



SIU SA

STRIKING AGAINST CORRUPTION

Progress update to SCOPA

By

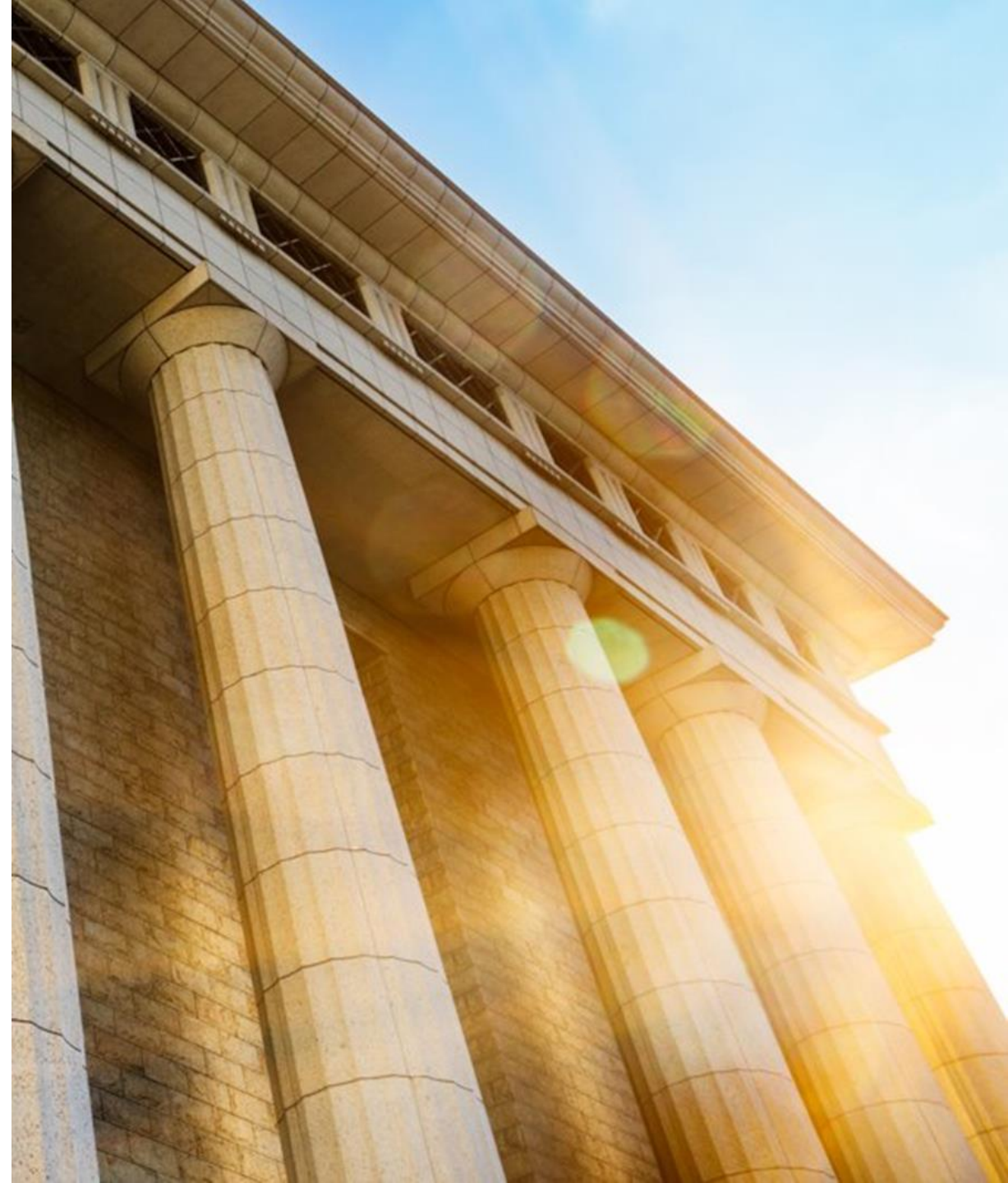
Adv. Andy Mothibi

12 September 2023

**Eskom Investigations into
Proclamations No 11 of 2018 as
extended by R3 of 2020 and R97 of
2022**

OUTLINE

- 1. About the SIU**
- 2. The Eskom Proclamations**
- 3. The Investigation Highlights**
- 4. Allegations by the former GCEO**
- 5. The GFFR Reports**
- 6. Question Requiring Answers**
- 7. Preliminary Findings**
- 8. The Way Forward**
- 9. The Fidelity Security Contract**





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ABOUT THE SIU

SIU FUNCTIONS & POWERS

The SIU was established in terms of Special Investigating Units & Special Tribunals Act 74 of 1996 by Proclamation No. R118 of 2001. The SIU is a public entity that conducts investigations conducted by a Proclamation from the President, once the investigation is complete the President receives a final report with findings.

Major Functions

- Investigate corruption, malpractice and maladministration
- Institute civil proceedings
- Referrals to relevant prosecuting authority
- Referrals for disciplinary action

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 action
- Works closely with other relevant agencies where its powers fall short in order to ensure consequence management

SIU CRITICAL SKILLS AND EXPERTISE



**Forensic Data
Analytics**

**Forensic
Accounting**

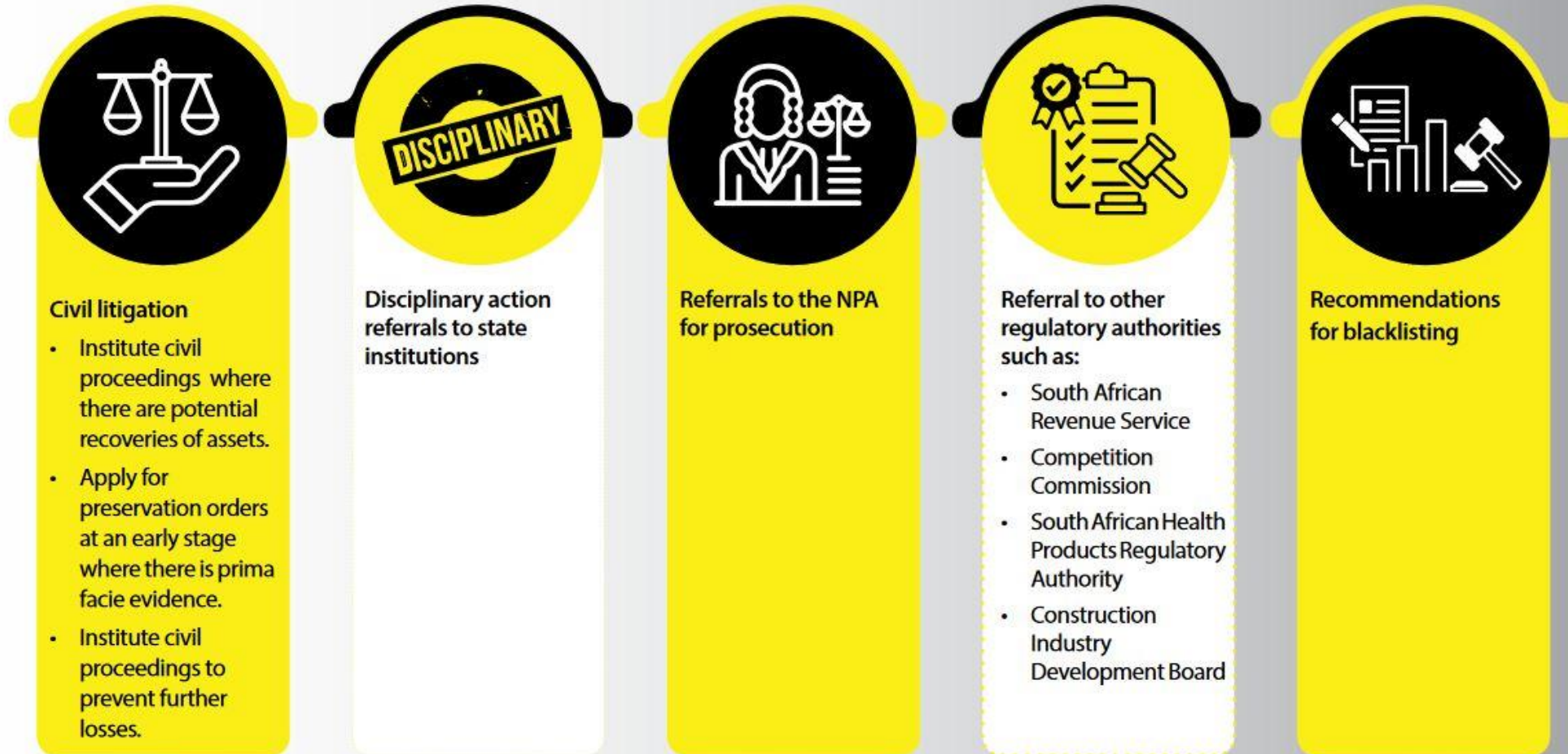
**Forensic
Investigation**

Civil litigation

Forensic Legal

**Cyber
Forensics**

SIU OUTCOMES & CONSEQUENCE MANAGEMENT



THE SIU'S LEGISLATIVE MANDATE

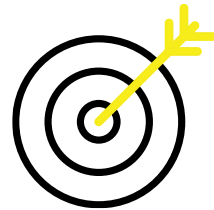
Empowering Legislation

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



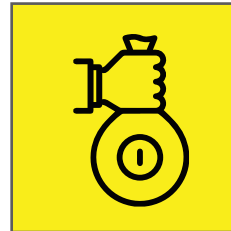
Vision

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



Mission

We provide forensic investigation and civil litigation services to Combat corruption, serious malpractices and maladministration to protect the interest of the State and the public.



Major Functions

- Investigate corruption, malpractice and maladministration
- Institute civil proceedings



SIU Powers

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ESKOM PROCLAMATIONS

Proclamation R11 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 R11 of 2018

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 (Oracle);
- Fuel oil supply contracts.



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HIGHLIGHTS OF THE ESKOM INVESTIGATIONS

KEY OUTCOMES	NUMBER / VALUE OF CASES
Civil matters before court	8
Value of contracts in respect of civil matters before court	R7 948 000 000.00
Actual Cash recoveries	R1.577bn
Value of contracts set aside/civil actions	R10,2bn
Disciplinary referrals	5617
NPA referrals	160
Administrative referrals (SARS, Blacklisting, CIDB)	85
Interim Presidential Reports	1



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ALLEGATIONS BY THE FORMER GCEO



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Allegations by the Former GCEO of Eskom

- The allegations made by the former GCEO of Eskom was never brought to the attention of SIU by either the former GCEO or other Eskom officials.
- After the publication of the interview by the former GCEO, the SIU made several attempts to contact the former GCEO however he never responded to our request for a meeting.
- The SIU continuously engages with officials from Eskom in order to scope new matters requiring further investigation.
- The SIU first became aware of the existence of the intelligence reports was on the morning before the former GCEO was due to appear before SCOPA – (26 April 2023). The SIU immediately requested a copy of the report from Eskom officials and were advised on Friday 5 May that Eskom is not in possession of the report and were unaware of such investigation.
- In terms of Section 34 of the PRECCA, the former GCEO as a person in a position of authority had a legal duty to report the suspicion of crime to the SAPS.

Allegations by the Former GCEO of Eskom

- As part of the SIU Stakeholder management principles, the investigation team is required to engage with the stakeholder on a regular basis. In this case since the commencement of Eskom investigations in 2018, the SIU met with the former GCEO (“ADR”) of Eskom and other senior officials on a regular basis in order to give them an update on the SIU investigations and continues to do so.
- The SIU provides a monthly report on the status of its investigations to Eskom.
- As part of its continuous engagement with Eskom, one of the matters regularly discussed are new areas requiring investigation.
- ADR, has on several occasions written to the SIU and requested the SIU undertake specific investigations, including prompting the SIU to apply for extensions to its proclamations, which the SIU has done resulting in Proc R97 being issued.



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GEORGE FIVAZ FORENSIC AND RISK

REPORT

Analysis of the GFFR Reports

- The SIU has confirmed that the private investigating company that compiled the reports was George Fivaz Forensics and Risk (GFFR)
- The SIU has requested and obtained a copy of the reports from GFFR who has cooperated with the SIU to date.
- The information consisted of the following:
 - 348 Agent Reports
 - 13 Monthly analysis reports
 - 10 Pre-read Reports and
 - 2 Diagrams
- Upon assessment of these reports the SIU has divided the information into 54 broad themes that feature across the reports.
- All 54 themes contain allegations of a criminal nature that will fall outside of the mandate of the SIU.
- Of the 54 themes, 22 themes contain allegations that fall within the mandate of the SIU.

Interviews with Mr Fivaz and Ms Mavuso

- The SIU conducted interviews and collected information from Mr George Fivaz of GFFR and Ms Busiswe Mavuso from BLSA. Both parties have been receptive to the SIU enquiries and cooperated to date and provided information that has been requested.
- The SIU obtained a copy of the contract between GFFR and BLSA which was concluded on 28 Jan 2022. The scope of the contract is as follows:

The Service Provider shall provide the following services:

a specialised risk and vulnerability assessment, to be provided by 30 June 2022, focused on the identification of imminent, immediate, and future threat and/or risk factors that have the potential to disrupt and/or to destabilise the day-to-day power supply to South African households, commerce and industry;

- The SIU can confirm that there are no other parties to the contract, including Eskom.
- The contract was for a period of 6 months ending on 30 June 2023 with an option to extend.
- The SIU learned that BLSA did not extend the contract.
- The value of the contract was R 17 146 000 ex VAT.
- A close out report was issued to BLSA in August 2023.

Engagements with Mr Fivaz, Ms Mavuso and Eskom

- According to Mr Fivaz, private individuals and business funded the exercise beyond 30 June 2023. Mr Fivaz did not disclose the identity of the funders and claimed confidentiality.
- Mr Fivaz informed the SIU that as far as he knew, ADR approached private funders. This is confirmed in ADR's book as well.
- Ms Mavuso informed the SIU that she did not know the identity of the private funders however she was aware that ADR was approaching private funders.
- Through engagements with Eskom and Mr Fivaz the SIU established that GFFR are not vendors to Eskom. The SIU has also independently verified this.
- Through these engagements the SIU has also established that the Eskom Board did not approve the investigation by GFFR.



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QUESTIONS REQUIRING ANSWERS

Questions Requiring Answers

- **Who authorized the appointment of a private investigating company that the former CEO referred to?**
GFFR was appointed by BLSA but facilitated by ADR. Confirmed in ADR's book as well.
- **Why would Eskom appoint a private investigating company when the allegations could have been referred to the SIU, to the DPCI or State Security Agency for investigation?**
Eskom did not appoint GFFR. ADR was acting on his own.
- **Whether the report of the private investigating company was handed to Eskom and presented to the Accounting Authority?**
The accounting authority were unaware of the investigation and were never presented with the reports.
- **If the report was presented to the Accounting Authority, the SIU would like to access the report?**
The SIU has obtained a copy of the reports directly from GFFR.



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Questions Requiring Answers

- How was the private investigating company paid by Eskom?

A portion of the funds came from BLSA, the balance (unknown) came from unknown private funders.

- If the investigation report was paid by third parties, then who are these parties?

GFFR claimed confidentiality on the identity of the private funders.

- Whether the payment by Eskom to the private investigating company was budgeted for and authorized by the Accounting Authority,

There were no payments directly from Eskom. Until the identity of the private funders are known, the SIU cannot confirm if there was indirect funding by Eskom.

- Whether the outcome of the private investigating company investigation is being acted upon, if so, how is it acted upon and by whom.

The SIU is aware that some parts of the reports are being act upon by the DPCI. The SIU had already begun some investigations prior to having access to the reports.

- Who leaked the report to the media and why?

It appears that elements from within GFFR leaked the reports to the media. This is confirmed from various media articles.



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PRELIMINARY FINDINGS

Preliminary Findings

These findings are preliminary and will be confirmed once the SIU has obtained the advice and guidance of Legal Counsel. The SIU does not limit its findings to these preliminary findings.

- ADR was not authorized to undertake the investigation,
- It appears that this investigation was not authorized, as unauthorized as it is, what would the evidentiary status of its contents be? The reports are disclaimed as intelligence that requires further investigation.
- Some of the information in the reports suggest that GFFR has had access to Eskom information. If this is confirmed then GFFR will have to explain how it came to be in possession of the said information.
- Can private parties undertake investigation into a State Institution without the necessary authority? It cannot be and this should not be permitted and allowed.
- GFFR conducted an unauthorized investigation into ESKOM. Especially in view of the parties to the contract.
- The sourced funds was paid directly to the to the service provider (GFFR) and not to Eskom.
- Could not establish any procurement process followed in appointing GFFR.

Who should be held to account:

- Consideration should be given to holding the former GCEO to account. As he is no longer employed by Eskom , SIU will consider the nature of the action required and advise the Board.
- Any action against the Fivas Company? They should know or alternatively reasonably ought to have known that they can't conduct investigation in a State Institution without the necessary authority. SIU will consider the nature of the action to be recommended and advise the Board.
- Any action against BLSA? They should know or alternatively reasonably ought to have known that they can't conduct investigation in a State Institution without the necessary authority. SIU will consider the nature of the action to be recommended and advise the Board.
- Other Eskom employees, who cooperated with the unauthorised investigation and provided information and support to the investigation will be identified and appropriate action will be recommended against them.



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THE WAY FORWARD

Engagements with the DPCI and FIC

- The SIU has been made aware that the DPCI is now also in possession of the GFFR reports and sent a letter to the DPCI pointing out areas requiring criminal investigations and proposing a joint effort in areas where the mandates of the SIU and DPCI overlap. This proposal was well received and discussions are ongoing so that efforts are combined.
- SIU has held discussions with the DPCI's Serious Corruption Cases office as well with the Provincial Head of the DPCI in Mpumalanga with a view of establishing joint operations.
- The strategy to combine efforts must not be taken as a direction to the GFFR reports. The discussions were already under way between the financial sector and law enforcement.
- The SIU has engaged with the FIC and can confirm that a Tactical Operational Team ("**TOG**") has been established. The TOG will operate under the provisions of the South African Anti Money Laundering Task Force ("**SAMLIT**") which is a private/public partnership initiative to fight money laundering. The first meeting was held on 6 Sept 2023 and the first cases have been prioritised and investigations have commenced.
- The idea of a TOG was well received and the major banks have already come on board.
- The fruit of this engagement have already started to yield results.

MATTERS UNDER INVESTIGATION BY THE SIU AND LINKED TO THE GFFR REPORTS

- The SIU was already investigating matters that feature in the GFFR Reports.

Location	No of Contracts	Value
Kusile	3	R42m
Medupi	6	R15m
Matla	5	R12,5m
Kendal	5	R22m
Arnot	4	R7m
Tutuka	3	R4m
Duvha	4	R3m
Grootvlei	1	R500k

- These contracts were awarded to 7 Companies, some with links to each other with common actors. The companies are active across power stations

The Next Steps

The SIU also identified 50 additional entities mentioned in the GFFR reports that are vendors to Eskom. Information relating to the contracts awarded to these entities have been requested. Once the information has been received, the SIU will develop a data base wherein certain patterns will emerge. The following information will form part of the data recorded.

- What goods or services are being procured and the location/power station
- At what price are the goods/ services being procured
- What procurement strategy is being used – Emergency, single source, quotation or open tender
- Who are the Eskom employees involved
- Who are the suppliers and when they were registered as vendors
- Who are the common actors in the companies and Eskom.

The SIU will seek to terminate existing contracts unlawfully awarded and seek to recover undue benefits from the companies and Eskom employees.

The SIU will consider litigation on closed out contracts and seek just and equitable remedy from the companies concerned.

The SIU will work in collaboration with the NPA, DPCI and AFU to ensure that referrals are done in real time and swift action is taken without compromising the integrity of the evidence gathered.



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THE FIDELITY SECURITY CONTRACT

The Fidelity Security Contract

- The SIU confirms that it has commenced its investigation into the Fidelity Security Contract (“FSC”)
- The scope of this investigation will not be limited to the FSC and therefore the SIU is casting its net wider than just this one contract.
- The SIU has requested and obtained the relevant documentation from Eskom in relation to this contract.
- The SIU has commenced with analysis of documentation received and interviews of persons identified.
- In the submission for a declaration of emergency Adv Pillay refers to “credible intelligence received”. The SIU will address this question of credible intelligence considering no intelligence report is attached to the submission.
- This investigation is ongoing.



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Thank you

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