴ Nceba Hinana, A 400% increase in train cancellations worries the Western Cape. (Business Day, 2017) Available: <https://www.businesslive.co.za/bd/national/2017-08-15-a-400-increase-in-train-cancellations-worries-the-western-cape/>

⁵ <http://ewn.co.za/2018/02/21/metrorail-resumes-limited-service-on-ct-central-line-after-6-week-suspension>

⁶ The High court of South Africa Gauteng Local Division, *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd* (2015/42219) [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017). Available: [<http://www1.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2017/177.html&query=Swifambo>]

completed and provided to Treasury in 2016, and subsequently leaked, *they have never been presented to parliament or made public.*

The following is a brief summary of the findings of the court case and independent investigations in order to provide an overview of the main issues, given that the scale of the evidence is so extensive. The detail may, however, be accessed in the court documents in the Swifambo case⁷ and in the leaked investigative reports⁸. These should also be supplemented by other independent investigations, including the PP's report⁹ and the documents of two further court cases initiated by the Board of PRASA into the 'Siyangena' tender and the "Mandamus" case intended to ensure that the prosecuting authorities take action against those implicated. Given the available independent evidence, it seems that the focus of further inquiry should not be on additional fact finding in relation to the corruption and mismanagement but *on why so little action has been taken by the relevant authorities based on the available evidence and on how this can be speeded up and monitored.*

National Treasury contracted 13 forensic accounting and legal firms to carry out the investigations: Bowman Gilfillan (Bowmans); Deloitte and Touche (Deloitte); Edward, Nathan, Sonnenberg (ENS); Fundudzi, Gobodo Forensic and Investigative Accounting (Gobodo); JGL Accounting Services (JGL); KPMG Accounting (KPMG); Nexus Accounting (Nexus); PPM Attorneys (PPM); Strategic Investigations and Seminars; Price, Waterhouse, Coopers (PWC); Sekela Xabiso; and TGR Attorneys.

Although the reports do not constitute fully fledged forensic audits, they did find sufficient evidence to make damning findings based on all available paperwork for procurement and contract management which was supplemented by interviews with relevant management officials, staff and suppliers. It should be noted, that in virtually every case, PRASA was not able to provide the full set of required documentation demonstrating compliance with required procedure, which is a damning finding in itself. In most cases investigators were unable to undertake site visits to verify whether work was actually done, often because the lapse of time would not make this meaningful.

GENERAL INABILITY TO PROVIDE EVIDENCE OF COMPLIANCE WITH REQUIRED PROCEDURE

- As noted above, PRASA was often unable to provide documentary evidence that proper procurement and supply chain management policies and procedures had been followed.¹⁰ This, in itself, constitutes evidence of irregularity, maladministration and financial mismanagement for which the senior officials and board members can be held responsible and which investigators note can warrant disciplinary action and, in some instances, criminal prosecution.
- In 124 out of the 193 reports, investigators noted that the documentation required to verify compliance was not provided to them by PRASA. Only 10 out of 193 reports mentioned that they had access to all necessary documentation. As a result, investigators were cautious in labeling expenditure as irregular or contracts as irregularly awarded or extended, even

⁷ Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty)Ltd (2015/42219) ZAGPJHC 177; (2017)3 All SA(GJ); 2017 (6) SA 223 (GJ) (3 July 2017) [<http://www1.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2017/177.html&query=Swifambo>]

⁸ Insert link to all the investigative reports and the PRASA leaks report

⁹ Public Protector South Africa, *Derailed (2015)*

¹⁰ For example in the Fantique contract, the total contract value of R29 million was deemed to be possibly irregular expenditure due to total absence of documentation: Deloitte, Findings relating to the appointment of Fantique Trade 664 CC and the payments to this supplier, (Final report: Forensic investigation into the appointment of and payments made to various service providers of the Passenger Rail Agency of South Africa (PRASA), 2016.), Section 18. Available: [https://www.groundup.org.za/media/uploads/documents/PRASALeaks/2.%20Deloitte/PRASA_Final%20Report_15%20December%202016.pdf]

though a lack of required documentation of compliance would generally render expenditure as irregular.

- However, given how widespread the lack of documentation and/or record keeping is, it is reasonable to make an assumption that this is not simply a case of poor or incompetent record keeping but rather a deliberate act to facilitate corruption, where prescribed processes were either not followed at all or only partially. Without an audit trail, it is not possible to verify whether critical steps in the procurement process were in fact followed. Without an audit trail there is the ability to syphon public funds and resources with impunity.
- As further evidence of this as a pattern, in the Swifambo case the judge found that documents had been concealed, spirited away or destroyed. The judge found further that even after the then GCEO, Montana, had left PRASA, "...he managed to obstruct the distribution of relevant information through a network of associates who were collaborating with him. Employees who did not follow were victimized or unfairly dismissed."¹¹
- This absence of documentation, coupled with the concrete evidence of lack of delivery, collusion related to inflated prices, irregular procurement processes and contract extensions, appear to point to criminal conspiracy.

EVIDENCE OF EXTENSIVE LOSS OF PUBLIC FUNDS TO LOOTING AND IRREGULAR TENDERS

- The judgement in the Swifambo case sets aside this entire contract as irregular and finds clear evidence of "corruption, collusion or fraud in this tender process."¹² This tender alone was worth R3.5 billion. No action has been taken against any of those implicated.
- R15 billion was the total value of the contracts investigated by Treasury and R6 billion of this amount constitutes questionable expenditure, even in terms of the cautious approach noted above.
- R2.5 billion can explicitly be attributed to "irregular" and unlawful expenditure or due to irregular supplier selection. A further R3.5 billion is unverifiable, due to lack of documentation.
- In 127 out of the 193 reports, the investigators find compromised procurement procedures.
- They also note that a significant proportion of tenders were awarded via confinement, a non-competitive process only approved in very clearly specified circumstances, such as urgency, emergency, expertise that was unique, or grounds for secrecy¹³. In the majority of these cases, investigators find that there was no valid reason provided for use of a confinement process. More contracts awarded through confinement were missing the required documentation than those awarded via open tendering processes.
- For example, a contract to the value of R 52,871,837 was awarded to Resurgent Risk Management (RRM) on the basis of confinement. This confinement was at the instruction of the GCEO, Mr. Montana, but the Corporate Tender and Procurement Committee (CTPC) did not recommend or approve the confinement application, as alleged in the recommendation report that was signed by the GCEO. With respect to the appointment of RRM through confinement, forensic investigators concluded that *"it cannot be excluded that the disregard*

¹¹ Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd (2015/42219) [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017). Available: [<http://www1.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2017/177.html&query=Swifambo>]

¹² The High Court of South Africa Gauteng Local Division, Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd (2015/42219) [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017). Available: [<http://www1.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2017/177.html&query=Swifambo>] (Para 84)

¹³ PRASA Supply Chain Policy on Confinement procurement process. 2009

for proper process...was as a result of, or in lieu of, gratification as defined in PRECCA [Prevention and Combating of Corrupt Activities Act]". Forensic investigators also found that "there are numerous and irreconcilable contradictions between the CTPC's resolution in December 2014 and the approved conditions in the approved memorandum". In light of this, they recommend that criminal action be taken against Dr Phungula and Mr. Mantsane on a charge of fraud, seeing as they misrepresented what the CTPC had approved. In addition, the investigating company Nexus recommended to Treasury and PRASA that criminal action should be taken against Mr. Lucky Montana, the then GCEO, for failing to comply with his fiduciary and general duties in his capacity as a member of the Accounting Authority. The Board is advised to report the RRM contract to the SAPS in terms of section 34 of PRECCA, to ensure compliance with its reporting duty. Furthermore, PRASA officials who would have known or at least suspected that the approval of the confinement was irregular, failed to take effective and appropriate steps to prevent irregular expenditure. Investigators were unable to make any finding with respect to the goods or services actually received due to the lack of evidence and documentation within PRASA.¹⁴

BLATANT WIDESPREAD BREACHES OF LAW, POLICY AND PROCEDURE IN PROCUREMENT

- While not all the reports cover the full spectrum of the supply chain process, those that do reflect disregard of the entire supply chain process, from demand management to procurement process and all the way through to contract management requirements.
- The failure to undertake proper **demand management** undermined virtually every tender under investigation, ensuring that the relevance of bids could not be properly assessed, scoring would not result in the best supplier being selected, pricing could not be easily judged, contracts were inadequate and payments could be made unrelated to actual delivery against an objective specification. This failure was too widespread to be considered a reflection of inadequate technical expertise. It was more likely to be a deliberate attempt to manipulate the tender process, and to allow corrupt suppliers to be appointed.
- 203 out of the 216 tenders were found, at the very least, to be irregular. The scale of irregularity in the **methods and processes of procurement** supports our conclusion that this is more likely to have been the result of criminal collusion than poor management. Required competitive tendering was seldom applied, committees were not constituted as required or scoring was manipulated, allowing suppliers without the required technical or financial capability to be awarded tenders at inflated rates.¹⁵ In the Swifambo case, for example, the judge noted in his ruling multiple breaches of law and procedure amounting to criminality. For example, he noted: "The inference is therefore irresistible that the [tender] specifications were tailored to benefit Swifambo."¹⁶ The Chief Engineer who was subsequently found to have falsified his qualifications was directly responsible for this but the only action taken was in relation to the falsification of his qualifications. Despite the court judgement, others found to have been directly implicated and those the judgement notes failed in their responsibility for ensuring compliance at senior management and board level have not been brought to account by internal disciplinary processes or prosecution.

¹⁴ Nexus, RESURGENT - EXECUTIVE SUMMARY. Available: [<https://www.groundup.org.za/media/uploads/documents/PRASALeaks/8.%20Nexus/RESURGENT.pdf>]

¹⁵ For example, Gobodo, *Appointment of Supercare Service Group (Pty) Ltd*. (Forensic Investigation into various PRASA contracts -consolidated summary findings of final reports. 2016). Available: [https://www.groundup.org.za/media/uploads/documents/PRASALeaks/5.%20Gobodo/Consolidated%20summary%20report%20-%2031%20October%202016_eob.pdf] And Gobodo, *Appointment of Inyatsi Construction (Pty) Ltd ; Appointment of Enza Construction (Pty) Ltd – Saulsville Station ; Appointment of Reutech Solutions (Pty) Ltd* . Available: [https://www.groundup.org.za/media/uploads/documents/PRASALeaks/5.%20Gobodo/Consolidated%20summary%20report%20-%2031%20October%202016_eob.pdf]

¹⁶ The High Court of South Africa Gauteng Local Division, *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd (2015/42219)* [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017). Available: [<http://www1.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2017/177.html&query=Swifambo>]

- Where documentation was provided to the investigators, the use of confinement could not be justified in terms of the Supply Chain Management Policy.¹⁷ It should be noted that in December 2015, PRASA's own internal audit declared all confinements irregular and all relevant contracts were stopped or cancelled. This would seemingly render most spending under the Supplier Development Programme irregular but no further action was taken against those who sanctioned its use in contravention of PRASA policy and national legislation.¹⁸
- Evidence of **contract management** irregularities are widespread. Where investigators had access to sufficient information, they found, in some instances, very serious anomalies in the pricing of services against set norms and industry standards, leading to spectacularly inflated contracts. For example, in the 7 tenders awarded to the Siyaya Group worth R1.2 billion, there is evidence that the Head of Procurement, Mr. Josephat Phungula, extended a contract unilaterally, 8 weeks before it was approved by the board. Despite commissioned reports on fuel fraud being regularly presented to PRASA there is no evidence of disciplinary action or criminal charges. On the contrary, contracts with Siyaya Energy and other companies in the Siyaya Group related to fuel security were renewed. The investigators note that Mr. Montana was the individual to whom the reports on fuel fraud were directly made. However, Mr. Montana declined the invitation to any interviews on this topic.
- Investigators found that, where payments had been made, the required supporting documentation could not be provided, it is important to note that without valid signatures and completed checklists, PRASA ultimately had no proof that the relevant services or goods had actually been provided before they made these payments.
- Across virtually every contract reviewed by the investigators, concerns are raised about **payment processes**. These include issues that range from simple ineptitude to gross legal violations.

EVIDENCE OF NETWORKS ACROSS GOVERNMENT

- The networks of corruption appear to be linked across government making it imperative for decisive action to be taken urgently. Two examples are provided below.
- The SA Fence and Gate contract mentioned as an example above was also awarded tenders at Eskom and the Department of Correctional Services.¹⁹ A whistleblower has alleged that the Department of Correctional Services (DCS) and the SA Security Solutions and Technologies (SASSTEC) group, the holding company of SA Fence and Gate colluded with DCS officials to ensure the awarding of a R378 million tender for the Integrated Inmate Management System (IIMS). The whistleblower detailed the allegations in a letter to the standing committee on public accounts (Scopa), which is probing irregularities in the contract, awarded in November 2015.²⁰ News24 reported in 2016 that National Treasury, had instructed the DG of DCS, Mr. Modise, to apply steps to cancel the contract, indicating

¹⁷ Deloitte, *Findings relating to the appointment of Lufthansa Consulting and the payments to this supplier*. Available: [https://www.groundup.org.za/media/uploads/documents/PRASALeaks/2.%20Deloitte/PRASA_Final%20Report_15%20December%202016.pdf] and ENS Forensics (ENS), *EXECUTIVE SUMMARY OF SIYAYA DB CONSULTING ENGINEER CONTRACTS* Available: [<https://www.groundup.org.za/media/uploads/documents/PRASALeaks/3.%20ENS/ENS%20FORENSICS%20-%20EXECUTIVE%20SUMMARY%20OF%20PRASA%20INVESTIGATION.pdf>]

¹⁸ Bowmans, *Investigation into 20 Selected contracts above R10 million awarded by PRASA from 2012 to date - Conogon Trading CC*, 19 December 2016, pp 23. Available: [<https://www.groundup.org.za/media/uploads/documents/PRASALeaks/1.%20Bowmans/PRASA%20CONOGON%20JK%2016%20JAN%202017.pdf>]

¹⁹ Basson, A., Van Wyk, P., Khoza, A. *Exclusive: R378m prisons tender scandal*. (News24 , 2016). Available: [<https://www.news24.com/SouthAfrica/News/r378m-prisons-tender-scandal-20160414>]

²⁰ amaBhungane, *Insider claims collusion with 378M Prisons Tender*, Available: [<http://amabhungane.co.za/article/2017-06-26-insider-claims-collusion-with-r378m-prisons-tender>]

that any fruitless and wasteful expenditure incurred through cancelling the contract should be recovered from Modise personally²¹.

- A further example is the irregular appointment of Resurgent Risk Management (RRM) by confinement given above. RRM is a security company that was co-founded by former State Security Agency Director General Arthur Fraser and former National Intelligence Agency boss Mr. Manala Manzini. Mr. Fraser already “stands accused of flouting tender processes and submitting false tax certificates”²². He was appointed as DG of SSA in 2016 despite the then Minister, David Mahlobo, having access to investigative reports that contained serious allegations. He is accused of abusing and syphoning off billions of rand through the ‘Principal-Agent Network’ he established and evading accountability for this by invoking secrecy. Press reports in 2017 also link him and RRM to fraud at the South African Social Security Agency (SASSA). It is alleged that SASSA irregularly awarded the R90 million contract irregularly and subsequently paid Resurgent R14.3-million in 2014 for “consultancy services” before the contract became the subject of an investigation²³. Fraser resigned from RRM in 2016. He has now been moved to head Correctional Services pending the outcome of the investigations against him.

SUFFICIENT EVIDENCE TO WARRANT CRIMINAL PROSECUTION AND OTHER MEASURES

- The #PrasaLeaks case studies and the judgement in the Swifambo case demonstrate intentional concealment and perversions of truth by **the Board, its Group CEO** and a range of the agency’s employees from executive managers and chief procurement officers to middle-level staff. Corruption in these cases has caused immense harm to millions of people.
- As noted above, in the Swifambo case, the judge found numerous deliberate acts that amount to criminality or dereliction of duty had been committed but none of those involved have been formally brought to account. *“The irregularities raised in this case have unearthed manifestation of corruption, collusion or fraud in this tender process. There is simply no explanation why Swifambo was preferred to other bidders.”*²⁴
- One in five investigative reports recommend that criminal charges be laid against PRASA officials. An additional 33 reports recommended disciplinary action against PRASA officials, including, on various occasions, the then **GCEO Lucky Montana, the members of the Board of Control** during this period and including its then chairperson, **the ex-Deputy Minister of Finance, Sfiso Buthelezi**. It is interesting to note that Mr Buthelezi was Deputy Minister of Finance at the time that these forensic reports were provided to Treasury and that they have subsequently not seen the light of day.

²¹ 38Basson, A., Van Wyk, P., Khoza, A. Exclusive: R378m prisons tender scandal. (News24 , 2016). Available: [<https://www.news24.com/SouthAfrica/News/r378m-prisons-tender-scandal-20160414>]

²² Thamm, M. The Principal Agent Network (PAN) Dossier, Part 1: Zuma and Mahlobo knew about Arthur Fraser’s rogue intelligence programme. (Daily Maverick, 2017). Available: [https://www.dailymaverick.co.za/article/2017-12-05-the-principal-agent-network-pan-dossier-zuma-and-mahlobo-knew-about-arthur-frasers-rogue-intelligence-programme/#.Wi_DDt-nHIU]

²³ Van Wyk, P., Scorpio: SA’s spy boss implicated in massive tender fraud at Prasa (<https://www.dailymaverick.co.za/article/2017-06-20-scorpio-sas-spy-boss-implicated-in-massive-tender-fraud-at-prasa/#.WvKpbKSFPIU>)

²⁴ The High Court of South Africa Gauteng Local Division, Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd (2015/42219) [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017). Available: [<http://www1.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2017/177.html&query=Swifambo>] (Para 84)

- For example, in the report on the SA Fence and Gate contract²⁵, the forensic investigators found that the PRASA Board has contravened the law (Section 50(1)(a) of the PFMA) in that it failed to exercise reasonable care to ensure the proper safekeeping of procurement related documents. Furthermore, in terms of the relevant laws, (Section 83(2) of the PFMA), all of the PRASA board members are individually and severally liable for financial misconduct.
- In regard to the same contract, investigators recommended disciplinary action be taken against acting **Chief Procurement Officer, Chris Mbatha and the Senior Manager for Procurement, Matshidiso Mosholi** in regard to irregularities with the procurement process (for example, not advertising the tender, no evidence of B-BBEE certificate and irregular constitution of Bid Evaluation Committee).
- The reports point to a complete absence of accountability throughout PRASA, from the Board, through to senior management, the Finance, Supply Chain and Internal Audit Departments.
- **The Board** failed to exercise their duty to ensure the responsible protection of PRASA resources and services to the public and to hold the senior management to the highest professional and ethical standards. Deloitte made the following observation in their general findings: *“There is no evidence to suggest that the PRASA board questioned any of the deviations. There is no evidence that the board intervened at any stage to question the procurement procedures followed. The board did not act with the necessary fidelity, honesty and integrity in the best interests of PRASA in managing its financial affairs as the PFMA requires of an accounting authority and in fact appears not to have played any role in relation to exercising care to protect the assets and records of PRASA. This warrants further investigation by the SAPS for possible contraventions of sections 50 and 51 of the PFMA read with sections 49, 83 and 86.”*²⁶
- These investigative reports have been in the possession of Treasury since 2016 and the public, and particularly commuters, need to know why the reports have not been made public, why there has been no action, who is responsible for this failure to act and what must be done to correct this situation. We humbly submit that we cannot have a New Dawn without dealing with those who have abused public funds and destroyed the services that millions rely on.
- Despite mountains of evidence of systemic corruption and state capture at PRASA, the Directorate for **Priority Crimes Investigation (the Hawks) and the National Prosecuting Authority** have failed to act for more than two years.
- The extensive, institutionalised corruption at PRASA/Metrorail directly implicates the **ex-Deputy Finance Minister Sfiso Buthelezi**, in his then capacity as chair of the PRASA Board and members of the Board in criminal collusion and negligence.
- There is evidence that ex-President Jacob Zuma’s network of friends and associates including **Makhensa Mabunda, Roy Moodley, Mario Ferreira, Arthur Fraser, Manala Manzini, Auswell Mashaba, Maria Gomez** and others unduly benefited through their companies from contracts which were irregularly obtained or for which little or no documentation exists that can prove legality.

²⁵ Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY. Available: [<https://www.groundup.org.za/media/uploads/documents/PRASALeaks/8.%20Nexus/SA%20FENCE%20AND%20GATE.pdf>]

²⁶ Deloitte, *General conclusions and Recommendations*, (National Treasury: Forensic investigation into the appointment of and payments made to various service providers of the Passenger Rail Agency of South Africa (PRASA) 15 December 2016) , Section 22.9, p156. Available: [https://www.groundup.org.za/media/uploads/documents/PRASALeaks/2.%20Deloitte/PRASA_Final%20Report_15%20December%202016.pdf]

- The Ministers of Transport at the relevant times: **Ben Martins, Dipuo Peters and Joe Maswanganyi** appear to have deliberately turned a blind eye to corruption and mismanagement. In the case of Peters and Maswanganyi, there appears to be collusion to obstruct justice.
- The investigations point to the following officials (relevant designations at the time provided) **Lucky Montana (GCEO), Josephat Phungula (Chief Procurement Officer), Chris Mbatha (PRASA Chief Information Officer and Procurement Officer), Daniel Mthimkulu (Chief Engineer), Rebecca Setino (PRASA Head of Supply Chain), Maishe Bopape (Senior Manager in Supply Chain Management) and Matshidiso Mosholi (Senior Manager for Procurement)** as key members of the network in PRASA that appear to have facilitated the capture of the institution.
- Some of the more prominent companies directly implicated include the “**S Group**” which includes **Siyaya Energy, Siyaya DB Consulting Engineers and Siyaya Rail Infrastructure Solutions and Technology; Royal Security; Resurgent Risk Management; and Tshireletso Enza Construction.**

RECOMMENDATIONS

Parliament oversees the immediate implementation of the following recommendations:

Transparency

1. The forensic reports presented to National Treasury be made public and presented to parliament immediately as they are currently only available as leaked documents and including a report from Treasury outlining the issues and further action recommended by Treasury.

Conclusion of investigation and action against perpetrators

2. The Directorate for Priority Crime Investigation (the Hawks/SIU) must be requested by Parliament to conduct an urgent and immediate investigations of all named people and companies, with the view to urgent prosecutions of all those who are implicated in corrupt activities relating to PRASA tenders, as required in terms of Section 17B and 17D of the South African Police Service Act.
3. The focus of any parliamentary or other public inquiry should be on the reasons for the lack of action where there is clear evidence of wrong doing, who is responsible and how this should be speeded up and monitored rather than on further fact finding as there is already significant independent evidence of wrong doing.
4. The National Director of the National Prosecuting Authority (NPA) be requested and, if necessary, compelled through a court order by the Minister of Justice, to protect PRASA’s assets and to institute asset forfeiture and investigations in terms of Section 22 of the Prevention and Combating of Corrupt Activities Act (12 of 2004) as well as the Prevention of Organised Crime Act (121 of 1998).
5. The Hawks/SIU to provide a timely and professional forensic investigation into the then PRASA officials and board to determine whether officials or members of the Board benefited individually from the siphoning of public money to selected suppliers.
6. Individuals found to have actively hampered the investigation and prosecution of wrong doers be removed from public office, where relevant, and appropriately sanctioned.
7. In the interim, assets of all local and international entities and individuals complicit in corrupt tenders to be frozen, pending the conclusion of investigations and prosecutions and the recovery of fruitless and wasteful expenditure.

Urgent and effective action taken to address the passenger rail crisis

8. All money recovered in this way be ring fenced and used to improve passenger rail services.

9. An informed and in-depth analysis of the problems and needs related to ensuring a reliable, affordable, and adequate passenger rail service that is safe be immediately commissioned from competent and committed specialists so that the causes and not the symptoms can be addressed.
10. Feasible plans and budgets based on this analysis should be made available for public comments and include timelines and deadlines.
11. Funding required to address the crisis with passenger rail services be secured with the utmost urgency and evaluations conducted to ensure it is applied strategically so as to ensure a reliable, affordable, adequate and safe service.
12. A renewed PRASA establish an efficient commuter information, enquiry and comment service as well as instituting commuter forums annually to report on progress and get feedback.
13. Parliament, through the Portfolio Committee on Transport, must amend the Legal Succession to South African Transport Services Act (No. 9 of 1989) to make the appointment of the PRASA Board an open process and accountable to the National Assembly.

National public procurement reform

14. Amendments to the relevant legislation and Treasury guidelines to provide for much greater consequences for individuals and entities implicated in negligence, corruption and malpractice related to Public Procurement.