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Portfolio Committee on Home Affairs Phase One: Interim Report on State Capture

15 August 2018

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1. Overview of Committee Inquiry

In a letter dated **15 June 2017** the House Chairperson for Committees, the Hon. Mr. CT Frolick, referred to the Portfolio Committee on Home Affairs (PCHA) a request to investigate the allegations of state capture involving the (then former) Minister of Home Affairs in the granting of citizenship to non-South Africans. The letter specified that allegations are to be investigated within the parameters of the Rules of Parliament and where applicable findings to be reported to the National Assembly as a matter of urgency. Subsequently, various communication and committee meetings ensued between the PCHA and the Department of Home Affairs (DHA). This interim report comprises **phase one** of the inquiry assessing information gathered thus far and identifying further information needed and persons to be considered for possible interview by the PCHA in **phase 2** prior to a final report. For purposes of this inquiry source documentation and sequence of committee meetings relevant to the project framework are as follows:

- i. On **20 and 21 June 2017** the PCHA wrote to then Minister of Home Affairs, HB Mkhize and then Minister of Finance, MKN Gigaba to attend the meeting on Gupta Naturalisation on 27 June.
- ii. On **22 June 2017**, the DHA submitted a 9-page report signed by the Director-General (the DG) to the PCHA. The report is titled "Report on the granting of naturalization to the Gupta family."
- iii. On **27 June 2017** PCHA meeting both current and former ministers of Home Affairs apology for not attending are read and the DG, Mr. M Apleni, presented to the PCHA an overview of the legal and administrative processes with respect to applications for naturalization and the process followed with respect to the Gupta families, which is detailed in section 4.
 - a. Mr. Ajay Gupta, his wife Mrs. Shivani Gupta, his mother Mrs. Angoori Gupta, and two sons Mr. Surya Kant Singhala and Mr. Kamal Kant Singhala applied for naturalisation as a family unit on 3 June 2013. Application as a group means that in the event a single member does not qualify for naturalization, none of the members in the rest of the group could receive naturalization.
 - b. DHA Adjudication Committee initially rejected the request for naturalisation on 23 December 2014. A letter of rejection was issued, dated 22 January 2015, specifying that a regulatory requirement in terms of section 5(1) (b) (4) of the South African Citizenship Act, 2010 (No. 17 of 2010) as amended requires that any person who lodges an application should not have been absent from the Republic for a period of more than 90 days in any year during the 5-year period of ordinary residence immediately preceding the date of application for naturalization.
 - c. **On 27 May 2015**, a submission to the Minister of Home Affairs, Mr. MKN Gigaba, in support of early naturalisation of Mr. Ajay Gupta and family was signed by the Deputy Director-General Mize and the DG Apleni.
 - d. **On 30 May 2015**, the Minister approved the submission for early naturalisation in terms of section 5(9) (a) of the South African Citizenship Act.
 - e. However, since India does not permit dual citizenship, Mr. Ajay Gupta declined to renounce his Indian citizenship consequently he could not be naturalized as a South African citizen.
- iv. On **3 August 2017**, the Chairperson of PCHA receives a letter enclosing a submission from the Organisation Undoing Tax Abuse (OUTA) containing an extensive report on state capture on the 28th of June 2017 titled "No room to hide: A President caught in the act" from Deputy Speaker Tsenoli. The Gupta emails referred to in the report are said to implicate misconduct on the part of Hon. KMN Gigaba (Gigaba), Mr Rajesh Gupta (Tony Gupta), Mr Ashu Chawla (Chawla) and Mr Gideon Cornelius Christians (Christians). The leaked emails and a summary affidavit relating to the Guptas and Home Affairs are also included.
- v. On **11 August 2017**, the DHA tables in Parliament the outstanding list of person's granted early naturalisation in 2013, 2014, 2016 and 2017 (none in 2015) as required by section 5(9)(a) of the Citizenship Act.

- vi. **On 8 September 2017:** PCHA sent a letter to the DHA requesting evidence of the Gupta Family's investments and charitable contributions.
- vii. **On 7 February 2018,** the Department submitted 97 pages of support documents responding to a request for further information. The document titled "Evidence of Gupta family investments and charitable contributions in support of the naturalisation of the Gupta family, submitted as per request of the Portfolio Committee on Home Affairs" include several annexures:
 - Annex 1: Evidence of sponsorship of two schools in the North West Province, through the 'Walk the talk school shoe campaign' – Odi Primary School and Tebogo Primary School, in 2013, to the value of R12 000.
 - Annex 2: Evidence of renovations (painting of classrooms) at Chaneng Primary School, in 2014, amounting to R8000.
 - Annex 3: Evidence of 15 computers given to Molelwane Primary School, in 2013, for use by the school's learners.
 - Annex 4: Shows sponsorship for 75 schools from local communities – Sundown (cash prizes and school sports kit), in 2013.
 - Annex 5: Confirms employment evidence from the Department of Labour / UIF.
 - Annex 6: Certificates from Companies and Intellectual Property Commission (for 2013, 2014 & 2006) issued to Oakbay Investments.
 - Annex 7: Letter listing companies under Oakbay Investments.
- viii. A signed letter dated **26 February 2018** on an Oakbay letterhead addressed to the Home Affairs DG headed: "Re: Request for further clarity on submitted documents" is submitted to PCHA with clearer details of social investments to schools in North West.
- ix. **On 27 February 2018,** a motion was seconded for the PCHA to solicit the support of the parliamentary research and legal services to engage with the documentation submitted to the committee.
- x. **On 6 March 2018,** re-appointed Minister of Home Affairs, Hon. Gigaba, presented to the Committee on early Naturalisation. He gave details of the naturalisation process followed by the Gupta family, and the technical reasons for rejections, such as applying as a family and not individually, or not renouncing their Indian citizenship as detailed in section 4. He emphasized that applications for documents had to be directed to the DHA, and not the Minister's office. Appeals could be sent to the Minister, but they would be forwarded to the relevant official with an instruction to review the application along with the appeal, and advise the Minister if there was any basis either to uphold the decision initially made, or to set it aside. A memorandum would then be prepared and submitted to the Minister, advising him whether to uphold the initial decision or not. There were many such cases, and the Gupta issue had been no different to other appeals which the Minister had to deal with.
- xi. **On 13 March,** the PCHA meeting resolved that private emails now in the public domain indirectly relating to the inquiry would be distributed to members. A revised terms of reference for the inquiry was drafted by the Research Unit for PCHA input but consensus was not reached on the matter. The relevant emails were distributed to members of the PCHA.
- xii. **On 15 March** letters are sent to DHA by PCHA staff, requesting additional information on other Gupta family members and another letter was drafted pending signature from Chairperson to the National and North West Department of Education and the Johannesburg Stock Exchange.
- xiii. **On 22 March,** 21 pages of publically leaked emails relating Home Affairs matters to Gupta associates are forwarded to PCHA members. Documented are correspondences in April 2015 between Ashu Chawla (former CEO of Sahara Computers) and advisor to Minister Malusi Gigaba, Thamsanqa Msomi, to his private email address asking for assistance for visas for "clients". Mr. Msomi was Hon. Gigaba's chief of staff while he was public enterprises minister, later becoming his legal advisor as Home Affairs Minister and appointed to board of Denel 2015 -2017.

Also in the emails Mr Chawla contacts other DHA and Presidency officials related to the appointment of Home Affairs staff at the Indian at the South African Consulate/High Commission in Delhi and Mumbai. Also requested is the correcting of blocked ID numbers and to expedite various visa requests which could otherwise have taken time to be issued, had the normal processes been followed. In certain instances, the email trail shows Mr Chawla making demands for visas to be issued in the same day.

- xiv. In a meeting of the PCHA on **27 March 2018**, the Committee decided to broaden the scope of the investigation into the broader process of naturalization of the entire Gupta family (i.e. not only early naturalization) as well as the due process followed in naturalization in general since the last effected amendments to the Citizenship Act (No. 88 of 1995) as per the related regulations of 28 December 2012.
- xv. On **28 March 2018**, the PCHA wrote a letter to the DHA requesting information on the other seven Gupta family members that have South African Citizenship: Mr. Atul K Gupta, Cetali Gupta, Rajesh K Gupta, Arti Gupta, Srikant Singhala and Sashank Singala (ID numbers disclosed). The Committee also requested a list of all persons granted naturalisation in the 5 preceding years with the dates of application and decisions as well as a copy of the Citizenship Standard Operating Procedures.
- xvi. On **10 April 2018**, the DHA provided the following information as requested:
Annex 2: All the details of the citizenship applications of the additional Gupta 6 family members noting that normal permanent residence requirements for naturalisation were met and thus confirmation of investments were not needed.
Annex 3: A list of persons who were granted naturalisation for the past five years - 2013/14 to 2017/18 financial years. The DG indicated that the Register does not show dates of application, however, it shows dates of approval and that complete individual files would need to be retrieved manually, a process requiring ample time to deal with 5600 files.
Annex 4: A copy of Citizenship Standard Operating Procedures that were implemented after the 2016 amendment to legislation.
- xvii. In a meeting of PCHA on **30 May 2018**, an update on progress made on Phase 1 of the inquiry is presented by PCHA support staff. Delays in the initial timelines of terms of reference of the inquiry are reported in large part due to the PCHA being without a full time Chairperson and thus inability to procure additional funding for staff to conduct interviews with DHA staff in Pretoria. There were also delays in getting information from the North West Department of Education on donations from Oakbay in part due to the Province being under administration. The Committee resolved to write to the Minister and if necessary summons the relevant informants. The Committee advises that a report on the information sourced be presented to the PCHA in August after the recess period.
- xviii. On **31 May** the Chairperson of the PCHA wrote to the DHA requesting further information.
- xix. On **21 June** the DHA responded with the requested information as follows:
- Annex 1: Civic Services Officials dealing with naturalisation application process - Head Office
 - Annex 2: Civic Services Officials dealing with naturalisation application process - Front offices
 - Annex 3: Civic Services Officials considering early naturalisation cases - Front Offices
 - Annex 4: List of officials at Civic Services that handled Gupta files
 - Annex 5: Branch: Civic Services organogram
 - Annex 6: Immigration Services Officials dealing with the temporary residence permits
 - Annex 7: Immigration Services Officials dealing with permanent residence permits
 - Annex 8: Officials in RSA diplomatic missions in India responsible for Immigration matters - From 2013 to 2018
 - Annex 9: List of Adjudicators at Branch: Immigration Services - Head Office
 - Annex 10: List of Managers at Branch: Immigration Services - Head Office

2. Judicial Commission of Inquiry

Subsequent to the Inquiry initiated at Parliament, a Judicial Commission of Inquiry Into State Capture, Corruption and Fraud in the Public Sector Including Organs of State (Commission) was appointed by the President of the Republic of South Africa in terms of section 84(2) (f) of the Constitution of the Republic of South Africa by way of Proclamation No 3 of 2018 published in the Government Gazette of **25 January 2018** (Government No 41436).

The terms of reference of the Commission appear as a Schedule to the Proclamation. In terms of section 1 of the Commissions Act, 1947 (Act No 8 of 1947), the President declared the provisions of that Act applicable with reference to the Commission and made regulations applicable to the Commission. The regulations appear to be in line with recommendations made by former Public Protector Thuli Madonsela in the State of Capture Report including that the Chief Justice Mogoeng, rather than President Zuma, appoint the chair of the inquiry. The Chief Justice, in turn appointed Deputy Chief Justice Raymond Zondo to lead the commission.¹

Regulations of the Commission of Inquiry were published in Government Gazette No. 41436 on 9 February 2018 with an Amendment on 23 March 2018. The regulations give the Commission the legal competence to conduct the investigation, including the power of the chairperson to subpoena witnesses and of search and seizure. The PCHA submitted evidence it had gathered to the Commission as requested in March 2018. The commission was to submit its report and recommendations to the president within 180 days of the commencement of the commission which was 25 July 2018. Justice Zondo had launched an urgent application to the High Court in Pretoria on July 19, asking for an order extending the 180 days within which the commission is required to complete its work. The court ruled that the extension be granted for a further 24 months calculated from 1 March 2018.

3. Acts, Regulations and Standard Operating Procedures

Naturalisation is regulated by both Immigration and Civic functions within the DHA. This is primarily done through the Immigration Act (Act 13 of 2002 as amended) together with the published 2014 Immigration Regulations, as well as the Citizenship Act (Act 88 of 1995 as Amended 2010) and related 2013 Regulations.

Immigration Act, 2002 and Immigration Regulations, 2014.

Foreign nationals who wish to come to the Republic of South Africa (Republic) must apply for a visa, formerly called a temporary residence permit, in their countries of origin. These include visitors, study, medical, business, work, relative or spousal visas. The visa, by its definition, is for a short-term visit up to 3 months and long-term visit up to 5 years, with the exception of a multi-entry visa which can be up to 10 years with each visit not exceeding 90 days and issued to frequent travellers, for example, for tourism or business purposes. A person requires a visa to legally enter and sojourn in the Republic and may be extended whilst in the Republic.

A foreign national who has been in the Republic on a visa for a period of 5 years qualifies to apply for a Permanent Residence Permit. A Permanent Residence Permit holder has all the rights of a South African citizen, except for the right to vote.

The application and adjudication of temporary visas and permits is managed within the Immigration Services Branch of the Department of Home Affairs.

The granting of temporary visas or permanent residence permits requires foreign nationals to meet the criteria set out per visa/permit type. However, in the event an applicant cannot meet any of the requirements, he or she can apply for a waiver of the prescribed requirement, which may be approved by the Minister in terms of Section 31(2) (c) of the Immigration Act, 2002.

¹ Times Live (25 January 2018)

For instance, in terms of the Immigration Regulations, a foreign national may invest in businesses of R5 million and above, but at times requests are received wherein a person is unable to provide the prescribed amount, in such circumstances, the Minister is then approached to grant a waiver .

If the applicant is not happy with the outcome, in terms of the immigration legislation, there is an internal remedy, which is an appeal. If the applicant is not satisfied with the outcome of the appeal, the applicant may resort to a judicial review.

Once granted a permanent residence permit an applicant is issued a South African ID book, with a differentiation of non-citizen. This affords the permit-holder citizen rights except the right to vote.

Civic services legislation

Naturalisation of a foreign national who has a permanent residence permit, and has completed 5 years in South Africa, qualifies to apply for naturalization in terms of the Citizenship Act, 1995 as amended in 2010. In terms of Section 5 of this Act (Annexure A), a person will qualify for naturalisation:

- a) He or she is not a minor,
- b) He or she has been admitted to the Republic for permanent residence,
- c) He or she is ordinarily resident in the Republic and that he or she has been resident for a continuous period of not less than 5 years immediately preceding the date of his or her application. (Regulations make provision for an applicant to be outside the country for a period not exceeding 90 days per year),
- d) He or she is of good character,
- e) He or she intends to reside in the Republic or to enter or to continue in the service of the Government of the Republic or of an international organisation of which the Government of the Republic is a member or of a person or association of persons resident or established in the Republic,
- f) He or she is able to communicate in any one of the official languages of the Republic to the satisfaction of the Minister,
- g) He or she has adequate knowledge of the responsibilities and privileges of South African citizenship,
- h) He or she is a citizen of a country that allows dual citizenship provided that in the case where dual citizenship is not allowed by his or her country such person renounces citizenship of that country and furnishes the Minister with proof of such renunciation.

If the applicants for naturalisation have children or dependants (mother or father) they must apply as a family. An application for naturalisation can be adjudicated for an individual or for a family. It should be noted that if one family member does not qualify, then the whole application is unsuccessful.

In the event that an applicant does not meet fully the prescribed requirements set out in (b) above, that a person should ordinarily be resident in the Republic for a continuous period of not less than 5 years immediately preceding the date of his or her application, he or she may request the Minister to consider to waive the requirement based on exceptional circumstances in terms of Section 5(9) (a) of the Citizenship Act, 2010 (Act 17 of 2010) (Annexure 8).

It is important to note that the initial process of assessment involves preparation of a submission by an official who goes through the file and collates all information in the submission to be presented to the Naturalization Adjudication Committee, established by the Civic Services Branch, and chaired by the Chief Director: Back Office Status Services with other three Members of the Committee. The Committee ensures that the applicant complies with all the requirements. In terms of its role, the Committee either approves or rejects applications.

An applicant will submit an application to Civic Services as an individual or as a family by submitting Application of Naturalisation (DHA 63). The Directorate: Citizenship verifies the authenticity of the issued permanent residence certificate.

If the Naturalisation and Adjudication Committee approves the processes of issuance, the applicant must then sign a Declaration of Allegiance. Where the applicant's country does not allow dual citizenship, the applicant must submit a renunciation of citizenship letter from the country of origin.

Submission of above-stated documents would lead to changing of identity number from permanent residence identity number to a citizen identity number which provides for all the rights of citizens, including the right to vote. Failure to submit a signed Declaration of Allegiance or renunciation letter would lead to the naturalisation not being issued.

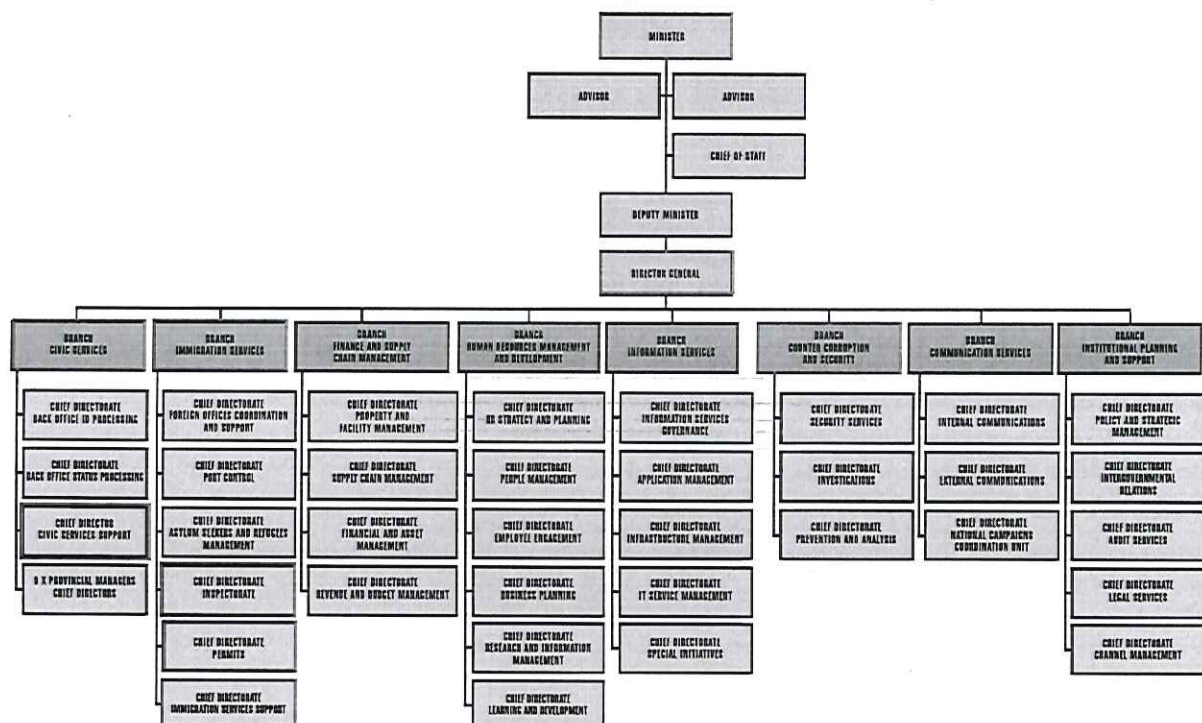
There are detailed standard operating procedures which define the exact roles and responsibilities for staff at the local and national offices dealing with citizenship (2016) and Immigration permits (**still awaited**). These roles specifically include the verification and compliance with requirements by officer receiving the application as well as quality assurance of the supporting documents by a supervisor/manager.

3. DHA permitting structure and officials

There are two main areas of competency within the Department of Home Affairs which both of relate to concerns around state capture. These are Civic Services and Immigration Services. Of concern in civic service are the sections dealing with the allocation of Citizenship and Immigration Services as they relate to the provision of permits.

Civic Services under a Deputy Director General, carries out the Department's core functions: granting rights and citizenship to eligible persons. Under this the Chief Directorate Status Services, maintains an accurate register of all citizens and immigrants who have acquired the right to permanent residence; registers births, deaths and marriages and provides travel and citizenship documents and determines and grants citizenship.² Information requested from the DHA in table 2 indicates the officials involved in the early Naturalisation process.

Table 1 - The organisational structure of the DHA³ (relevant sections in red)



² <http://www.dha.gov.za/index.php/about-us/organisational-structure>

³ DHA Annual Report (2015/16)

Table 2 - Section 5 (9) (A) Gupta Early Naturalisation⁴

Gupta Applicant	Date of Motivation	Receipt of Motivation	Official Receiving motivation: application office	Official Receiving Motivation: head office	Official preparing submission for Minister's	Route list of signatures on submission to Minister
Singhala Kamal Kant	29/04/2015	B.Z Khoza	B.Z Khoza	S.M Ramokoka	D. Dombo	<ol style="list-style-type: none"> 1. ZR Sikakane 2. NN Ramashia 3. SY Mkhize 4. M Apleni 5. MKN Gigaba
Singhala Surya Kant	29/04/2015					
Shivani	29/04/2015					
Aim Kumar	29/04/2015					
Angoori	29/04/2015					

4. Gupta Family and Associates Immigration and Citizenship process with Home Affairs⁵

For ease of reference in this section of the report, the Gupta family are presented in chronological order and are divided into three: Atul's Family; Rajesh's Family; and Ajay's Family.

Atul's Family

Atul Kumar Gupta (49) is the middle of the three Gupta brothers and the first to have come to South Africa. In 1993, a 25-year-old Atul was sent to South Africa by his father, Shiv Kumar Gupta, to come and explore business opportunities in the country.

The following information is provided by DHA on 10 April 2018: Atul Kumar Gupta (born 14 June 1968, husband), Chetali Gupta (born 4 April 1970, wife), Singhala Srikant (born 4 August 1994, child) and Singhala Sashank (born 15 November 1995, child). Mr AK Gupta entered the Republic for short visits from 1994 to 1996. He applied for a work permit on 12 April 1995 at SA mission in New Delhi. The application was forwarded to Head Office in Pretoria and was received on 19 April 1995. The Work Permit was approved on 9 May 1995 for 6 months, valid until 9 November 1995. The family arrived in South Africa on 22 July 1995 (Annex J).

He applied for renewal of his work permit on 11 October 1995 at the Randburg Office and the application was rejected on 16 November 1995. He was ordered to leave the country on or before 28 December 1995 (Annexure K).

He then appealed against the decision on 6 December 1995 at the Randburg Office. On reconsideration it was approved for six months up to 12 June 1996 (Annex L).

He and his family applied for Permanent Residence Permits on 22 April 1996 and their applications were approved by the Immigration Selection Board on 30 October 1996 for the category of own business (including his wife Chetali and children - Srikant Singhala and Sashank Singala) (Annex M). The Atul family applied for Certificates of naturalization on 2 July 2002 at the Home Affairs Randburg Office and the naturalization certificates were issued on 30 October 2002 at the Randburg Office (Annexure N).

⁴ DHA 10 April 2018 Submission to PCHA

⁵ <http://www.gupta-leaks.com/>

Rajesh's Family

A submission from the DHA on 10 April 2018 indicates: Rajesh Kumar Gupta (main applicant, husband, born 5 August 1972), Gupta Arti (wife, born 24 October 1977) and Singhala Shubhangi (child, born 5 November 1997).⁶

Rajesh Kumar Gupta entered the Republic for short visits from 1996 to 1998. The date of entry on his work permit was 17 June 1998 valid until 21 April 1999 (Attached to submission as Annex C). He applied for an extension of his work permit and conversion to business permit in May 2000 which was approved on 29 August 2000 until 29 August 2001 subject to him submitting audited financial statements and it was issued valid until 2 September 2003 (Annexure D).

He came with his wife (Arti) and child (Shubhangi). The wife was admitted into the Republic to accompany her husband and the child to accompany parents (Annexure E).

He and his family applied for Permanent Residence Permits in New Delhi and his application was forwarded to Head Office and received on 2 February 2000 (Annexure F). The Permanent Residence Permit was approved on 27 October 2000 with the condition to conduct own business (Annexure G).

They applied for certificates of naturalisation on 07 February 2006 at the Alexandra Office in Sandton (Annexure H). After completion of 5 years (26 October 2005), complying with the provisions of the Act. The applications were approved on 17 July 2006 (5 months) and naturalisation certificates were issued on 21 July 2006 (Annexure I).

Ajay's Family

A report submitted by the DG of DHA to the PCHA on 22 June 2017 on the granting of early naturalisation to members of the Gupta family reported as follows - A request for exemption to ordinary residence requirements as stipulated in Section 5(9)(a) of the Citizenship Act was refused for these Gupta family members: Mr Ajay Gupta (born 8 February 1966, applicant/ husband), Mrs Shivani Gupta (born 10 May 1970, wife), Mrs Angoori Gupta (born 30 December 1945, mother), Mr Kamal Singhala (born 25 October 1992, son) and Mr Surya Singhala (born 10 March 1995, son).

Mrs Angoori Gupta (Mother) applied for and was granted a visa (Temporary Residence Permit/TRP) dated 1995/12/28 and another one dated 1997. This means that she first arrived in the country in 1995. Furthermore she applied for another TRP based on family re-union whilst in New Delhi, in 2001/01/08. According to DHA records, Mrs A Gupta visited South Africa for short periods lasting up to about 6 months at a time. She applied for a Permanent Residence Permit which was approved on 10 March 2003 after 8 years from the granting of the initial TRP in 1995.

Thereafter Mrs Gupta applied for naturalization on 3 June 2013 as part of the family, which was 10 years since she was granted a Temporary Residence Permit, as against a requirement of 5 years. Her application was rejected after adjudication by the adjudication Committee on 23/12/2014 (As per an annex C accompanying the DHA report) as per the refusal letter dated 22/01/2015 (Annexure D), due to the fact that in the 5 years preceding her application, she was outside the country for a period exceeding the prescribed 90 days per year, by 18 days in the last year, as shown below:

- Year 1: 2009/07/29 - 2010/07/29 (abroad 0 days)
- Year 2: 2010/07/29 - 2011/07/29 (abroad 0 days)
- Year 3: 2011/07/29 - 2012/07/29 (abroad 0 days)
- Year 4: 2012/07/29 - 2013/07/29 (abroad 0 days)
- Year 5: 2013/07/29 - 2014/07/29 (abroad 3 months 18 days)

⁶ DHA (April 2018)

Mr Ajay Gupta (1966/02/05) initially came to South Africa on a Work Permit as an employee of SAHARA granted for the following periods:

- 2000/07/21 until 2001/04/05
- 2001/05/30 until 2002/06/05
- 2002/06/07 until 2005/05/13
- 2005/02/28 until 2008/02/20

Mr Ajay Gupta applied for a permanent residence permit which was issued to him on 18/01/2008, after 8 years in South Africa, as against a requirement of five years.

Thereafter Mr Ajay Gupta applied for naturalization on 3 June 2013 as part of the family, which was the required 5 years since he was granted a Permanent Residence Permit, in compliance with the requirement of 5 years. Mr Ajay Gupta's period of residence in South Africa is as follows:

- Year 1: 2008/06/03 - 2009/06/03 (Abroad 16 days)
- Year 2: 2009/06/03 - 2010/06/03 (Abroad 2 months 10 days)
- Year 3: 2010/06/03 - 2011/06/03 (Abroad 1 month 28 days)
- Year 4: 2011/06/03 - 2012/06/03 (Abroad 2 months 5 days)
- Year 5: 2012/06/03 - 2013/06/03 (Abroad 1 month 18 days)

Mr Ajay Gupta complied with the ordinary residence periods however, his application was rejected after adjudication by the Committee on 23/12/2014 (Annexure E) as per the refusal letter dated 22/01/2015 (Annexure D) due to the fact that other members of the family did not meet the requirements.

Mrs Shivani Gupta (wife) applied and obtained a spousal permit on 31 May 2001, valid until 30 May 2002. A further spousal visa was issued on 24 February 2005 until 22 February 2008. Another spousal visa was issued valid until 31 December 2010, after which a final extension was granted valid until 21 December 2015. Mrs Shivani Gupta applied for a permanent residence permit which was approved on 7 June 2012, after 11 years in South Africa, as against a requirement of 5 years.

Mrs Shivani Gupta applied for naturalization on 3 June 2013 as part of the family, which was a year since she was granted a permanent residence permit, and thus not in compliance with the requirement of 5 years. Her application was rejected after adjudication by the Committee on 23/12/2014 (Annexure E) as per the refusal letter dated 22/01/2015 (Annexure D), due to the fact that she did not complete 5 years preceding her application as shown below:

- Year 1: 2012/06/07 - 2012/07/17 (Abroad 24 days)
- Year 2: 2012/07/17 - 2013/07/17 (Abroad 1 month 20 days)
- Year 3: 2013/07/17 - 2014/07/17 (Abroad 1 month 12 days)

The reason for rejection was that she was short of 2 years, thus the Gupta family was advised to re-apply in December 2017.

Mr Kamal Kant Singhala (son) applied and was granted a visa (Temporary Residence Permit) dated 1995/12/28 then applied for a permanent residence permit which was approved on 18 January 2008 after 12 years, as against a requirement of 5 years.

Thereafter Mr Kamal Kant Singhala applied for naturalization on 3 June 2013 as part of the family, which was 5 years since he was granted a Permanent Residence Permit, in compliance with the requirement of 5 years. Mr Kamal Kant Singhala's period of residence in South Africa is as follows:

- Year 1: 2009/07/29 - 2010/07/29 (Abroad 30 days)
- Year 2: 2010/07/17 - 2011/07/17 (Abroad 19 days)
- Year 3: 2011/07/17 - 2012/07/17 (Abroad 44 days)
- Year 4: 2012/07/17 - 2013/07/17 (Abroad 0 days)
- Year 5: 2013/07/14 - 2014/07/14 (Abroad 15 days)

As reflected above, Mr Singhala complied with the ordinary residence periods however, his application was rejected after adjudication by the Committee on 23/12/2014 (Annexure F) as per the refusal letter dated 22/01/2015 (Annexure D), due to the fact that other members of the family did not meet the requirements.

Mr Surya Kant Singhala (son) applied and was granted a visa (Temporary Residence Permit) dated 1995/12/28. She then applied for a permanent residence permit which was approved on 18 January 2008 after 12 years, as against a requirement of 5 years.

Thereafter Mr Surya Kant Singhala applied for naturalization on 3 June 2013 as part of the family, which was 5 years since he was granted a permanent residence permit, in compliance with the requirement of 5 years. Mr Surya Kant Singhala's period of residence in South Africa is as follows:

- Year 1: 2009/07/29 - 2010/07/29 - (Abroad 20 days)
- Year 2: 2010/07/17 - 2011/07/17 - (Abroad 1 month 8 days)
- Year 3: 2011/07/17 - 2012/07/17 (Abroad 2 months 10 days)
- Year 4: 2012/07/17 - 2013/07/17 (Abroad 17 days)
- Year 5: 2013/07/17 - 2014/07/17 (Abroad 1 month 26 days)

As reflected above, Mr Surya Kant Singhala complied with the ordinary residence periods however, his application was rejected after adjudication by the Adjudication Committee on 23/12/2014 (Annexure G) as per the refusal letter dated 22/01/2015 (Annexure D), due to the fact that other members of the family did not meet the requirements.

Noted is that that "Singhala" used as a surname for the two sons, was explained as another way of denoting "Gupta" in India (Annexure H).

Consideration of exceptional circumstances

When the Gupta family was informed of their unsuccessful application as per letter dated 22 January 2015 (Annexure D), particularly informing them that as a statutory requirement, any person who lodges an application should not have been absent from the Republic for a period of more than 90 days in any year during the five year period of ordinary residence immediately preceding the date of application for naturalisation; they exercised their right to approach the Minister for him to consider exceptional circumstances as per the powers vested in the Minister in terms of Section 5(9)(a) of the Citizenship Amendment Act, 2010, as per the letter dated 29 April 2015 (Annexure B).

In this regard, as explained above, it was Mrs Angoori Gupta (mother) and Mrs Shivani Gupta (wife) who did not meet the requirement as Mr Ajay Gupta and the two sons met the requirements of physical residence in the Republic, with the proviso that they can be outside the Republic for not longer than 90 days in a year during the 5 year period of ordinary residence preceding the date of application for naturalisation.

On receipt of the letter dated 29 April 2015 (Annexure I) from the family requesting the Minister to consider granting early naturalisation due to exceptional circumstances, the Civic Services Branch prepared a submission for the Minister's approval of granting early naturalisation based on the motivation, during the month of May 2015 (Annexure J).

The Department in recommending for the approval of the early naturalisation, considered the family's business presence and investments in the Republic. Hence the Minister granted approval on 30 May 2015 (Annexure K).

However, it is important to note that the exceptional circumstance were only in respect of the mother and the wife.

After the approval was granted, because India does not accept dual citizenship, the family had to provide proof of renunciation of Indian citizenship (Annexure L). Mr Ajay Gupta did not provide proof of renunciation. As a result, his naturalisation was not effected and thus he remains a permanent resident permit holder. Naturalisation was effected after receiving renunciation letters for the mother (Annexure M), the wife (Annexure N) and the two sons, Mr Kamal Kant Singhala (Annexure O) and Mr Surya Kant Singhala (Annexure P).

The Department received a Parliamentary Question No. 2146 from the National Assembly, due for publication on 14 October 2016, asking: "With reference to his reply to question 1007 on 25 April 2016, what are the full details of the exceptional circumstances under which [the Minister] granted citizenship to certain persons [in the Gupta family]" (Annexure T). The Department replied accordingly, explaining the exceptional circumstances for granting citizenship to the Gupta family which are dealt with in Section 4.

In terms of Section 5(9) (b) of the Citizenship Act (Annexure Q), the Department of Home Affairs is required to table names of those granted SA citizenship by naturalisation to Parliament. The last report was submitted in 2012 (Annexure R). Since 2013, the Department naturalised four families and five individuals as per the attached document (Annexure S). It was admitted as an omission on the part of the Department of Home Affairs not to have tabled the names which were subsequently tabled on 11 August 2017.

5. Gupta family related companies

According to the memorandum recommending the early naturalisation and approved by Minister Gigaba, both the South African Revenue Service and Companies and Intellectual Property Commission were consulted on the investment claims by the family. The following information on shares held is in the application:

- Westdawn Investment (Pty) Limited T A JIC Mining Services with 54% shares.
- Tegeta Exploration and Resources (Pty) Ltd: 48% share directly and 30% shares through associate.
- Tegeta Resource: 25% share directly and 45% share through associate.
- Blackedge Exploration (Pty) Limited: Oakbay Holds 55% shares.
- Oakbay Resources and Energy owns 74% on Shiva Uranium Ltd.
- Investments in Media and Broadcast (The New Age where they own 93% and ANN7).

It should be noted that the overall investment amount of R25 billion in the early naturalisation application is not verified nor the charity to schools and employment numbers.

According to a submission from the Department of Labour on 23 October 2017 and requested by the Department of Home Affairs on 17 October 2017; the 8 companies associated with the Gupta family have declared numbers of employees in excess of the originally stated 7000 employees stated in the early naturalisation applications. As per the Table 3 below employees amounted to close to 17 000.

Table 3: Gupta Company Employment numbers from Department of Labour

UIF REFERENCE	REGISTRATION NAME	TRADE NAME	NUMBER OF EMPLOYEES
1667537/3	Westdawn Investments	JIC Mining Services	12 434
0102528/4	Migration Proxy Value	Shiva Uranium Limited	4 106
2008987/9	TNA Media Pty Ltd	TNA Media Pty Ltd	230
0520673/4	Sahara Computers Pty Ltd	Sahara Computers Pty Ltd	164
2042258/2	Blackedge Exploration Pty Ltd	Blackedge Exploration	50
2054533/0	Oakbay Investments Pty Ltd	Oakbay Investment Pty Ltd	1
1871505/9	Tegeta Exploration & Resources Pty Ltd	Tegeta Exploration & Resources	1
1860219/6	Islandsite Investments One Hundred And Eighty Pty Ltd	Islandsite Investments One Hundred And Eighty Pty Ltd	1
Total			16 987

Further information on TNA Media, now in the public domain, relate the Gupta initiated news channel ANN7, to various DHA permitting irregularities. In the book *Indentured – Behind the Scenes at Gupta TV*, Rajesh Sundaram reports of flagrant disregard for the law by flouting work visa regulations and exploiting young black South Africans and migrant Indian workers as but a few of the he encountered as part of a broader web of deceit and political manoeuvring. Sundaram has been a veteran journalist for 23 years and holds a degree in Journalism from the University of Delhi, and has worked for top Indian and international media houses, including India Today Group, NDTV and Al Jazeera.⁷

Sundaram's story emerged after he was recruited with a small team of Indian broadcast professionals and South African interns to launch the television news channel ANN7 under extremely tight deadlines under Atul Gupta and his associates. This resulted in Sundaram quitting his job in a public dispute, while his life was threatened and his health deteriorated.

In affidavit from Sundaram, directed to the PCHA he recounts events that took place during the period 3 June and 2 September 2013, when employed at Gupta-owned Infinity Media (Trading Name TNA Media). These include:

- The Gupta family created a joint venture with Mr Laxmi Goel (Indian national) and Duduzani Zuma who owned 30% of company.
- Contraventions of the South African labour and visa regulations, in that despite the availability of sufficiently qualified South African candidates across all departments at ANN7, Mr Atul Gupta and Laxmi Goel insisted on hiring staff from India in order to:
 - i. Exploit working hours without fear of Indian workers complaining to authorities.
 - ii. Indian citizens would accept lower salaries and benefits.
- Claims that large number of employees would enter SA on tourism visas - with the option of converting these to work permits at a later stage. Further alleges that Mr Atul Gupta indicated that former President Zuma assured him that a number of visa would be issued by Home Affairs without "fussing" about norms required.
- Claims further that labourers were brought in on tourist visas to assemble the ANN7 studio and that they had to live on the construction site in Midrand under sub-human conditions. The labourers were paid in Indian Rupees in India. It alleges that Mr Chawla coordinated with the President's Office and Home Affairs to ensure visas were speedily issued. Many people stayed on tourist visas and paid small fine at passport control when exiting country, which was later reimbursed to them.

⁷ R. Sundaram (March 2018)

- A number of people who overstayed on tourism visas were issued work permits within weeks.
- Improper relationship between former President Zuma and Mr Atul and Ajay Gupta through the Oakbay Company. Alleges that Mr Zuma used his position to benefit the Oakbay media venture, of which his son was a 30% shareholder. These include advertising deals (IEC advertising budget specifically mentioned), sponsorship and attendance of New Age breakfasts – which allegedly generated “insane profits”.
- He made a formal complaint about these experiences to the DHA immediately on his return to India via email. To date, he has not received any communication from the DHA since he lodged these complaints in 2013. Attached to the affidavit are copies of 3 emails sent to the DHA senior members of management in 2013. In the emails to DHA, he makes allegations of visa violations and destruction of evidence by Mr Atul Gupta and Laxmi Goel. In his email, claims that employees of Infinity Media used business visas to work at ANN7 and these were renewed several times. Emails were sent to senior DHA officials on the dates listed below:

- i. Email dated 4 September 2013 to Mr Apleni
- ii. Email dated 6 September 2013 to Mr Apleni
- iii. Email dated 9 October 2013 to Mr Apleni. CC'd following senior DHA staff who held the following positions at the time (2013):

mkuseli.apleni@dha.gov.za (former DG of DHA)

jackie.mckay@dha.gov.za (DDG Immigration Services)

castro.khwela@dha.gov.za (Former DDG: Counter Corruption and Security Services)

rudzani.rasikhinya@dha.gov.za (Former DDG: Finance and Supply Chain Management)

avril.williamson@dha.gov.za (Former DDG Human Resources)

ronnie.mamoepa@dha.gov.za (deceased former DDG Communication)

6. Schools receiving donations

In terms Social Investment to support their application for early naturalisation, 76 schools in the North West Province were said to have received donations. The Parliament Research Unit attempted to gather evidence of this having occurred in the absence of such being done by the DHA. In the absence of responses on other types of donations (6.2), the school principals were contacted telephonically in the absence of responses to questionnaires – as this represented a significantly smaller number of respondents.

6.1 Sporting equipment

The response rate for schools identified as having received donations has been very slow to date. The North West Department of Education was first contacted to verify details of schools listed on 25 April 2018, but did not solicit a response. This was followed up with another communication on 31 May 2018, with a response in July 2018.

A total of 76 schools were listed as having received sporting equipment donations from the Oakbay group. The Department provided details for 68 schools. One of the schools, Reatile Middle, was closed during the rationalisation process in the province, while the email address provided for 1 school was incorrect, and numerous telephone numbers were outdated and incorrect. To date, a total of only 11 schools responded, resulting in response rate of 16.7%. These responses are summarised below.

It should be noted that the information received to date cannot be regarded as a representative sample, as the response rate was too low. However, a total of 5 out of the 11 schools (45.5%) indicated that they never received a donation from the Oakbay group. Some of the schools signed several acknowledgements of receipt, instead of one: i.e. for intermediate, senior and FET phases, and these were signed by different individuals.

Table 3: School Donation Evidence Requested

Name	Donation received?	Donation	How the school was selected for donation?
1. Ithumeleng Secondary	Yes	<ul style="list-style-type: none"> • R1000 for 1 learner. • 15 soccer cones. • 15 hula hoops 	School was requested to participate in competition for Gupta wedding invitations.
2. Bobuantswa Primary	Yes	<ul style="list-style-type: none"> • 15 bean bags • 10 green low cones • 10 red low cones • 10 orange low cones • 10 white low cones • 10 yellow low cones • 2 orange disk cones (big) • 48 marker cones set • 5 mitre whistle and lanyard • 2 mitre speed ball size 5 • 7 mitre lynx size 5 • 2 mitre netball ball (green) size 5 • 8 mitre pivot netball size 5 (pink) • 10 yellow mitre bip XL Junieur • 14 yellow mitre bip Junieur • 10 blue mitre bip XL Junieur • 5 green hoola hops • 5 red hoola hops • 5 blue hoola hops • 1 plastic mini soccer set • 1 ball, 1 pump, 8 ground plastic poles • 2 all weather net , light • Weight frame 78cm x 68cm x 53cm • R1000 for the best learner 	Selected by departmental officials from Area Office level.
3. Rakoko Secondary	No		
4. Nkobong Secondary	No		
5. Makuka Secondary	Yes	<ul style="list-style-type: none"> • R1000 consolation prize for 1 learner who participated in a wedding invitation card design. • Hula hoops – quantity not specified • Rugby balls – quantity not specified • Mini soccer balls – quantity not specified • Soccer bibs – quantity not specified 	Geography teacher was informed at geography meeting in 2013 about wedding card invitation.
6. Mogono Primary	Yes	<ul style="list-style-type: none"> • 15 Bean bag • 10 green low cones • 10 red low cones • 10 orange low cones • 10 yellow low cones • 10 white low cones • 2 orange disk cones (big) • 48 orange marker cone set • 5 mitre whistle and lanyard • 2 mitre speedball size 5 • 7 mitre Lynx (size 5) • 2 mitre netball (size 5) green • 8 mitre pivot netball (size 5) pink • 10 yellow mitre bibs • 14 red mitre bibs • 10 blue mitre bibs 	

		<ul style="list-style-type: none"> • 5 red hoolahops • 5 green hoola hops • 5 blue hoola hops • 1 plastic mini twin soccer set • 1 ball, 1 pump, 8 ground plastic poles • 2 all-weather nets, light weight frame (78cm x 68cm x 53cm) • Envelop contains R1000-00 for the best learner (Rankoko Aobakwe) 	
7. Ratheo Primary	No		
8. Reuben Moraneng Primary	No		
9. Rasimone Primary	Yes	<ul style="list-style-type: none"> • Soccer T Shirts • Soccer trousers • Soccer boots • Shin Guard • Whistles • Travelling bags • Soccer kit bags 	Through a circular from the donor to enter competition for Gupta wedding invitation. Also received sporting equipment as part on entering competition.
10. Mperebere Primary	Yes	<ul style="list-style-type: none"> • A R1000 cash payment which was awarded to a grade 7 learner 	<p>Prize awarded at Sundown ranch Hotel.</p> <p>It is alleged that an official from Home Affairs Department visited the school to collect data on this donation.</p>
11. Chaneng Primary	No		It is alleged that an official from the Department of Home Affairs visited the school on 10 May 2018 to collect information on the donation.

Of the 6 responses received from schools with donations, schools provided varying levels of detail. Some of the schools did not indicate sporting equipment received. However, most of the schools link their donations to a competition for designing wedding invitations for the Gupta wedding held in 2013. A consolation prize of R1000 was awarded to a learner for each of the participating schools. In addition, some of the schools received sporting equipment.

Schools were not informed about the competition in the same manner; some heard through official departmental communication and others through word of mouth. Also of note is that two of the schools indicated that a DHA official had visited the school to verify the donation although at what date is unclear. Mperebere primary also reported a visit from a "Home Affairs" official in their questionnaire, however attempts to contact the school telephonically to confirm the date were unsuccessful. However, this issue requires further clarification with the Department of Home Affairs.

6.2 Other donations

Evidence submitted with respect to 15 computers donated to Molelwane primary school was disputed by the former principal, Mr PW Mogotsi, on which behalf the letter of acknowledgment was signed.

Evidence submitted as relates to the painting of 4 classrooms at Chaneng primary school is partly refuted by the principal, Mr SM Mmola. According to Mr Mmola, only 2 classrooms were painted, and the school also never received donations for sporting equipment.

Evidence submitted with respect to the donation of 75 pairs of school shoes to learners at Tebogo primary school was confirmed by the principal, Mr Lightfoot. Mr Lightfoot indicated that the donation totalled 85 pairs of shoes, on 16 November 2013. The donation was initiated after a visit from Hernic Ferrochrome, Tugela and Sisure Mining, accompanied by JIC in 2013. In addition, another donation from Hernic Ferrochrome was made on the 19 February 2014 to launch a water project. The donation

was two 5000 litre water tanks and a stand, as well as a borehole. Parliament has as yet been unable to contact Odi primary at this stage to confirm receipt of school shoes.

Given the poor response rate to date, telephonic follow-ups continue with schools listed to confirm receipt of questionnaires, as well as encouraging schools to submit completed questionnaires. This section will thus continuously be updated as more information becomes available.

7. Gupta Leaked Emails Related to Home Affairs

An Affidavit received by the PCHA from the Organisation Undoing Tax Abuse (OUTA) via the Deputy Speaker to Parliament summarises the DHA related aspects of leaked emails. These were analysed in a broader report on State Capture titled "No room to hide: A President caught in the act".⁸ The emails were ostensibly retrieved from the server of SAHARA Computers Pty (Ltd). These Gupta emails substantiate allegations pertaining to state capture and have unveiled evidence of misconduct by the Gupta family and many high-ranking government officials. OUTA has access to and made available the emails and established the authenticity of such. What follows in this section is primarily from the summary Affidavit submitted by OUTA.

Amongst the Gupta emails were implications of misconduct on the part of KMN Gigaba (Gigaba), Rajesh "Tony" Gupta (Rajesh Gupta), Ashu Chawla (Chawla) and Gideon Cornelius Christians (Christians).

According to his curriculum vitae, Christians worked as the Second Secretary (Immigration and Civic Services) for the South African High Commission of New Delhi, India between **February 2008 and March 2014**. Prior to this, Christians worked in similar capacities in Cape Town, Cameroon and Mauritius and his duties included the facilitation of the prosecution of illegal foreigners.

On **19 September 2011**, Christians (in his capacity as an employee of the Delhi South African High Commission - Immigration and Civic Services) sent an email to Chawla, the then CEO of Sahara Computers (Pty) Ltd, which stated "Ashu; Attached please find details of the coal." Christians usage of Chawla's first name indicates some familiarity between the two (related email attached in submission).

On or about **8 November 2011**, Christians emailed Chawla and one Miguel Dos Santos, notifying them that he had met with a "Mr Gupta" on **7 December 2011** and discussed business relating to the sale and purchase of coal. This is presumed to be Rajesh Gupta as he was forwarded the email by Chawla. Christians further stated that he had been in contact with prospective buyers in China and that he would refer them to an identified client if they were able to match the specifications of coal contained within a coal purchase agreement of 2010, which he attached to the email. In summary, the agreement was between two unidentified parties and set out the terms and conditions for the sale of "Steam/ Thermal/ Non Coking Coal" for the purpose of importing coal to China. Finally, he advised them that a coal mine was up for sale in the Tete region of Mozambique (related email attached in submission). Again, the communications indicate some familiarity between Christians, Rajesh Gupta and Chawla in 2011 already.

On or about **11 June 2013**, Chawla sent an email to Christians, asking him to help to finalise his wife and son's visa by "tomorrow". This is the first of many requests to expedite visas. Later that same day, Christians replied to the email, asking where they were landing, to which Chawla replied, "I am sure you not confused about that..." (Related emails attached in submission).

On **20 June 2013**, Chawla sent Christians another email requesting visas for eight more people, which he identified as "TV guys". (Related email attached in submission).

On or about **21 June 2013**, Chawla initiates a chain of emails with Christians regarding a two-year multiple entry business visa for one Tanvi Gupta. Chawla intended to apply for such a visa, with Christians' help, but misrepresented that the visa was for the purpose of business. In truth, Tanvi Gupta was coming to South Africa to get married to Varun Gupta. Chawla states outright that he intends to use the Sahara letter head to facilitate the false business visa and attaches a draft to this

⁸ Organisation Undoing Tax Abuse (OUTA) 28 June 2017.

effect. Christians himself subsequently questions Chawla on this. (related email attached in submission).

On or about **17 July 2013**, Chawla emailed Christians asking him to get a visa for "today". He stated that the visas were required urgently because they were launching the TV station on 9 August and that he might be requesting more visas in a couple of days. Later that same day, Chawla sent Christians another email thanking him for "all the continuous support" (related email attached in submission).

On or about **8 August 2013**, Chawla emails Christians a selection of Mini Coopers for sale in South Africa. The reason for the email is unclear but the nature of the relationship between the two indicates that this may well constitute a form of *quid pro quo* for the assistance rendered by Christians to Chawla and the Guptas (related email attached in submission).

On or about **13 August 2013**, Chawla sent Christians two emails in which he requests help with more visas. In the first, Chawla says, "Brother, Please help. Thanks." In the second, he says, "Brother, One more. Thanks." On or about 14 and 19 August 2017, Chawla sent two more emails, without any pleasantries, he only forwards the names and their respective passport numbers (related email attached in submission).

On or about **15 February 2014**, Chawla forwarded Christians an email chain in which one Anant Sarkaria requests the assistance of Abhinav Shukla in removing his travel ban. Shukla subsequently emailed Chawla twice and in the second email he states that he was instructed to do so by Rajesh Gupta (related email attached in submission).

On or about **21 November 2014**, Christians emails his CV to Chawla "as discussed ", expressing confusion as to why he needs it. On or about 11 December 2014, Chawla forwarded the CV to "Ronica" at Oakbay (Presumably Ronica Ragavan, then current CEO of Oakbay Ltd) (Related email attached in submission). The significance of these specific emails becomes apparent after reading later emails mentioned below. On or about 27 December 2014, Chawla sends Christians an email with the subject line: "4 Dubai visas". Although the attachments are not available, the descriptions of the attachments indicate that the visas for relatives of Christians were forwarded. (related email attached in submission).

On or about **12 February 2015**, Chawla sent Christians the passports of various Gupta family members including Anil Kumar Gupta, his mother, wife, daughter and son in law. (not Rajesh Gupta). It would seem that Christians may have assisted to facilitate the immigration of the Gupta family to South Africa. At the very least, it demonstrates improper influence by the Gupta family on the Department of Home Affairs (related email attached in submission).

On or about **6 October 2015**, Mr Siyamthanda Skota of the Ministry of Home Affairs sent a submission referring to instruction by Minister Gigaba in which he directed that one Ms Munyadziwa and Christians were to be transferred to Mumbai and New Delphi respectively. Christians' appointment was for a period of four years and was subject to him receiving a Top Secret Clearance at the same level of Assistant Director. Major Kobese, the Director: Foreign Office Coordination (FOC) and Support for the DHA, confirmed his receipt of the signed submission on 14 October 2015. A discussion soon developed between Kobese and Wesane Hlongwane, the Director: People's Acquisition (HR), over which Department was to provide "a background" for Christians, in respect of the clearance required. On or about 20 October 2015, Kobese stated that "this deployment was done outside the normal recruitment process." However, in another email on or about 21 October 2015, he also stated that the deployment of Christians was an instruction by the Minister and their role was to carry out that instruction.

Ultimately, on that very same day, Christians is "unofficially, provided with the email chain, which he then sends from his official government account, to his Gmail account, before sending it to Chawla, stating:

"Bhiya Someone sent this to me unofficially . . . seems there is a fight with HR and FOC to issue the letter to me...The other issue is security clearance...Call me when you can."

It appears that Christians is contacting Chawla to ensure that matters are resolved in his favour instead of following formal government channels. This is an indication that Chawla and the Gupta family had,

at the very least, a degree of influence over the affairs of the DHA and/or Christians and/or Gigaba (related email attached in submission).⁹

8. Legal concerns on application of policy

It is common cause that the Minister has the power, in law, to grant a certificate of naturalisation to a person who has not fulfilled the residential requirements under the Act. The Act is clear that such a power must only be exercised in “exceptional circumstances” and yet it does not define what those circumstances are. In this sense it is left to the Minister to determine what should constitute “exceptional circumstances”. However, it bears emphasising that a statutory power must only be exercised for the purpose for which it was given, not for an ulterior motive. In the abstract it is difficult to come to a conclusion either that the power was used incorrectly or correctly without affording the holder of that power an opportunity to explain his thought process in reaching his decision.

Our courts have had an occasion to consider the meaning of the phrase “exceptional circumstances” before *albeit* in different circumstances and facts. Legally there seems to be consensus that the phrase envisages “unusual or different, or markedly unusual or especially different” circumstances. From this it is clear that the legislature intended to make it more difficult for the Minister to invoke this power.

Although the existence of an investment is a matter of fact, whether or not that investment constitutes “exceptional circumstances” under the Act is an exercise of a value judgment. At any given point there are thousands of persons who invest in South Africa and it cannot be that all of them would be entitled to “early” naturalisation by virtue of their investments. This then suggests that the “exceptionalism” of any investment must lie in the extent/degree or rarity of the nature of the investment in question for it to trigger the exercise of this discretion by the Minister.

From the reading of the submission approved by the Minister for the naturalisation of the Gupta family it is difficult to make a determination as to what was considered “exceptional” in this instance. The submission merely confirms the fact of an investment without elaborating as to why this was considered exceptional to justify a departure from the ordinary prescripts of the law. This, however, is not sufficient to impute ulterior motive on the part of the Minister or Department unless there is additional evidence that definitively points to that direction and we have not come across any from the available information.

This is not to suggest that there is no circumstantial evidence that points to a pattern of manipulation of Home Affairs processes by the Gupta family in as far as the granting of visas to some of their employees. This is all revealed in the Gupta leaked emails which are now in the public domain and referred to above in this Report. Whether such manipulation specifically extended to the granting of the “early” naturalisation is a matter that may require further investigation.

Questions to the Department of Home Affairs

9. Gaps in information and issues of concern

- a) It took one month from the letter requesting for early naturalisation in April 2015 to when it was approved by the Minister in May 2015. In contrast, the DG reported to the Committee on 6 March 2018, that there were many cases where the DHA had been taken to court by other applicants, not because the decision had been rejected or an appeal was not successful, but because the DHA had delayed finalising the applications. The question to the Minister is what particular exceptional circumstances of the Gupta Family were such that their application was prioritised faster than other such early naturalisation applications?
- b) On what permits did Atul and Rajesh Kumar Gupta initially enter South Africa between 1994 and 1998.

⁹ Organisation Undoing Tax Abuse (12 September 2017.)

- c) Rajesh Gupta lists various attached supporting documents in his permit renewal application (BI 159 in August 2000) which are not included in the information submitted to the PCHA. This includes investment letters from ABSA and CPIC Company Registration information. Why were these not included, and what do they show?
- d) Is the rerecord of Rajesh Kumar and his family leaving the country between the expiry of his initial work permit on 21 April 1999 and the approval of the conversion to business permit on 29 August 2000?
- e) On what conditions is it that Permanent Residence was approved in October 2000 for Rajesh Gupta and his family only 2 Months after his business permit was approved?
- f) Rajesh Gupta's work permit extension application (BI 1155 in August 2000) is extended and converted to business permit subject to the submission of audited financial statements and repatriation deposit. Were these ever received?
- g) On what conditions is it that Permanent Residence was approved in 30 October 1996 for Atul Gupta and his family after only 1 year on two 6 month work visas?
- h) Is four months from application for naturalisation to approval (July to November 2002) for Atul Gupta and Family not considerably faster than the usual application time?
- i) There is a gap of 2 months between the April 2001 expiry of Ajay Gupta's first work permit and its renewal on 30 May. What was he illegally in the country for this period or are there records of his departure and re-entry in to South Africa?
- j) There is a three year gap between the expiry on 30 May 2002 of the initial spousal permit granted to Mrs Shivani Gupta and next one granted on 34 February 2005. Was she in the country during this time and if so on what document?
- k) What are the latest Immigration Permitting standard operating procedures and why could these not be provided to the PCHA. Are these distributed and explained to all immigration staff?
- l) It also took 5 months for the DHA to respond to the PCHA 2017 request for confirmation of investments and employment by Gupta family businesses. The long delay could in part be attributed to the DG being on suspension during this period, however, had the DHA done the necessary due diligence in assessing the early naturalisation application, this information should have been readily available having already been verified and not only requested from the Department of Labour on 17 October 2017.
- m) The question to the Adjudication Committees dealing with the early naturalisation application is: why were the number of staff employed, and the overall investment by the applicant's businesses not verified initially?
- n) In relation to the naturalisation of Atul and Rajesh's family in 2002 and 2006; what were the exact processes followed including the recommendation of the adjudication committee? Which family members are currently citizens and were granted passports and were registered to vote. Are there records of when applications were approved signed allegiance as required for by the Citizenship Act?
- o) Were the Guptas given different treatment in terms of being given opportunity to renounce Indian Citizenship subsequent to getting South African Citizenship unlike other applicants who have renounced their initial citizenship but are still awaiting the ceremony of naturalisation?
- p) Does the DHA have official record of Atul and Rajesh's family renouncing their Indian Citizenship? If so, this must be forwarded, if not why not?

- q) The apparent close relationship between Mr. Christians, reference to a Minister, Mr. Chawla and Rajesh Gupta should be investigated as it appears from the evidence above that Chawla and Rajesh Gupta didn't have to follow prescribed procedure and received preferential treatment from government officials. In return, it appears that Christians was rewarded for his assistance. It also appears that Rajesh Gupta may have had the ability to influence decisions taken by Mr Gigaba and the reason therefor should be properly investigated.
- r) Chaneng primary school indicated that they did not complete the Parliament questionnaire, as allegedly an official from the 'DHA' visited the school on 10 May 2018 to complete a questionnaire on the Gupta donations. They thus considered it a duplication. Attempts to contact the number provided of the official remain unanswered. Mperebere primary also indicated a visit from a "Home Affairs' official who attempted to verify donations. The date of the visit could not be verified telephonically at this stage. Both schools, however, denied receipt of sporting equipment by the Oakbay and associated group of companies. This issue requires clarity from the DHA on who the official is and the timing of the visit, given the issue is currently before the Portfolio Committee and the Judicial Inquiry.
- s) Why were the procedures of the Citizenship Act (Section 5(9) (b) not followed on time for tabling in a Parliament, a list of those granted early naturalisation in 2013, 2014 and 2016?
- t) Posts filled by workers brought from India at ANN7 were not all vacant for the six months. Why was this not checked by the DHA?
- u) Is there record of Indian Workers being brought on tourism visas but being employed as construction workers by the Gupta's?
- v) It is alleged that ANN7 applied for intercompany transfer permits though they weren't working for the same media company. Can this be checked?
- w) Can evidence be provided of the reasons for the irregular appointment of Mr. Gideon Cornelius Christians at the South African High Commission in Delhi India?
- x) Supporting documentation submitted to the DHA related to the Ajay's early naturalisation application included the social responsibility donations to schools in the North West province. Evidence from schools suggests that in some instances the donations may be overstated or incorrect. What is the administrative recourse such as in terms of Section 8 of the Citizenship Act in cases where incorrect or overstated information is submitted to support applications for naturalisation?
- y) Can the DHA clarify why emails submitted in 2013 to several of its senior management by Mr. Sundaram, listing visa irregularities were not investigated or responded to?
- z) Can the DHA provide a list of (1) all Indian nationals who applied for various visas under the Gupta related group of Companies to enter SA in the period 2013 to 2017, (2) what type of visas were issued (3) a list of visas that were subsequently renewed (4) a list of visas that were converted to a different type?

10. Persons identified for further clarity

In relation to the abovementioned gaps and questions remaining on the Guptas and other further issues that may emerge; the following persons, over and above the current Minister and Director General, could be engaged with by the PCHA to form part of this inquiry:

- Hon. MG Buthelezi - Former Minister of Home Affairs
- Hon. Nosiviwe Mapisa-Nqakula - Former Minister of Home Affairs
- Mr Richard Sikakane - DHA Naturalisation Adjudication Committee

- Mr Siyamthanda Skota - DHA Employee
- Mr. Thamsanqa Msomi – Advisor to Minister Gigaba
- Mr. Ajay Gupta – Oakbay Ltd. related Businessman
- Mr. Atul Gupta - Oakbay Ltd. related Businessman
- Mr. Rajesh Gupta - Oakbay Ltd. related Businessman
- Mr. Johan Swanepoel - CEO Hemic Ferechrome
- Mr. Mosotho Moepya - CEO of Electoral Commission
- Dr. K.J. Srinivasa – Consul General, Consulate of India
- Mr. Gideon Cornelius Christians – Former DHA Employee
- Mr. Ashu Chawla - Former CEO of Sahara Computers
- Mr. Nazeem Howa - Former Group CEO for Oakbay
- Ms. Magriet Coetzee - Head of Human Resources, ANN7
- Mr. Jackie McKay – DHA Deputy Director General (DDG) Immigration Services
- Mr. Castro Khwela - Former DHA DDG: Counter Corruption and Security Services
- Mr. Mkuseli Apleni - Former DG of DHA
- Ms. Rudzani Rasikhinya - Former DHA DDG: Finance and Supply Chain Management
- Ms. Avril Williamson – Former DHA DDG Human Resources

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