

BETRAYAL OF THE PROMISE: HOW SOUTH AFRICA IS BEING STOLEN

July 2017



Background

- “State Capture”, and the future of democratic governance in South Africa, has **dominated** public debate ever since the former Public Protector published her report, *State of Capture*, in **October 2016**.
- In **response** to this national debate, and because the academic community had contributed little to it, the State Capacity Research Project (SCRP) was constituted as an **interdisciplinary, Inter-University research partnership**.
- The SCRCP aimed to **achieve two objectives**: (1) provide a conceptual framework to help to make sense of what we describe in our report as a ‘silent coup’; and (2) collate a vast quantity of empirical material, which shows how state institutions have been ‘repurposed’ to redirect rents away from development and into the hands of an increasingly confident power elite – what we call the symbiotic relationship between the constitutional state and the shadow state.
- We **agree** with the intentions of the governing party’s commitment to ‘**radical economic transformation**’, but in our view this is being used as an ideological smokescreen to mask the rent seeking practices of the Zuma-centred power elite.
- To this end, our work is not only a collaboration between University research institutions – we also aim to collaborate with various stakeholders, social movements and organisations engaged in similar work, including the **South African Council of Churches (SACC)**, who mounted their own independent process called the **Unburdening Panel**.
- This triangulation of **different bodies of evidence** is of **great significance**.

A Silent Coup has taken place

The dominant conception of President Jacob Zuma and his allies as a criminal network that has captured the state obscures the existence of a political project at work to repurpose state institutions to suit a constellation of rent-seeking networks that have constructed – and now span – the symbiotic relationship between the constitutional and shadow state. This is akin to a silent coup.

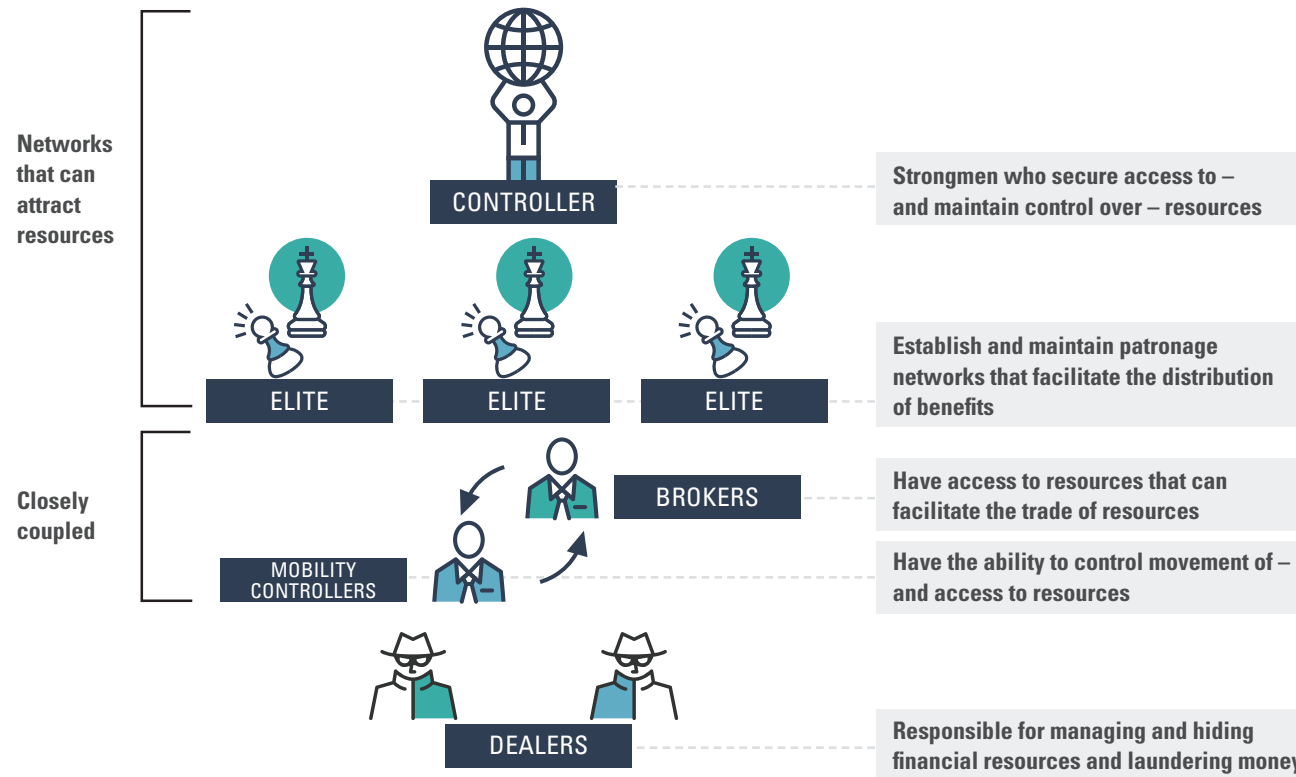
At the epicentre of the political project mounted by the Zuma-centred power elite is a rhetorical commitment to radical economic transformation. Unsurprisingly, although the ANC's official policy documents on radical economic transformation encompass a broad range of interventions that take the National Development Plan as a point of departure, the Zuma-centred power elite emphasises the role of the SOEs, particularly their procurement spend.

Eskom and Transnet, in turn, are the primary vehicles for managing state capture, large-scale looting of state resources and the consolidation of a transnationally managed financial resource base, which in turn creates a continuous source of self-enrichment and funding for the power elite and their patronage network

How the Silent Coup has taken place

The symbiotic nexus between the constitutional and shadow state requires the integration of a range of skillsets similar to what exists in most international corporations. The composition of the Zuma- centred power elite is in many respects highly organised, following the structure of what in academic terms is called a 'war economy'. In a war economy, the 'shadow state' establishes a number of informal structures (see below), which produce systems of "profit, power and protection", and which, in turn, serve to further their operations making it possible to have continued preferential access to resources and power through an exploitative economic system. The cycle can, therefore, continue. One of the key requirements in establishing these shadow structures is the ability to secure a system of command and control over how the resources are accessed, moved and distributed.

Generalised model of a patronage network that extracts and administers rents



The Rise of President Zuma's power elite

The rise of Zuma can be understood in this context. With an economic environment set by the developmental state discourse, infrastructure-led growth, BEE, the emerging significance of the SOEs and state-investment institutions like the Public Investment Corporation, conditions were ripe for an assertive power elite to repurpose state institutions in the name of addressing the contradictions of the Mbeki era. The solution of the Zuma faction was heavy dependence on the use of the procurement systems of the SOEs. Repurposing the SOEs to become the primary mechanisms for rent seeking at the interface between the constitutional and shadow state became the strategic focus of the power elite that formed around Zuma.

Periodization of the Political Project

The Polokwane moment: December 2007 represented a repudiation of former President Thabo Mbeki's approach to the economy – in particular the idea that 'white' business could be pushed to 'transform' through BEE measures and Affirmative Action. This set off a search for a more 'radical' model of economic transformation.

Recognition of government procurement as an alternative radical empowerment opportunity:

Within the EDD and DTI, legitimate ideas emerged, especially regarding the use of government procurement budgets, especially those in the State-Owned Enterprises, to displace traditional, white firms and to build new, black-owned and controlled industries.

The move to extra-legal forms of procurement: From about 2011/2012 however, the project of RET itself radicalises. Its protagonists come to believe that the project cannot be undertaken within the framework of the constitution and the law and increasingly move to extra-legal forms of procurement.

Shadow state emerges: In this context of growing illegality, there is a move from 2014 to weaken and bring under political control key state institutions with investigative and prosecutorial functions, including SARS, the Hawks and the NPA. Political power starts shifting away from its formal institutional locations in the ANC, in government and in the cabinet. There is a mushrooming of 'kitchen-cabinets', including in Inter-ministerial Committees, frequent cabinet changes, and the growing informal decision-making networks, the most obvious being at Saxonwold, the home of the Guptas.

In this fluid and unstable environment, the project is increasingly hijacked by persons and groups with criminal intent. That is, the project of radical economic transformation is criminalised.

The Protagonists

- At the nexus of this symbiosis between the shadow and constitutional states are a handful of the same individuals and companies connected in one way or another to the Gupta-Zuma family network. The way that this is strategically coordinated constitutes the shadow state. Well-placed individuals located in the most significant centres of state power (in government, SOEs and the bureaucracy) make decisions about what happens within the constitutional state.
- Those who resist this agenda in one way or another are systematically removed, redeployed to other lucrative positions, placed under tremendous pressure, or hounded out by trumped up internal and/or external charges and dubious intelligence reports.

SOEs: Transnet and Eskom

We have noted four steps that have become a kind of ‘repurposing modus operandi’ at the SOEs:

- A new minister changes the board composition of a SOE.
- The SOE announces a major new acquisition or build project.
- People are brought on to the board who are either strongly in favour of radical economic transformation and/or have close personal links to some of the bidders.
- The tender is awarded in circumstances where there is a clear conflict of interest.

***ESKOM**, which spends R45-billion annually on coal for its 13 coal-fired power stations) and **TRANSNET**, which in April 2012 announced that between 2012 and 2019 it would spend R300bn improving its ageing rail network, are the centre pieces of this strategic focus on SOEs as the drivers of RET.*

Examples - Eskom procurement (Tegeta / Optimum)

“It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of Optimum Coal Holdings and is thus in severe violation of the Public Finance Management Act.” State of Capture report, 2016.

July 2013

Owner of Optimum Coal Holdings, Glencore, writes to Eskom to invoke the “hardship clause” in their contract to enable the parties to renegotiate the coal-supply contract, which was leading to losses of about R1-billion for Glencore.

May 2014

They sign a “Co-operation Agreement”, which paves the way for a new coal-supply contract to stop Glencore’s losses.

March 2015

Eskom’s Executive Procurement Committee approves a new contract for Glencore but defers final approval to new Acting CEO Brian Molefe.

April 2015

Brian Molefe becomes Eskom’s acting CEO.



May 2015

Molefe informs Glencore that he rejects new terms and he suspends all negotiations

July 2015

Several things happen -

- Eskom imposes as R2.5-billion fine on Glencore for supplying poor quality coal, penalties are rarely applied by Eskom and appear to have been done selectively in Eskom’s case and probably contributed to Optimum’s financial difficulties
- Glencore then announces that it has to retrench 380 employees because of its financial troubles;
- KPMG approach Glencore with an offer from an “anonymous client” – later confirmed to be the Guptas – offering to buy Optimum for R2-billion. Optimum turns the offer down.

August 2015

Glencore announces that they are placing Optimum Coal Holdings and Optimum Coal Mine under business rescue.

According to the Public Protector’s report: “The only individuals/entities who stood to benefit from [Optimum] not being awarded a revised contract by Eskom was the subsequent prospective suitors who could now purchase an entity in business rescue.”



September 2015

Mosebenzi Zwane is appointed Mines Minister.

November 2015

Two things happen -

- Department of Mineral Resources places work stoppages on Glencore mines, worsening their financial position.
- Zwane travels to Switzerland to meet Glencore’s Ivan Glasenberg. Thuli Madonsela’s State of Capture report cites an “independent source” saying that **Rajesh Gupta** and **Salim Essa** were present at the meetings. Days after Zwane’s return, Optimum’s business rescue practitioners conditionally agree to sell the mine to Tegeta for R2,15-billion.



In her report, Madonsela notes: “It is potentially unlawful for the Minister to use his official position of authority to unfairly and unduly influence a contract for a friend or in this instance his boss’s son at the expense of the state. (**Duduzani Zuma** is a shareholder in Tegeta). This scenario would be further complicated if his actions were sanctioned by the President.”



December 2015

Glencore agrees to sell Optimum. At the time, several board members are conflicted, according to the Public Protector:

- Ben Ngubane (chair) – co-director at Elgasolve (part-owner of Tegeta)
- Mark Pamensky – interests in entities related to or part-owning Tegeta
- Viroshini Naidoo – director of Albatime which part-funded the Tegeta purchase of Optimum
- Molefe (CEO) was in frequent phone contact with the Gupta family (owners of Tegeta) during the period of the sale, and in contact with **Ms Ragavan** (director at Tegeta) during the final month.

January 2016:

Two things happen -

- Tegeta given easier terms for Hendrina
- Tegeta given lucrative contracts to supply Arnot

February 2016

- Tegeta given another lucrative contract to supply Arnot (in total these contracts amount to R1.6-billion).

Public Protector states: “It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of [Optimum Coal holdings] and is thus in severe violation of the PFMA.”

April 2016

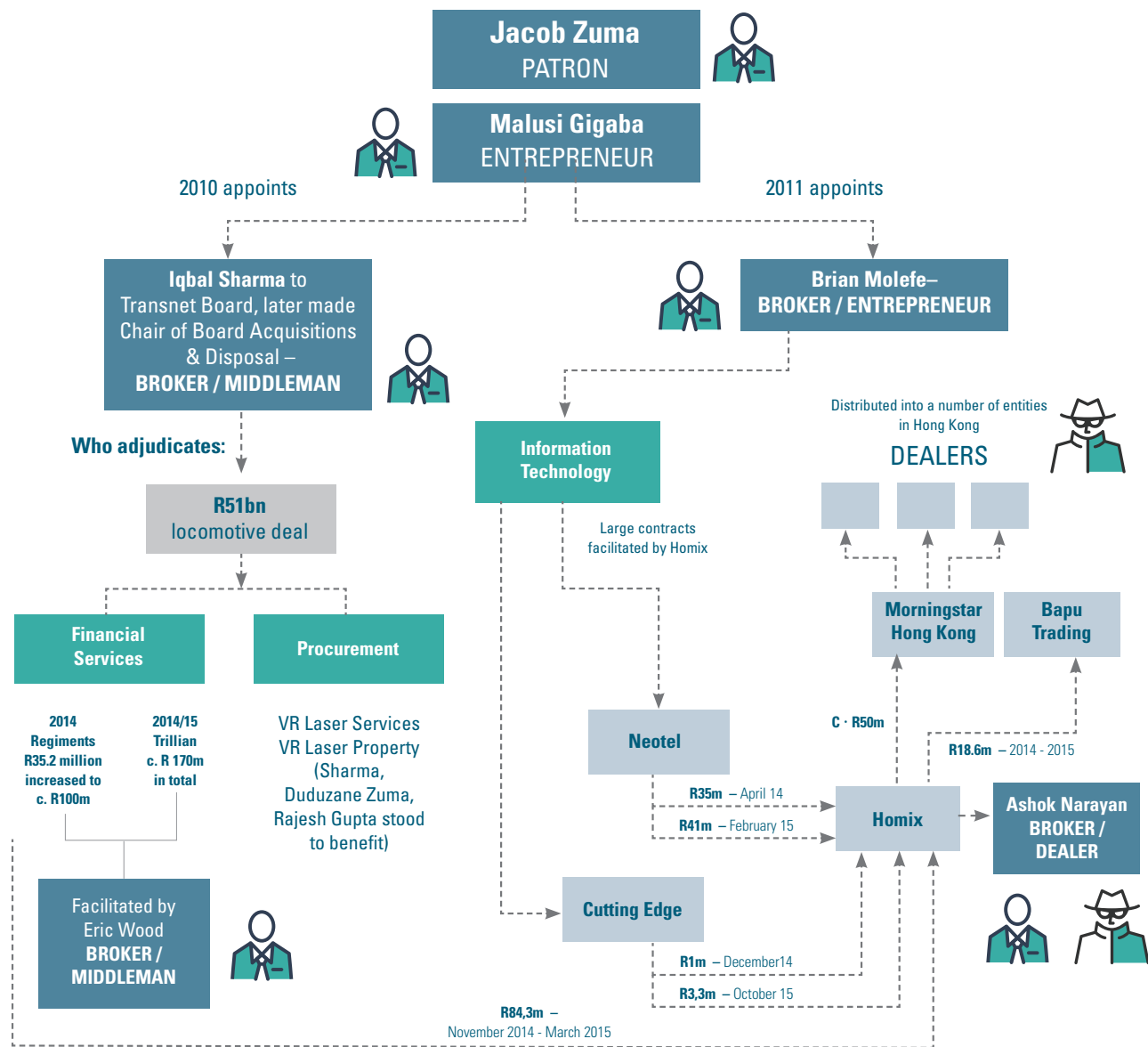
A few things happen -

- April 11: Tegeta is short of R600million to buy Optimum and banks refuse bridging finance to the company.
- April 11: The Eskom board approves another R600-million contract for Tegeta, plus prepayment.
- April 13: Eskom makes the payment.
- April 14: Tegeta’s full funds transferred to buy Optimum.
- April 21: Eskom give Tegeta another lucrative Arnot contract.
- April 24: Tegeta attempt to access mine rehabilitation fund

May - September 2016

Mine rehabilitation funds at a Bank of Baroda account are being used the Public Protector’s report shows that once the fund for Optimum and Koorfontein had been moved from Standard Bank to Bank of Baroda, they were not ring-fenced and the interest was not reinvested, suggesting that it may have been used for other purposes, which is illegal.

The Broker Network in Action: Transnet



Nothing short of audacious

What happened at Eskom was nothing short of audacious. The SOE had leveraged its procurement budget to displace an established corporation in favour of a newcomer with strong links to the proponents of radical economic transformation. As much as this smacked of corruption, from the perspective of these proponents the Guptas were a useful 'battering ram' to displace white monopoly capital. The trouble was that Glencore/Exarro was a largely black-owned and controlled firm.

- The Public Protector noted that almost all the new appointees to the Eskom board by Minister Brown in 2014, and prior to this deal, had links to the Gupta family.
- Nazia Carrim is the wife of Muhammed Sikander Noor Hussain, a family member of Salim Essa. Romeo Khumalo was a director alongside Essa at Ujiri Technologies. Mark Pamensky was a former director of the Gupta's Oakbay Resources and Exploration. Kuben Moodley was a special advisor to the Minister of Environmental Affairs; Mosebenzi Zwane was a director of one of Pamensky's companies. Marriam Cassim used to work at Sahara Computers – owned by the Guptas. Ben Ngubane was also a director with Salim Essa at Gade Oil and Gas.
- Those board members who were not part of the right network were quickly removed. The Eskom board, in other words, was a tangled web of mostly undeclared, personal and business associates, all linked to Salim Essa and the Gupta family.

Further questionable coal contracts

- The Office of the Chief Procurement Officer's website provides information about contract deviations and expansions. It currently only has information for 2016.
- In the second quarter of the year it records that with respect to Eskom, a Tegeta contract to supply the Majuba Power Station was increased from R3 794 748 750 by an additional **R2,9 million**.
- Another Tegeta contract to supply coal to the Arnot Power station rose by R854 955 000, in addition to the original contract value of R235 021 150.
- Koorfontein mine, owned by Tegeta, with a contract to provision the Komati Power Station had its contract increased by a further **R341 544 200**.
- In the third quarter of 2016, the Koorfontein mine saw the value of its contract increase by a further R6 955 200 000, in addition to the original amount of R341 544 200 – a **2000 percent escalation**. In effect, as the Denton report makes clear, Eskom was paying massive rents to third parties for the same coal it had previously bought cheaply.

Conclusion

- President Zuma's political project, legitimised by a rhetorical commitment to radical economic transformation, is both undermining the democratic and constitutional form of the South African state as well as weakening the capability of government and of public institutions – the very administrations that progressive policies, for example, in health or education need for effective implementation.
- The state, in short, is being turned into an *undevelopmental* mishmash of apparatuses connected via the networks that manage the symbiotic relationship between the constitutional and shadow states.
- The majority of South Africans will bear the brunt of these corrosive developments. Worryingly, large-scale corruption enables much wider corrupt activities to go undetected at the lower tiers of government. Under such conditions, it is impossible to achieve transformative objectives that could improve livelihood of the majority of South Africans.

Addendum I

South African government guarantee exposure (2014/15–2016/17)












R billion	2014 / 15		2015 /15		2016 / 17	
	Guarantee	Exposure ²	Guarantee	Exposure ²	Guarantee	Exposure ²
Public institutions	469.6	220.9	469.9	255.8	477.7	308.3
<i>of which:</i>						
<i>Eskom</i>	<i>350.0</i>	<i>149.9</i>	<i>350.0</i>	<i>174.6</i>	<i>350.0</i>	<i>218.2</i>
<i>SANRAL</i>	<i>38.9</i>	<i>27.4</i>	<i>38.9</i>	<i>27.2</i>	<i>38.9</i>	<i>30.1</i>
<i>Trans-Caledon Tunnel Authority</i>	<i>25.6</i>	<i>20.8</i>	<i>25.8</i>	<i>21.2</i>	<i>25.7</i>	<i>20.7</i>
<i>South African Airways</i>	<i>14.4</i>	<i>8.4</i>	<i>14.4</i>	<i>14.4</i>	<i>19.1</i>	<i>17.9</i>
<i>Land and Agricultural Bank of South Africa</i>	<i>6.6</i>	<i>2.1</i>	<i>6.6</i>	<i>5.3</i>	<i>11.1</i>	<i>5.4</i>
<i>Development Bank of Southern Africa</i>	<i>12.9</i>	<i>4.1</i>	<i>13.9</i>	<i>4.4</i>	<i>12.7</i>	<i>4.2</i>
<i>South African Post Office</i>	<i>1.9</i>	<i>0.3</i>	<i>4.4</i>	<i>1.3</i>	<i>4.4</i>	<i>3.9</i>
<i>Transnet</i>	<i>3.5</i>	<i>3.8</i>	<i>3.5</i>	<i>3.8</i>	<i>3.5</i>	<i>3.8</i>
<i>Denel</i>	<i>1.9</i>	<i>1.9</i>	<i>1.9</i>	<i>1.9</i>	<i>1.9</i>	<i>1.9</i>
<i>South African Express</i>	<i>1.1</i>	<i>0.5</i>	<i>1.1</i>	<i>0.5</i>	<i>1.1</i>	<i>1.0</i>
<i>Industrial Development Corporation</i>	<i>1.6</i>	<i>0.3</i>	<i>2.0</i>	<i>0.2</i>	<i>1.9</i>	<i>0.2</i>
<i>South African Reserve Bank</i>	<i>7.0</i>	<i>—</i>	<i>3.0</i>	<i>—</i>	<i>3.0</i>	<i>—</i>
Independent power producers	200.2	96.2	200.2	114.0	200.2	125.8
Public-private partnerships³	10.1	10.1	10.3	10.3	10.9	10.9

Source: Budget Review 2017

³⁰ See for, example, the ANC's 2017 organisational renewal document that argues that during the Mbeki period there was "marked progress towards a National Democratic Society." This was because economic growth was relatively quick, fiscal expenditure on social and other services grew dramatically and civil society activism was strong. Most noteworthy is that the ANC suggested that "institutions tasked with defending and promoting the Constitution sought to play their role, with the judiciary standing out among them in asserting its independence and a progressive interpretation of the provisions of the Constitution". This was a far cry from the suggestion that the Constitution was an obstacle to progressive transformation in South Africa. (See ANC. 2017. *Organisation renewal and organisational design discussion document*. 5th National Policy Conference 30 June - 5 July 2017, Gallagher Convention Centre, Midrand, Gauteng, South Africa.

Addendum II

Value of South African SOE procurement (2010–2011)

	State Owned Enterprise	SOE Procurement Expenditure	% of Total Government Procurement Expenditure
1	 ACSA	R 2,200,000,000.00	0,26%
2	 City Power	R 1,500,000,000.00	0,18%
3	 CSIR	R 700,000,000.00	0,08%
4	 Denel	R 1,600,000,000.00	0,19%
5	 Eskom	R 74,000,000,000.00	8,75%
6	 IDC	R 226,000,000.00	0,03%
7	 PetroSA	R 12,000,000,000.00	1,42%
8	 SAA	R 14,800,000,000.00	1,74%
9	 SAPO	R 6,000,000,000.00	0,7%
10	 SARS	R 2 700 000 000.00	0,32%
11	 SITA	R 6 000 000 000.00	0,7%
12	 TELKOM SA	R 13 000 000 000.00	1,5%
13	 TRANSNET	R 70 000 000 000.00	8,3%
	TOTAL	R 212 726 000 000.00	25%

Source: DTI, 2011