



SIU_{SA}
STRIKING AGAINST CORRUPTION



The State's preferred and trusted anti-corruption forensic investigation and litigation agency



SIU PRESENTATION TO SCOPA ON ESKOM INVESTIGATIONS

BY

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Presentation Outline

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The SIU's Legislative Mandate

Empowering Legislation

Special Investigating Units and Special Tribunals Act, 1996 (Act no. 74 of 1996) (“**SIU act**”).

Vision

“The State’s preferred and trusted forensic investigation and litigation agency.”

Mission

“We are the State’s preferred provider of forensic investigating and litigating services working together with other agencies in the fight to eradicate corruption, malpractice and maladministration from society.”

Major Functions

- Investigate corruption, malpractice and maladministration
- Institute civil proceedings

SIU Powers

- Able to subpoena, search and seize evidence, and interrogate witnesses under oath (once a proclamation has been issued)
- Institute civil litigation to recover state funds lost or to prevent future losses

Out of SIU Mandate

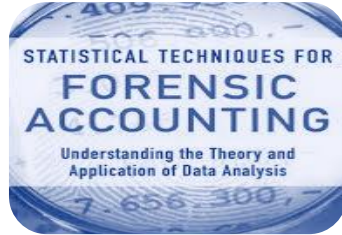
- Arrest or prosecute offenders
- Implement disciplinary actions
- Works closely with other relevant agencies where its powers fall short



SIU METHODOLOGY



Forensic Data Analytics



Forensic Accounting



Forensic Investigation



Civil litigation



Legal's



Cyber Forensics





SIU OUTCOMES CONSEQUENCE MANAGEMENT



CIVIL LITIGATION

- Institute civil proceedings where there are potential recoveries of assets.
- Apply for preservation orders at an early stage of investigation where there is prima facie evidence.



DISCIPLINARY ACTION REFERRALS TO ESKOM



PROSECUTION REFERRALS TO THE NPA



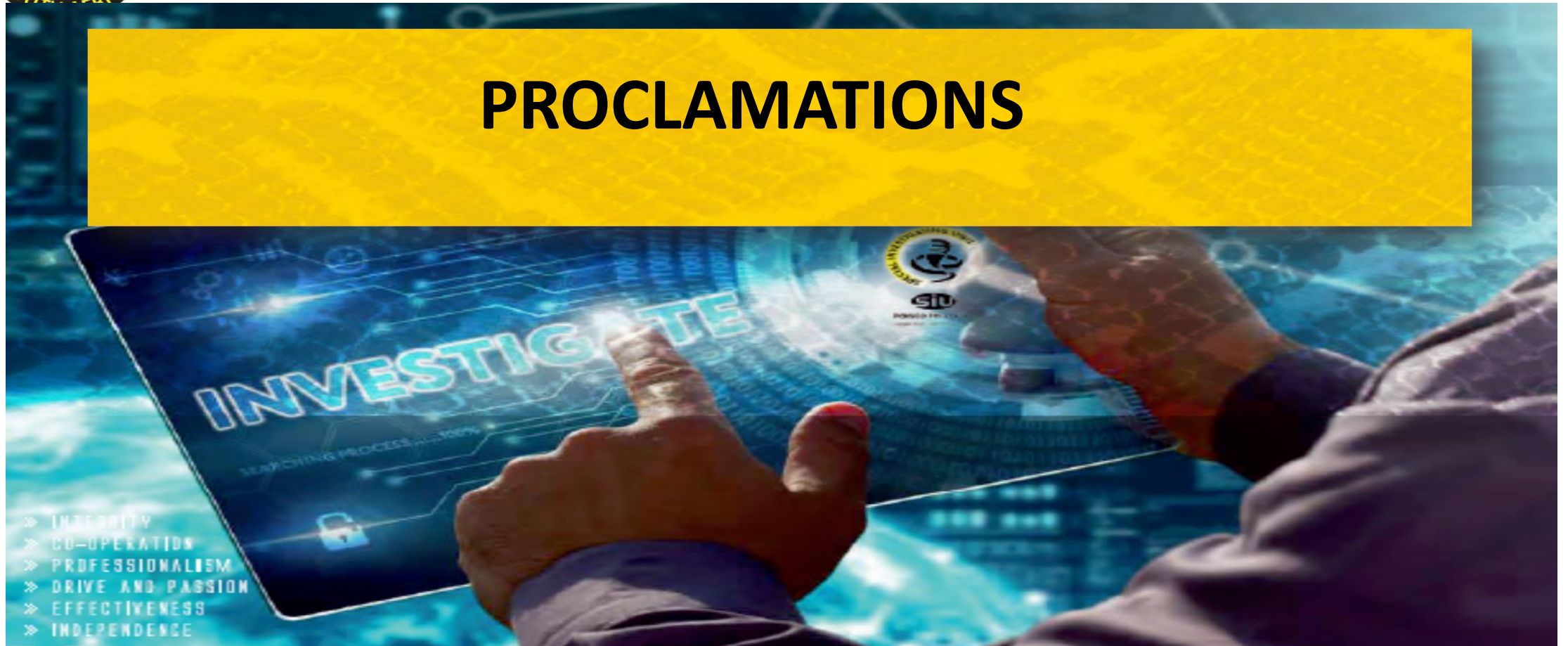
REFERRAL TO OTHER REGULATORY AUTHORITIES SUCH AS:

**SARS
CIDB**

SYSTEMIC RECOMMENDATIONS



PROCLAMATIONS





Proclamation R18 of 2018

- The Procurement of Coal;
- The Transportation of Coal;
- The Procurement of Diesel;
- The Appointment of and Payments to McKinsey, Trillian and Regiments;
- Maladministration in the affairs of Eskom and the Non Performance by Service Providers in relation to the Medupi, Kusile and Ingula Power Stations and the High Voltage Transmission Projects at Medupi, Kusile & Ingula;
- Conflicts of interest:
 - Failure by Eskom employees to declare interests; and
 - Eskom employees doing business with Eskom.



Proclamation R3 of 2020

- The contracting and procurement of
 - Cloud computing services and
 - Software licences and support services. (SAP)
- Engineering and Project Management Consulting Services in Respect of
 - Contract No. 4600061859 (Majuba Power Station) and
 - Contract No. 4600062636 (Matla Power Station.)



Proclamation R97 of 2022

New Allegations

The SIU has been inundated with receiving new allegations. Many of these allegations fell outside of the existing SIU Eskom Proclamations.

As a result of the seriousness of these allegations a motivation has been submitted to the DoJ to extend the scope of the SIU's mandate both in terms of time and focus areas.

The extension to the proclamation has been issued on 2 December 2022 by the President and provides for:

- the dates of all investigations as contemplated in Proclamation R11 of 2018 to be extended to 1 January 2003 and 2 December 2022,
- The contracting for or procurement of goods, works and services by Eskom's Kusile, Medupi, Kendal, Matla, Duvha, Arnot, Tutuka and Grootvlei Power Stations as well as Eskom's Head Office, situated at Megawatt Park in Johannesburg.
- Contract No 4600062450 for information technology and related services and;
- Fuel oil supply contracts.



STATUS OF INVESTIGATIONS





CONFLICT OF INTEREST



Proc R18 of 2018 – Conflict of Interest Cases

Matter	Number of Employees	Disciplinary Referrals		NPA		Civil Litigation
		Previously Reported – Oct 2022	Current Status	Previously Reported – Oct 2022	Current Status	
Eskom officials who were potentially linked to entities that are Eskom Vendors (Conflict of Interest)	334	135	<u>135 Referred to date</u> 120 Finalised <ul style="list-style-type: none">• 71 Guilty• 18 Not Guilty• 19 Resigned• 4 Retired• 8 Withdrawn 15 Outstanding	14	14 There are no changes since the previous update	Cases will be assessed on a case by case basis to consider the possibility of civil litigation against employees and companies



Proc R18 of 2018 – Conflict of Interest Cases

Matter	Number of Employees	Disciplinary Referrals		NPA		Civil Litigation
		Previously Reported – Oct 2022	Current Status	Previously Reported – Oct 20221	Current Status	
Failure to submit declaration forms (Declaration of Interest)	5464 <u>(Revised based on recon)</u>	<u>5464</u>	<u>5464 (Revised based on recon)</u> 5438 Finalised <ul style="list-style-type: none"> • 1564 Withdrawn • 3875 DC process finalised 25 Outstanding	0	0	0
Whistleblowers	29	10	<u>12 Referred</u> <ul style="list-style-type: none"> • 2 x Resigned • 3 x Dismissed • 6 x Written warnings • 1 x Not Guilty 	0	0	Cases will be assessed on a case by case basis to consider the possibility of civil litigation against employees and companies



LIFESTYLE AUDITS



Proc R18 of 2018 – Lifestyle Audits

Matter	Number of Employees	Disciplinary		NPA		Civil Litigation
		Previously Reported – Oct 2022	Current Status	Previously Reported – Oct 0222	Current Status	
Lifestyle audits referred to SIU by Eskom	34 <ul style="list-style-type: none"> • 20 Closed (1 Employee dismissed on unrelated matter) • 3 Under investigation • 11 Referred 	11	11 Referred <ul style="list-style-type: none"> 11 Finalised <ul style="list-style-type: none"> • 7 Guilty • 2 Not Guilty • 1 Resigned • 1 Retired 	0	0 (3 criminal investigations are ongoing)	Cases will be assessed on a case by case basis to consider the possibility of civil litigation against employees and companies



SJ Mthembu vs SIU and Eskom

- The SIU found that Mr Mthembu, the former Head of Legal at Eskom did not make the required declarations of interest that he was required to make in terms of Eskom DOI policies.
- The SIU made a referral to Eskom to consider disciplinary action against Mr Mthembu
- Mr Mthembu, brought an application against the SIU and Eskom for an order that the court declare the findings of the SIU, invalid and unlawful.
- The SIU opposed the application and served and filed its opposing affidavits. The pleadings are closed and the applicant and the matter was heard on 16 November 2022. Judgment is reserved.



COAL SUPPLY AGREEMENTS



Proc R18 of 2018 – Coal Supply Agreements

Matter	Outcome	Referrals		
		Disciplinary	NPA	Civil
Tegeta Brakfontein	<p>This investigation is finalised.</p> <p>The agreement between Eskom and Tegeta for the delivery of coal to Majuba Power Station, to the value of R3.7 billion, on the basis of the 2008 Medium Term Procurement Mandate, was unconstitutional. The SIU made findings against various Board members and executives of Eskom.</p>	<p>None have been made as all of the implicated employees are no longer in the employee of Eskom</p>	<p>The NPA investigation had already commenced. The SIU conducted a money flow exercise and provided the findings to the NPA in support of their investigation.</p>	<p>Phase 1 - Contract was reviewed and set aside - R3.7b. Future savings calculated at R2.6b.</p> <p>Phase 2 – SIU instituted proceedings against Tegeta and the BRPs for just and equitable relief as a result of damages suffered due to the poor quality of coal that was supplied – Value R734m. Counsel to be briefed to have matter set down for hearing to argue point that ESKOM is not a creditor. This will avoid ESKOM being considered a creditor as provided in the Insolvency Act by the BRP's , if successful this will avoid the obtainment of an un-executable “hollow” judgment. The possibility of acting against company’s executive is not excluded in the event of the judgment not being satisfied.</p> <p>Phase 3 – The SIU proposed to embark on civil action against the Board members and executives identified. Counsel was appointed and advised against action – prospects poor due to prescription.</p>



Proc R18 of 2018 – Coal Supply Agreements

Matter	Outcome	Referrals		
		Disciplinary	NPA	Civil
Tegeta Optimum	<p>This investigation is finalised.</p> <p>The Tegeta/Optimum contract expired on 15 September 2016 (prior to the start of the SIU's investigation). As such, no recommendation was made to invalidate the contract.</p> <p>Prior to commencing of the SIU's investigation, the Optimum deal had been extensively investigated by various entities</p>	<p>None have been made as all of the implicated employees are no longer in the employee of Eskom</p>	<p>The NPA investigation had already commenced. The SIU conducted a money flow exercise and provided the findings to the NPA in support of their investigation.</p>	<p>Civil proceedings have been instituted by the SIU and Eskom against various former Eskom employees, former board members, a former executive authority and private individuals to recover R 3 8 bn losses suffered as a result of state capture and the involvement of the former directors and executives in it. In August 2020 combined summons and particulars of claim were issued against 12 defendants, with the SIU cited as co plaintiff. The 12 Defendants are, the late Dr Ngubane, Mr Pamensky, Mr Molefe, Mr Singh, Mr Koko, Ms Mabude, Ms Daniels, former Min Zwane, Atul Gupta, Ajay Gupta, T Gupta and S Essa</p> <p>Eskom is only pursuing claims against seven former Eskom executives and directors, the late Dr Ngubane, Mr Pamensky, Mr Molefe, Mr Singh, Mr Koko, Ms Mabude and Ms Daniels, based on breach of fiduciary duties and breach of contract Eskom had the matter placed under judicial case management, and the first meeting was held on 13 September 2021 to deal with the defendants' objections and delays. It was resolved that a day would be set aside to ventilate the issues to be dealt with in terms of the interlocutory applications, after which the remainder of the issues would be dealt with. The matter has now been set down for 10 March 2023 in the Gauteng High Court.</p>



Proc R18 of 2018 – Coal Supply Agreements

Matter	Outcome	Referrals		
		Disciplinary	NPA	Civil
Tegeta Koornfontein	<p>This investigation is finalised.</p> <p>The SIU found that the contract was unlawful and invalid in that it did not comply with Section 217 of the Constitution.</p> <p>Eskom terminated the contract in the value of R 6.5b based on the findings of the SIU.</p>	None have been made as all of the implicated employees are no longer in the employee of Eskom	None	Respondents/ Defendants have no assets and was placed under business rescue. Civil legal action was not considered as it would not have realized the losses and or damages suffered by Eskom.



Proc R18 of 2018 – Coal Supply Agreements

Focus Area	Contract concluded under 2008 Medium Term Contracts	Contract Value	Status
Mine 1	1 x Medium Term Contract & 3 x Short Term Contracts	R 9 327 501 343	<ul style="list-style-type: none">• The procurement process has been previously investigated and reported on in terms of Proclamation R2 of 2012.• It terms of this mandate the SIU is reviewing:<ul style="list-style-type: none">➤ the performance of the mine which relates to delivery of the contractually agreed quantities and the agreed quality of the coal supplied➤ payments by Eskom to the Mine based on the delivery➤ The investigation is ongoing and will be finalised by 31 March 2023



Proc R18 of 2018 – Coal Supply Agreements

Focus Area	Contract concluded under 2008 Medium Term Contracts	Contract Value	Status
Mine 2	1 x Medium Term Contract	R 2 642 414 276	<ul style="list-style-type: none">• The procurement process has been previously investigated and reported on in terms of Proclamation R2 of 2012.• It terms of this mandate the SIU is reviewing:<ul style="list-style-type: none">➤ the performance of the mine which relates to delivery of the contractually agreed quantities and the agreed quality of the coal supplied➤ payments by Eskom to the Mine based on the delivery➤ The investigation is ongoing and will be finalised by 31 March 2023



Proc R18 of 2018 – Coal Supply Agreements

Focus Area	Contract concluded under 2008 Medium Term Contracts	Contract Value	Status
Mine 3	4 x Medium Term Contracts	R 27 276 367 304	<ul style="list-style-type: none">• The procurement process has been previously investigated and reported on in terms of Proclamation R2 of 2012.• It terms of this mandate the SIU is reviewing:<ul style="list-style-type: none">➤ the performance of the mine which relates to delivery of the contractually agreed quantities and the agreed quality of the coal supplied➤ payments by Eskom to the Mine based on the delivery➤ The investigation is ongoing and will be finalised by 31 March 2023



Proc R18 of 2018 – Coal Supply Agreements

Focus Area	Contract concluded under 2008 Medium Term Contracts	Contract Value	Status
Mine 4	1 x Medium Term Contract and 1 x Short Term Contract	R 10 586 009 880	<ul style="list-style-type: none">• The procurement process has been previously investigated and reported on in terms of Proclamation R2 of 2012.• It terms of this mandate the SIU is reviewing:<ul style="list-style-type: none">➤ the performance of the mine which relates to delivery of the contractually agreed quantities and the agreed quality of the coal supplied➤ payments by Eskom to the Mine based on the delivery➤ The investigation is ongoing and will be finalised by 31 March 2023



Proc R18 of 2018 – Coal Supply Agreements

Focus Area	Contract concluded under 2008 Medium Term Contracts	Contract Value	Status
Mine 5	1 x Medium Term Contract	R 42 586 009 880	<p>This contract was concluded on 1 February 2020. The procurement process has been investigated and has been found to be compliant.</p> <p>As the contract was fairly new the performance of the mine was not investigated.</p> <p>This matter is being prepared for closure.</p>



SIU vs Zulu and SIU vs Mazibuko

- Matter was referred by a Whistleblower.
- The SIU investigated the Coal Transportation Contract awarded to Commodity Logistix Managers to the value of R24.8m.
- The evidence showed that CLM were used as subcontractors prior to them being awarded a main contract. Therefore the true value of the money CLM received was substantially more than the R 24.8m.
- The investigation found that Mr Petros Mazibuko an Eskom Senior Manager Coal Operations and Mr Thulani Zulu an Eskom Contract Supply Unit Manager were receiving funds from CLM.
- The SIU embarked on two separate civil litigation proceedings to freeze the bank accounts of the Eskom employees and disgorge the secret profits that they received in the form of kickbacks.
- The SIU has obtained an order from the ST for the preservation of R11m in the bank account of Mazibuko. The judgement has been taken on appeal. The appeal has been dismissed in the High Court and the SIU will execute/enforce the Special Tribunal judgment.
- The SIU made a disciplinary referral against Mazibuko who has been disciplined and dismissed.
- Zulu resigned after being interviewed by the SIU and before a disciplinary referral was made.
- **The SIU has made 15 NPA referrals against various individuals and companies including the 2 Eskom employees.**



DIESEL PROCUREMENT



Proc R18 of 2018 – Diesel Procurement Contracts

Focus Area	Contract concluded Short Term Diesel Contracts	Contract Value	Status
Company 1	Short Term Contract	R277 010 217	<ul style="list-style-type: none">• The appointment of this service provider was as a result of an emergency being declared.• The procurement process has been reviewed and found to be compliant.• Suppliers were placed on a data base and called upon to deliver diesel on an adhoc basis.• The SIU is reviewing the performance of the company against payments made.



Proc R18 of 2018 – Diesel Procurement Contracts

Focus Area	Contract concluded Short Term Diesel Contracts	Contract Value	Status
Company 2	Short Term Contract	R792 025 217	<ul style="list-style-type: none">• The appointment of this service provider was as a result of an emergency being declared.• The procurement process has been reviewed and found to be compliant.• Suppliers were placed on a data base and called upon to deliver diesel on an adhoc basis.• The SIU is reviewing the performance of the company against payments made.



Proc R18 of 2018 – Diesel Procurement Contracts

Focus Area	Contract concluded Short Term Diesel Contracts	Contract Value	Status
Company 3	Short Term Contract	R1 181 028 658	<ul style="list-style-type: none">• The appointment of this service provider was as a result of an emergency being declared.• The procurement process has been reviewed and found to be compliant.• Suppliers were placed on a data base and called upon to deliver diesel on an adhoc basis.• The SIU is reviewing the performance of the company against payments made.



Proc R18 of 2018 – Diesel Procurement Contracts

Focus Area	Contract concluded Short Term Diesel Contracts	Contract Value	Status
Company 4	Short Term Contract	R195 013 800	<ul style="list-style-type: none">• The appointment of this service provider was as a result of an emergency being declared.• The procurement process has been reviewed and found to be compliant.• Suppliers were placed on a data base and called upon to deliver diesel on an adhoc basis.• The SIU is reviewing the performance of the company against payments made.



BUILD PROJECTS



Proc R18 of 2018 - The Build Contracts

Focus Area	No of Contracts	Value of Contracts	Disciplinary Referrals		NPA Referrals		Civil Referrals
			Previously Reported – Oct 2022	Current Status	Previously Reported – Oct 2022	Current Status	
Kusile	24	R88bn	14	14 Referred 6 Finalised • 4 Dismissed • 2 Resigned 8 Pending – All suspended	73	73 Referrals have been made against individuals and companies.	Various cases are being prepared. Some have commenced.
Medupi	5	R47bn		0		0	0
Ingula	1	R11.3bn		0		0	0



ABB International– C&I Contract - Kusile

- The SIU, Eskom and ABB entered into a settlement agreement and in accordance with the settlement, ABB repaid **R 1.577b** to Eskom in December 2020.
- The SIU is working with Eskom to set aside the R2,2b control and instrumentation contract.
- The contract that had been unlawfully and irregularly awarded to ABB. Court papers in this regard are being finalised and will be filed shortly. Papers to be issued and matter heard/ set down before end February 2023.
- The SIU and Eskom are in discussions with NT regarding a new contract to be concluded with ABB to complete the outstanding works at no profit. This contract will commence as soon as the previous contract has been terminated.
- The NPA's ID has reached an agreement with ABB to repay R2,5bn in the form of punitive reparations as a result of the serious crimes committed against Eskom during the State Capture period. The SIU played an active role to the ID in finalizing this matter.
- As at the December 2020 ABB's claims amounted to R 2.079bn. As a result of the technical assistance from the experts and the SIU's intervention, the real value of the claims amounted to R 369m resulting in the prevention of future losses to the value of R 1.71b. The SIU is awaiting written confirmation from Eskom confirming the losses prevented.



Tenova Contracts - Kusile

- Tenova made a voluntary disclosure in the region of around R 1m following a Carte Blanche expose'.
- Tenova made further disclosures around suspicious payments to Babinatlou in the region of R 46m.
- The SIU found evidence of corruption in respect of money paid by Tenova to Babinatlou to various former Eskom employees.
- Eskom terminated the contract with Tenova and recovered R58m in the form of bonds that were in place.
- The SIU made NPA referrals against various individuals and companies including the former Eskom employees.
- The SIU is awaiting the technical experts reports on global settlements to the tune of R 700m and R 350m that was paid to Tenova by Eskom.
- Tenova is challenging the termination of the contracts and Eskom has applied for an interdict to halt all DAB proceedings pending the outcome of the SIU and NPA investigations.



SIU vs Hlakudi and Others

- The SIU investigated the Stefanutti Stocks Izazi Consortium JV contract at Kusile Power Station for Site Finishing (P28). The value of the contract was **R 782 983 578**
- The SIU found that there was a corrupt relationship between the JV and Eskom employees; Mr France Hlakudi, a former Projects Director at Kusile, Ms Mildred Nonhlanhla Nyoka a former Kusile Senior Manager: Contracts Management and Simon Makondo a former Officer Technical Support.
- The SIU found evidence of a flow of money **R 105 500 000** from Eskom to the JV and then to the Eskom employees or agents of the employees through a convoluted network of entities.
- Hlakudi and Nyoka resigned prior to the SIU investigation. A disciplinary referral was made by the SIU against Makondo and he was dismissed.
- The SIU has filed its summons and particulars of claim against the Eskom employees to disgorge profits they received from the JV. This matter is ongoing.
- NPA referrals have been made against all individuals and entities concerned and the AFU has preserved various assets held in the names of the Eskom employees.
- This contract has been terminated by Eskom.
- The SIU has found that this contract was irregularly awarded and has briefed counsel to advise on the prospects of setting the contract aside. Counsel's opinion is expected within the next two weeks.



SIU vs Moyo

- The SIU investigated the Tamukelo contract at Kusile for the transportation of raw and potable water to the value of **R 341 213 488.92. This investigation is finalised.**
- The SIU found that an Eskom employee Ms Moyo, received financial benefits to the tune of R 24, 584,000.from Tamukelo through a convoluted structure of entities, as well as family members.
- She received these payments in circumstances where she was responsible and/or involved in the appointment, managing of and approving of payments to Tamukelo.
- The SIU made a disciplinary referral against Ms Moyo who was dismissed after a disciplinary process.
- The SIU has obtained an interim order to freeze Ms Moyo's pension.
- The SIU has made referrals to the NPA and AFU.
- The Tamuleko contract was terminated by Eskom in October 2020 prior to any findings being made.
- The SIU has assisted the AFU in confiscating and freezing various assets of Ms Moyo which she acquired with the proceeds of crime.



Proc R3 of 2020 – Cloud Computing and Software Licensing Contracts



Proc R3 of 2020 – Cloud Computing and Software Licensing Build Contracts

Matter	Finding	Referrals		
		Disciplinary	NPA	Civil
Procurement of Cloud Computing with SAP	The appointment of SAP was found to be unlawful and irregular in that it did not comply with S.217 of the Constitution	Disciplinary findings have been made against 2 x executive members of Eskom however no referrals have been made as they were no longer in the employ of Eskom	Initially the SIU made 6 NPA referrals have been made against and companies. Upon finalisation of the investigation an additional 7 referrals have been made. The SIU is assisting the ID in conducting this investigation. This case clearly demonstrates the extent of the State Capture as it has all of the hallmarks of State Capture.	Civil litigation to the value R 1.1b is pending. Papers have been filed in the ST. SAP through their attorneys have requested a stay in proceedings as they proposed settling the matter. Negotiations are on going.
Software Licensing Contracts with SAP				



Proc R3 of 2020 – Engineering and Project Management Consulting Services



Impulse International

- The SIU investigated 2 x contracts awarded to Impulse on Matla (R41.5m) and Majuba (R41.8) Power Stations.
- The SIU found evidence of a corrupt relationship between Impulse and Eskom officials and their family members.
- Eskom terminated its contracts based on the SIU's findings.
- Impulse International instituted civil action against Eskom in two (2) matters. The first was against Eskom Rotek Industries in the amount of R22 million and the second against Eskom Holdings in the amount of R62 million. Both cases were issued out of the Johannesburg High Court under case numbers 40330/19 and 2354/20 respectively.
- Eskom is defending both matters and pleadings have been exchanged. The SIU contacted ESKOM and agreed that it would based on the findings in its investigations join the proceedings to ensure that the contracts are set aside and that damages and losses suffered are recovered from Impulse International, its successor in title and or officials responsible for the unlawful/irregular conduct. The SIU is in the process of briefing counsel and instructing the Office of the State Attorney.
- Payments made by Eskom on these contracts were Matla – R2.8m and Majuba R12.2m.
- The SIU will coordinate any civil legal remedies by considering the legal action already instituted by SARS and AFU.
- The SIU made NPA referrals against various individuals and companies in relation to its findings and is playing an active role in assisting the ID's investigation and prosecution of various individuals.



Observations



Observations on Conflict of Interest

Eskom regulates Conflicts of Interests of its employees through a number of policies and procedures that require:

- That Eskom officials above a certain level annually declare all conflicts of interest, directorships, memberships, details of any related or inter-related persons or other associates that do business with Eskom, whether a conflict exists or not.
- That Eskom officials do not, without the prior written approval of the manager concerned, become involved in private work for remuneration outside of Eskom or accept a directorship in a company, obtain membership of a closed corporation or a partnership or a joint venture.

Employees are prohibited from having a personal or other interest in an Eskom contract, whether as a supplier, an advisor, or by virtue of being a director or owner of a business, or in any other capacity. This includes third-party related transactions with an indirect link to an Eskom contract (for example, having a personal or other interest in a business that has as interest in a Supplier to Eskom)

In terms of **section 17(1) of PRECCA** a public official who holds an interest in any contract emanating from or connected with the public body in which he is employed is guilty of an offence.



Observations on Conflict of Interest

The identification of transgressions is problematic. Desktop analyses of available databases (e.g. CIPC data and Eskom's vendor, employee, DOI and SAP payment databases) do not always identify the links between officials and Eskom vendors

The above analyses will only identify the official's link to an entity if he/she is reflected as a director of the entity on the CIPC database. The following instances will not be picked up:

- Where the Directors of the Eskom Vendor are family members or friends of the official in question;
- **Where the Directors of the Eskom Vendor are co-directors of the Eskom official in other entities that are not Eskom vendors;**

In some instances Eskom officials approach complete strangers to set up sub-contractors and bank accounts through which to channel funds to officials

These links can only be identified from a review of bank accounts, email communications, cell phone records etc.

What further complicates the identification of conflicts is that Eskom vendors often pay kickbacks to officials indirectly e.g. by paying the creditors of the official directly (e.g. by paying the official's child's school fees or by paying the official's service providers/suppliers directly). Including providing Eskom officials with credit cards held in the name of the service provider. This allows the Eskom employee to utilize funds held in the bank accounts of the Eskom service providers with very little chance of being exposed.



Observations: Coal Procurement and Transportation

Eskom officials facilitate contracts with coal providers despite concerns about coal quality raised by technical experts

A number of technical reports questioned the suitability of coal from the Brakfontein mine for the Majuba PS and the ability of the mine to produce the required quantities.

Despite these concerns, a contract was entered into with Tegeta at an inflated price.

Laboratory testing processes were interfered with by submitting coal that was not from the Brakfontein mine for testing. This happened due to the deliberate actions of Eskom officials who:

- Made sure that samples for testing were obtained in the absence of Eskom observers
- Facilitated the swapping of samples by transporting samples to the laboratory in a truck that was not fitted with the contractually required tracking device

The mine delivered non-compliant coal from areas that are not stipulated in the contract. This is achieved by manipulating pre-certification processes at the mine (i.e. certifying coal that is non-compliant as compliant)

Once the coal is delivered at the Power Station no further quality checks are conducted before coal from different origins are mixed. It is imperative that coal be tested upon arrival at Power Stations and prior to being mixed with coal from other mines. This is not currently taking place.



Observations: Coal Procurement and Transportation

In order to circumvent controls regulating coal transportation pricing, Eskom officials collude with mines by entering into CSAs where coal prices are inflated to accommodate transportation costs.

Transportation contracts are then entered into between the mine and transporters linked to Eskom officials. Due to the fact that the transportation contract is between the mine and the Transporter, the pricing is not visible to Eskom.

Often such coal is procured from mines that are far away from the relevant Power Station instead of from mines that are producing coal at the required quality that are situated close to the Power Station in order to increase transportation costs.

Mines and Eskom officials collude with transporters and/or truck drivers to mix poor quality coal from certain mines with good quality coal from other mines – thereby ensuring that the contractually required quantities are delivered to the relevant Power Stations.

Due to the fact that coal quality is often not tested once coal is delivered to the power station it is not possible to identify the source of sub-standard coal.

Eskom can only mitigate the risk of this happening by installing automated real-time combustion testing facilities that are able to link test results to a specific truck, and therefore source, as soon as the coal arrive at the power station, and before offloading. This would ensure that sub-standard coal can be linked and returned to the mine of origin while Eskom will not be liable to pay for the coal, nor incur damage to its equipment due to the overly abrasiveness of the bad coal.



Observations: Build Projects

Our findings in many of our investigations in relation to build projects reflect that claims management is an area that is abused by Eskom officials and Contractors alike in the following manner:

- Contractors submit inflated, unsubstantiated, duplicated claims that are settled by Eskom officials – often by way of global settlements.
- Contractors refuse to submit substantiation for their claims and Eskom officials allow them to get away with this practice
- Contractors and officials manipulate claims assessment processes by providing incorrect/selective information
- Officials deliberately fail to timeously instruct claims assessors to defend Eskom against claims leaving them with unreasonably short timeframes within which to adequately prepare defences.
- Officials provide confidential information on Eskom's legal position/potential defences to the opposition.
- Officials circumvent the claims assessment process by issuing unnecessary and inflated variation orders.



Systemic Recommendations



Systemic Recommendations

Thorough vetting of officials upon entering Eskom is not enough, Eskom should consider implementing contractual terms that:

- Allow for access to the personal information of the employee, such as bank accounts of the employee (and his/her spouse & children), e-mails and cellular phone communications
- Allow for voice stress analyses and lie detector tests to be conducted routinely

Continued monitoring of high risk officials are required (such as SCM practitioners, contract managers, financial staff etc.)

- Monitor the lifestyles and financial transactions of high risk officials
- **Monitor declarations of interest**

Manage information obtained through DOIs by both officials and bidders – e.g. if an official declares his interest in a business, ensure that such business do not appear on Eskom's vendor database and if they do, remove them

Build a database of high risk officials/contractors identified in forensic and audit reports/bid documents etc.



Systemic Recommendations

Develop a system to red flag transactions approved by high risk officials on the SAP payment system or payments made to high risk suppliers/contractors.

Improve transparency in relation to procurement processes - Transparency provisions enable processes and decisions to be monitored and reviewed, helps ensure that decision-makers can be held accountable and also helps open public procurement to more competition.

Transparency needs to pervade all steps in the procurement cycle, from the earliest decisions on needs assessments, to the development of procurement plans and budget allocations, to bid evaluations, to implementing the contracts (and any contract amendments)

The attitude of turning a blind eye must be discouraged.

When strategic positions are filled, there is usually a rapid progression of the incumbents go-to people to fill in the support positions. This usually presents a fertile ground for corruption as a result of unquestionable loyalty to the incumbent.



Systemic Recommendations

- Independent expert oversight over claims and variations processes (the governance applied to managing claims should equally be applied to the assessment of variations).
- Re-baseline the Kusile and Medupi Project Works to accurately determine Eskom's exposure to the time and associated costs across all package works. This will provide Eskom with certainty as to its future capital expenditure to completion.
- Aggressively defend open claims against Eskom.
- Apply a consistent and forensic approach to the assessment of claims for additional time and cost in strict adherence to the contract.
- Ensure that project documentation and records to maintained to rebut, by way substantiated alternative assessment, inflated contractor claims.
- Eskom's first line of defence, is its construction project management teams. It is therefore essential that these individuals are properly skilled and working in Eskom's best interests at all times. Central oversight of contract management is required.
- Recover historic overpayments.
- Eskom considers alternative modes of coal delivery like rail and conveyor as opposed to road. This will prevent any tampering with the coal. This could also be more cost effective in the long term.



Summary of Outcomes



Summary of Outcomes

Focus Area	Disciplinary	NPA	Civil
Conflict of Interest	135	14 individuals	0
Declaration of Interest	5452 (3875 Finalised)	0	0
Whistleblowers	12	0	0
Coal Procurement and Transportation	1	15 individuals and companies	<ul style="list-style-type: none"> • 1 x Contract has been set aside R3.7b • 1 x Damages Claim has been instituted R734m • 1 x Case has been instituted against former Eskom executives, Board members and private companies R3.8b • 1 x Contract R6.5b has been terminated • 1 x Preservation and Forfeiture order has been obtained in the ST R11m. • R2.7m Claim instituted against former employee Zulu
Build Projects	14	73 referrals against individuals and companies	<ul style="list-style-type: none"> • 1 x matter have instituted R 105m • 1 x Pension has been preserved R24m • Several others matters are in the process
SAP	0	13 individuals and companies	<ul style="list-style-type: none"> • The SIU has filed its papers for R1,1b • The parties re currently in settlement discussions



New Allegations

The State Capture Recommendations

The SIU motivated for a new Proclamation that will allow it to investigate the specific recommendations that have been made by the State Capture Commission.

The SIU has undergone the necessary internal processes and have made a submission to the DoJ for approval of a new proclamation that will deal specifically with the recommendations of the State Capture Commission recommendations in so far as it relates to Eskom. The SIU can confirm that the Minister of Public Enterprises has provided support for the approval of a new proclamation to deal with the State Capture allegations.

Freezing of Assets

The SIU has streamlined its strategy in collaboration with the NPA, ID and AFU to freeze and forfeit all proceeds of crime including fixed assets acquired with the proceeds of crime.



THANK YOU

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