

HOW ONE WORD CAN CHANGE THE GAME:

Case Study of State Capture and the South African Social Security Agency

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State Capacity Research Project
Convenor: Mark Swilling

Authors

Robyn Foley (Centre for Complex Systems in Transition, Stellenbosch University)

Professor Mark Swilling (Centre for Complex Systems in Transition, Stellenbosch University)



PREFACE

In April 2017, the State Capacity Research Project, funded by the Open Society Foundation, was established in response to what many considered to be the last strategic move by then president, Jacob Zuma, to advance and cement the corrupt political project and finally capture National Treasury. The purpose of the *Betrayal of the Promise* report was primarily to provide an academic framework in which to better understand the social, political, and economic moment in South Africa.

This report forms part of the second set of deliverables for the State Capacity Research Project and presents a detailed case study of state capture at an institution that is responsible for arguably one of the most important government functions, namely the South African Social Security Agency (SASSA), which is responsible for the distribution of social grants to the most vulnerable members of our society.

The reasons for selecting SASSA as a case study are threefold. The first being that it does not directly involve the Guptas or any of their known associates. This is important as it highlights that state capture is not contained or limited to only a closed circle of connected individuals, but is part of a much larger network of political players. Up until now significant focus has been on commercial state-owned enterprises (a preferred locale for the Guptas), but, as argued in this report, state capture has infiltrated other spheres of government and infected its fundamental social service functions as well.

The second reason for selecting this case study is that it provides a rare detailed example of the mechanics and modus operandi of state capture. This is for the most part thanks to the litigation which has surrounded the Cash Paymaster Services Ltd (Pty) contract with SASSA and

the extensive volume of information available in the public domain as a result. This case study is thus predominantly based on these legal filings, together with annual reports, speeches, media statements, parliamentary meetings, and reporting by investigative journalists.

The last and arguably most important reason for selecting SASSA as a case study is that it illustrates that state capture is not just a form of 'grand corruption' resulting in a financial loss to the state and taxpayer, but is a political project that has a direct negative impact on the poorest and most vulnerable in our society; the consequences of which will undoubtedly be felt for years to come.

Since the release of the *Betrayal of the Promise* report in May 2017, there have been a significant number of changes to South Africa's political and economic landscape. The release of the Gupta-leak e-mails and the revelations in the Eskom Inquiry in parliament have reaffirmed several of the key findings in the *Betrayal of the Promise* report. A formal Inquiry into State Capture has been instated and arrest warrants are now awaiting the Gupta brothers, should they return to South Africa. Jacob Zuma has resigned and Cyril Ramaphosa is now president of the African National Congress and the country. A sense of cautious optimism is slowly emerging; however, the country still faces the immense task of unravelling and repairing the damage done by the Zuma-centred political project. The aim of this case study is to contribute to this task by shedding light on how the shadow state operates and manoeuvres alongside and within formal government structures. It is only through having a better understanding of the broader political project that South Africa will be able to safeguard its constitutional democracy and progress towards achieving the promise of 1994.

CONTENTS

| | |
|---|-----------|
| 1 INTRODUCTION | 1 |
| 1.1 KEY TERMS AND CONCEPTS | 2 |
| 1.2 STRUCTURE OF THE REPORT | 4 |
| <hr/> | |
| 2 SASSA AND THE SOUTH AFRICAN WELFARE SYSTEM | 5 |
| 2.1 BACKGROUND ON SOUTH AFRICA'S SOCIAL GRANTS | 5 |
| 2.2 LEGISLATIVE AND INSTITUTIONAL FACTORS REGARDING SASSA | 8 |
| 2.3 THE BIOMETRIC BULLET | 9 |
| 2.4 THE AFRICAN NATIONAL CONGRESS WOMEN'S LEAGUE (ANCWL) AND THE POLITICAL MACHINE | 11 |
| <hr/> | |
| 3 SASSA-GATE CHRONOLOGY | 13 |
| 3.1 FIRST FAILED ATTEMPTS | 13 |
| 3.2 THE INVALID 2012 CPS CONTRACT | 18 |
| 3.3 MINISTERIAL COMMITTEES, TASK TEAM, AND WORK STREAMS | 24 |
| 3.4 IN THE MEANTIME | 30 |
| 3.5 SELF-CREATED CRISIS OF 2017 | 31 |
| <hr/> | |
| 4 CONTROVERSIES AND CONTRADICTIONS | 41 |
| 4.1 WHAT IS THE DEAL WITH CPS? | 41 |
| 4.2 IN THE SHADOWS | 48 |
| 4.3 CABINET SHUFFLE | 56 |
| 4.4 SASSA'S SECOND FUNCTION: BLURRING THE LINES BETWEEN PARTY AND STATE | 58 |
| <hr/> | |
| 5 THE LINES BETWEEN THE DOTS | 59 |
| 5.1 WHAT FUTURES MAY UNFOLD | 59 |
| 5.2 PROTECT THE ELITES AT WHAT COST? | 64 |
| <hr/> | |
| 6 CONCLUSION | 67 |
| <hr/> | |
| ADDENDUM | 69 |

ACRONYMS AND ABBREVIATIONS

| | | | |
|---------------|--|----------------|---|
| Adv. | Advocate | MTT | Ministerial Task Team |
| ANC | African National Congress | NASDAQ | National Association of Securities Dealers Automated Quotations |
| ANCWL | African National Congress Women's League | NDA | National Development Agency |
| ANCYL | African National Congress Youth League | NEC | National Executive Committee |
| AOD | Acknowledgement of debt | NEDLAC | National Economic Development and Labour Council |
| ATM | Automatic teller machine | Net1 | Net 1 UEPS Technologies Inc. |
| BAC | Bid Adjudication Committee | NGO | Non-governmental organisation |
| B-BBEE | Broad-based Black Economic Empowerment | NPA | National Prosecuting Authority |
| BEC | Bid Evaluation Committee | NPS | National Payment System |
| BEE | Black Economic Empowerment | NSSF | National Social Security Fund |
| BSC | Bid Specification Committee | NT | National Treasury |
| BVI | Business Venture Investments | PACSA | Pietermaritzburg Agency for Community Social Action |
| CAO | Compliance Advisor/Ombudsman | PASA | Payment Association of South Africa |
| CC | Close Corporation | PCSD | Portfolio Committee on Social Development |
| CEO | Chief executive officer | PFMA | Public Finance Management Act |
| CFO | Chief financial officer | PIC | Public Investment Corporation |
| COGTA | Cooperative Governance and Traditional Affairs [Department of] | PMG | Parliamentary Monitoring Group |
| CPI | Consumer price index | PoS | Point-of-sale |
| CPS | Cash Paymaster Services | RAF | Road Accident Fund |
| CSIR | Centre for Scientific and Industrial Research | RET | Radical economic transformation |
| CSSD | Comprehensive Social Security Document | RFI | Request for Information |
| CVM | Cardholder Verification Method | RFP | Request for Proposal |
| DA | Democratic Alliance | SABC | South African Broadcasting Corporation |
| DCS | Department of Correctional Services | SACP | South African Communist Party |
| DG | Director General | SAPO | South African Post Office |
| DOJ | Department of Justice [United States] | SARB | South African Reserve Bank |
| DSD | Department of Social Development | SARS | South African Revenue Service |
| DWS | Department of Water and Sanitation | SASCOC | South African Sports Confederation and Olympic Committee |
| EFT | Electronic funds transfer | SASSA | South African Social Security Agency |
| EMV | Europay, MasterCard, and Visa | Sasstec | SA Security Solutions and Technologies |
| EPE | EasyPay Everywhere | SC | Senior Council |
| FBI | Federal Bureau of Investigation | SCM | Supply Chain Management |
| FIC | Financial Intelligence Centre | SCOPA | Standing Committee on Public Accounts |
| FICA | Financial Intelligence Centre Act | SCRP | State Capacity Research Project |
| FNB | First National Bank | SDA | Special Disbursement Accounts |
| GEAR | Growth, Employment and Redistribution | SEC | Securities and Exchange Commission |
| ICT | Information and communications technology | SITA | State Information Technology Agency |
| IDTT | Inter-departmental Task Team | SIU | Special Investigations Unit |
| IFC | International Finance Corporation | SOCPEN | Social pension |
| IIMS | Integrated Inmate Management System | SOE | State-owned enterprise |
| IMC | Inter-ministerial Committee | TTT | Technical Task Team |
| IP | Intellectual property | UIF | Unemployment Insurance Fund |
| ISS | Institute of Security Studies | UN | United Nations |
| JSE | Johannesburg Stock Exchange | US | United States |
| MAC | Ministerial Advisory Committee | USA | United States of America |
| MoA | Memorandum of agreement | WMC | White Monopoly Capital |
| MP | Member of parliament | | |

1

INTRODUCTION

In an interview with the South African Broadcasting Corporation (SABC), speaking on the side-lines of the Commission on the Status of Women at the United Nations (UN) in New York, on 19 March 2016, Bathabile Dlamini, Minister of the Department of Social Development (DSD) and leader of the African National Congress Women's League (ANCWL), cautioned ANC members against airing the party's dirty laundry in the media, saying:

All of us in the NEC [National Executive Committee] have our smallanyana skeletons and we don't want to take out skeletons because all hell will break loose.¹

Dlamini's comment was made in the context of her absence from the first ANC NEC meeting held after the public media statement made on 16 March, by then Deputy Minister of Finance, Mcebisi Jonas, in which he took South Africa into his confidence and confirmed that he had rejected the Gupta's R600 million bribe to become an agent of the shadow state and be promoted to finance minister.² This statement, as short and succinct as it was, provided the nation with the confirmation that indeed there are many dark and dubious secrets hiding in the shadows, behind the closed doors of power centred around Jacob Zuma.

A little less than a year ago, a collective of academics released the report. The report provides a conceptual framework for understanding the phenomenon of 'state capture', outlining the mechanics by which state institutions are repurposed and the shadow state formed. The subsequent release of the Gupta Leaks e-mails and revelations contained therein have reaffirmed the findings which were laid out in the *Betrayal of the Promise* report. The role of the Guptas has been exposed and more details of the extensive depth and breadth to which the parasitic network extends are emerging every day. The shock of these revelations to the nation is significant, a judicial inquiry into the Guptas' business dealings with the state, and several parliamentary committee inquiries into 'state capture' have been launched, which are signals that the fight

to reclaim the constitutional state has gained momentum. This momentum has led to the recent resignation of Jacob Zuma and the instatement of Cyril Ramaphosa, who was elected president of the ANC in December 2017 at a highly contested national conference and he is now the president of South Africa. All of these developments, together with much long awaited action finally being taken by the National Prosecuting Authority (NPA) (in instituting charges against several of the Gupta cohorts), have most South Africans feeling a new sense of hope and relief. However, with much of the country's focus now on repairing the damage left in the wake of the Zuma-Gupta network shenanigans, it would be easy to resort to the 'corruption'-based narrative of state capture and neglect to interrogate the other less conspicuous networks of Zuma elites and more nuanced dynamics of the political project.

Criminal investigations and various forms of inquiries, which seek to unearth the corrupt activities, should be applauded and will undoubtedly go a long way to bring those who are guilty of plundering state resources for individual gain to book. Still, the corruption of the country's polity cannot be redressed through court actions or convictions of individuals alone. The political project, which is state capture, extends beyond just looting of the state - it is also about the corruption of our collective values and the mutating of our political ideals. They are ideals which cannot be read directly from the printed letters in the pages of the Constitution, but are discovered by reading between the lines and reside in the spirit and principles on which this document is founded. It is these very ideals and principles which were (and to some extent still are) under threat.

If indeed, as argued in the *Betrayal of the Promise*³ report, we are to expand our understanding of state capture from merely the typical activities of bribery and corruption to being a broader political project, we have to extend our enquiry beyond just the financial flows of ill-gotten gains and definitively criminal activities, to include the currency of

¹ SABC Digital News. 2016. *Dlamini Warns on Wrong Channels to Raise Issues within ANC*. Video. [Online] Available: https://www.youtube.com/watch?v=YiZ_-gd2Cb8.

² SABC Digital News. 2016. *Mcebisi Jonas on Being Offered a Job by the Guptas*. Video. [Online] Available: https://www.youtube.com/watch?v=_bHCHh1cT2k.

³ Bhorat, H., Buthelazi, M., Chipkin, I., Duma, S., Mondli, L., Peter, C., Qobo, M. & Swilling, M. 2017. *Betrayal of the promise: How South Africa is being stolen*. State Capacity Research Project.

power, the bartering of political favours by manipulation of state institutions (trading of fear and favours) and determine the cost this places on all South Africans. It is these aspects of the political project which this report seeks to unpack, through a case study of the South African Social Security Agency (SASSA). In particular, this case study focuses on the recently averted crisis regarding the potential non-payment of social grants to an estimated 17 million South Africans unless an unlawful and invalid contract was extended with the payment service provider, Cash Paymaster Services (Pty) Ltd (CPS).

The *Betrayal of the Promise* report outlined seven key features of the political project, most of which can be found to benefit the Zuma-Gupta network in particular (addressed in other State Capacity Research Project [SCRIP] case studies). However, as noted throughout the report, this is only one of the networks and there are many other players and activities which were and still are required for the 'silent coup' to be realised. The following are the factors which have been identified as being most relevant to the SASSA case⁴:

- Securing control over the public service, in particular through the appointment of Edna Molewa in 2009 and then Bathabile Dlamini in 2010 as minister of the DSD.
- Securing access to rent-seeking opportunities by 'shaking down' regulations, in particular the manipulation of tender processes, which resulted in contracting of services between SASSA and CPS for the nationwide payment of social grants. This was achieved by changing just one word in the tender specifications, where 'preferred' changing to 'must' changed the rules of the game.
- Securing control over strategic procurement opportunities by intentionally weakening key technical institutions and formal executive processes. In this case, it was the establishment of a parallel governance structure where the recommendations of an external advisory team (which reported directly to the minister) were elevated above those of SASSA officials. The insistence of establishing and utilising external advisors played a significant role in creating the recently averted crisis, in which the Constitutional Court was required to intervene,

ordering the CPS contract to be extended to ensure that grant payments would continue.

- Securing parallel political, governmental, and decision-making structures that undermine the functional operation of government institutions: In this case it includes strengthening of the 'Premier League' and the ANCWL (those with the apparent power to determine leadership positions within the ANC and in turn the government).

1.1 KEY TERMS AND CONCEPTS

As with the *Betrayal of the Promise* report, it is necessary to first establish and reaffirm some of the key concepts and expand on the underlying theoretical framework within which this case study should be understood. The following sections elaborate on the most relevant concepts, as extracted from the *Betrayal of the Promise* report, which will be focused on in this case study.

1.1.1 Repurposing the State

Repurposing state institutions refers to the organised process of reconfiguring the way a given state institution is structured, governed, managed, and funded so that it serves a purpose different to its formal mandate. Understanding state capture purely as a vehicle for looting does not explain the full extent of the political project that enables it. Institutions are captured for a purpose beyond looting. They are repurposed for looting, as well as for consolidating political power to ensure longer-term survival, the maintenance of a political coalition, and its validation by an ideology that masks private enrichment by reference to public benefit.⁵ An important aspect of the SASSA case study is to highlight the repurposing of this state institution for the purposes of reinforcing political support and power. An example of this (the provisioning of public services and the allocation of state resources for party political ends) can be found in the Public Protector's *Blurred Lines: Party and State* report.

⁴ Borhat et al. 2017. *Betrayal of the promise: How South Africa is being stolen*. State Capacity Research Project.

⁵ Borhat et al. 2017. *Betrayal of the promise: How South Africa is being stolen*. State Capacity Research Project.

1.1.2 Power Elite and the Political Project Machine

In the *Betrayal of the Promise* report, the notion of a 'power elite' refers to

a relatively well-structured network of people located in government, state institutions, SOEs [state-owned enterprises], private businesses, security agencies, traditional leaders, family networks and the governing party. The defining feature of membership of this group is direct (and even indirect) access (either consistently or intermittently) to the inner sanctum of power to influence decisions. The power elite exercises its influence both through formal and informal means. However, what unites the power elite is the desire to manage effectively the symbiotic relationship between the constitutional and shadow states. In order to do this, and in broad terms, this power elite loosely organises itself around a 'patron or strongman', who has direct access to resources, under whom a layer of 'elites' forms who dispense the patronage, which is then managed by another layer of 'brokers or middlemen'.⁶

In our democratic (constitutionally based) system, any strongman is in turn reliant on maintaining political patronage in order to retain power, either through coercion or violence (in the broadest definition of these terms). If we recognise that the Guptas only form one node of the networks, which is purposely focused on addressing the financial looting tasks of the shadow state, it then requires us to enquire as to who may be involved in the other nodes and what is the function they fulfil in terms of establishing and maintaining control over the constitutional and shadow states. It is in this regard that those elites in the cabinet, as well as those elites outside the government but within the ANC structures (in this case the ANCWL) have an important role to play, namely to provide a veil of legitimacy to the 'silent coup' and push the political narrative that masks the misdeeds of the shadow state.

1.1.3 The Long Game: Staying in Power

The popular narrative of 'state capture', often presented as an end in and of itself with the singular objective of looting the state, is different to the broader and more rigorous

notion of state capture as a political project – which aims to continue, grow, and ultimately replace the current socio-political compact as laid out in the Constitution. Why and how corrupt and neopatrimonial-aligned political elites managed to maintain and stay in power for such an extensive period of time, are perhaps two of the most important questions that this case study seeks to address. It is only in understanding the political project that we will be able to make necessary corrections and make, adjust, and repair the associated political and governance systems. Luigi Manzetti and Carole Wilson highlight that "[a]s long as corrupt leaders can satisfy their clientelistic networks by manipulating government resources, they are likely to retain political support".⁷ Arguably, this is the basis from which all political parties operate and is the root of populist politics. The state capture project differs, however, in that it requires the perversion of the populist sentiment to camouflage the manipulation of resources for selective interests. When the majority of South Africans live in abject poverty and are unemployed or working poor, it is understandable that they will tend to favour and vote for those who are seen to be addressing their immediate plight, as opposed to "politicians who promise public goods (as opposed to individualized ones) in the long term".⁸ The result is to adopt short-term populist decisions with little or no regard for long-term consequences. This could be seen in the decision taken by Jacob Zuma to announce the implementation of free higher education at the ANC national conference towards the end of 2017. The manipulation of government policy or rather the ignoring/changing thereof, with the specific intention of benefiting the shadow state, can be seen throughout the political project of state capture. Examples of this includes the interference at the SABC by Faith Muthambi; Eskom coal-procurement practices not aligned to mining charter requirements under the leadership of Brian Molefe; and the new mining charter later proposed by Mosebenzi Zwane (which allows for Broad-based Black Economic Empowerment [B-BBEE] to be applicable for naturalised citizens), among others. In this case it is specifications associated with technopolicy for biometric verification of grant recipients and the required application and implications thereof.

⁶ Bhorat et al. 2017. *Betrayal of the promise: How South Africa is being stolen*. State Capacity Research Project.

⁷ Manzetti, L. & Wilson, C.J. 2007. Why Do Corrupt Governments Maintain Public Support? *Comparative Political Studies*. 40(8):949-970.

⁸ Manzetti, L. & Wilson, C.J. 2007. Why Do Corrupt Governments Maintain Public Support? *Comparative Political Studies*. 40(8):949-970

1.2 STRUCTURE OF THE REPORT

The next section provides the contextual basis from which this case study is explored. It presents a brief overview of the historical background to South Africa's social grants system, outlines the legislative and technical framework in which SASSA has been established, and lastly discusses the ANCWL's political dynamics which are at play and how these form an integral part of the political project underway.

The third section details key events and decisions taken, outlining what has transpired over the years since SASSA was established, culminating in the crisis of March 2017 that nearly resulted in the government not being able to meet its constitutional obligation of providing millions of the poorest South Africans with the social grants they depend on for their survival. This chronology is focused primarily on the governance and legal aspects of the crisis.

The fourth section provides an analysis of the so-called 'SASSA-Gate' scandal in the context of the broader political

project of state capture. In particular, it examines the contradictions that emerge when the interests of the shadow state are in conflict with not only the constitutional state, but also with the ideological rhetoric of this political project, namely 'radical economic transformation' (RET). This section fleshes out the various allegations about who and how certain individuals from both outside and within state institutions were entangled in the CPS contracts in various ways. This is then extended to focus on the power dynamics at play. Lastly we then examine at a high level the other means by which the DSD and SASSA are repurposed, in particular with regard to the use of state resources to manipulate and secure legitimacy from the voting public.

The final section contextualises the SASSA case within the broader context of the very real and difficult economic, social, and political challenges that South Africa faces going forward. It will provide an analysis of recent events from a 'state capture' perspective and discuss the broader impact of the 'state capture' project on South Africa's social welfare system.

2

SASSA AND THE SOUTH AFRICAN WELFARE SYSTEM

This section provides an overview of the social grant system and the emergence of SASSA. This includes an analysis of the role played by key ANC politicians who wanted to use the welfare system to ensure the reproduction of ANC dominance in South African politics.

2.1 BACKGROUND ON SOUTH AFRICA'S SOCIAL GRANTS

*For many people in this country the payment of social grants by the state provides the only hope of ever living in the material conditions that the Constitution's values of dignity, freedom, and equality promise. About 15 million people depend on the payment of these social grants. They are vulnerable people, living at the margins of affluence in our society.*⁹

In 1994, when the democratically elected ANC government was instituted, the social security system, which was inherited, was skewed towards favouring white pensioners, with little protection in place for addressing the plight of African women and children. The system was to be reformed to cater for all South African citizens equitably and fairly, as laid out in the UN Declaration on Human Rights. Article 25 of the 1948 UN's Universal Declaration of Human Rights states that

*[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*¹⁰

Access to social security is one of several socio-economic rights guaranteed in the South African Constitution of 1996, where section 27 (1)(c) states that

*[e]veryone has the right to have access to [...] social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.*¹¹

However, unlike other socio-economic rights, such as the right to freedom of expression or property rights, the Constitution also recognises and accommodates the practical limitations on the state's ability to comprehensively fulfil this mandate, in that the state is subject to an internal limitation of the resources which are available. Section 27(2) in the Constitution states that

*[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*¹²

This caveat is a necessity, in that it allows for flexibility in terms of establishing of policy and the management of the state's budget and the country's fiscal sustainability. It is in this regard that the expansion and application of social grants policy can arguably be viewed as one of the greatest post-1994 redistributive achievements.

In 2002, the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (also referred to as the Taylor Committee) presented its recommendations in reports to the Parliamentary Portfolio Committee. The Taylor Committee was tasked by cabinet to establish a holistic overview of South Africa's social policy requirements and to put forward recommendations on how to develop a comprehensive social security system for the nation. The outcomes of the Committee of Inquiry informed the legislation relating to social assistance (including social grants) that has since been developed and administered over the years, among others the expansion of child care grants and the use of biometric verification in grant payment system.

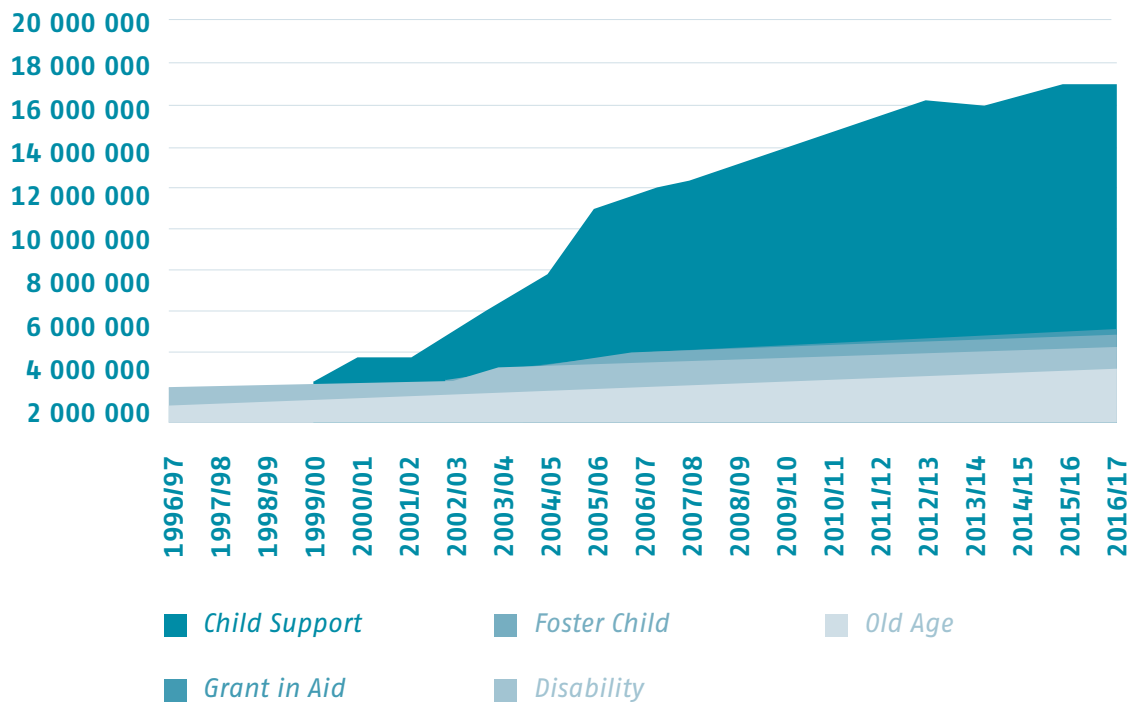
⁹ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS*. [2013] ZACC 42 (29 November 2013) - Judgment (*AllPay I*).

¹⁰ UN. 1949. United Nations Universal Declaration of Human Rights 1948. *Office of the High Commissioner for Human Rights*. Geneva: United Nations Publication.

¹¹ Department of Justice and Constitutional Development of South Africa. 1996. *Constitution of the Republic of South Africa*.

¹² Department of Justice and Constitutional Development of South Africa. 1996. *Constitution of the Republic of South Africa*.

Figure 1: Growth in Number of Grant Recipients



Source: SASSA Annual Report 2016/2017¹³

Table 1: Breakdown of Grant Types and Amounts

| Grant Type | Beneficiaries | | Amounts | | |
|-----------------|-------------------|-------------|---------------|----------------------|-------------|
| | Number | % of Total | Monthly Grant | Total Amount (R'000) | % of Total |
| Old Age | 3 302 202 | 19% | R1 505 | R58 320 617 | 42% |
| War Veteran | 176 | 0% | R1 525 | R3 849 | 0% |
| Disability | 1 067 176 | 6% | R1 505 | R19 926 031 | 14% |
| Care Dependency | 144 952 | 1% | R1 505 | R2 613 647 | 2% |
| Foster Child | 440 295 | 3% | R890 | R5 326 151 | 4% |
| Child Support | 12 081 375 | 70% | R350 | R51 476 941 | 37% |
| Grant in Aid | 164 349 | 1% | N/A | R650 308 | 0% |
| Total | 17 200 525 | 100% | - | R138 317 544 | 100% |

Source: SASSA Annual Report 2016/2017¹⁴ and National Treasury (NT) 2017 Budget¹⁵

¹³ SASSA. 2017. SASSA Annual Report 2016/2017. Pretoria: South African Social Security Agency

¹⁴ SASSA. 2017. SASSA Annual Report 2016/2017. Pretoria: South African Social Security Agency.

¹⁵ National Treasury. 2017. Budget Review 2017. Pretoria.

Social grants were identified as a key component of the Growth, Employment and Redistribution (GEAR) framework, which was adopted under the Mbeki presidency. Under Mbeki, with the determined leadership of then Minister of Social Development, Zola Skweyiya, the increased scope of social grants was implemented as the main form of wealth redistribution and was the principal programme which sought to account for the flaws/shortcomings of implementing neo-liberal economic policies. Zola Skweyiya worked with and was supported by civil society organisations concerned with strengthening the social security and social assistance programmes, often in opposition to the views of many of his colleagues in cabinet. The result was a significant growth in the number of grant recipients, in particular the introduction of Child Support grants in the early and mid-2000s, which resulted in the number of South African citizens receiving social grants ballooning from approximately three million beneficiaries in 2000 (primarily Old Age grants) to over 12 million beneficiaries by 2008. Figure 1 outlines the growth in the number of grant beneficiaries over time.

As of December 2017, there are over 17 million grant beneficiaries. Social grants are targeted at providing financial relief to the most vulnerable in South Africa's society, namely the elderly, children, and persons with disabilities, and temporary assistance for those experiencing financial hardship outside of their control. The latter is referred to as the Social Relief of Distress grant, which is provided in the form of food parcels, vouchers, or cash, on an as-and-when-required basis. Table 1 provides a breakdown of the fixed grants, outlining grant type, number of beneficiaries, and monthly amount respectively.

Research is currently being undertaken by non-governmental organisations (NGOs), such as the Pietermaritzburg Agency for Community Social Action (PACSA), in search of determining what would constitute 'a decent standard of living' for South Africans. Their focus is to determine the true-felt reality of the poor in terms of inflation of food prices (which is a primary expense for the poor). This entails monitoring prices of a selected 'food basket' and the research indicates that it is much higher than the average annual consumer

price index (CPI), which is applied to the annual increase of grants. They indicate on average that "PACSA's Food Basket tracks on average 5.3% higher than the CPI figures".¹⁶ Social grants are increased annually in line with average annual CPI, which means that the material/practical value of grants has decreased over the years. This demonstrates "the steady 'regressivity'/diminishing 'progressivity' of the social grant system".¹⁷

Khan highlights that social grants are no longer just a 'stop-gap measure' for counter-balancing the deficiencies in the government's policies to achieve meaningful structural transformation of the economy. Social grants "are now a structural necessity and 'politically irreversible pillars of social policy'". The redistributive potential which social grants, together with other social policies, serve is ultimately constrained by the amount of resources at the government's disposal. In 2014, NT indicated that in terms of the national fiscus being able to sustain and cater for the country's social spending:¹⁸

*Current levels of spending are sustainable, provided that real growth remains above 3%. In a secular stagnation scenario, social spending will be increasingly difficult to sustain. Faster population growth will also put strain on the fiscus, if not accompanied by higher economic growth.*¹⁹

The growth in social grant beneficiaries then also needs to be noted, particularly with regard to Old Age Grants and Child Support Grants, which have average growth rates of 3.7% and 20.2% (inclusive of expansion) respectively over the last five years.²⁰ This harsh reality that the country now faces is not lost on SASSA, when it highlights in recent court papers that

*[t]he continuing inability of the economy to create sustainable and decent employment, combined with the slow growth trends over the foreseeable future require creative and cost-effective solutions to reduce the burden of poverty within increasingly limited resources.*²¹

¹⁶ Smith, J. & Abrahams, M. 2015. *PACSA Food Price Barometer Annual Report October 2015*. Pietermaritzburg: Pietermaritzburg Agency for Community Social Action.

¹⁷ Khan, F. 2013. Poverty, grants, revolution and "real Utopias": society must be defended by any and all means necessary! *Review of African Political Economy*. 40(138):572-588.

¹⁸ Khan, F. 2013. Poverty, grants, revolution and "real Utopias": society must be defended by any and all means necessary! *Review of African Political Economy*. 40(138):572-588.

¹⁹ Michael Sachs. 2014. South Africa's long-term fiscal choices. *Fiscal Policy Workshop*. Pretoria: Nation Treasury. [Online] Available: [http://www.treasury.gov.za/comm_media/presentations/South Africa's long-term fiscal choices 5 Nov 2014.pdf](http://www.treasury.gov.za/comm_media/presentations/South%20Africa's%20long-term%20fiscal%20choices%205%20Nov%202014.pdf).

²⁰ SASSA. 2017. *SASSA Annual Report 2016/2017*. Pretoria: South African Social Security Agency.

²¹ SASSA. 2017. *Constitutional Court SASSA Submission: Sapo Agreement*. Pretoria: SASSA.

2.2 LEGISLATIVE AND INSTITUTIONAL FACTORS REGARDING SASSA

In 2004, the legislation that formalised South Africa’s social security systems and established the national agency that would be responsible for administering grants was signed and promulgated. The Social Assistance Act, No. 13 of 2004, and the South African Social Security Agency (SASSA) Act, No. 9 of 2004, are the two main pieces of legislation that outline the requirements and parameters for social grants and the institutional structure by which they are distributed. The primary objective of SASSA (also referred to as the Agency) was to centralise and standardise the payment and administration of grants. Over and above this legislation, SASSA is also required to be governed by all legislation related to the operation and governance of any state-run entity, including to the Public Finance Management Act (PFMA), No. 1 of 1999.²²

Prior to the establishment of SASSA, the payments of grants were fragmented, as the responsibility for grants resided with each of the nine provinces, and payment methods were inconsistent and inefficient. The majority of grants were paid in cash through contracted service providers, each conforming to separate and varying service level agreements and providing different models for payment.²³ The Social Assistance Act regulations provide the various methods by which grant beneficiaries are able to receive their grants, namely: “a) electronic transfers into an account of the beneficiary held at a financial institution or that of a procurator; b) manual payments at a designated pay point; or c) any other method approved by the Minister”.²⁴

The objectives and mandate of SASSA, as outlined in section 3 of the South African Social Security Agency SASSA Act (SASSA Act), are the following:

- (a) act, eventually, as the sole agent that will ensure the efficient and effective management, administration, and payment of social assistance;
- (b) serve as an agent for the prospective administration and payment of social security; and

- (c) render services relating to such payments.²⁵

The SASSA Act details the Agency’s functions, which include the administering of social grants in terms of Chapter 3 of the Social Assistance Act, No. 13 of 2004, and “to collect, collate, maintain, and administer such information as is necessary for the payment of social security, as well as for the central reconciliation and management of payment of transfer funds in a national database of all applicants for and beneficiaries of social assistance (s4(1)(a) and (b) of the SASSA Act)”.²⁶ The act further makes an allowance for, where necessary or appropriate, the Agency to, “with the concurrence of the Minister [to] enter into an agreement with any person to ensure effective payments to beneficiaries”.²⁷ This in effect allows for SASSA to contract service providers for the payment of grants, but this can only be done once the minister has approved such an action.

In terms of governance structure, unlike commercial SOEs, which are generally governed by a board of directors which provides a degree of separation between the administration and management of the entity and the Executive Authority, the chief executive officer (CEO) of SASSA reports directly to the DSD minister. In terms of the act, the following is worth noting under the “Functions of Chief Executive Officer”:

- (1) The Chief Executive Officer is responsible for-
 - (a) the management of the Agency, subject to the direction of the Minister;
 - (b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the Minister;
 - (c) the appointment of members of staff contemplated in section 7(1j); and
 - (d) control of, and maintenance of discipline over, members of staff of the Agency.
- (2) The Chief Executive Officer is accountable to the Minister and must report to him or her on the activities of the Agency...

²² Presidency of Republic of South Africa. 2004. *South African Social Security Agency Act*. Pretoria: Government Gazette.

²³ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1)*.

²⁴ Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd: [2011] ZASCA 13 (11 March 2011)*.

²⁵ Presidency of Republic of South Africa. 2004. *South African Social Security Agency Act*. Pretoria: Government Gazette.

²⁶ Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd: [2011] ZASCA 13 (11 March 2011)*.

²⁷ Presidency of Republic of South Africa. 2004. *South African Social Security Agency Act*. Pretoria: Government Gazette.

(7) The Minister may override any decision taken by the Chief Executive Officer.²⁸

A last note with regard to legislation governing SASSA is that “[t]he appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Minister”. Ultimately, it is this agreement which would outline in detail the administrative relationship (role and responsibilities) between SASSA and the DSD, which are not addressed in the act. The 2014/2015 annual report of the DSD stated that “[d]espite the non-completion of the oversight compact agreement with SASSA, other governance tools were used to provide support and strategic guidance for these public entities”.²⁹ The oversight compact agreements, referred to as the shareholder’s compact, were regarded as an important mechanism to facilitate oversight by the Minister of Social Development through the DSD under the stewardship of Zola Skweyiya. The early shareholder agreements mandated the CEO of SASSA to meet with the Director-General (DG) of Social Development and with an oversight unit within the Office of the DSD’s Chief Operations Officer. The use of these shareholder’s compacts and the mechanisms for accountability it established were essentially abolished at the end of Skweyiya’s tenure. This laid the basis for a direct relationship between the CEO of SASSA and the Minister of Social Development in a manner that served to exclude an oversight role for the DG of Social Development.

The importance of this agreement should not be understated, as this is where the details of the roles and responsibility and relationship between the minister, the DSD DG, and the SASSA CEO would be fleshed out. There is a duplication of responsibilities between the DG of the DSD and the SASSA CEO, as the DG is the accounting officer for the overall social grants system, in particular the allocation of budget for grants (the ‘big money’), the DSD’s operations, and services associated with certain grants (such as Foster Care and Disability grants), while the SASSA CEO is responsible for the administration of grants. In light of experience, Point 7 above is the root cause of institutional instability because in situations where decisions of the SASSA CEO are overturned by the minister, it would effectively mean that the minister has assumed de facto the role of accounting officer of the Agency.

2.3 THE BIOMETRIC BULLET

One of the functions of SASSA, as stated in the SASSA Act, was to “establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained”.³⁰ What this mechanism entailed, its parameters, and how it was to be structured remained the prerogative of the Agency. Over the years, the Agency has established various units within the organisation to address the issue of fraud, partnering with other crime investigative units, to a point where there is now a dedicated department which specifically focuses on fraud and corruption.³¹

In her statement on 05 March 2017, in which Minister Dlamini briefed the media on the actions that SASSA was undertaking to ensure that the payments of grants continued past April 2017, she said:

*Fraud and corruption is well documented in cash transfer systems throughout the world and South Africa is no different. We constantly need to innovate and remain ahead of both syndicates and recipients working with some of our officials to protect the social grants investment [...]. This is the reason biometric verification must be at the centre of recipient authentication as advised by the Taylor Committee report in 2002 and I will not back down on this requirement.*³²

When SASSA took over the contracts with the various provincial service providers in 2006, the social grant system was fragmented, inconsistent, and inefficient. Most of the operations were undertaken manually and there were several loopholes that allowed for various types and scale of fraud to occur. Fraud ranged from millions of rands being siphoned by corrupt civil servants to beneficiaries registering ‘phantom twins’ in order to receive an additional Child Support Grant. There were cases of beneficiaries receiving grants in more than one province and there were allegations that Old Age Grants were still being collected after the beneficiary had passed on. There is no denying that it was necessary to address this issue and this was in fact one of the main arguments for the establishment of SASSA: to standardise the payment service and consolidate and maintain a registry of all grant beneficiaries and minimise the losses to the state due to fraud and corruption. This reinforced the argument for

²⁸ Presidency of Republic of South Africa. 2004. *South African Social Security Agency Act*. Pretoria: Government Gazette.

²⁹ DSD. 2015. *DSD Annual Report 2014/2015*, Pretoria: Department of Social Development.

³⁰ Presidency of Republic of South Africa. 2004. *South African Social Security Agency Act*. Pretoria: Government Gazette.

³¹ SASSA. 2017. *SASSA Annual Report 2016/2017*. Pretoria: South African Social Security Agency.

³² Dlamini, B. 2017. *Minister of Social Development Media Briefing 05 March 2017*. Pretoria: Department of Social Development.

Text Box 1: Key Technical Concepts

Although it is not the intention to go into great technical detail regarding the various systems and sub-systems involved in the payment of grants, it is important to provide the reader with a basic understanding of several key concepts, which will inform the remainder of the case study. Where appropriate, a text box such as this shall provide necessary technical information.

Grant Payment Methods:

As indicated above, the allowed methods of payments are either by way of electronic transfers into an account of the grant recipient or by manual cash payments at a designated pay point.³³

Costs and Fee Structure:

Several cost centres must be considered when examining a payment model, namely:

- (a) cost to government for service providers to distribute grants;
- (b) cost to beneficiaries for transactions and bank service fees; and
- (c) cost to retailers or commercial service providers for transactions and payment devices.

National Payment System (NPS):

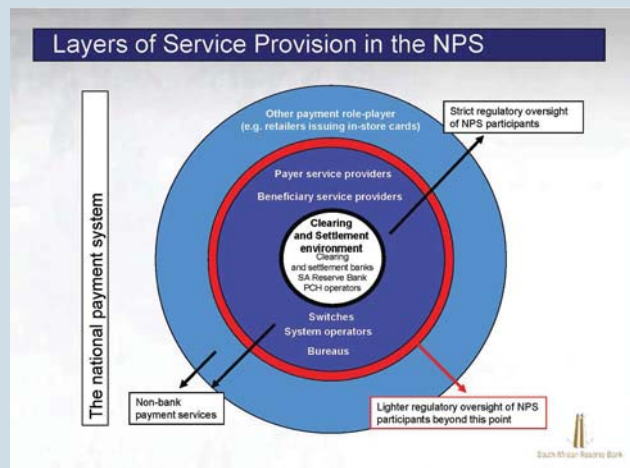
"A national payment system (NPS) does not only entail payments made between banks, but encompasses the total payment process. This includes all the systems, mechanisms, institutions, agreements, procedures, rules and laws that come into play from the moment an end-user, using a payment instrument, issues an instruction to pay another person or a business, through to the final interbank settlement of the transaction in the books of the central bank. The NPS therefore enables transacting parties to exchange value to conduct business efficiently."³⁴

Smart Card Technology and Open-Architecture / Open-loop vs Closed-loop System:

The Payment Association of South Africa (PASA) is a self-regulatory body, whose mandate is derived from the NPS Act, which develops the rules, criteria, and governance structures as may be required to carry out its function and to manage its members' specific payment activities through legal constructs.³⁵

Open Architecture is in effect the system design of the NPS, where transfers take place within and between banks, based on PASA-regulated processes and specified industry standards for the various elements of the payment system. "Interoperability within the National Payment System (NPS), including the utilisation of the ATM and retail point-of-sale [PoS] network requires for the card to be EMV (Europay, MasterCard, Visa) compliant as determined by Visa and MasterCard [...]. In South Africa PASA has prescribed only the EMV standard coupled with a MasterCard/Visa card to operate within the NPS."³⁶

Closed-loop: "In a closed system, the card issuer is the scheme owner."³⁷ The system utilises proprietary technology/IP smart cards (not EMV standard), which require compatible merchant devices in order for a transaction to occur and both are connected to the scheme owner, thus eliminating the need to be connected to the NPS. These smart cards can be interoperable, provided it partners with a bank that is connected to the NPS and is EMV enabled; however, if (as in the case of CPS) the scheme/system owner is a non-bank service provider, it is still considered a closed-loop system.



³³ Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd: [2011] ZASCA 13 (11 March 2011).*
³⁴ SARB. 2008. *Overview of the South African National Payment System. Financial Stability Review.* Pretoria: South African Reserve Bank.
³⁵ PASA. 2017. *Overview | Payment Association of South Africa.* [Online] Available: <http://www.pasa.org.za/about-us/overview>.
³⁶ Dlamini, B. 2017. *SASSA Media Briefing in East London.* East London: Department of Social Development.
³⁷ Banking Enquiry Panel. 2008. *Chapter 6 Payment Cards and Interchange, Banking Enquiry Report to the Competition Commissioner.* Pretoria.

biometric technology and why it became a fundamental part of the government's techno-political programme.³⁸

In a 2013 working paper published by the Centre for Social Science Research, titled *The Biometric Imaginary: Standardization & Objectivity in Post-Apartheid Welfare*³⁹, Kevin Donovan examined the motivation behind the adoption of biometric verification in the grants payment system and investigated both its strengths and weaknesses. Several questions emerged from his report that will be considered in this case study. The first is in relation to understanding how and why a certain technology is adopted. Is the technology a tool which is used to reach a certain objective, or is the objective to utilise a specific technology? In a system as complex as the payment of grants, where there are as many social issues as there are administrative issues, it is sometimes easier to find a solution to the symptoms (in this case beneficiary fraud) than a cure for the disease (which is poverty and unemployment). The second is how these objectives are defined and understood, as this directly relates to the effectiveness of any technology. This would need to include having an understanding of how a technology affects or impacts on the broader systems of the institution, other government functions, and society in general.

2.4 THE AFRICAN NATIONAL CONGRESS WOMEN'S LEAGUE (ANCWL) AND THE POLITICAL MACHINE

*The SA Constitution is hailed as the best in the world and it is evident that some clauses of the Constitution are exploited by opportunistic anti-transformation agents to undermine government programs and to reduce black people to be beggars and landless in their country of birth. The ANCWL joins the progressive voices which calls [sic] for a debate on whether SA should consider parliamentary democracy or just continue with constitutional democracy.*⁴⁰

The extract above was taken from a statement that was released by the ANCWL in February 2016. It was issued in response to the announcement by AfriForum, an NGO, that it would be forming a unit whose sole purpose would be to institute private prosecutions of winnable cases which the state, for one reason or another, chooses not to pursue. Significantly, this statement calls into question the constitutional order. One interpretation is that the ANCWL came to the conclusion that too much power resides with the judiciary. As argued in the *Betrayal of the Promise*⁴¹, the constitutional protection of rights is regarded by the Zuma-Gupta faction within the ANC as restricting the implementation of strategies that claim to be about 'RET' but in reality are about state capture and repurposing of state institutions.

In theory, the role of the ANCWL and the other various sub-structures of the organisation is to provide political representation for its constituency, in this case women. However, the trajectory of the ANCWL since 1994 has followed the classic neo-patrimonial pattern found in newly liberated nations. As outlined by Tripp, when a handful of political elites are brought into a clientelistic network, the substructure of the political party is effectively captured by individuals or groups who use the party to further the ends of a specific power elite. Once captured, the primary objective of the party political structure is then to use its position to drive a specific narrative or directive, which might not be representative of the main party objectives or even be in the best interests of their constituency.⁴²

In 2015, Bathabile Dlamini became president of the ANCWL. Before that she had been in various positions of leadership in the league since 2001, including being the longest serving Secretary-General of the ANCWL, from 1998 to 2008. It was during this time that she had reportedly, to the surprise of the then ANCWL president, Nosiviwe Mapisa-Nqakula, "engineered the surprise nomination of Zuma as the ANC Women's League's candidate to replace Mbeki ahead of the 2007 Polokwane conference".⁴³ At the conference, she became a member of the NEC of the ANC, as well as the National Working Committee.⁴⁴ Following the national

³⁸ Donovan, K.P. 2013. *The Biometric Imaginary: Standardization & Objectivity in the Post-Apartheid Welfare State*. International Journal of Humanities and Social Sciences. Cape Town: Centre for Social Science Research University of Cape Town.

³⁹ Donovan, K.P. 2013. *The Biometric Imaginary: Standardization & Objectivity in the Post-Apartheid Welfare State*. International Journal of Humanities and Social Sciences. Cape Town: Centre for Social Science Research University of Cape Town.

⁴⁰ ANCWL. 2016. *ANCWL Statement on Establishment of Private Prosecutorial Unit by AfriForum*.

⁴¹ Bhorat et al. 2017. *Betrayal of the promise: How South Africa is being stolen*. State Capacity Research Project.

⁴² Tripp, A.M. 2001. Women's Movements and Challenges to Neopatrimonial Rule: Preliminary Observations from Africa. *Development and Change*. 32(1):33-54

⁴³ Ngalwa, S. 2015. *Friends, Advisors and Rogues: Who Does Zuma Turn to for Advice?* [Online] Available: <https://www.timeslive.co.za/sunday-times/news/2015-12-20-friends-advisors-and-rogues-who-does-zuma-turn-to-for-advice/>.

⁴⁴ ASSA. 2016. *Minister of Social Development*. [Online] Available: <http://www.sassa.gov.za/index.php/about-us/our-leadership-team/minister-of-social-development>.

elections, she was subsequently made deputy and later minister of the DSD.

It was shortly after the 2015 ANCWL conferences that the notion of the 'Premier League', consisting of the Free State, Mpumalanga, and North West premiers, emerged.⁴⁵ Going into the conference, it seemed that there was majority support for the incumbent ANCWL president, Angie Motshekga. However, during the conference it is alleged that the Premier League intervened. A senior ANC leader told the *Mail & Guardian*:

*After the adoption of credentials, the "premier league" came to the conference and threatened members of the [league] from Free State, Mpumalanga and North West that, if they did not support Bathabile, they must remain in Johannesburg. That's when everything turned [...] The first night of the conference they disbursed a truck full of blankets and tracksuits to members of the [league who were] supporting Bathabile. It was a very cold night. There was no way those members would not support Bathabile's group.*⁴⁶

The ANCWL has generated much controversy over the years. Perhaps the most notable was the silence of the ANCWL during Zuma's 2006 rape trial.⁴⁷ It was reported that "ANC Women's League members demonstrated in support of Jacob Zuma outside his rape trial in 2006, carrying signs which included wording such as "Zuma, rape me".⁴⁸ The ANCWL did not reprimand the then ANCYL president, Julius Malema, when he said that "the woman who accused Zuma of rape had a good time, otherwise she would

have asked for taxi money and gone home".⁴⁹ He was later found guilty of hate speech after being taken to the courts by the Sonke Gender Justice, an organisation of men who fight for women's rights. This type of selective non-outrage, specifically reserved for political affiliate counterparts, at blatantly misogynistic behaviour is still common. Last year, Dlamini herself appeared to have provided protection for then Deputy Minister of Higher Education and Training, Mduzuzi Manana, who had admitted to assaulting a woman at a nightclub. In an interview with *The Sunday Times* she indicated:

Don't start from him [...] If we want to say everyone who occupies a senior position in government, we must know his track record. Because there are those that are actually worse than him.

*They must come out in the open. We must know them. We must know how they are going to be rehabilitated. As the Women's League it is our role to fight on the issues of women [like] gender-based violence.*⁵⁰

The ANCWL issued a strongly worded statement in her defence. However, a recording of the exchange speaks for itself. The ANCWL was required to come to the minister's defence again during the ANC Consultative Conference. The ANCWL had decided to include six men as part of its delegation. When asked what the reason was for the inclusion of men in the ANCWL delegation, it was reported that Dlamini said that "women were too emotional".⁵¹ There are many more examples that highlight the contradictions that exist between the ANCWL's actions and the gender equality struggle which it professes to espouse.

⁴⁵ Davis, R. 2015. *Can Bathabile Dlamini Save the ANC Women's League?* [Online] Available: https://www.dailymaverick.co.za/article/2015-08-11-can-bathabile-dlamini-save-the-anc-womens-league/#.WiE_4FWWbDd; Ngalwa, S. 2015. *Friends, Advisors and Rogues: Who Does Zuma Turn to for Advice?* [Online] Available: <https://www.timeslive.co.za/sunday-times/news/2015-12-20-friends-advisors-and-rogues-who-does-zuma-turn-to-for-advice/>.

⁴⁶ Bendile, D. 2017. *Motshekga Gives League a Headache.* [Online] Available: <https://mg.co.za/article/2017-09-15-00-motshekga-gives-league-a-headache>.

⁴⁷ For context, we recommend reading the recently released book by Redi Tlhabi, titled *Khwezi - The Remarkable Story of Fezekile Ntsukela Kuzwayo*.

⁴⁸ Davis, R. 2015. *Can Bathabile Dlamini Save the ANC Women's League?* [Online] Available: https://www.dailymaverick.co.za/article/2015-08-11-can-bathabile-dlamini-save-the-anc-womens-league/#.WiE_4FWWbDd.

⁴⁹ Gouws, A. 2011. *Women's Representation in Government: Quotas, Substantive Equality and Self Interested Politicians.* *Transformation: Critical Perspectives on Southern Africa.* 77:80-99.

⁵⁰ Shoba, S. 2017. *LISTEN: Mduzuzi Manana's Not the Only One, Others Are Worse, Says Bathabile Dlamini.* [Online] Available: <https://www.timeslive.co.za/sunday-times/news/2017-08-12-mduduzi-manana-not-the-only-one-others-are-worse-says-bathabile-dlamini/>.

⁵¹ Tandwa, L. 2017. *ANCWL Defends Decision to Have 6 Men in Policy Conference Delegation.* [Online] Available: <https://www.news24.com/SouthAfrica/News/ancwl-defends-decision-to-have-6-men-in-policy-conference-delegation-20170702>.

3

SASSA-GATE CHRONOLOGY

One of the signature achievements of our constitutional democracy is the establishment of an inclusive and effective programme of social assistance. It has had a material impact in reducing poverty and inequality and in mitigating the consequences of high levels of unemployment. In so doing it has given some content to the core constitutional values of dignity, equality, and freedom. This judgment is, however, not an occasion to celebrate this achievement. To the contrary, it is necessitated by the extraordinary conduct of the Minister of Social Development (Minister) and of the South African Social Security Agency (SASSA) that have placed that achievement in jeopardy. How did this come about?⁵²

The above is the opening statement from the scathing Constitutional Court judgment which was handed down on 17 March 2017. The judgment was regarding the extension of an unlawful and invalid contract, which the Constitutional Court had ruled as such in 2013, between SASSA and grants payment service provider, CPS. This section seeks to answer the question as put forward by the court, in providing a high-level overview of the sequence of events, decisions which were made, and of the people involved.

3.1 FIRST FAILED ATTEMPTS

In 2006, SASSA inherited the fragmented and non-standardised social grants service provider contracts for the various provinces. The method and manner in which grants were distributed to recipients varied greatly between the various service providers, as did the costs and the terms and conditions of service contracts. In line with the recommendations laid out by the Taylor Committee, SASSA undertook to centralise the payment of grants. On 23 February 2007, the Agency issued its first Request for Proposal (RFP) for the "Provision of a Payment Service". Nine bids were received for the tender; however, in its final report submitted to the CEO of SASSA on 25 September

2008 (almost a year and a half after being issued, the Bid Adjudication Committee (BAC) concluded that the tender should be cancelled.⁵³

The reasons as to why the tender was cancelled and the events and revelations which followed are worth further exploration.

3.1.1 First Failed Tender

In response to media speculation and allegations of potential corruption, the Social Development Minister, Zola Skweyiya, at the time (March 2009) determined that a detailed report be released to the public, outlining the findings and reasons for the cancellation of the 2007 tender. The report titled *Narrative Report of the Adjudication Committee in Respect of Payment Tender Service*⁵⁴ (hereafter referred to as the Narrative Report) provides key insights into some of the challenges which are involved in providing payment service for grants, as well as highlighting some of the re-occurring issues which arise in finding and procuring a suitable service provider.

The first aspect to note is that it would appear from the Narrative Report that the focus of the department (and in turn the service provider) was to be placed on improving and standardising the experience of the beneficiary, improving operational efficiency (including reducing costs, and reducing fraud and corruption). It was SASSA's intention to appoint service providers to render the payment of social grants to qualifying beneficiaries in all provinces in a standardised manner. It is unclear as to how many service providers SASSA was aiming to appoint, on what basis, or how the work/services would be allocated should there be more than one service provider (allocated according to province, based on method of payment, etc.). From a response by SASSA to an article published by the Institute for Security Studies (ISS) in June 2008, entitled *South Africa - All Is Not Well With Government Tenders*, it was stated that

⁵² Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others*: [2017] ZACC 8 (17 March 2017) - Judgment 1.

⁵³ Adjudication Committee. 2008. *Narrative Report of the Adjudication Committee for Tender: SASSA 19/06/BS*. Pretoria: South African Social Security Agency.

⁵⁴ Adjudication Committee. 2008. *Narrative Report of the Adjudication Committee for Tender: SASSA 19/06/BS*. Pretoria: South African Social Security Agency.

[t]he Minister and SASSA are also concerned about the fact that certain service providers have dominated the social grants payment market since the service was opened up. In the current bid process, instead of looking for one service provider to ensure uniformity of services nationwide, SASSA decided to subdivide the bid into nine provincial tenders. This will prevent the development of a monopoly and allow opportunities for new entrants into the market.⁵⁵

The lack of clarity regarding exactly which services SASSA required and how it envisioned the provisioning of the required services are undoubtedly some of the problems which faced both the bidders and in turn the Bid Evaluation Committee (BEC) and the BAC. In the end, the BAC “unanimously agreed that the RFP was fraught with problems (some insurmountable) notwithstanding subsequent questions and answers and bidders’ notices designed to clarify and remedy it”. They noted that the “refinement of criteria in the RFP caused more problems [...] thereby rendering the entire evaluation process unreliable”.⁵⁶ This is a critical point to highlight, as similar observations can be made in the tender process in 2011. Yet, in that instance, the confusion created by the refinement of criteria was seemingly ignored and the preferred ‘technical’ option put forward by CPS was pushed through.

The Narrative Report further highlighted that given the factors that led to the BAC determining that the tender ultimately be abandoned, the bidders failed to meet the strategic objectives of the tender itself. Specifically noted was that bidders “did not provide standardised payment services; were offered via merchants and were thus not safe and secure for beneficiaries; were not cost effective; did not transfer maximum risk to the private sector; and were not in line with principles of the Black Economic Empowerment [BEE]”.⁵⁷ As will be seen further in this report, the issues in relation to BEE would seem to be an ongoing point of contention in finding

a suitable service provider, as will be the provisioning of a standardised payment service.

It would only be revealed years later, in a 2012 *amaBhungane* article, that an apparent attempt at bribery had taken place during the tender adjudication process where Advocate (Adv.) Norman Arendse, who was chair of the BAC and author of the Narrative Report, alleged that

while he was deliberating on a R7-billion state tender in 2008 he was offered an ‘open chequebook’ bribe by an individual claiming to represent Cash Paymaster Services (CPS) [...] Arendse named prominent sports administrator Gideon Sam when he recorded the incident.⁵⁸

The alleged attempted bribery would again resurface in June 2016, when *GroundUp* investigative journalists published an article reporting that an anonymous e-mail sent “to key officials of the Commonwealth Games Federation and SASCO, drawing their attention to corruption allegations in 2008 against Sam and asking both organisations to take action against him”. Attached to the e-mail was a statement by Adv. Arendse⁵⁹, as well as a supporting statement by his secretary at the time, Colleen Beverley Bainbridge⁶⁰. This is the first instance in which these statements had been made publicly available and were independently verified by *GroundUp*.⁶¹ When confronted with these allegations, denials were put forward by all the implicated parties. Serge Belamant, the CEO of Net 1 UEPS Technologies Inc. (Net1), which owns CPS, stated that he had never heard of Sam. In turn, Sam denied that the incident had even occurred, saying, “No, no. Not at all. I’ve never done social pensions. I am a sportsperson.”⁶²

Adv. Arendse has reportedly confirmed that this incident was reported to the BAC, and the *GroundUp* article noted that “[t]he committee decided on approaching the government with the corruption allegations was not necessary as the

⁵⁵ Sokomani, A. 2008. All Is Not Well With Government Tenders. *Institute of Security Studies Africa*. [Online] Available: <https://oldsite.issafrica.org/iss-today/south-africa-all-is-not-well-with-government-tenders>.

⁵⁶ Adjudication Committee. 2008. *Narrative Report of the Adjudication Committee for Tender: SASSA 19/06/BS*. Pretoria: South African Social Security Agency.

⁵⁷ Arendse, N. 2009. Statement of Norman Arendse. *GroundUp*.

⁵⁸ McKune, C. 2012. “Name Your Price” Bribe Offer for R7-Billion Tender. [Online] Available: <http://amabhungane.co.za/article/2012-02-24-name-your-price-bribe-offer-for-r7billion-rand-tender>.

⁵⁹ Arendse, N. 2009. Statement of Norman Arendse. *GroundUp*.

⁶⁰ Bainbridge, C.B. 2009. Statement of Colleen Beverley Bainbridge. *GroundUp*.

⁶¹ Bejoy, R. 2016. *Corruption Allegations against Gideon Sam Come back to Life*. [Online] Available: <https://www.groundup.org.za/article/corruption-allegations-against-gideon-sam-come-back-life/>.

⁶² Bejoy, R. 2016. *Corruption Allegations against Gideon Sam Come back to Life*. [Online] Available: <https://www.groundup.org.za/article/corruption-allegations-against-gideon-sam-come-back-life/>.

Director General of the Department of Social Development [Vusi Madonsela] was part of the committee and aware of the allegations". It is understood that the statements made by Adv. Arendse had also been sent to the relevant officials in the United States Department of Justice (US DOJ), while they were investigating Net1/CPS for possible corruption in relation to being awarded the 2011 tender for payment services, which would ultimately be found to be an invalid tender by the Constitutional Court.⁶³ It would, however, appear that with regard to this specific allegation of corruption, no official follow-up action was initiated, nor any investigation undertaken.

Following the failure to award a tender, the DSD was forced to extend the contracts with the various companies in the respective provinces to ensure that grants continued to be paid, including contracts which existed with CPS, Empilweni, and AllPay at the time. This would be the first instance when the DSD and SASSA would experience the risks which come with the outsourcing of services to the private sector first hand – where a private company attempts to hold the country's most vulnerable people hostage and leaving the government with no option but to concede to its demands. On 25 March 2009, the CEO of SASSA at the time, Fezile Makiwane, released a statement in regard to the arrangements for the continuation of grant payments; in effect calling out CPS for being the only service provider that had not agreed to continue services under the terms which were imposed by NT and the Auditor-General.

The statement made is as follows:

Regarding Empilweni and Allpay, we have received assurances that payment will be effected for the month of April. As far as CPS is concerned we understand that payment will not be effected unless CPS is granted a two-year contract at the same terms and conditions as the expiring contracts. The Agency is unable to grant CPS a two-year contract given the grant conditions by the National Treasury and the Auditor-General that all cash payment contractors

*must get an interim contract for a period of one year and that a new tender be must be published and finalized within that fiscal year (2009/2010).*⁶⁴

It would appear that the release of this statement placed sufficient pressure on CPS to agree to SASSA's terms, as later the same day another statement was issued, indicating that CPS agreed to the one-year contract extension.⁶⁵ CPS would, however, use this act of 'good faith' to supplement legal action that it would institute against SASSA for entering into agreement with the South African Post Office (SAPO).

3.1.2 CPS vs SASSA and SAPO

*Since 2002, the Minister is on record as having expressed his preference for the Post Office as government's service provider of first choice, as a matter of policy. To this end, in May 2007, SASSA, the South African Post Office, supported by the Departments of Social Development and Communications, respectively, entered into a Memorandum of Understanding in terms of which SASSA and the Post Office agreed to further their collaboration to, at a minimum, leverage each other's expertise with the key short-term focus being to effect a partnership in the implementation of a back office system in the social grants payment process.*⁶⁶

The statement above was made on behalf of Minister Zola Skweyiya in 2009. It indicates that the establishment of a mutually beneficial relationship between SASSA and SAPO was envisioned as far back as 2002, with the intention of inter-governmental agency cooperation being the most desirable way forward because it would mean leveraging existing public infrastructure, an improvement of public sector operational capabilities, and an improved payment experience for beneficiaries. In July 2009, SASSA concluded the Letter of Agreement with SAPO to provide specific payment services to beneficiaries. According to the court papers, the agreement (signed in July) was backdated to be effective from 05 January 2009.⁶⁷

⁶³ Bejoy, R. 2016. *Corruption Allegations against Gideon Sam Come back to Life*. [Online] Available: <https://www.groundup.org.za/article/corruption-allegations-against-gideon-sam-come-back-life/>.

⁶⁴ DSD. 2009. *Media Statement on Contracts Relating to the Payments of Social Grants*. [Online] Available: http://www.dsd.gov.za/index.php?option=com_content&task=view&id=141&Itemid=106.

⁶⁵ DSD. 2009. *Social Grants Payment Dispute Resolved*. [Online] Available: http://www.dsd.gov.za/index.php?option=com_content&task=view&id=142&Itemid=106.

⁶⁶ DSD. 2009. *Response by the Director General of the Department of Social Development Mr Vusi Madonsela on Allegations by City Press Published on 29 March 2009*. [Online] Available: http://www.dsd.gov.za/index.php?option=com_content&task=view&id=144&Itemid=106.

⁶⁷ Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd*: [2011] ZASCA 13 (11 March 2011).

CPS was not happy with the arrangements made between SASSA and SAPO, and initiated litigation against SASSA for entering into the agreement with SAPO without following necessary procurement procedures, which would stretch out from October 2009 (High Court) up until March 2011 (Supreme Court of Appeal). The case brought forward by CPS sought to have an urgent interdict placed against SASSA and SAPO entering into an agreement for providing grant payment services. The High Court found in favour of CPS' argument, but this decision would later be overturned by the Supreme Court of Appeal; in effect making the agreement between SAPO and SASSA valid. This outcome would, however, be of no consequence as in the month that followed, SASSA would initiate a fresh tender process for identifying a service provider for payment of grants.⁶⁸

It is at this stage that the agreement between SAPO and SASSA would become void, marking a significant turning point both in the manner in which SASSA and the DSD envisioned grant payments being made, as well as the overall strategic approach which the Agency would adopt. This turning point coincides with a change in leadership in the country and in turn in the Ministry and SASSA. Following the national election, President Zuma appointed Edna Molewa as minister of the DSD and Bathabile Dlamini deputy minister in May 2009. Zola Skweyiya, a champion of progressive social policy and public sector leadership, was pushed aside. Unsurprisingly, he became a prominent member of the veterans group that emerged to oppose Zuma in 2017.

It is worth noting that the secondary argument which was put forward by CPS (on which the High Court did not make any finding) with regard to its request to overturn the agreement between SASSA and SAPO was "that the Agency failed to obtain the concurrence of the Minister to enter into the Letter of Agreement as is required by sec. 4(2)(a) of the SASSA Act."⁶⁹ There are two potentially significant insights which might be gathered from this argument put forward by CPS. The first is that the then CEO of SASSA, Mr Fezile Makiwane, had by inference entered into the agreement with SAPO either without the minister's consent or knowledge of the agreement. The second and perhaps more curious insight

is that at some point CPS was made aware of this assumed fact. As with most internal departmental management matters, one would assume that this information would not be readily available to the public. This begs the question as to how it was that CPS was informed of the fact that the minister had not provided concurrence for the agreement – perhaps this is the reason why the Letter of Agreement signed in July 2009 came into effect in January 2009. As this argument was not pursued by the court, it will remain unknown as to what the minister's view on the matter was. Given that CPS was confident enough to include this in its legal argument, one might assume that the minister would have been called upon to testify in favour of CPS.

On 16 July 2009, SASSA CEO, Mr Fezile Makiwane, was placed on 'special leave' following a probe by the Special Investigations Unit (SIU). At first it was reported that Makiwane had instructed CPS to pay R2.5 million from SASSA's Reconstruction and Development Fund, a fund which was used and controlled by payment service providers for maintaining and upgrading of payment facilities, towards funding a party for Jacob Zuma in December 2008 at Nkandla.⁷⁰ The fund was subsequently closed. It is unknown if any charges were ever laid against Makiwane or CPS, or if indeed any evidence was found in support of this allegation.

It was then further alleged that Makiwane "had contravened the rules of the Public Finance Management Act in relation to irregular procurement practices involving 11 transactions amounting to R10 million".⁷¹ In January 2010, Makiwane submitted his resignation, but this was rejected by Molewa, citing that he had not given the required three months' notice. On 23 April 2010, Fezile Makiwane was dismissed⁷² and Molewa appointed Coceko Pakade, the then chief financial officer (CFO) of the DSD to the acting CEO position at SASSA.⁷³

Makiwane challenged the dismissal in labour court⁷⁴ and it was revealed that the motivation for his resignation was "influenced solely by the extent to which the working conditions had been rendered unbearable".⁷⁵ In the court papers he detailed how he had been asked to respond to

⁶⁸ Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd*. [2011] ZASCA 13 (11 March 2011).

⁶⁹ High Court of South Africa: North Gauteng. 2009. *Cash Paymaster Services v The Chief Executive Officer of the SA Social Security Agency and SAPO* 2009.

⁷⁰ Maphumulo, S. 2009. *Official Fired over Merc Scandal*. [Online] Available: <https://www.iol.co.za/news/politics/official-fired-over-merc-scandal-450020>.

⁷¹ Sapa, A. 2010. *Social Security Head Rolls*. [Online] Available: <https://www.timeslive.co.za/sunday-times/business/2010-04-23-social-security-head-rolls/>.

⁷² Sapa, A. 2010. *Social Security Head Rolls*. [Online] Available: <https://www.timeslive.co.za/sunday-times/business/2010-04-23-social-security-head-rolls/>.

⁷³ Maphumulo, S. 2009. *Official Fired over Merc Scandal*. [Online] Available: <https://www.iol.co.za/news/politics/official-fired-over-merc-scandal-450020>.

⁷⁴ SA Labour Court. 2010. *Makiwane v Minister of Social Development and Another*. [2010] ZALC 285 (24 May 2010).

⁷⁵ Staff Writer. 2010. *Work Was "Unbearable", Says Ex-SASSA Boss*. [Online] Available: <https://www.iol.co.za/news/politics/work-was-unbearable-says-ex-sassa-boss-474714>.

what was referred to as the so-called "Penultimate Report", which had been completed two years earlier and concerned property acquisitions. He responded to all the requests put to him, but received no response or feedback and at

the end of January [2010] he was 'at his wits end' as he had been suspended for six and a half months, had responded to allegations against him and still was not being allowed to return to work, despite what he believed to be the absence of any good reason to prolong his 'special leave'.⁷⁶

It would thus appear from the filings in the court processes and the lack of any public information to the contrary that none

of the allegations against Makiwane were ever substantiated. Makiwane later sued the department for reputational damages, resulting in a R6.7 million pay-out.⁷⁷ In hindsight, this is a story that appears to be replicated throughout the various examples of state capture, as outlined in the *Betrayal of the Promise*⁷⁸ report and other supplementary reports.

The removal of Fezile Makiwane from SASSA allowed for a change in the approach of the Agency to the distribution of grants and how this should be undertaken. Text Box 2 outlines the pertinent details of the envisioned payment system, prior to the Zuma administration.

Text Box 2: South African Post Bank Payment Model

Context and Objectives:

The 2007 RFP set out the challenges that SASSA was experiencing at the time in relation to the grant payment system, namely that:⁷⁹

- approximately 70% of payments are done at pay points, ranging from buildings which comply with the national norms and standards to structures with inadequate shelter, ablution facilities, and security;
- the beneficiaries experience long queues and are exposed to harsh weather conditions;
- in many urban townships, and at most rural and deep rural pay points, there is a complete lack of permanent and secure building structures with ample seating, ablution facilities, and water; and
- the security measures at these pay points are not in line with the requisite norms and standards.

In response, service providers were required to provide SASSA with services which would:

- enhance payment services to beneficiaries, inclusive of a technological solution that addresses the current challenges;
- qualitatively enhance the beneficiaries' experience; and
- reduce the cost.

Payment Methods:

The proposed solution was required to take into account the fact that beneficiaries have an option to choose one of the following payment methods:

- bank payments;
- cash payments using a contractor; or
- post office payments.

In the agreement between SASSA and SAPO it was indicated that "[w]hen new beneficiaries applied to SASSA for a grant, they would be asked if they had an existing bank account, and if not, whether they would like to open a Postbank account. If they did, SASSA would on behalf of the beneficiary open a Postbank account if the particular SASSA office was online or it would refer the beneficiary to any post office to do so [...] Within some eight months, 460 377 beneficiaries had opened Postbank accounts under the scheme".⁸⁰ SASSA would have to continue contracting service providers to

Continues on page 18...

⁷⁶ SA Labour Court. 2010. *Makiwane v Minister of Social Development and Another*: [2010] ZALC 285 (24 May 2010).

⁷⁷ Magubane, K. 2016. *Scopa MPs Question Social Development Minister Dlamini on Dodgy Spending*. [Online] Available: <https://www.businesslive.co.za/bd/national/2016-11-23-scopa-mps-question-social-development-minister-dlamini-on-dodgy-spending/>.

⁷⁸ Bhorat et al. 2017. *Betrayal of the promise: How South Africa is being stolen*. State Capacity Research Project.

⁷⁹ Adjudication Committee. 2008. *Narrative Report of the Adjudication Committee for Tender: SASSA 19/06/BS*. Pretoria: South African Social Security Agency.

⁸⁰ Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd*: [2011] ZASCA 13 (11 March 2011).

meet the demand for cash payments of grants. With the SAPO agreement it was envisioned that there would be a steady increase in grants being paid electronically and the need and associated cost of distributing cash would decrease over time.

Card Specifications and Biometric Verification:

SAPO would issue the beneficiary with a Mzansi bank card. The Mzansi bank card was a specialised account which was carried/accepted by all major banks (linked into the NPS and was thus open-loop model) and offered reduced service and transaction fees specifically for low-income account holders. The Mzansi bank card programme did not achieve the critical mass required to ensure that it was financially sustainable for all of the banks and most of the large banks have since developed their own low-cost bank account services. The Post Bank, however, still offers the Mzansi bank card.

Costs:

At the time, costs varied between service providers. At that stage AllPay was the cheapest (as it had already started moving towards electronic payments) and CPS was the most expensive (as it mostly distributed grants through cash payments). The "average handling charge of contractors amounts to R32.11 per transaction". SAPO proposed "a once-off fee of R13.68 for every beneficiary account opened and thereafter a monthly fee of R14.59 per beneficiary".⁸¹

Ownership of Data:

At the time "[t]he contractors were the repositories of the data and the enrolment payment system. Thus, the contractors were and are in control of the process of taking the biometric data of the beneficiaries, including verifying the beneficiaries' details up to the payment stage. All this data remained with the contractors".⁸²

In the court filings it was noted that "[o]ne of the advantages of the [SAPO] system as far as SASSA was concerned was that whereas in the past the beneficiary's details would remain in the contractor's system, the beneficiary's account details would now be captured in the SASSA system."⁸³

3.2 THE INVALID 2012 CPS CONTRACT

In November 2010, arguably now the most visible strategic move by the Zuma-led power elite to repurpose state institutions took place in the form of the first cabinet reshuffle, which included the appointment of Malusi Gigaba as Minister of Public Enterprises. Molewa was relocated to become Minister of Water and Environmental Affairs, and Bathabile Dlamini was appointed Minister of the DSD. At the time, Coceko Pakade was the acting CEO of SASSA⁸⁴ and Vusi Madonsela was still the DG of the DSD.

Minister Dlamini appointed Ms Virginia Petersen as CEO of SASSA on 21 April 2011,⁸⁵ four days after the new RFP was

released on 17 April. The importance of specifying these dates is to highlight, that in terms of exposure to the complexities of the services which SASSA was seeking to acquire and the technical complexities around how the RFP was constructed, it would be reasonable to assume that Ms Petersen was most likely not readily in a position to make executive interventions in the bidding process. However, it was Petersen who, on 10 June, issued Bidders Notice 2, which was intended to clarify the requirements for biometric identification and was ultimately the main reason for CPS being awarded the tender on 17 January 2012.⁸⁶

A number of the losing bidders, particularly the other provincial service providers (hereafter referred to as 'AllPay'),

⁸¹ Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd*. [2011] ZASCA 13 (11 March 2011).

⁸² Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd*. [2011] ZASCA 13 (11 March 2011).

⁸³ Supreme Court of Appeal of South Africa. 2011. *The Chief Executive Officer of the South African Social Security Agency v Cash Paymaster Services (Pty) Ltd*. [2011] ZASCA 13 (11 March 2011).

⁸⁴ Maphumulo, S. 2009. *Official Fired over Merc Scandal*. [Online] Available: <https://www.iol.co.za/news/politics/official-fired-over-merc-scandal-450020>.

⁸⁵ Cabinet. 2011. *Statement on Cabinet Meeting of 20 July, 2011*. [Online] Available: <http://www.gcis.gov.za/content/newsroom/media-releases/cabstatements/111ct2012>.

⁸⁶ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS*: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay I).

were aggrieved by the bid evaluation process and the awarding of the contract to CPS and collectively resolved to institute litigation against the DSD, SASSA, and CPS. First was a High Court application which sought to attain an interdict preventing SASSA from taking any steps to implement the tender (which was later dropped) and then to have the tender reviewed.

In August 2012, the High Court found that the tender process was to be declared illegal and invalid “but declined to set the award aside because of the practical upheaval this would have involved”.⁸⁷ This was due to the complex practicalities which would be involved in attempting to find a ‘just and equitable’ remedy for correcting the flaws to the tender process. AllPay then approached the Supreme Court of Appeal to seek further relief in terms of a remedy to the SASSA tender. In March 2013, “the Supreme Court of Appeal, in the end, found that there were no unlawful irregularities”.⁸⁸ The Supreme Court of Appeal dismissed the appeal and upheld the cross-appeal (filed by CPS); in effect making the tender outcome legal.⁸⁹ Aggrieved by this judgement AllPay, joined by Corruption Watch and the Centre for Child Law Amicus Curiae (friends of the court), approached the Constitutional Court seeking leave to appeal against the adverse orders made by the Supreme Court of Appeal.

On 29 November 2013, the Constitutional Court held that the award of the tender to provide services for payment of social grants to CPS was constitutionally invalid (AllPay 1) and on 17 April 2014 a remedial order (AllPay 2) was handed down, where the court suspended the declaration of invalidity. The declaration was based on the premise that a new tender would be awarded after a proper procurement process. To ensure the payment of grants was not interrupted, CPS would continue to provide payment services and the invalidity of the contract was suspended. SASSA was ordered to report to the court on progress in respect of the new tender process and its outcome.⁹⁰

The details which emerged through these court cases, including how the tender process unfolded and the various irregularities which occurred along the way, demonstrate and provide insight into how tender processes can be manipulated (intentionally or unintentionally) to benefit specific bidders or, alternatively, to disqualify others. This is an important tool in

the state capture handbook. It shows the accumulative impact which ‘minor’ missteps, infractions, and misinterpretations at various stages within a procurement process could have in determining who is awarded a government contract. As in the High Court and Supreme Court of Appeal, the central arguments put forward by AllPay to the Constitutional Court focused on the alleged irregularities in the procurement process, namely:

- a) the requirement of separate bids for the nine provinces;
- b) the composition of the BEC;
- c) the attendance of members when the BAC made its final decision;
- d) the assessment of the functionality of the BEE component of CPS; and
- e) the nature and effect of Bidders Notice 2.

On the surface, the tender for the payment services for grants followed the general procurement processes, where an RFP was developed by a Bid Specification Committee (BSC) consisting of the appropriate technical and operationally competent officials; a BEC evaluated the bids by following a two-stage evaluation process. The first stage entailed the assessment of the technical proposals which bidders put forward in response to the requirements of the RFP, where bidders who scored below a prescribed minimum threshold of 70% fulfilment would be eliminated from the bidding process. Those bids scoring above the 70% technical scoring would then be evaluated on costs and other remaining requirements, including BEE. Based on the recommendations and findings of the BEC, the contract would then be awarded by a BAC.

A total of twenty-one bids were submitted in response to the RFP and of those submitted only AllPay and CPS were able to meet the initial technical evaluation threshold of 70%, with the former scoring 70.42% and the latter 79.79%. Both entities were asked to deliver oral presentations on their technical capability, in order for the BEC to make a final determination for the first stage of the evaluation. Following the presentation, the BEC revised the scores of the two bidders, where “AllPay’s score fell to 58.68% and Cash Paymaster’s score rose to 82.44%”⁹¹, effectively leaving CPS as the only service provider in the running for being awarded

⁸⁷ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1)*.

⁸⁸ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1)*.

⁸⁹ Supreme Court of Appeal of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZASCA 29 (27 March 2013) - SCA Judgment*.

⁹⁰ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1)*.

⁹¹ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1)*.

the tender. The BEC being “satisfied with Cash Paymaster’s proposal on its financial and preference-point merits” recommended to the BAC, who then approved, that CPS be awarded the tender.

Several additional arguments were put forward by AllPay regarding the irregularity of the tender, which were dismissed by the courts, such as the “procedural unfairness” with regard to the short notice given for delivering an oral presentation and the last-minute application to include what the court determined was inadmissible hearsay evidence of potential corruption (this will be dealt with later in this report). However, it is the five factors listed above that speak directly to the modus operandi of the state capture project and will thus be elaborated on further. The first of these is the requirement for separate bids for the nine provinces, where bidders were allowed to submit proposals for any number of provinces.

The High Court had found this argument compelling because “the decision to overlook CPS’ failure to comply with the RFP [was] not rationally connected to the purpose of the tender as a whole, namely, to ensure proper comparative scrutiny of the bids across different provinces”.⁹² Conversely, both the Supreme Court of Appeal and the Constitutional Court ruled that the fact that CPS had failed to comply with the RFP, by only submitting one bid as opposed to a bid for each province, did not have sufficient bearing to warrant a review of the tender. It was the courts’ understanding that it was always SASSA’s intention to award a contract to a single service provider, to provide all the required services nationwide. This assumption (although most likely an assertion made based on SASSA’s representations at the time) is in contradiction to the concerns which the Agency raised previously with regard to the risk of enabling monopolisation of grant payment services, as highlighted in the previous section.

The second and third arguments, which were also ultimately not deemed to have sufficient motivation for declaring the irregularity of the contract, centred on the composition of the BEC and the number of members in attendance at the final meeting in which the BAC decided to award the tender to CPS. In terms of the composition, the BEC consisted of a four-member panel (none of whom was a supply chain management practitioner), which was not in line with

SASSA’s own Supply Chain Management (SCM) guidelines, which required the BEC to consist of five members, one of whom should be an SCM practitioner.⁹³ The courts received arguments from SASSA as to why this point was not relevant, which the courts accepted. Still, the composition of the BEC in terms of who the actual members were and how the bid evaluation unfolded are relevant in relation to Bidders Notice 2. The fact that a member was not present at the final BAC meeting was also viewed as a non-issue in terms of influencing the overall tender awarding outcome, as there was a unanimous agreement between the other four members of the BAC that the contract should be awarded to CPS. What is relevant, is that the absent member, Mr Mathebula of NT, was the only BAC member who raised red flags with regard to the change in biometric specifications and how it influenced the bid evaluation; that there appeared to be no comparative assessment on provincial level and the change in scoring, which was made following the oral presentations.⁹⁴

Ultimately, the Constitutional Court found that the contract awarded to CPS was irregular due to the established fact that Bidders Notice 2 constituted a significant change in the terms of reference of the RFP and that because of the lack of clarity with regard to the requirement, the awarding of the contract should be declared invalid. Bidders Notice 2 served as a declaratory document to the bidding participants, which was to provide clarity on specific requirements in the RFP which bidders were to address in their proposal. The notice was issued on 10 June 2011, just five days prior to the original scheduled date of submissions (15 June 2011), which was extended to 27 June. The significant change comes down to the change of just one word, where the authentication of life on the monthly payment of a grant to a recipient (read biometrics) had gone from being a ‘preferred’ requirement to a ‘must’. Both of the competing bidders (AllPay and CPS) provided for the use of fingerprint biometrics in the process of beneficiary enrolment and reconciliation (this was proposed by both AllPay and CPS). However, as the diverse payment methods of direct transfers, ATMs, PoS, etc., which are included in the NPS, were not yet enabled for biometric verification, AllPay was not able to meet this change in requirement. It was only CPS’s proposal that offered an alternative method of biometric verification in the form of voice biometric technology, which was not implemented.

⁹² High Court of South Africa: North Gauteng. 2012. *AllPay vs SASSA and CPS: HC judgment*.

⁹³ High Court of South Africa: North Gauteng. 2012. *AllPay vs SASSA and CPS: HC judgment*.

⁹⁴ AllPay. 2013. *AllPay vs SASSA and CPS: Stated Facts Submission*.

In the court judgement it was highlighted that both the BEC and the BAC had in fact found it difficult to approach the evaluation of the bids, given the lack of clarity around the change which Bidders Notice 2 inferred in relation to the original RFP. The bidders notice was at first not included in the BEC assessment, as the committee itself found it difficult to align the RFP with the change implied by Bidders Notice 2. However, it was later included in the reassessment, which took place following the oral presentations by the two qualifying bidders. As highlighted previously, the result of this change in the technical specification is what motivated AllPay's bid score to be reduced to below the qualification

threshold of 70% and left CPS as the only bidder to proceed to the second stage of the evaluation. For reference, Table 2 provides a breakdown of the members of the BEC and the corresponding technical scores that they allocated before and after the oral presentations. As can be seen from the table, very little change in scoring was recorded from the two BEC members, Ms Raphaahle Ramokgopa (project manager at the time) and Mr Frank Earl (then acting programme manager: DSD). AllPay's score was, however, reduced across all categories by both Mr Wiseman Magasela, Deputy DG: Social Policy in the DSD, and Ms Vuyelwa Nhlapo, CEO of the National Development Agency (NDA).

Table 2: Breakdown of BEC Scoring for SASSA 2012 Tender

| | Ramokgopa | | Magasela | | Earl | | Nhlapo | | Total | |
|----------------------------|-----------|------|----------|------|--------|------|--------|------|---------------|--------------|
| | AllPay | CPS | AllPay | CPS | AllPay | CPS | AllPay | CPS | AllPay | CPS |
| Before Presentation | | | | | | | | | | |
| Enrolment | 3,60 | 3,60 | 3,76 | 3,96 | 2,88 | 3,36 | 2,92 | 3,88 | 16,45 | 18,50 |
| Payment Solution | 3,67 | 4,50 | 2,70 | 4,42 | 3,33 | 3,42 | 3,58 | 3,92 | 26,56 | 32,52 |
| Security | 4,10 | 3,95 | 4,00 | 5,00 | 4,00 | 3,80 | 4,00 | 4,05 | 12,08 | 12,60 |
| Phase-in/out | 3,83 | 4,50 | 3,67 | 5,00 | 3,50 | 3,17 | 3,67 | 3,67 | 7,34 | 8,17 |
| Mitigation | 4,00 | 5,00 | 4,00 | 4,00 | 4,00 | 4,00 | 4,00 | 4,00 | 8,00 | 8,00 |
| | | | | | | | | | 70,42 | 79,79 |
| After Presentation | | | | | | | | | | |
| Enrolment | 3,60 | 3,60 | 2,32 | 3,96 | 2,72 | 3,36 | 1,84 | 4,56 | 13,1 | 19,35 |
| Payment Solution | 3,42 | 4,50 | 2,58 | 4,42 | 2,83 | 3,42 | 2,25 | 4,33 | 22,16 | 33,34 |
| Security | 4,10 | 3,95 | 3,60 | 5,00 | 4,00 | 3,80 | 2,30 | 4,25 | 10,5 | 12,75 |
| Phase-in/out | 3,83 | 4,50 | 2,33 | 5,00 | 3,50 | 3,17 | 2,17 | 4,33 | 5,915 | 8,5 |
| Mitigation | 4,00 | 5,00 | 3,00 | 4,00 | 4,00 | 4,00 | 3,00 | 4,00 | 7 | 8,5 |
| | | | | | | | | | 58,675 | 82,44 |
| Difference | | | | | | | | | | |
| Enrolment | - | - | -1,44 | - | -0,16 | - | -1,08 | 0,68 | -3,35 | 0,85 |
| Payment Solution | -0,25 | - | -0,12 | - | -0,50 | - | -1,33 | 0,41 | -4,40 | 0,82 |
| Security | - | - | -0,40 | - | - | - | -1,70 | 0,20 | -1,58 | 0,15 |
| Phase-in/out | - | - | -1,34 | - | - | - | -1,50 | 0,66 | -1,42 | 0,33 |
| Mitigation | - | - | -1,00 | - | - | - | -1,00 | - | -1,00 | - |

Source: 2013 Supreme Court of Appeal AllPay Judgement⁹⁵

⁹⁵ Supreme Court of Appeal of South Africa. 2013. AllPay vs SASSA and CPS: [2013] ZASCA 29 (27 March 2013) - SCA Judgment.

In the High Court and the Supreme Court of Appeal, AllPay put forward that there was a conflict of interest with at least one of the BEC members, namely Ms Nhlapo, who was the BEC chairperson at the time, highlighting that she had a previous business relationship within one of CPS's empowerment partners, Mr Yako. Ms Nhlapo and Mr Yako had previously served on the board of a company called Reflective Learning Resources. As the company had no involvement in the bid or tender, they no longer sat on the company's board, and had had little interaction with each other, the court agreed that the allegation of bias could not be established.⁹⁶ The Constitutional Court did, however, find the effect of Bidders Notice 2 and the consequential bid evaluation process unfair, thus rendering the contract between SASSA and CPS invalid.

In the judgement on the AllPay case, the Constitutional Court detailed how it took great exception to the fact that very little consideration was given to the assessment of CPS's empowerment model:

There was an obligation on SASSA to ensure that the empowerment credentials of the prospective tenderers were investigated and confirmed before the award was finally made. That obligation became even more crucial when there were no other competitors left in the second stage. There is then an even greater obligation for the tender administrator to confirm the empowerment credentials of the winning bidder. Cash Paymaster claimed that its equity partners would manage and execute over 74% of the tender. Its tender did not substantiate this [...] Despite this failure, SASSA did not call on Cash Paymaster to substantiate its claimed empowerment credentials, presumably because by that stage the preference points could not have affected the outcome. This effectively made the consideration of empowerment an empty shell, where preference points were calculated as a formality but where the true goal of empowerment requirements was never given effect to.⁹⁷

It would later emerge, through investigative reporting by *amaBhungane*⁹⁸, that the agreement between CPS and its consortium partners (which had not been submitted to the courts) provides an empowerment model which is in fact nothing more than an "empty shell". In its response to the RFP, CPS stated that 74.57% of the contract value would be allocated to its consortium partners. In the consortium memorandum of agreement (MoA), however, there was a clause which in effect rendered the partners' active participation in the provision of services to SASSA mute. The contract indicates that the consortium members were to form a new company (Newco) and this company would then enter into a "Services Agreement" with CPS, wherein CPS would then render "certain support services to Newco, against payment of 74.45% of the Transaction Fee".⁹⁹ This in effect meant that CPS's empowerment partners would only be allocated 0.12% of the R10 billion contract amount. The issues around CPS and the various empowerment partnerships will be dealt with further in the following chapter.

The case which was brought before the Constitutional Court centred on the tender process and as such it was not within the scope of the court proceedings to establish whether or not there was any form of corruption involved. The court did, however, see fit to include the following statement in its judgement:

As Corruption Watch explained, with reference to international authority and experience, deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences.¹⁰⁰

⁹⁶ High Court of South Africa: North Gauteng. 2012. *AllPay vs SASSA and CPS: HC judgment*.

⁹⁷ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1)*.

⁹⁸ McKune, C. 2016. *Serge Belamant, SASSA, and the "useful Blacks"*. [Online] Available: <http://amabhungane.co.za/article/2016-12-14-serge-belamant-and-the-useful-blacks>.

⁹⁹ Cash Paymaster Services (Pty) Limited, Born Free Investments 272 (Pty) Ltd, Ekhaya Skills Developments Consultants CC & Reties Trading CC. 2011. *Memorandum of Agreement*.

¹⁰⁰ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1)*.

Text Box 3: CPS Payment Model

Context and Objectives:

By 2011 there were approximately 14.5 million beneficiaries, when the bid document was issued, where approximately 58% of the total 9.2 million recipients are paid electronically into a bank account.¹⁰¹

The objectives of the payment services contract included:

- enhance payment services to beneficiaries, with focus on protecting beneficiaries' dignity;
- to move beneficiaries away from more expensive cash delivery toward electronic delivery (this would reduce cost);
- interoperability for electronic payments nationwide (able to operate within the NPS); and
- new requirement of biometric verification was introduced.

Payment Methods:

A re-registration process was undertaken, whereby each grant recipient was issued with a special Grindrod bank account, linked to a SASSA-branded smart card. Recipients could then choose one of the following payment methods:

- payment into personal bank payment;
- ATMs;
- participating merchants (retail outlets); and
- designated pay points where cash payments distributed.

"Net's payments are accomplished by the use of a biometrically enabled smart card. Beneficiaries/Recipients use the card to access their store-of-value, receiving cash at unique, single-purpose cash-dispensing machines. These machines are mounted in vehicles that arrive at designated pay points at the scheduled time of payment. Though this method uses an electronic store-of-value, the payment is considered/categorized by SASSA as 'cash-based'".¹⁰²

Card Specifications and Biometric Verification:

Each grant recipient received a SASSA-brand smart. This card utilised CPS's proprietary technology, which is supposed to require biometric verification before payment can take place.

Participating merchants and the designated pay points were also required to utilise specific technology-compatible payment devices to do fingerprint biometric verification. Where recipients wanted to access their grants either through non-participating retailers, transfers into personal bank accounts, or non-CPS/Grindrod ATMs, voice biometric verification was required before payment would be made into their account.

CPS is a non-bank payment service (partnered with Grindrod, but is not directly linked to the NPS) and with the proprietary biometric technology (which is not included in government standards and not compatible with most transaction devices), this is a closed-loop system.

Costs:

SASSA paid a fixed monthly fee of R16.44 (inc. VAT) per recipient (a recipient can receive more than one grant and/or could be receiving a grant payment for more than one beneficiary).

If payment is made into a recipient's personal bank account, they would pay associated banking fees.

The smart card is interoperable with the NPS (i.e. can be used with other devices); however, transaction fees are charged to recipients, for example ATM withdrawals and purchases at non-participating merchants.

Ownership of Data:

CPS retained control over all the beneficiaries' data, including biometrics and personal information.

*Voice verification was only implemented in 2014 and was then halted the same year - this does not appear to have been implemented and a normal PIN is used with the card.

¹⁰¹ Pulver, C. & Ratichek, J. 2011. *CGAP G2P Research Project: South Africa Country Report*. [Online] Available: <https://www.cgap.org/sites/default/files/CGAP-G2P-Research-Project-South-Africa-Report.pdf>.

¹⁰² Pulver, C. & Ratichek, J. 2011. *CGAP G2P Research Project: South Africa Country Report*. [Online] Available: <https://www.cgap.org/sites/default/files/CGAP-G2P-Research-Project-South-Africa-Report.pdf>.

3.3 MINISTERIAL COMMITTEES, TASK TEAM, AND WORK STREAMS

When I joined the Department of Social Development in 2010, I was presented with a report by SASSA which was developed by a panel of independent advisors who analysed the challenges relating to the then payment system, problems faced by beneficiaries and the administrative issues within SASSA. It contributed to the decision of establishing the Ministerial Advisory Committee [MAC].¹⁰³

Following the two attempts to find a solid solution for distributing grants, the first being abandoned and the second being found by the Constitutional Court to be invalid, the DSD set about the task of attempting to once again carve out a way forward. As can be seen from the statement above, utilising outside players to provide expertise and advice to government institutions is not new. This pre-Zuma trend became more pronounced and widespread after Zuma became president. There were two consequences that are significant for this analysis: it exacerbated the institutional weaknesses of key state institutions, and created a powerful network of seemingly 'independent' experts and advisors. The line between advising and decision making tends to fall away in the context of the emergence of a 'shadow state'. This is where the decisions made by so-called 'kitchen cabinets' are carried through into state institutions and legitimised via repurposed tender procedures for the appearance of upholding the constitutional state facade.

3.3.1 Ministerial Advisory Committee (MAC)

Before departing from her position as minister of the DSD, Molewa had established "a number of committees"¹⁰⁴, similar in nature and seemingly with some of the same members. The MAC effectively evolved into the so-called work streams in 2016. Little information is available in the public domain regarding these committees, with only a brief reference being made to them by Ms Zodwa Mvulane (project manager at SASSA for Payment System) on 28 February 2017, when she indicated that there were in fact a number of committees, one of which "looked at norms and standards at pay points". Yet, no further detail could be provided on who was on these committees, how many committees there were, or

what their various functions were. It could be assumed that one of these was the committee which Dlamini referred to in a Social Development Parliamentary Committee meeting on 22 February 2017, at the height of tension around the CPS contract coming to an end. In her answer to a question posed by a member of parliament (MP), on the background to the MAC, Dlamini indicated that 'the committee' had been established long before and was in fact established by her predecessor.¹⁰⁵ This would seem to confirm Molewa's appointment of such a committee and that it was constituted with some of the same members. It would appear that this is, however, an attempt to pass the buck backwards, as Dlamini announced in a public statement the appointment of the MAC in 2013, which in turn established the process for SASSA to take over payment of grants from CPS.¹⁰⁶

On 13 August 2013, SASSA released a press statement indicating the Agency's intention to take over the payment of grants from CPS by 2017 and in order to achieve this mammoth task, the minister appointed the MAC. The role of the MAC was to "investigate and advise her on the best payment options for social security. Amongst other things, the committee is tasked with the responsibility to explore the existing market for a suitable payment model that will make it possible for SASSA to pay social grants in-house". In her statement, the minister emphasised how the members were "key expert sectors such as accounting, banking, legal, ICT [information and communications technology], payment systems" (breakdown provided in Table 3). However, it is important to highlight that none of the committee members were actually from the DSD or from SASSA.¹⁰⁷ Only one member had direct qualifications and expertise in social protection, namely Prof. Ann Skelton, Director of the Centre for Child Law and a professor at the University of Pretoria. Mr Tim Masela, Head of the NPS Department at the South African Reserve Bank (SARB), had the necessary expertise with regard to the national banking system.

In December of 2014, the committee submitted a report in which it recommended that SASSA should develop its own payment system and that work streams should be established to facilitate the implementation of the committee's recommendations. It was in this report that the

¹⁰³ Dlamini, B. 2017. *Minister of Social Development Media Briefing 05 March 2017*. Pretoria: Department of Social Development.

¹⁰⁴ PMG. 2017. *SCOPA: SASSA: hearing on Cash Paymaster Services (CPS) contract*. Cape Town: Parliamentary Monitoring Group.

¹⁰⁵ eNCA. 2017. *Sassa to Face Tough Questions in Parliament*. Video. [Online] Available: <https://www.youtube.com/watch?v=j8a8VnCh-Sc>.

¹⁰⁶ SASSA. 2013. *Media Release: Appointment of Ministerial Advisory Committee*. Pretoria: South African Social Security Agency.

¹⁰⁷ SASSA. 2013. *Media Release: Appointment of Ministerial Advisory Committee*. Pretoria: South African Social Security Agency.

Table 3: List of MAC Members

| Name | Qualification (s) | Experience |
|-------------------------------|---|---|
| Mr Themba Langa (chairperson) | LLB | Extensive experience in law |
| Mr Mark Davids | National Higher Diploma: Electrical Engineering | Extensive experience in business development and management in the ICT sector |
| Mr Siphon Majombozi | B.Ed | Extensive experience with regulatory bodies, policy, and government |
| Mr Tim Masela | BCom | Extensive experience in central and commercial banking |
| Mr Patrick Monyeki | MBA | Extensive experience in the ICT sector |
| Mr Sizwe Shezi | MA in Social Policy | Project management, relationship management |
| Dr Makhozi Khoza | PhD in Administration | Financial management, total quality management |
| Ms Tangkiso Parkies | Honours in Sociology | Project management |
| Prof. Ann Skelton | PhD in law restorative and child justice | Local and international experience on child law and justice, family law |
| Mr Sanjiv Mital | Engineering Degree Information Technology / Management Degree | Engineering and Information Technology |
| Mr Barend Petersen | Honours B Compt. | ICT and ICT infrastructure |
| Mr Tim Sukazi | LLM in Commercial Law | Commercial law |
| Mr Andile Nyhonyha | LLB | Local and international commercial law |

Source: *Written Response to Parliamentary Question 295/2015*¹⁰⁸

first suggestion was put forward that “in order to speed up the in-sourcing process”, some members of the MAC could be retained. In August 2015, the committee recommended that it be disbanded in order to speed up the implementation of the recommendations.¹⁰⁹

By the time the MAC had issued the December 2014 report, CPS had been providing SASSA with payment services in accordance with the ruling of the Constitutional Court. This included the massive task of re-registering grant beneficiaries, which had already been undertaken, and SASSA was in the process of advertising a new tender in line with the court order. The new tender was initially advertised in December 2014. There were, however, disputes around the RFP, where CPS took exception to the lack of clarity around the technicalities of the tender and around the use of beneficiary data, to which the Black Sash Trust raised concerns. The Constitutional Court was required to provide guidance, in the form of a follow-on judgement to the AllPay2 case, on the revision of the RFP

and set out the timeframes by which SASSA and the DSD were required to complete the process. The RFP was revised and then issued on 24 March 2015.¹¹⁰

In May 2015, Net1/CPS released a statement announcing that it would not be submitting a proposal for the new tender. AllPay also did not submit a proposal and in the end the tender was not awarded to any of the other three submitting bidders. It was suggested at the time that the tender was engineered to fail, citing two specifications which made the tender unviable. The first was the price, where SASSA had stipulated a maximum fee of R14.50 per recipient per month, which is an 11.8% decrease on the fee which CPS was charging, and the second being the biometric (proof of life) requirement, which CPS initially approached the courts to have SASSA revise. Two of the bidders were disqualified for not meeting the biometric requirement and the last bidder was excluded for providing a bid which was above the ceiling price.¹¹¹

¹⁰⁸ DSD. 2015. *Written Reply for Question to the Minister of Social Development: May 2015 - 295/2015*. Cape Town: Parliamentary Monitoring Group. [Online] Available: https://pmg.org.za/question_reply/552/.

¹⁰⁹ Dlamini, B. 2017. *Minister of Social Development Media Briefing 05 March 2017*. Pretoria: Department of Social Development.

¹¹⁰ Constitutional Court of South Africa. 2015. *AllPay vs SASSA and CPS: [2015] ZACC 7 (24 March 2015) - Judgment (AllPay 3)*.

¹¹¹ Sole, S. & McKune, C. 2017. *Social Grants Payment Crisis - Everything You Need to Know but Were Afraid to Ask*. [Online] Available: <http://amabhungane.co.za/article/2017-03-17-social-grants-payment-crisis-everything-you-need-to-know-but-were-afraid-to-ask>.

The tenders were adjudicated in October 2015, in line with the Constitutional Court timelines and on 05 November 2015, SASSA filed a progress report to the Constitutional Court informing it of the outcome of the tender process and outlining the steps that SASSA proposed to take in order for the Agency to take over the payment function itself after 31 March 2017. On 25 November, the court issued an order indicating that it was satisfied with the proposal put forward by SASSA to take over the payment of grants and the court discharged its supervisory jurisdiction over SASSA, as it was no longer viewed as necessary.¹¹²

3.3.2 The Work Streams

In July 2015, Minister Dlamini sent the then CEO of SASSA, Virginia Petersen, a letter instructing her to appoint various work streams, based on the recommendations of the MAC. In the letter the minister gave the following instructions:

I have decided that in order to roll out implementation process diligently, we need to retain the collective knowledge and institutional memory of the key members of the Committee. Given their knowledge and expertise, these members will lead the work streams and work jointly with you and the SASSA Executive Management team so as to ensure that the various work streams are adequately resourced to execute [sic] their respective mandates in a speedy manner without any disruption, and to minimise delays in the implementation of the third recommendations.

To this end, I have decided to retain the services of the following individuals who were part of the Committee for the implementation of the third recommendations: Mr Andile Nyonyha (Team Leader), Mr Tim Suzuki (Legal), Ms Tankiso Parkies (Social Benefits), Mr Sizwe Shezi (Economic Development) and Mr Patrick Monyeke (Information Communication Technology). Although this panel will account directly to me during the implementation process, I request SASSA appoints hosts, provide resources and compensates the panel on behalf of the Department, subject to the applicable laws.¹¹³

Of the five individuals listed above, only three of the work streams were actually appointed and a year lapsed between when this letter was sent and when the work streams were actually appointed in July 2016, by then acting CEO, Ms Raphaahle Ramokgopa. It is unknown as to why there was this delay in appointing the work streams, but one possible reason could be that their appointment (which was budgeted for R47 million over three years) was not in line with PFMA requirements of going on an open tender process. In a statement by Dlamini, the motivation for appointing the work streams without following the required SCM process was, firstly, that SASSA did not have the necessary “expertise within the organisation because this function it was planning for [paying grants], was always outsourced”, and, secondly, that “SASSA’s management team had their day-to-day running of the organisation and could not simultaneously run a hugely complex and intense transition project”.¹¹⁴ Still, this motivation does not provide clarity as to why the appointment of the work streams was to be undertaken by SASSA when they were instructed to report directly to the minister. It would appear that this is real source of the confusion surrounding how SASSA was to meet its obligations for taking over the payments of grants come 01 April 2017. Further discussion on the role the work streams played in the culmination of the ‘self-made crisis’ of March 2017 is discussed in Section 3.5.

With the crisis averted, following the Constitutional Court proceedings, the then CEO of SASSA, Thokozani Magwaza, decided to cancel the work stream contracts in July 2017, after having received a letter from NT informing him that the procurement process followed was non-compliant with the SCM requirements and was thus regarded as irregular.

Running a brief Internet search on some of the individuals named in the minister’s request provides cross-referencing links to other state capture projects, which need to be highlighted in the context of this case study. The two MAC members not appointed to the work streams were Andile Nyonyha, who is a founder and director of Regiments Capital, which is linked through work which it undertook together with McKinsey at Transnet and Eskom (it should be pointed out this was prior to the fallout between them and Eric Wood/Trillian).¹¹⁵ Mr Sizwe Shezi, who has served as a trustee of two of Zuma’s trusts (namely the Friends of Jacob Zuma Trust and the Jacob Zuma RDP Children’s Trust), was reported to have benefited

¹¹² Dlamini, B. 2017. Minister of Social Development Media Briefing 05 March 2017. Pretoria: Department of Social Development.

¹¹³ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 20 (15 June 2017) - Judgment 2.*

¹¹⁴ Dlamini, B. 2017. Minister of Social Development Media Briefing 05 March 2017. Pretoria: Department of Social Development.

¹¹⁵ ABSIP. 2016. *Game Changers Black Book 2016. Association of Black Securities and Investment Professionals.* [Online] Available: <http://www.envisionitcapital.com/Media/ABSIP-Magazine-Black-book-2016.pdf>.

from a R1.7 billion deal which was partly funded by the Public Investment Corporation (PIC) for the purchasing of a 22.95% stake in oil company Total SA. Shezi's company, TheMan Investments, was reported to have received shares worth an estimated R122.4 million through the deal.¹¹⁶

Out of the five work streams which were identified in the MAC final report, three were established in July of 2016, namely:

- Legal and regulatory work stream, which was led by Mr Tim Sukazi of Tim Sukazi Inc. and was responsible for reviewing and ensuring that there was legal and regulatory compliance to the proposed solution.¹¹⁷ The value of the appointment was R7.6 million.¹¹⁸
- Benefits and local economic development work stream, which was led by Ms Mpolokeng Tankiso Parkies and was responsible for identifying the potential benefits and local economic initiatives which could be achieved as a result of implementing the proposed work stream solution.¹¹⁹ The value of the appointment was approximately R4.4 million.¹²⁰
- Business information, banking services, and project management work stream, which was contracted to Rangewave Consulting and led by Mr Patrick Monyeki. This company was responsible for the bulk of the work relating to developing a plan and the technical system requirements which would need to be implemented in order for SASSA to take over payments of grants come 01 April 2017. The contracted value for the work was R35.8 million.¹²¹

Patrick Monyeki has played a central role in not only the technical IT-related project of SASSA's grant payment system, but has also been linked to a number of other potentially dodgy dealings within the government. Two are

worth mentioning here; the first is related to allegations of collusion in a contract between the Department of Correctional Services (DCS) and the SA Security Solutions and Technologies (Sasstec) group, of which he is a 15% shareholder.¹²² The contract involved the development of an Integrated Inmate Management System (IIMS); in effect a system "to keep track of South Africa's 160 000 strong prison population".¹²³

The second is linked to the investigations around unexplained money transfers to South African Revenue Service's (SARS) second-in-command, Jonas Makwakwa, Chief Officer: Business and Individual Taxes. Investigative reporting on the matter appears to link Monyeki to a "February 2015 payment of R17.87 million by the Department of Water and Sanitation [DWS] in favour of a debt-collection company called New Integrated Credit Solutions". New Integrated Credit Solutions then transferred precisely 25% of the value of its shares (approximately R4.5 million) to a company, of which Monyeki is the sole director, called Mahube Payment Solutions. Makwakwa is reported to have received money from the same initial payment made by the DWS, through a complex web of money transfers and exchanges. The details of the alleged corruption and money laundering emerged when the Financial Intelligence Centre (FIC) flagged several suspicious payments to Makwakwa to the SARS, following which he was suspended and investigations ensued. After an internal enquiry, he was cleared of all charges and reinstated. The Hawks are still currently investigating the matter.¹²⁴ The link between Monyeki and Makwakwa appears to be related to the close friendship between Monyeki and SARS Commissioner, Tom Moyane. The two have also been linked to the awarding of the 2012 SASSA contract to CPS. Further discussion on Monyeki and Moyane will be presented in the next chapter.¹²⁵

¹¹⁶ Thamm, M. 2016. *Six Months to Re-Issue 17-Million New SASSA Cards: Can It Be Done or Are We Heading for Another Deadly Crisis?* [Online] Available: <https://www.dailymaverick.co.za/article/2016-10-26-six-months-to-re-issue-17-million-new-sassa-cards-can-it-be-done-or-are-we-heading-for-another-deadly-crisis/#:~:text=WiFmfVWWbDd>.

¹¹⁷ DSD. 2017. *Written Reply for Question to the Minister of Social Development: April 2017 - W31*. Cape Town: Parliamentary Monitoring Group.

¹¹⁸ DSD. 2017. *Written Reply for Question to the Minister of Social Development: April 2017 - NW30*. Cape Town: Parliamentary Monitoring Group.

¹¹⁹ DSD. 2017. *Written Reply for Question to the Minister of Social Development: April 2017 - W31*. Cape Town: Parliamentary Monitoring Group.

¹²⁰ DSD. 2017. *Written Reply for Question to the Minister of Social Development: April 2017 - NW30*. Cape Town: Parliamentary Monitoring Group.

¹²¹ DSD. 2017. *Written Reply for Question to the Minister of Social Development: April 2017 - W31*. Cape Town: Parliamentary Monitoring Group.

¹²² Serrao, A. 2017. *Moyane-Era Prisons Tender Referred to SIU*. [Online] Available: <https://www.news24.com/SouthAfrica/News/moyane-era-prisons-tender-referred-to-siu-20170814>.

¹²³ Sole, S. 2017. *Insider Claims Collusion with R378m Prisons Tender*. [Online] Available: <http://amabhungane.co.za/article/2017-06-26-insider-claims-collusion-with-r378m-prisons-tender>.

¹²⁴ Haffjee, F. 2017. *Hawks Investigating Money-Laundering By Top SARS Man*. [Online] Available: http://www.huffingtonpost.co.za/2017/11/04/hawks-investigating-money-laundering-by-top-sars-man_a_23266546/.

¹²⁵ Serrao, A. 2017. *Moyane-Era Prisons Tender Referred to SIU*. [Online] Available: <https://www.news24.com/SouthAfrica/News/moyane-era-prisons-tender-referred-to-siu-20170814>.

The work streams started their work in August 2016 and in just three months had “fleshed out the advisory committee’s proposal and developed a project plan and preliminary costing for the project”. In October 2016, the work streams had issued their first draft report, in which they outlined the ‘optimal model’ and approach that SASSA should adopt for

taking over the payments of grants from CPS. In a statement defending the work streams, Dlamini praised that “[i]t was through their analysis that we appreciated the complexity of the programme and that the initial timelines that were presented to the [Constitutional] Court underestimated the effort and capacity required to prepare SASSA for the in-sourcing process.”¹²⁶

Text Box 4: Work Streams Payment Model

In November 2016, there were more than 17 million beneficiaries and approximately 10.5 million recipients. It is unclear what the exact breakdown of payment methods according to category of beneficiaries per received grant is. However, based on a presentation by former Finance Minister Pravin Gordhan in parliament, it is estimated that approximately 4 million (38%) recipients received grants at pay points and participating merchants, 1.6 million (15%) had direct transfer to a separate bank account and 4.9 million received grants through other banks’ ATMs (which charge recipients a transaction fee)¹²⁷ It is estimated that there are between 1.5 million and 2 million recipients who have their grants automatically transferred to an EasyPay Everywhere (EPE) account, a Net1 subsidiary, which is also a Grindrod-held bank account.¹²⁸

In terms of payment type, 35% of transactions (there can be more than one electronic transaction by a recipient) take place at pay points (this is an increase from before CPS) and only 7% at biometric-compatible ATMs or PoS devices, 18% with regular PIN-based PoS and 40% from standard ATMs. This means that more than half of the transactions made under the CPS system did not meet the biometric verification as required by SASSA.¹²⁹

It is important to note that the scope of the work streams extended beyond just the payment system and looked at all of SASSA’s internal operations as well. From documents and information available, the following is understood to be the principal objectives of the work streams’ proposed model:

- To develop an entirely new integrated web-based system, which would replace the legacy grant administration (social pension, or SOCPEN) system.
- Biometric verification would remain a mandatory requirement.
- Cards should be a prepaid debit card, linked to the SASSA holding account (closed-loop system, similar to that of CPS).
 - SASSA should produce its own specialised bank card, which would include biometric verification for every transaction and be able to “enforce spending at specific merchants”; “manage/restrict debit orders”, and “provide protected and unprotected spending”, such as barring spending on alcohol.¹³⁰
- This would require compatible ATMs and POS devices to be distributed to participating merchants, agreements with whom SASSA would have control over.
- No debit orders or deduction would be allowed (excluding a 10% funeral policy allowance in line with regulations).
- SASSA to have ownership and control over beneficiary and recipient data, including transaction data.

Important to note is that in the 2013/2014 annual report, SASSA indicated that “[t]he effectiveness of the proof of life verification solution is dependent on compatibility with payment Cardholder Verification Method (CVM) solutions in the NPS and as such necessitates the development of Biometric Standard for CVM in the NPS infrastructural environment”. In July 2016, PASA announced “a new specification for biometric authentication on payment cards across the country.”¹³¹

¹²⁶ Dlamini, B. 2017. *Minister of Social Development Media Briefing 05 March 2017*. Pretoria: Department of Social Development.

¹²⁷ Minister of Finance. 2017. *Standing Committee on Public Accounts: SASSA and Related Matter*. [Online] Available: <http://www.parl.gc.ca/Committees/en/PACP/About>.

¹²⁸ Black Sash Trust. 2017. *Submission to the Panel of Experts on the First Quarterly Report of the South African Social Security Agency, June 2017*; van Rensburg, D. 2017. *Net1 Eyes the World Once Infamous Social Grants Contract Ends*. [Online] Available: <http://city-press.news24.com/Business/net1-eyes-the-world-once-infamous-social-grants-contract-ends-20171110>.

¹²⁹ SASSA. 2017. *Banking & Payments RFI Questions*. Pretoria: South African Social Security Agency.

¹³⁰ Sole, S. & McKune, C. 2017. *Social Grants Payment Crisis – Everything You Need to Know but Were Afraid to Ask*. [Online] Available: <http://amabhungane.co.za/article/2017-03-17-social-grants-payment-crisis-everything-you-need-to-know-but-were-afraid-to-ask>.

¹³¹ Staff Writer. 2016. *South African Fingerprint Standard for Card Payments Launched*. [Online] Available: <https://mybroadband.co.za/news/banking/173444-south-african-fingerprint-standard-for-card-payments-launched.html>.

3.3.3 Inter-ministerial Committee (IMC)

In the *Betrayal of the Promise*¹³² report, it is highlighted that ad hoc IMCs are key components of the constellation of kitchen cabinets that the Zuma-centred power elite used to exercise power. Recently there have been many references made to the IMC on Comprehensive Social Security. The initial reference to this IMC was in connection to the release of the draft plans for a Comprehensive Social Security Document (CSSD), which was tabled at the National Economic Development and Labour Council (NEDLAC) in November 2016. But references to the IMC became more frequent once it started to emerge that there was a looming crisis because SASSA found itself unable to take over from CPS on 01 April, thus placing social grant beneficiaries at risk of not receiving the monthly income on which they depend.

The structure and tasks of the IMC (in its current form) are seemingly undefined as there has been no recent media statement clarifying the objectives of the IMC, other than non-specific references to its composition.

The only reference in which the members of the IMC are clearly stated is in relation to a statement made, indicating that the president was going to take over as chair of the IMC ("focus on comprehensive social security reforms"¹³³), from 19 March 2017:

*The IMC was established last year [assume this is November 2016] and it includes the Ministers of Social Development Bathabile Dlamini and Finance Pravin Gordhan as co-chairpersons. Other members are the Ministers of Labour, Mildred Oliphant, Transport, Dipuo Peters, and Health, Dr Aaron Motsoaledi [...] The IMC will now also include the Ministers of Telecommunications and Postal Services, Dr Siyabonga Cwele, Communications, Faith Muthambi, and Home Affairs, Malusi Gigaba. The Directors-General of the Department of Social Development and National Treasury will co-chair the technical task team and lead the IMC secretariat.*¹³⁴

The statement above was made following the ruling made by the Constitutional Court, which ultimately ordered that the invalid contract between SASSA and CPS be extended for a year, in order for SASSA and the DSD to devise a solution for taking over the payment of grants. It is unclear, however, if this is the same IMC as the one referenced in the Minister of Social Development's speech, with regard to the 2012 CSSD, which was released in November 2016, where she indicated that the IMC was established in 2006, which was chaired by the Minister of Finance.¹³⁵

The CSSD is a policy document that puts forward a proposal for structural reform for South Africa's broader social security system. Some of the proposed changes would include consolidating the various social security programmes such as Unemployment Insurance Fund (UIF), Road Accident Fund (RAF), etc. under a single management structure called the National Social Security Fund (NSSF), and expanding social assistance for Child Support and Old Age grants to cover all citizens who fall in the relevant age brackets (making these grants universal). Perhaps the most impactful would be the introduction of a National Pension Fund, which would operate on a similar basis as the UIF.¹³⁶

The relevance of the proposed CSSD, which was prepared by an Inter-departmental Task Team (IDTT), is that it would undoubtedly add an increased level of complexity to the challenge of SASSA taking over the payments of grants in the near future. The potential ramifications of attempting to establish a realistic short-term solution in the context of the larger aspirations laid out in the CSSD could be substantial. An important technical aspect that should be noted is that the proposed reforms stipulate that an integrated payment system would need to be established, which would be connected to the NPS. Further discussion on implications regarding the long-term strategy for the DSD and SASSA is provided in Section 5.1.

The challenge of wanting decisions to be made in an IMC setting is that this may in fact escalate the problem, due to conflict either in individual cabinet members' mandate or their approaches to finding a solution. This may lead

¹³² Bhorat et al. 2017. *Betrayal of the promise: How South Africa is being stolen*. State Capacity Research Project.

¹³³ de Villiers, J. 2017. *Zuma to Lead Social Security Team Looking at Grants*. [Online] Available: <https://www.news24.com/SouthAfrica/News/zuma-to-co-chair-social-security-committee-with-bathabile-dlamini-20170318>.

¹³⁴ Staff Writer. 2017. *President Zuma Takes over Reins of Social Security Committee*. [Online] Available: <https://www.sanews.gov.za/south-africa/president-zuma-takes-over-reins-social-security-committee>.

¹³⁵ Dlamini, B. 2016. *Minister Bathabile Dlamini: Tabling of Comprehensive Social Security Document at NEDLAC*. [Online] Available: <https://www.gov.za/speeches/minister-bathabile-dlamini-tabling-comprehensive-social-security-document-nedlac-25-nov>.

¹³⁶ IDTT. 2012. *Comprehensive social security in South Africa Discussion document*. Pretoria. [Online] Available: https://www.gov.za/sites/www.gov.za/files/Comprehensive_Social_Security_in_South_Africa_a.pdf.

to members using the lack of cooperation as an excuse to bypass accountability (relaying the notion of collective accountability) or lead to paralysis in finding a solution to the problem at hand. This is highlighted in the following comment, which was made at the time:

The IMC on Comprehensive Social Security was activated in November 2016. Its two chairpersons, Dlamini and Finance Minister Pravin Gordhan, did not see eye to eye. It is on public record that as the situation escalated in recent weeks, Social Development fingered National Treasury for refusing to sign off on the legally required deviation needed for this contract extension despite legal advice that the court needed to be approached, while finance officials insisted approval from the Constitutional Court was required beforehand.¹³⁷

This case study serves as a prime example, as further discussed in Section 3.5, where the work of the government reaches a deadlock. NT refused to make a decision which it knew to be unconstitutional. SASSA seemed to be attempting to bypass its obligation to report back to the Constitutional Court on its inability to take over payment of grants on 01 April 2017, for reasons which to this day remain unclear.

3.4 IN THE MEANTIME

Although no formal record can be found in the media, it would seem that by October 2012, Vusi Madonsela had had enough and left the DSD. He was transferred and appointed DG of Cooperative Governance and Traditional Affairs (COGTA), but would later be transferred again, leaving COGTA under Minister Des van Rooyen, to become DG of the Department of Justice and Constitutional Development.¹³⁸ Following Madonsela's departure, Coceko Pakade was appointed acting DG, and for a brief time Wiseman Magasela¹³⁹ also fulfilled this role. By May 2013, Pakade had officially been appointed as DG of the DSD, a position which he would hold for less than two years, and by March 2015 Thokozani Magwaza would be appointed as acting DG.¹⁴⁰ Magwaza

would remain in an acting capacity for over a year and a half, before being appointed as the CEO of SASSA. Why no formal appointment was made, given the importance of the role, has never been made clear, but this undoubtedly influenced the way in which the situation at SASSA unfolded. As in any organisational structure, when undertaking a role in an acting position, the ability of individuals to take long-term strategic decisions is restricted by the fact that their responsibility is temporary and the continued implementation of decisions are uncertain.

While all the changes within the DSD's management were taking place and the litigation around the CPS contract was unfolding, with the MAC plotting a way forward, the day-to-day operations continued at SASSA. The invalid and in effect illegal appointment of CPS as the service provider for distribution of grants was of course the largest and arguably most significant contract which SASSA entered into at the time, but it is only one of the many services which the Agency procures from the private sector. Over the years there have been several contracts/expenses which raised eyebrows and some are worth noting for this case study, given that they took place under the watch of the former SASSA CEO, Ms Virginia Petersen. The details of the various instances of "fruitless and wasteful expenditure, maladministration, and possible fraud/corruption" only really started to emerge once Ms Petersen had left her position as CEO in May 2016¹⁴¹ and is an ongoing concern for the Standing Committee on Public Accounts (SCOPA) in parliament.

The escalation of irregular expenditure at SASSA over the years can best be expressed in the comparison of the amounts recorded in the annual reports. In 2010/2011, the year in which Dlamini became minister and following which Virginia Petersen become CEO of SASSA, the accumulated amount, from 2007, only stood at R8.8 million.¹⁴² By 2012/2013, the recorded amount allocated as irregular expenditure for that year was R47.4 million¹⁴³ and in the latest 2016/2017 annual report it is recorded that the closing balance in terms of irregular expenditure stood at a staggering R1.4 billion (of which R1.1 billion had been carried over from the previous

¹³⁷ Merten, M. 2017. *Governing the Country, One Inter-Ministerial Committee at the Time*. [Online] Available: <https://www.dailymaverick.co.za/article/2017-03-20-governing-the-country-one-inter-ministerial-committee-at-the-time/#:~:text=,WIF3YIWWbDf>.

¹³⁸ Staff Writer. 2016. *Cogta DG Transferred to Justice*. [Online] Available: <https://www.sanews.gov.za/south-africa/cogta-dg-transferred-justice>.

¹³⁹ van Onselen, G. 2017. *Political Musical Chairs: Turnover in the National Executive and Administration Since 2009*. South African Institute of Race Relations.

¹⁴⁰ van Onselen, G. 2017. *Political Musical Chairs: Turnover in the National Executive and Administration Since 2009*. South African Institute of Race Relations.

¹⁴¹ Dlamini, B. 2016. *Speech by the Minister of Social Development, Ms Bathabile Dlamini, MP on the Occasion of the Debate on Budget Vote 17. Department of Social Development*.

¹⁴² SASSA. 2011. *SASSA Annual Report 2010/2011*. Pretoria: South African Social Security Agency.

¹⁴³ SASSA. 2013. *SASSA Annual Report 2012/2013*. Pretoria: South African Social Security Agency.

year in which Petersen was still the CEO).¹⁴⁴ That equates to an increase of more than 15 000% in just six years.

It is important to highlight that this increase might only be a result of the high values attached to the irregular contracts and not in actual fact to the number of irregular contracts. Other than highlighting the large-value contracts, little information regarding the number of instances of irregular procurement is available in the public domain. In the 2016/2017 financial year, confirmed by information available to parliament¹⁴⁵, there are details as to some of the larger contracts which have resulted in the recording of R1.4 billion in irregular expenditure. Some of the payments involve the renewal of leases (R358 million), the appointment of forensic investigations (R75 million), and procurement of security services (R414 million), but perhaps the most relevant is the appointment of the work streams to which R43 million of the original budgeted R47 million had been paid prior to the cancellation of their contracts and the payment of CPS (R316 million) for the "re-registration" of additional social assistance grants beneficiaries.¹⁴⁶

The payment which SASSA made to CPS, which was approved on 25 April 2014, has been taken to court by Corruption Watch (2015) in an effort to have it reviewed and with the hope that the appropriate remedial action will follow. In the court papers filed by Corruption Watch, it highlights that throughout the RFP and in the contract between SASSA and CPS it was clear that the requirement had always been for the service provider to include the bulk enrolment of beneficiaries in a fixed-pricing model. Corruption Watch further argued that even if this was not the case, SASSA had not followed the appropriate SCM processes which were necessary to allow for an 'extension' of the contract. CPS first argued that the contract price was limited to the registration of only 9.2 million beneficiaries (and recipients) and that while undertaking the re-registration process, the number had "more than doubled" (an additional 11.9 million), according to a report by KPMG. The limitation on the number of beneficiaries, however, is not recorded in the Service Level Agreement or the RFP.¹⁴⁷

The re-registration of grant beneficiaries was to take place over six months, between July and December 2012. By that time, re-registration had only covered grant recipients who received cash payments and it was necessary to extend the re-registration for banked beneficiaries from January to July of 2013. This appears to be the motivation put forward by Mr Frank Earl of SASSA in his submission to the BAC. It implied that the additional cost was due to the resources which were required to extend the re-registration timeframe. SASSA initially intended to oppose the legal action. However, in May 2017 the then CEO, Magwaza, decided that the Agency would withdraw. At the time of writing, the case was set to be heard in February 2018.¹⁴⁸

3.5 SELF-CREATED CRISIS OF 2017

*If you've got to choose between paying the grants and irregular. And if the country's going to burn on the 1st of April and the irregular, I choose the country not to burn.*¹⁴⁹

This statement, made by the then CEO, Magwaza, during a presentation to the Parliamentary Portfolio Committee on Social Development (PCSD) on 01 February 2017 highlights the two crises which were unfolding before South Africa's eyes in March 2017. The first was the potential risk that some 17 million grant recipients would not receive the grants which they depend on come 01 April - an eventuality which by that point was unthinkable. So unthinkable was this idea that admittedly almost everyone at the time was in agreement that this would not come to pass and that one way or another there was no option but to ensure that the payments of grants would continue. Yet, until there was clarity on how grants would be paid, the assurances given by the president and the minister provided little reassurance to the millions of children who were at risk of going hungry, nor would that alleviate the anxiety of the elderly who could be left homeless due to not being able to pay their rent. Had it materialised, this would have been a socio-political crisis of mammoth proportions. Thankfully, however, through the instructions of the Constitutional Court, this crisis was averted.

¹⁴⁴ SASSA. 2017. *SASSA Annual Report 2016/2017*. Pretoria: South African Social Security Agency.

¹⁴⁵ PMG. 2017. *SCOPA: SASSA, with Minister: hearing on irregular, fruitless and wasteful expenditure*. Cape Town: Parliamentary Monitoring Group.

¹⁴⁶ SASSA. 2017. *SASSA Annual Report 2016/2017*. Pretoria: South African Social Security Agency.

¹⁴⁷ Corruption Watch. 2015. *Corruption Watch vs. SASSA and CPS - Supplementary Affidavit*. Pretoria: High Court of South Africa Gauteng.

¹⁴⁸ Corruption Watch. 2015. *Corruption Watch vs. SASSA and CPS - Supplementary Affidavit*. Pretoria: High Court of South Africa Gauteng.

¹⁴⁹ SABC Digital News. 2017. *SASSA Ensures Parliament It Will Pay Social Grant Beneficiaries*. Video. [Online] Available: <https://www.youtube.com/watch?v=6qhy34TtFgY>.

The underlying cause of this crisis, however, is the second crisis – the governance crisis – whose story this section will unveil. As the Constitutional Court concluded:

*The constitutional right to social assistance that for many, especially children, the elderly and the indigent, provide the bare bones of a life of dignity, equality and freedom is directly involved, across the land. The conduct of the Minister and SASSA has created a situation that no one could have contemplated: the very negation of the purpose of this Court's earlier remedial and supervisory order. The matter can be decided on facts that are not disputed. Due to the time constraints of the emergency created by the Minister and SASSA, the forum for effective final relief is this Court.*¹⁵⁰

As pointed out previously, in November 2015 SASSA filed what was expected to be its final report to the Constitutional Court, outlining the merits and proposed recourse it would follow in order to ensure it would, in its own internal institutional capacity, take over the payment of grants from CPS on 01 April 2017. As noted in the scathing Constitutional Court judgement, the promise which it made in that submission was never to materialise.

On 15 March 2017, the Constitutional Court was called upon by a collective of NGOs, namely Black Sash Trust, Freedom Under Law, and Corruption Watch (Amicus Curiae), among others, to seek urgent legal remedy to the impending potential crisis, in which SASSA and the DSD would be unable to ensure the payments of grants on 01 April due to the invalid contract with CPS coming to an end. The urgency of the court application, given the limited time available for addressing the imminent crisis, was not disputed; nor was the required outcome in terms of CPS needing to continue to pay grants. In the court application, the minister and SASSA declared that "CPS is the only entity capable of paying grants for the foreseeable future after 31 March 2017", a situation which the court did not take kindly to¹⁵¹

This Court and the country as a whole are now confronted with a situation where the executive arm of government admits that it is not able to fulfil its constitutional and statutory obligations to provide

*for the social assistance of its people. And, in the deepest and most shaming of ironies, it now seeks to rely on a private corporate entity, with no discernible commitment to transformative empowerment in its own management structures, to get it out of this predicament.*¹⁵²

Ultimately, the court ruled that the invalid contract between SASSA and CPS would continue for a year (with changes to pricing being determined by NT) and that the court would resume its oversight role, by appointing a panel of experts to monitor the progress in finding a solution to take over the payments from CPS by 01 April 2018. The fact that the court had to appoint such a panel as a governance mechanism reveals how deeply dysfunctional the Executive had become in the eyes of the court. As highlight in the constitutional court judgement:

*[s]ince April 2016 the responsible functionaries of SASSA have been aware that it could not comply with the undertaking to the court that it would be able to pay social grants from 01 April 2017. The Minister says she was informed of this only in October 2016. There is no indication on the papers that she showed any interest in SASSA's progress before that. Despite repeated warnings from [the] advising counsel and CPS, neither SASSA nor the Minister took any steps to inform the Court of the problems they were experiencing. Nor did they see fit to approach the Court for authorisation to regularise the situation.*¹⁵³

3.5.1 How did we get here?

The events which led the Black Sash Trust to approach the court were extensively covered in the media at the time, making the public well aware of the imminent crisis. These reports exposed the confusion surrounding the grant system, leaving many anxious about the uncertainty as to what was going to happen come 01 April 2017. The court sent questions to the DSD and SASSA to seek clarity on what had happened since it relinquished its supervisory role in November of 2015, after receiving the progress report which indicated that SASSA would take over the payment of grants. The minister and SASSA's joint affidavit, drafted by Wiseman Magasela,

¹⁵⁰ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others*: [2017] ZACC 8 (17 March 2017) - Judgment 1.

¹⁵¹ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others*: [2017] ZACC 8 (17 March 2017) - Judgment 1.

¹⁵² Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others*: [2017] ZACC 8 (17 March 2017) - Judgment 1.

¹⁵³ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS*: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1).

who was acting CEO at the time, provides an account of the events that led up to the court proceedings.¹⁵⁴

Little detail is provided about what had happened prior to June 2016, which is most likely due to Ms Petersen not being able to provide input prior to the filing of the affidavit. It was indicated that following the filing of the progress report, SASSA conducted a number of studies to establish the technical requirements which would need to be met in order for SASSA to take over the payment of the grants. Initially, "SASSA believed the plan was ambitious but capable of implementation". After undertaking a gap analysis on the Agency's capabilities, however, and further investigations, by April 2016 SASSA's project manager, Ms Zodwa Mvulane, had become aware that it would not be able to take over the payment of the grants. She concluded that SASSA would most likely require two years to do so and that it would require CPS to continue providing payment services in the interim. The technical work stream would later advise that "the plan [presented in the progress report] was overly optimistic, unrealistic, and underpinned by insufficient research". What remains unknown is who exactly was responsible for drafting the plan in the first place, which was outlined in the progress report, and what role the MAC (which the work streams were part of) may have played in developing this plan also remains a mystery to this day.¹⁵⁵

Armed with this foresight, Ms Mvulane sought legal advice on how to approach the dilemma regarding the potential extension of the contract with CPS (or entering into a new one) and what this would mean given the Constitutional Court rulings. On 19 April 2016, the Office of the State Attorney was requested to provide SASSA with a legal opinion on the matter and the CEO of SASSA at the time, Ms Petersen, was informed of the situation.

In June 2016, Adv. Nazeer Cassim Senior Council (SC) provided SASSA with the first of three separate written legal opinions, which indicated that SASSA was to approach the Constitutional Court before taking any legally binding decisions on how it would proceed. The main debate that the various legal opinions centred around was the legalities of SASSA either extending the existing contract or signing a new (non-competitive) contract with CPS for providing payment services beyond 01 April 2017. From the Constitutional Court judgement it would seem that all three legal opinions which

were provided to SASSA were correct in their advice, when the court stated:

[SASSA] intends to enter into a contract with CPS without a competitive tender process as required by section 217 of the Constitution in order to continue the payment of social grants. In so doing it has walked away from the two fundamental pillars of this Court's remedial order in AllPay 2. That is serious enough, but it has also broken the promise in its assurance to this Court in November 2015, that it would take over the payment of social grants by 31 March 2017, which formed the basis of the withdrawal of the supervisory order.¹⁵⁶

The legal opinion from Adv. Cassim SC was shared with the then acting CEO, Ms Ramokgopa. As previously noted it was Ms Ramokgopa who, while in the acting role of CEO, appointed the work streams in mid-July and started working on finding the 'best' possible way for SASSA to proceed. By September the work streams had formulated a plan, which proposed a phased transition of payments from CPS to SASSA to take place over two to three years, reiterating the requirement for CPS and SASSA to enter into an 'arrangement'. The work streams' plan would, however, entail a change in the conditions of the contract between CPS and SASSA and as such it was their view that an extension of the contract was not desirable and that it would be preferred that a new contract be instated. It was at this stage that the second legal opinion was requested from Adv. Wim Trengove SC, procured by the work streams. He also reiterated that SASSA should approach the Constitutional Court as a matter of urgency. It was further recommended that SASSA should approach NT and the Auditor-General because any arrangement which it might enter into with CPS would be non-competitive and fall outside of general SCM practices, and therefore written approval would be required.

Just prior to Magwaza taking up the mantle of CEO on 01 November 2016, several large meetings/workshops were held between the work streams and various officials at SASSA. The proposed plan was presented and discussed in detail. It is unknown who was present and at which meeting the decision was made that SASSA would enter into a new contract with CPS. This decision was then brought into question when the third legal opinion was obtained from Adv. Muzi Sikhakhane

¹⁵⁴ Magasela, W.K. 2017. *Black Sash Trust v Minister of Social Development and Others: DSD and SASSA Affidavits in Response to Directions 14 March 2017*

¹⁵⁵ Magasela, W.K. 2017. *Black Sash Trust v Minister of Social Development and Others: DSD and SASSA Affidavits in Response to Directions 14 March 2017*.

¹⁵⁶ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 8 (17 March 2017) - Judgment 1*.

SC on 10 November. Sikhakhane emphasised that the court was the correct place to seek clarity on how it could proceed because it had already noted any new contract with CPS would be non-competitive. He further highlighted that in terms of section 238 of the Constitution, it could be argued that if SASSA could not take over the payment of grants, the "best option was a delegation to another organ of state"¹⁵⁷ (possibly implying the South African Post Bank).

From November 2016 to January 2017, SASSA met with a number of stakeholders, including NT, the SARB, MasterCard, and others regarding various possible options available to SASSA. Serious concerns then emerged from the consultations, particularly with regard to what would be the 'optimal' technical model for SASSA to pay grants. It is recorded that in a meeting on 12 December there was clearly no agreement within SASSA, or between SASSA and the minister, on when a report should be submitted to the Constitutional Court or what the content of the report would be. This is the first indication that there was a disagreement – between Magwaza and the then DG of the DSD, Zane Dangor (who had also only just been appointed on 02 November) and the minister – on the proposed model for SASSA taking over the payments of grants.

On 09 December, SASSA issued a public Request for Information (RFI), which was to be submitted by 10 February

2017, in order to better determine the parameters of any possible future RFP and to establish who in the private sector would be able to meet SASSA's requirements and how.

In between all of the interactions taking place by and within SASSA, letters were being exchanged between the project manager, Ms Mvulane, and CPS. CPS first initiated the communications in May 2016, inquiring as to how SASSA planned to take over grants, and CPS raised technical issues which SASSA would have to deal with, such as the extension of the use of cards. On 22 December 2016, Mvulane sent a letter to Net1/CPS indicating that SASSA intended engaging CPS regarding possibly having to continue providing payment services beyond March 2017.

On 19 January 2017, a Technical Task Team (TTT) was constituted by the CEO of SASSA, the DG of the DSD, the DG of NT, and the Deputy Governor of the SARB, comprising technical managers from each institution, who were then tasked to develop the most viable options to enable SASSA to pay social grants in the short and medium term. The TTT determined six potential options (listed in Text Box 5). In the affidavit it is stated that "[t]here have been and remain differences of opinion within SASSA and amongst SASSA's stakeholders as to how best to proceed in a manner which prioritises the best interests of beneficiaries."¹⁵⁸

Text Box 5: The TTT's Options¹⁵⁹

- Option 1: continuing with an arrangement with CPS.
- Option 2: procuring the service from Grindrod Bank (which services the majority of the social grant beneficiaries).
- Option 3: procuring the services of all banks wishing to comply with the SASSA requirements.
- Option 4: procuring the services of all banks wishing to comply with the SASSA requirements for those beneficiaries who have access to banking infrastructure and procuring the services of another service provider for grant recipients who are currently using cash pay points.
- Option 5: procuring the services of SAPO.
- Option 6: appointing a service provider for cash distribution to grant recipients who are currently using cash pay points and utilising existing bank accounts to distribute grants through the banking sector to those beneficiaries with bank accounts.

The first two options would inevitably have the same effect, primarily because Grindrod would still have to partner with CPS (or a similar partner) to distribute grants. The implication of the remaining four options, however, all point toward a solution which would/could be connected to the NPS and be based on an open-architecture / open-loop model.

¹⁵⁷ Magasela, W.K. 2017. *Black Sash Trust v Minister of Social Development and Others: DSD and SASSA Affidavits in Response to Directions 14 March 2017*.

¹⁵⁸ Magasela, W.K. 2017. *Black Sash Trust v Minister of Social Development and Others: DSD and SASSA Affidavits in Response to Directions 14 March 2017*.

¹⁵⁹ Magasela, W.K. 2017. *Black Sash Trust v Minister of Social Development and Others: DSD and SASSA Affidavits in Response to Directions 14 March 2017*.

It would seem the first option was preferred by Dlamini as it was the most aligned with the work streams' proposal. It is public knowledge that, conversely, NT preferred the last option. Following the pronouncement in parliament on 01 February that SASSA would be engaging with CPS to continue providing payment services, the CEO of SASSA sent a letter (07 February) to NT requesting approval for deviation from the normal competitive bidding process "specifically seeking the Treasury's support to extend the existing contract with CPS to enable a negotiation to appoint CPS for a period of 12 to 18 months".¹⁶⁰ NT swiftly responded on 08 February, indicating it could not sanction the request for deviation without the Constitutional Court having been informed and approval obtained for SASSA's proposal.

On 22 February 2017, in a briefing to the Social Development Committee in parliament on the plan for addressing the crisis, it would seem that SASSA had adopted a new approach whereby it would no longer approach the court for approval for entering into negotiations with CPS, but would instead file a 'supplementary report' informing the court of the outcomes of the negotiations. It was indicated in the meeting that the new approach was based on new legal advice. There appears to be no written legal opinion that supports this decision and it is unknown from whom this advice was received. It contradicted the three legal opinions already received from three advocates.

On 28 February, supported by an affidavit by Magwaza, SASSA "instituted an application in the Court requesting its assistance in ensuring that CPS could continue rendering its current grant payment services".¹⁶¹ Shortly thereafter it was withdrawn by the minister, with little explanation.

On the same day, Black Sash Trust instituted an application in the court, in the hope that a remedy could be found for the looming crisis. SASSA would later file a "follow-up report", which was signed by the then acting CEO of SASSA, Ms Mzobe, which provided very few details and was not quite up to the standard that the court had expected.

To make matters worse, the Minister and SASSA did not deign to inform the Court of these developments until 28 February 2017 when SASSA and its CEO launched an application on an urgent basis for an

*order authorising it to take further steps to ensure payment of social grants from 01 April 2017. In an unexpected about-turn, SASSA sought to withdraw that application the next day. On 03 March 2017 it filed a "follow-up report" with limited information on how this had arisen and what might happen in the future. The Court issued directions in response to this report. An answer of sorts was received only just the day before the hearing [...]*¹⁶²

On 01 March, SASSA and CPS started negotiations regarding a new contract for providing payment services beyond April 2017. However, this was short-lived. A Ministerial Task Team (MTT), which was formed on 08 March and comprised Ministers J. Radebe (chairperson), S. Cwele, M. Gigaba, P. Gordhan, M. Mahlobo, and N. Pandor, instructed SASSA to terminate the negotiations and indicated that they were only to enter into fresh negotiations if and when NT gave its prior written approval for a deviation. The hearing of the court case then unfolded.

As part of the court application, the NGO parties sought for the court to rule that the minister be held personally accountable for the crisis and be ordered to pay the cost for all counsel. In the judgement, it stated:

*The Black Sash Trust submitted that the Minister misled Parliament during her appearance before the Parliamentary Committee in November 2016. There is little doubt that the Minister and SASSA are liable in their official capacity for the costs, but in view of the possibility that individual conduct may have played a material role in the matter, the order will also provide for further opportunity for explanation in that regard.*¹⁶³

3.5.2 The Parallel Structure

There must be public accounting for how this was allowed to happen. Accountability is a central value of the Constitution. It accompanies the conclusion of procurement contracts for the procurement of public functions. This judgment is the judicial part of that accounting. It is founded on the commitment to openness and responsiveness the Constitution

¹⁶⁰ Magasela, W.K. 2017. *Black Sash Trust v Minister of Social Development and Others: DSD and SASSA Affidavits in Response to Directions* 14 March 2017.

¹⁶¹ Magasela, W.K. 2017. *Black Sash Trust v Minister of Social Development and Others: DSD and SASSA Affidavits in Response to Directions* 14 March 2017.

¹⁶² Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 8 (17 March 2017) - Judgment 1.*

¹⁶³ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 8 (17 March 2017) - Judgment 1.*

*requires. It is important to note that this particular role, at this particular time, is not one of the Court's choosing.*¹⁶⁴

As part of the March 2017 judgment, the minister was called upon to motivate why “she should not be joined in her personal capacity; and she should not pay costs of the application from her own pocket”.¹⁶⁵ It was this order which would bring to light the details in regards to by whom and how decisions were actually being made and highlighted how legitimate governance structures were side-lined, resulting in the ‘self-created’ crisis. In her affidavit, Minister Dlamini provided an outline of events, wherein she in effect attempted to pass the blame onto SASSA’s CEO at the time.

*In the main she sought to place the blame for what went wrong on officials from the third respondent (SASSA) and the Department of Social Development (Department).*¹⁶⁶

In response to this affidavit, the then CEO of SASSA, Thokozani Magwaza, aggrieved by the version of events that the minister had put forward and with a view that they were inaccurate and misleading, filed a responding affidavit detailing his interpretation of events and requested the then DSD DG, Zane Dangor, to do the same. What emerged from these two accounts, together with supporting documentation and other first-hand accounts, is a very mind-boggling and dangerous landscape of confusion and institutional chaos, which they attributed to the minister’s formation of a parallel reporting and decision-making structure (in the form of the work streams). They asserted that this is what led them to conclude that the crisis around the payment of grants was in fact ‘self-made’. They were both clear that there had been a bias all along towards ensuring that CPS would be awarded a new (admittedly illegal) contract.

*The thrust of their affidavits is that the Minister had established parallel decision-making and communications processes that bypassed SASSA and Department officials.*¹⁶⁷

Faced with the contradictory affidavits and versions of the events and the serious allegations contained therein, the Constitutional Court initiated a process of a section 38 inquiry (hereafter referred to as the Inquiry), presided

over by Justice Ngcobo, which was heard in January 2018 in order to determine if the minister should in fact be held liable in her personal capacity. At the time of finalising this report, the outcome of the inquiry is still to be determined. The testimonies provided during the Inquiry, however, substantiate, confirm, and provide additional insight into exactly what had happened at SASSA and how the SASSA-Gate crisis unfolded.

It would seem from Magwaza and Dangor’s affidavits (and subsequent testimonies) that up until October 2016, shortly after Magwaza became CEO, the SASSA Executive had effectively no (or very minimal) knowledge or involvement in the development of the plans and decisions around how it was to take over payment of grants come 01 April 2017, except for the project manager Ms Mvulane. Dlamini declared that she only became aware of the situation late in October 2016, when she was provided a legal opinion by the work streams. This was a central issue of dispute during the Inquiry; as the notion that she was unaware of the fact contradicted her testimony that she was frequently receiving updates from Mvulane directly during the year.¹⁶⁸ For example, there is a letter, sent to her on 12 September 2016 by the Black Sash Trust (co-chair of the MTT regarding the illegal and immoral deduction from grants), which had requested that an update be given on SASSA’s progress. It was Ms Mvulane who replied to the letter declining to meet with the MTT, even though it had been addressed to the minister. The question is whether the minister had agreed to this response, in which case she would have been aware that SASSA was not in a position to act accordingly or Ms Mvulane was not being forthright with the minister. The motivation given for why the presentation could not take place was that work streams had only been on the job for eight weeks at that point and had not yet finalised a ‘firm plan’, which begs the question: What had SASSA been doing since it filed the progress report in November 2015?

As previously shown (in section 3.3.2), it is known that in July 2015 a letter instructing the appointment of the work streams had been sent from the minister to the then CEO of SASSA, Ms Peterson. The appointments would only take place a year later (July 2016), after Peterson had stepped down and was replaced by Ramokgopa as acting CEO in June. This was also

¹⁶⁴ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 8 (17 March 2017) - Judgment 1.*

¹⁶⁵ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 8 (17 March 2017) - Judgment 1.*

¹⁶⁶ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 20 (15 June 2017) - Judgment 2.*

¹⁶⁷ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 20 (15 June 2017) - Judgment 2.*

¹⁶⁸ SABC Digital News. 2018. *Bathabile Dlamini Social-Grant Crisis Inquiry: 23 January 2018.* Video. [Online] Available: <https://www.youtube.com/watch?v=OV5GDZvVneM&t=1s>.

an issue of contention during the Inquiry, as the motivation for the irregular appointment of the work streams (bypassing normal procurement processes) was that their services were required as a matter of 'urgency', which is contradicted by the year delay in their actual appointment.¹⁶⁹ During the Inquiry it was also implied on several occasions that Ramokgopa was "bullied"¹⁷⁰ into appointing the work streams, even though she had been advised against this.¹⁷¹ It is also important to note that, as highlighted previously, in a DSD press statement on 10 June 2016, it was indicated that Magwaza had been appointed as CEO of SASSA. At the time Magwaza was the acting DG of the DSD. This means there was a period of at least five months in which arguably the two most important senior official positions, the accounting officers for the payments of grants, were only being filled by persons in an acting capacity. It is within these five months (where these bureaucrats in acting positions were stifled in terms of their ability to take long-term strategic ownership of plans or projects) that the work streams (which were mainly external private sector businesspeople) were handed the enormous task of deciding how an organ of the state is going to function. These are important factors which undoubtedly had a major impact on the DSD's and the Agency's ability to effectively address the challenge of developing a plan for taking over grants in the near future. The minister herself urged the court to take into account the "turnover of leadership at SASSA between 2012 and 2016".¹⁷² It is still unclear as to why there was a delay in Magwaza moving over to SASSA.

Concerned by the apparent lack of progress, Zane Dangor (who was then special advisor to the minister and co-chair of the MTT regarding deductions on grants), together with Mr Siphoshezi (also a special advisor to the minister), approached the then acting CEO of SASSA, Ms Ramokgopa, and Ms Mvulane at the beginning of October 2016. In his affidavit, Dangor emphasised that it was at that point that it became clear that the acting CEO had very little knowledge of what the work streams' plans entailed or what SASSA intended to do.¹⁷³ During the month of October 2016, a number of meetings were held in which the work streams presented their proposals for a way forward and it was at this stage that both Magwaza and Dangor raised concern over the fact that the

work streams were reporting directly to the minister and not to SASSA, and in effect "created parallel reporting structures".¹⁷⁴

It was shortly after these meetings that Dangor (who had by then been appointed DG on 02 November), Magwaza (then CEO), and Shezi started engaging with other organs of state which would either be directly affected by or have a direct impact on the implementation of any plan which SASSA would put forward to address the looming crisis, in particular NT, the SARB, PASA, etc. What seems to have emerged from those meetings was that there was a strong objection to the ultimate solution as envisioned by the work streams; in particular there was substantive disagreement over the proposed payment model being a closed-loop system, which would mean it was disconnected from the NPS (see details of the implications of this provided in Section 5.1). It was this fundamental disagreement over a payment model that SASSA needed to implement that created the conflict between Magwaza, Dangor, Shezi, and the minister.

Two significant moments are detailed in Dangor's affidavit, where it would appear that the minister deliberately subverted the attempts by officials to put forward a solution which minimised CPS's role in the payment of grants going forward. The first was regarding the work which had been undertaken by the TTT, which was officially established on 19 January and consisted of technical managers from the DSD, SASSA, NT, and SARB, and which also included Ms Mvulane. They were due to present their findings and the six options which they had developed on 24 January to the various department heads. The TTT was by then pushing for an open-loop / open-architecture model (i.e. to connect to the NPS) to be adopted for both short- and long-term solutions for the payment of grants, which would remove CPS from the equation. The minister, however, not being in favour of these options, had on 23 January (the day before the TTT would present its options) sent a document to then Finance Minister Pravin Gordon, titled *Briefing Notes for the Minister of Social Development to the Minister of Finance*. This document "appeared to have little or no correlation between the discussions that were taking place by the technical team"¹⁷⁵ at the time. Instead, it presented arguments against SASSA adopting an open-architecture model and in effect was motivating for the work

¹⁶⁹ SABC Digital News. 2018. *Inquiry into Bathabile Dlamini's Role in Social Grants Crisis: 25 January 2018*. Video. [Online] Available: <https://www.youtube.com/watch?v=PXnCQ988feE&t=306s>.

¹⁷⁰ SABC Digital News. 2018. *Inquiry into Social Grants Crisis: 02 February 2018 - Part 3*. Video. [Online] Available: <https://www.youtube.com/watch?v=GTyvwgSOkdA&t=1s>.

¹⁷¹ SABC Digital News. 2018. *Inquiry into Social Grants Crisis: 26 January 2018*. Video. [Online] Available: <https://www.youtube.com/watch?v=acmITRQ36KM&t=3890s>.

¹⁷² Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 20 (15 June 2017) - Judgment 2*.

¹⁷³ Dangor, Z. 2017. *Black Sash Trust v Minister of Social Development and Others: Dangor Affidavit 10 April 2017*.

¹⁷⁴ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 20 (15 June 2017) - Judgment 2*.

¹⁷⁵ Dangor, Z. 2017. *Black Sash Trust v Minister of Social Development and Others: Dangor Affidavit 10 April 2017*.

streams' closed-loop model of payment. Both the DG and the CEO of SASSA were not aware of where this document came from or who had prepared it. It has, however, been suggested that this was done by Ms Mvulane.

At the meeting on 24 January 2016, it was agreed that due to the time constraints and the risks involved that any short-term solution would require CPS to continue to pay grants for the next twelve months. "The meeting also agreed that this extension would be undergirded by an agreement that this extension was predicated on the long-term 'firm plan' being that grants would be paid according to the open-architecture model."¹⁷⁶ An additional requirement for the parties to allow for an extension of CPS's contract was for SASSA to present a 'firm plan' as to how it was going to proceed and attain consent from the Constitutional Court for the extension.

Based on this outcome SASSA, assisted by Adv. Cassim, proceeded to draft its submission to the Constitutional Court. There was some disagreement on the contents of the report by the minister and Wiseman Magasela, newly appointed advisor to the minister. Their concerns were seemingly addressed and at a meeting on 16 February, which was chaired by Shezi and attended by Magasela, Mvulane, two members of the work streams, and Ms Busisiwe Mahlobogoana (SASSA legal advisor), the details of what would be presented to the Constitutional Court was agreed on by all members. It would later emerge, however, that on the same evening, the minister contacted Ms Mahlobogoana and instructed her not to make the submission "as the minister needed to do further consultations over the weekend."¹⁷⁷ Neither the CEO of SASSA, the DG of the DSD, nor Mr Shezi were informed of this at the time.

What took place over that weekend and who the minister consulted have not yet fully come to light in any of the legal filings. It was indicated by Dangor's testimony (during the Inquiry) that the minister had travelled to KwaZulu-Natal to meet with President Zuma.¹⁷⁸ Media reports allege that at the meeting the minister met with, among others, Mr Michael Hulley, President Zuma's lawyer, and it was he who advised the minister. The advice was that SASSA did not need to seek consent from the Constitutional Court for extending CPS's payment services, but should rather inform the court once negotiations of a new contract had been finalised. There

appears to be no written legal opinion justifying this new approach, which is in stark contradiction to the three other legal opinions that had been attained thus far. Hulley's role will be discussed in further detail in the next chapter.¹⁷⁹

As already mentioned, Magwaza and Dangor were only made aware of this 'new approach' to addressing the grants payment crisis during a presentation by Ms Mvulane to the Social Development Portfolio Committee on 22 February. It seemed that there were also additional changes to what had previously been agreed on, in that it was now proposed that the contract with CPS be extended to cover a period of two years, as opposed to only one year. Upon lobbying to have a report filed with the Constitutional Court as soon as possible, rather than leaving it until the eve of the existing contract's expiry, the minister agreed on condition that the report is compiled by the work stream legal team, led by Mr Tim Sukazi.

By 27 February, no report had yet been filed with the Constitutional Court and when contacted, Mvulane indicated that the document was not ready yet as consultation with the minister was ongoing. It was at this stage that Ms Mahlobogoana (SASSA's lawyer) indicated that a report had been prepared, supported by an affidavit signed by Magwaza, who was on sick leave at the time, which would be filed the following day, on the 28th. Although various reasons were presented as to why this report was withdrawn, it would seem that the content of the report did not have the minister's approval. The content of the report, which was prepared by Mvulane and the work streams, is still unknown, but given the court's dissatisfaction with the 'follow-up' report, it is clear that not seeking consent from the court (as was advised in the three legal opinions) was a serious error in judgement by the minister. In Magwaza's affidavit he stated:

*I waited for the Minister's instructions pursuant to her proposal to consult on the affidavit but given the fact that the deadline of 31 March 2017 was imminent and upon legal advice provided to me, I took a decision to file the application on 28 February 2017. I submit that in doing so, I was not required to consult with the Minister. I am not required to consult the Minister on every operational aspect of the work of SASSA.*¹⁸⁰

¹⁷⁶ Dangor, Z. 2017. *Black Sash Trust v Minister of Social Development and Others: Dangor Affidavit 10 April 2017.*

¹⁷⁷ Dangor, Z. 2017. *Black Sash Trust v Minister of Social Development and Others: Dangor Affidavit 10 April 2017.*

¹⁷⁸ SABC Digital News. 2018. *Inquiry into Social Grants Crisis: 02 February 2018 - Part 3.* Video. [Online] Available: <https://www.youtube.com/watch?v=GTyvvgSOkdA&t=1s>.

¹⁷⁹ McKune, C. 2017. *Bathabile Dlamini's Game of Chicken.* [Online] Available: <http://amabhungane.co.za/article/2017-02-25-bathabile-dlamini-s-game-of-chicken>.

¹⁸⁰ Magwaza, T. 2017. *Black Sash Trust v Minister of Social Development and Others: Magwaza Affidavit 06 April 2017.*

The issues around the legitimacy of Magwaza's actions and the assertion he made in the statement above highlight the institutional and governance challenges which resulted from the manner in which the Agency had been established in terms of the SASSA Act, which states that "[t]he Minister may override any decision taken by the Chief Executive Officer".¹⁸¹ The seeming confusion around the allocation of roles, functions, responsibilities, and legal obligations of the various players in the management of the country's social welfare system was the central debate on the Inquiry in determining Dlamini's potential personal liability for the SASSA-Gate debacle. During the Inquiry, on several occasions, Dlamini appeared to be under the impression that "whatever the CEO does there has to be concurrence with the minister also".¹⁸² This is not what the SASSA Act prescribes (which only states concurrence as a requirement for entering into third-party agreements and opening of a bank account),¹⁸³ and the only way in which this approach to the Agency's governance could be legitimate would be if it was outlined in an oversight compact agreement.

At a SCOPA briefing, which also took place on 28 February, MPs questioned Dangor and Mvulane on the negotiations which took place between SASSA and CPS. Mvulane indicated that negotiations were only set to start on the next day, 01 March. But it was then revealed by one of the MPs that they were in possession of correspondence between the two organisations. A letter written by Magwaza indicated CPS asking for the fixed beneficiary fee to be increased from R16.44 to between R22 and R25 per beneficiary.¹⁸⁴ It was shortly after this confrontation that Dangor decided to resign. He indicated that his decision to resign was based on the fact that he had been lied to by his colleagues and he could no longer remain in an environment of governance chaos.

As previously mentioned, Mr Magwaza had been placed on two weeks' sick leave (for hypertension) in late February and only returned to work on 13 March. During this period, there were rumours that he had been suspended for "stabbing [Dlamini] in the back by having meetings with the Treasury".¹⁸⁵ Ms Thamo Mzobe, who is the CEO of the NDA, was

appointed as acting CEO of SASSA. She too was booked off for hypertension after only being on the job for about a week. She had signed off on the follow-up report that was filed with the court and was required to lead the negotiations between SASSA and CPS, which took place between 01 and 03 March. Effectively, a person with no prior knowledge of the complex challenges involved in the payment of grants and the technical nuances involved was expected to sign an agreement which she would not oversee or be responsible for in the future. According to a report in *The Sunday Times*, "[s]he was frantic, saying she had no idea why she was brought in to head up SASSA and left on her own [...]. She was scared that she was going to make a mistake by signing the contract and wanted it to wait for the return of the real accounting officer". It was said that after being summoned to sign the contract, she suffered a mild stroke.¹⁸⁶ It was during this time that Dangor resigned, on 03 March, citing that he could no longer continue as DG of the DSD due to the deterioration of his relationship with the minister. In his resignation letter he emphasised that the "parallel decision-making processes that essentially excluded both accounting officers of SASSA and the DSD and a trusted Special Adviser like Siphoshezi from key decisions regarding this matter have given rise to the kinds of tensions that have emerged".¹⁸⁷

With Mzobe also on sick leave, Wiseman Magasela was appointed as acting CEO of SASSA. He then compiled and signed the initial DSD and SASSA affidavit to the court. As already noted, an MTT, chaired by Minister J. Radebe (chairperson) was formed on 08 March and instructed that all negotiations be scrapped and should start afresh only once written approval was received from NT. Magwaza returned to work on 13 March, thereby quashing the rumours of his suspension.

In his closing statement, Dangor levied a serious allegation against the minister that, based on Magwaza's and his own versions of the events between October 2016 and March 2017, "the parallel decision-making structures in the form of work streams may have been deliberate to ensure a continued relationship with CPS under conditions favourable

¹⁸¹ Presidency of Republic of South Africa. 2004. *South African Social Security Agency Act*. Pretoria: Government Gazette.

¹⁸² SABC Digital News. 2018. *Inquiry into Bathabile Dlamini's Role in Social Grants Crisis: 23 January 2018 Part 2*. Video. [Online] Available: <https://www.youtube.com/watch?v=8G0R8hdNFdU&t=95s>.

¹⁸³ Presidency of Republic of South Africa. 2004. *South African Social Security Agency Act*. Pretoria: Government Gazette.

¹⁸⁴ PMG. 2017. *SCOPA: SASSA: hearing on Cash Paymaster Services (CPS) contract*. Cape Town: Parliamentary Monitoring Group.

¹⁸⁵ wa Afrika, M. & Saba, A. 2017. *Zuma Lawyer Fuels CPS Grants Chaos, "Stressed" Sassa Bosses Land in Hospital*. [Online] Available: <http://archive.timeslive.co.za/sundaytimes/stnews/2017/03/12/Zuma-lawyer-fuels-CPS-grants-chaos-stressed-Sassa-bosses-land-in-hospital>.

¹⁸⁶ wa Afrika, M. & Saba, A. 2017. *Zuma Lawyer Fuels CPS Grants Chaos, "Stressed" Sassa Bosses Land in Hospital*. [Online] Available: <http://archive.timeslive.co.za/sundaytimes/stnews/2017/03/12/Zuma-lawyer-fuels-CPS-grants-chaos-stressed-Sassa-bosses-land-in-hospital>.

¹⁸⁷ Dangor, Z. 2017. *Black Sash Trust v Minister of Social Development and Others: Dangor Affidavit 10 April 2017*.

to CPS, through a self-created emergency”.¹⁸⁸ In the initial judgment on the 2017 SASSA-Gate crisis, the Constitutional Court had the following to say regarding Minister Dlamini’s responsibility with regard to what unfolded:

The Minister bears the primary responsibility to ensure that SASSA fulfils its functions. She appoints its CEO. There is little the CEO can do without her direction. Attempts to obtain evidence of what steps

*she took after AllPay 2 to ensure that beneficiaries would continue to be well catered for drew a blank [...] The office-holder ultimately responsible for the crisis and the events that led to it is the person who holds executive political office. It is the Minister who is required in terms of the Constitution to account to Parliament. That is the Minister, and the Minister alone.*¹⁸⁹

¹⁸⁸ Dangor, Z. 2017. *Black Sash Trust v Minister of Social Development and Others: Dangor Affidavit* 10 April 2017.

¹⁸⁹ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 8 (17 March 2017) - Judgment 1.*

4

CONTROVERSIES AND CONTRADICTIONS

Having fleshed out the details of what has evolved within the formal bounds of the constitutional state in the previous chapter, this section now seeks to locate the actions which unfolded within the broader context of state capture as the Zuma-centred political project that relies on the construction of a shadow state. This section will focus on four fundamental elements of this political project. The first is an examination of the role and motives of the corporate companies involved. The second is the role of the players which appear to reside within the shadow state and are acting behind the scenes to ensure that the objectives of state capture are achieved. The third is an assessment of the power dynamics of the events which unfolded, particularly with regard to the workings of the power elites in the Executive and the strategic manoeuvring by various kitchen cabinets. And lastly, the other means by which the DSD and SASSA are repurposed are examined, in particular with regard to the use of state resources to manipulate and secure legitimacy from the voting public.

4.1 WHAT IS THE DEAL WITH CPS?

4.1.1 Radical Economic Transformation (RET) and White Monopoly Capital (WMC)

Substantive empowerment, not mere formal compliance, is what matters. It makes a mockery of true empowerment if two opposite ends of the spectrum are allowed to be passed off as compliance with the substantive demands of empowerment. The one is a misrepresentation that historically disadvantaged people are in control and exercising managerial power even when that is not the case. That amounts to exploitation. The other is to misrepresent that people who hold political power necessarily also possess managerial and business skills. Neither situation advances the kind

of economic empowerment that the Procurement and Empowerment Acts envisage. Both employ charades.¹⁹⁰

The BEE component of the 2012 tender and the failure by SASSA and the bid committees to properly examine the veracity of the claims made by CPS, were two of the central issues addressed in the judgement made by the Constitutional Court. In its finding, the court lambasted CPS and SASSA for not adequately addressing this aspect in what was at the time one of the largest single supplier government contracts. This lack of appreciation for the underlying purpose of a preferential procurement mandate highlights the hypocrisy of the power elite's professed commitment to RET and its opposition to WMC.

The history of CPS and Net1 goes back to the 1990s. Net1 UEPS Technologies Inc., which is now the parent company of a range of subsidiaries which provide a range of payment technology solutions and financial services, including CPS, was incorporated in Florida in May 1997 and later became listed on the Nasdaq Stock Market in 2005. In 2004, the company acquired a South African company, Net1 Applied Technology Holdings Ltd (or Aplitec), which was a public company listed on the Johannesburg Stock Exchange (JSE). It was in fact Aplitec (a smart card company, whose founder and CEO was Serge Belamant) which had initially bought CPS from First National Bank (FNB). At the time (1999) CPS had contracts to distribute grants to some 1.2 million people in South Africa and Namibia worth R54 million.¹⁹¹ In the years that followed, Aplitec would go on to acquire Moneyline (Pty) Ltd and New World Finance (Pty) Ltd (both micro lending businesses)¹⁹² and later in 2006 Prism Holdings Ltd, which focused on "secure transaction technology, solutions and services" and which later became the owner of EasyPay Ltd.¹⁹³

¹⁹⁰ Constitutional Court of South Africa. 2013. *AllPay vs SASSA and CPS: [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1)*.

¹⁹¹ Staff Writer. 1999. *Aplitec Acquires FNB Subsidiary*. [Online] Available: http://www.itweb.co.za/index.php?option=com_content&view=article&id=131137.¹⁹² Net1. 2006. *Net1 Annual Report - 2006*. Net1 UEPS Technologies Inc.

When it emerged in March 2017 that Allan Gray held the second largest stake in Net1 (16% shareholding), there was a strong outcry from the public, to which it swiftly responded. Allan Gray engaged with Net1 and applied sufficient pressure (it would appear) on the company for its founder and CEO, Serge Belamant, to resign in May 2017 and decried the announcement that a multi-million-rand golden handshake went with it.¹⁹⁴ But what had not been as prominently covered in the newspapers was that the largest investor in Net1 is in fact the International Finance Corporation (IFC), which is the World Bank's investment arm, with a 19% share in the company. In April 2016, the IFC invested \$107.7 million (almost R1.6 billion) in Net1.¹⁹⁵ Corruption Watch, the Black Sash Trust, and Equal Education have since filed a complaint with the Compliance Advisor/Ombudsman (CAO) of the IFC, requesting "the CAO to investigate the investment, because it was 'made despite the existence of overwhelming evidence of unlawful and unethical practices involving Net1 subsidiaries'".¹⁹⁶

Being a United States (US)-listed company makes it difficult to determine the degree of adherence of the company in terms of transformation outside of formally structured empowerment deals. But these types of deals do not necessarily translate into actual empowerment in terms of actively participating in the business or its operations – as was clearly a requirement of the 2012 tender, and which CPS clearly had no intention of fulfilling, and which is supposedly a condition for RET. As highlighted earlier, in the MoA with its empowerment partner there was a sly clause which implied that of the 74.54% which CPS indicated the empowerment consortium partners were to "manage and/or execute"¹⁹⁷, they would enter into a "Service Agreement" whereby CPS would actually do the work for 74.45% of the transaction fee.¹⁹⁸ This would undoubtedly be considered by some as fronting and potentially fraud. The validity of the MoA, which is in the public domain and was part of CPS's proposal, and its contents have never been disputed by SASSA or Net1/CPS. It is important to note that it would appear that this

MoA was not disclosed in any of the court filings. It would seem that this information was only really scrutinised in November 2016 by *amaBhungane*, presumably after all investigations by the various authorities had or were in the process of being suspended.¹⁹⁹

The companies and individuals who were signed on to be CPS's empowerment partners at the time were never fully discussed by the courts. Yet, investigative reporting by *amaBhungane* revealed that of the three BEE partners, CPS's Serge Belmont (Net1/CPS CEO) only knew one well, namely Born Free Investments 272 (Pty) Ltd, who had been a CPS empowerment partner for a long time. The other two partners were small businesses, both apparently in the process of closing when the SASSA contract came along, which in no way appear to have been in any position to undertake the mammoth task of delivering grants to some 15 million beneficiaries across the country. The first, Retles Trading Close Corporation (CC), was a company established in 2008 and involved Bulelwa and Jongi Makoetlane, who supplied textbooks to schools in the Western Cape from their modest home in Gugulethu, Cape Town. The second company, Ekhaya Skills Developments Consultants CC, was a "small outfit, run by one woman who advertised that she provided 'skills training' for employers".²⁰⁰

There was a second clause in the MoA that effectively made the agreement invalid due to litigation pursued by AllPay and the contract being declared invalid in November 2013. Specifically, it stated that a condition of the agreement was for a successful defence of any review process instituted by the aggrieved bidder (read AllPay).²⁰¹

On 26 January 2012, just nine days after having been awarded the SASSA grants payment contract, Net1 entered what appears to be a second BEE deal with a consortium called Business Venture Investments 1567 (Pty) Ltd (BVI) – a special purpose vehicle that "represents a consortium of black South Africans, community groups and the Net1

¹⁹⁵ Net1. 2008. *Net1 Annual Report - 2008*. Net1 UEPS Technologies Inc.

¹⁹⁴ Lapping, A. 2017. *Allan Gray Condemns Net1 CEO Severance Payment*. [Online] Available: <https://www.allangray.co.za/latest-insights/companies/allan-gray-condemns-net1-ceo-severance-payment/>.

¹⁹⁵ Torkelson, E. 2017. *The World Bank's Role in SA's Social Grants Payment System*. [Online] Available: <https://www.groundup.org.za/article/world-banks-role-sas-social-grants-payment-system/>.

¹⁹⁶ Gouws, N. 2017. *NGOs Want Ombud to Investigate \$107m Investment in Net1's CPS*. [Online] Available: <https://www.timeslive.co.za/sunday-times/business/2017-09-07-ngos-want-ombud-to-investigate-107m-investment-in-net1s-cps/>.

¹⁹⁷ McKune, C. 2016. *Serge Belamant, SASSA, and the 'useful Blacks'*. [Online] Available: <http://amabhungane.co.za/article/2016-12-14-serge-belamant-and-the-useful-blacks>.

¹⁹⁸ Cash Paymaster Services (Pty) Limited et al. 2011. Memorandum of Agreement.

¹⁹⁹ *amaBhungane*. 2017. *CPS, SASSA, Mosomo, Ntshalintshali Correspondence*. [Online] Available: https://www.dropbox.com/s/yfq6tchjpuwlli/161214_amab-cps-sassa-mosomo-ntshalintshali_correspondence.pdf?dl=0.

²⁰⁰ McKune, C. 2016. *Serge Belamant, SASSA, and the 'useful Blacks'*. [Online] Available: <http://amabhungane.co.za/article/2016-12-14-serge-belamant-and-the-useful-blacks>.

²⁰¹ Cash Paymaster Services (Pty) Limited et al. 2011. Memorandum of Agreement.

Foundation”.²⁰² The consortium is led by Mosomo Investment Holdings (Pty) Ltd (Mosomo), whose CEO is Mr Kgomoitso Brian Mosehla. At the time, Serge Belamant (CEO of CPS/Net1) denied that this BEE deal was connected to being awarded the tender.²⁰³ It is thus assumed that this deal was not a replacement or alternative to the consortium which signed the MoA and was submitted as part of the bid for the payment of grants.

This deal entailed “a one-year option to purchase up to 8,955,000 shares of the Company’s common stock, equal to 19.9% of the Company’s current issued and outstanding shares, with an exercise price of US\$8.96 per share.”²⁰⁴ The deal hinged on the idea that the share price would increase. However, with the tender being challenged by AllPay and the investigations into alleged corruption being undertaken, it did not materialise and the option to purchase was never exercised.

Then, towards the end of 2013, after CPS had undertaken the re-registration of the grant beneficiaries and shortly after the Constitutional Court had declared the contract between SASSA and CPS invalid, it was announced that Net1 would enter into a new B-BBEE deal. This time the deal would include both Mosomo (in the form of BVI) and Born Free Investments, where the companies would be all allocated 4.1 million and 300 000 shares respectively. The cost of the shares was allocated at R60/share (25% of the JSE market price at the time).²⁰⁵ It is important to note that due to the Constitutional Court’s rulings, it is also at this stage that the MoA relating to the invalid 2012 contract, between CPS and its empowerment partners, would have been void. This is possibly the reason for Born Free Investments being included into the new Net1 BEE deal. It remains unclear as to who CPS’s empowerment partners were in the distribution of grants, what the extent of their involvement was, or if there even was a signed empowerment partner for the 2012 contract. The potential legal issues around the contractual obligations with regard to empowerment in the contract between SASSA and CPS are also unknown. It would seem this is not something any of the parties were interested in following up on.

On 16 April 2014, Net1 announced that it had concluded the conditions of the deal in which 4.4 million shares were issued to the B-BBEE partners under a five-year loan agreement with Net1. The conditions also included two specific caveats; namely that the deal would allow Net1 to purchase back shares if the market price increased above R120/share and that “Net1 could replace the Net1 shares with shares in CPS at its discretion”.²⁰⁶

Just a day after the announcement, on 17 April 2014, the Constitutional Court handed down the remedial order, which suspended the ruling of invalidity to ensure that the payments of grants would not be negatively impacted. Thereafter Net1’s share price started to recover and by June would reach the magic R120/share mark. Later that same month, on 25 April 2014, SASSA approved the R316 million payment for the ‘re-registration’ of grant beneficiaries, a payment which has since been deemed irregular and has been taken to court for review. Excluding VAT, the value of the payment is approximately R277 million.

With the share price of Net1 reaching the target of R120/share in June 2014, Net1 repurchased just under 2.43 million (55%) shares from the B-BBEE partners for approximately \$24.9 million (± R267 million at the time). The money was then used by the B-BBEE partners to repay the loan owed to Net1. Within just three months, BVI and Born Free Investments had acquired just fewer than two million shares (worth approximately R237 million) in Net1 with no upfront investment and no debt. In August 2014, BVI would sell back the remainder of its shares (1.8 million) for a cash amount of R97.4 million and a 12.5% ownership in CPS, and it would appear that Born Free Investments retained its remaining 134 446 shares in Net1.²⁰⁷

The timing of the R277 million windfall (from the ‘re-registration’ payment) and the gifting of two million Net1 shares to its B-BBEE partners (after settling the loan agreement) appear to cancel each other out, with the net result that the entire deal cost Net1 nothing. This could, however, all be just one big coincidence.

²⁰² Net1. 2012. *Net1 Statement: Concludes BEE Deal*. Net1 UEPS Technologies Inc.

²⁰³ Brümmer, S. 2012. *Tokyo Sexwale’s Prints All over R10-Billion Tender*. [Online] Available: <http://amabhungane.co.za/article/2012-03-23-sexwales-prints-all-over-r10bn-tender>.

²⁰⁴ Net1. 2012. *Net1 Statement: Concludes BEE Deal*. Net1 UEPS Technologies Inc.

²⁰⁵ Wierzycka, M. 2017. *Net1 and BEE Deals: A Gift That Keeps on Giving*. [Online] Available: <https://www.dailymaverick.co.za/opinionista/2017-03-20-net1-and-bee-deals-a-gift-that-keeps-on-giving/#:~:text=WiGPsFWWbDe>.

²⁰⁶ Net1. 2016. *Net1 SEC Filing*. Net1 UEPS Technologies Inc.

²⁰⁷ Net1. 2016. *Net1 SEC Filing*. Net1 UEPS Technologies Inc.

Without any additional information available, it is unknown at this time what benefit the various other members of the BVI 1567 (Pty) Ltd consortium might have derived from this

B-BBEE transaction or if Retles Trading CC and Ekhaya Skills Developments Consultants CC were ever brought into any of the grant payment operations. From the investigative reporting on the dealings of Net1/CPS and its empowerment partners, it would appear as though they were simply left behind or forgotten. This seems to not be something which CPS, Net1, SASSA, or the DSD saw as being important enough to reflect on at any stage over the years. With so much focus now placed on RET and calls for an end to WMC dominance in the economy, it needs to be asked why there would appear to be such preference given to a US-based company with such a deplorable track record regarding empowerment and transformation.

4.1.2 How to Milk Money from the Poor

*No party has any claim to profit from the threatened invasion of people's rights.*²⁰⁸

This was potentially one of the most damning statements levelled against CPS in the March 2017 Constitutional Court judgement. It relates to the debate around the contractual arrangements which were to be made in the proposed new contract for CPS to continue to distribute grants beyond 01 April 2017.

*CPS is correct in submitting that its continued constitutional obligation to provide services for payment after 31 March 2017 exists only if there is no-one else to provide those services. It is also correct that it will not be in a position to perform its continuing constitutional obligation for payment of social grants if the reciprocal obligations of SASSA and CPS in relation to that payment are not specified. But it is not correct that those obligations can only be specified by way of a negotiated contract between itself and SASSA.*²⁰⁹

Explicitly debated in the court, it was an accepted fact that when SASSA and CPS entered into negotiations for the signing of a new contract (an illegal process that was stopped by the MTT), the result would be a pricing structure that

would generate considerable profits for CPS. In the exchange of letters between SASSA and CPS, which were submitted to the court as an affidavit by CPS, it was indicated by CPS that the cost to SASSA for the continuation of grant payments would need to be increased from R16.44 to between R22 and R25 per beneficiary. This would have resulted in an increase in the service fee from a budget allocation of R2.6 billion to at least R3 billion, an increase of at least R400 million a year.²¹⁰ These figures were made public before the negotiations began and it would appear that due to the strong backlash these figures received in parliament, the costing approach was revised.

During negotiations it was proposed that over the transition period CPS would receive a fixed amount of R194 million per month, as opposed to the then approximately R174 million per month, regardless of the number of beneficiaries paid by CPS.²¹¹ This would have reduced the impact on SASSA's budget shortfall. However, as the plan was for payments to be transferred from CPS to either SASSA or another service provider, the number of beneficiaries which CPS would pay would reduce over time. Because SASSA would also have had to pay for the new payment services, there would have been a period during which there was effectively a double cost being incurred by the state for the same service. In addition, it should be pointed out that by this stage all of CPS's start-up costs should have been recovered, meaning little investment would be required other than covering ongoing operational expenses. In either scenario, it is clear that CPS stood to make significant profit from the new (illegal) contract. This contrasts with the AllPay 2 judgment, which declared that as the initial contract was invalid and irregular, CPS should not profit from the contract. The March 2017 ruling made a similar declaration.

As has already been established (see Section 3.4) in 2014, the contract with CPS was irregularly 'extended', resulting in the payment of R316 million for the re-registration of grant recipients. This payment was declared irregular by the Auditor-General and is currently the subject of litigation proceedings. This payment coincided with the settlement of the B-BBEE consortia (consisting of Mosomo and Born Free Investments) loan agreement for its shares in Net1, resulting in a debt-free ownership of just under two million shares worth approximately R237 million.

²⁰⁸ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 8 (17 March 2017) - Judgment 1.*

²⁰⁹ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others: [2017] ZACC 8 (17 March 2017) - Judgment 1.*

²¹⁰ Raborife, M. 2017. *Sassa Asks ConCourt for Direction over CPS Contract.* [Online] Available: <https://www.news24.com/SouthAfrica/News/sassa-asks-concourt-for-direction-over-cps-contract-20170228>.

²¹¹ SASSA, *Black Sash Trust v Minister of Social Development and Others: DSD Support Documents - Bundle E* (Johannesburg, 2017).

Over and above the irregular contracts, it would appear that the actual benefit that Net1 derived was as an indirect result of its appointment to pay grants, primarily from the sale of secondary financial services to grant beneficiaries. The problem here is not the pursuit of profit, but rather how the interests of this private company became the interest of certain state institutions. A lucrative state contract was used by the company to gain preferential access to a market consisting of poor and vulnerable people.

The supply of secondary financial services has always been part of the Net1 business strategy and is in fact documented in the company's 2008 annual report, from which the following was extracted:

1. *Disciplined Approach to New Markets [...] Where we believe it makes sense, we will use partnerships or make acquisitions to accelerate our entry into new markets [...]*
2. *Unlock Target Markets with a Key Product. The first step in establishing our system within a new province or country is to establish a broad base of smart card users around a single application. One of our preferred routes is to secure contracts to implement payment systems for government programs having large numbers of potential card holders [...]*
3. *Expand Our Products within the Markets We Serve [...] As part of broadening our card holders' options, we will also sell our smart card readers and PoS devices to merchants to enable them to enter into transactions [...]*
4. *Provide Products and Services Ourselves Where the Profit Potential is Compelling [...] For instance, we engage in lending in South Africa.*
5. *Establish Partnerships or Make Acquisitions When Appropriate [...]*²¹²

In the MoA, CPS indicates that the Service Level Agreement with SASSA would require at least the provision of, among others, "[g]ranting CPS the right to provide value-added services, such as the sale of prepaid utilities and the provision of financial services, such as money transfers, credit facilities, insurance products, and debit orders to all beneficiaries."²¹³

What is important to highlight is that this business strategy has long been known to veteran DSD officials, such as Zane Dangor, who led the negotiations with the various service providers in 2008/2009. It is a practice that has been frowned upon by those who understood the potential negative ramifications which could result from allowing a company that pays grants to also sell secondary financial services to beneficiaries. The 2012 contract between SASSA and CPS states that the "Contractor [CPS] shall not use data belonging to SASSA for any purpose other than for the performance of the services."²¹⁴ Even though over the years SASSA has threatened to cancel its contract with CPS, it would seem the restriction on the use of beneficiary data was never properly enforced. As a result, Net1 was able to move directly from establishing access to the market, to pushing its proprietary financial services that have nothing to do with the service provided to the state.

Herein lies the genius of its business model: it was paid to establish a massive client base and ensure the payment technology is adopted by the major commercial businesses involved; it then leveraged beneficiary data and information to which only it had access to sell financial products, knowing that there is minimal risk of non-payment. It highlighted that "[Net1 is] able to offer this service at a lower interest rate than competitors due to our ability to deduct interest and principal directly from a borrower's smart card and our knowledge of that individual's payment history."²¹⁵ It would appear from a statement made when responding to the 2015 tender that Net1 no longer viewed the distribution of social grants to be essential to its business development:

[I]ts business plan, which focuses on providing a comprehensive suite of transactional products and services, will allow it to service all SA's unbanked and under-banked citizens, including social grant beneficiaries. However, this can now be done independently and without SASSA's limitations and constraints. Net1 says the business plan includes the continued successful deployment of its EasyPay Everywhere bank account, its biometric ATMs and mobile portal, its suite of financial and added value

²¹² Net1. 2008. *Net1 Annual Report - 2008*. Net1 UEPS Technologies Inc.

²¹³ Cash Paymaster Services (Pty) Limited et al. 2011. *Memorandum of Agreement*.

²¹⁴ McKune, C. 2017. *Serge Belamant, Sassa and the "War Chest" of Poor People*. [Online] Available: <http://amabhungane.co.za/article/2017-03-16-serge-belamant-sassa-and-the-war-chest-of-poor-people>.

²¹⁵ Net1. 2008. *Net1 Annual Report - 2008*. Net1 UEPS Technologies Inc.

*services, and the company's proven and innovative technological systems. The company believes these activities will ensure a sustainable business model that will, over time, far exceed the benefits that could be realised from being the successful bidder for the SASSA RFP.*²¹⁶

It is the selling of secondary financial services that has become a bone of contention between CPS and SASSA. The issue is CPS's ownership and control of grant beneficiary data. This was a matter that was raised in the Constitutional Court hearing in March 2017 and was the reason for the establishment of the MTT, co-chaired by the DSD and Black Sash, to find solutions that would prevent Net1 and others from making 'illegal' and immoral deductions from social grant beneficiaries.

Since the appointment of CPS, SASSA has become increasingly aware of 'deductions' being made from grants – a significant number of which were linked to the products supplied by other Net1 subsidiaries such as Moneyline (micro-loans), Smart Life (life insurance), Manje Mobile (airtime), etc. In an effort to stop deductions being made from grants, in May 2016 the DSD issued new regulations (Regulations 21 and 26A to the Social Assistance Act, No. 13 of 2004) which limited the type and amount of deductions which could be made from grants, to only allow a maximum of 10% of the grant from being deducted and only for the purposes of funeral cover.²¹⁷

In response to the new regulations, Net1, Grindrod (the bank which is partnered with CPS and provides the bank account services for grant recipients), and others approached the High Court to provide clarity on the regulations. The issue of the legal deductions from grants payments is not a straightforward or simple matter, as it is not something which can be governed or controlled by SASSA once a grant is transferred to an individual's private bank account, which is then regulated by the normal commercial banking laws of the country. In May 2017, the High Court ruled in favour of Net1; the main reason being the conditions of the

contract between SASSA and CPS, in that SASSA does not have a direct contract with Grindrod Bank (which falls under standard banking regulations). When grant recipients are enrolled by CPS, they enter into an agreement to open individual bank accounts. This agreement is then between Grindrod Bank and the recipient and not with SASSA, and as such is again governed by standard commercial banking regulations. This is just one of the many factors that needed to be considered in SASSA's approach to paying grants in the future and will be discussed in the next chapter. SASSA is now in the process of possibly appealing this ruling, with a view that the Grindrod accounts are for the specific purpose of the payment of grants (special accounts) and as such should not be treated as ordinary private bank accounts.²¹⁸

The question of the 'illegality' of the deductions would seem to have not yet been fully examined in any civil or criminal court. Complaints have been lodged by the National Credit Regulator and with the Competition Commission of South Africa, but there have been no conclusive findings against Net1 to date (several matters are ongoing). The main allegation levied against Net1 concerns the use of grant recipients' personal information and data, held by CPS in terms of the payment services contract with SASSA. It is alleged that this information is exchanged between and within the Net1 group of companies. Particular focus has been placed on Moneyline, which provides micro-loans. By virtue of the fact that it has access to and knowledge of a beneficiary's income significantly reduces risk for the business, which means it has an unfair advantage over other competitors in the market. The second advantage derived is that the enrolment process of beneficiaries for these services is made both easier and cheaper for Net1 companies. The third allegation involves the use of beneficiaries' personal details, such as contact numbers, for marketing of products ('ambush' marketing practices).²¹⁹

It should be noted once again that the issues around the legality of Net1's business practices have not yet been established and, in its defence, it commissioned a report by KPMG to address the various allegations.

²¹⁶ Staff Writer. 2015. *Net1 Pulls out of SASSA Tender Process*. [Online] Available: <https://www.itweb.co.za/content/IP3gQ2qGBbjMnRD1>.

²¹⁷ Matshediso, M. 2016. *SASSA Stops Unlawful Social Grant Deductions*. [Online] Available: <https://www.sanews.gov.za/south-africa/sassa-stops-unlawful-social-grant-deductions>.

²¹⁸ Maregele, B. 2017. *Net1 Wins Case to Allow Deductions on Social Grant Accounts*. [Online] Available: <https://www.groundup.org.za/article/net1-wins-case-allow-debit-deductions-social-grant-accounts/>.

²¹⁹ Mawson, N. 2015. *Net1 Cleared of Dodgy Lending*. [Online] Available: http://www.itweb.co.za/index.php?option=com_content&view=article&id=143049; van Zyl, G. 2016. *New Social Grant Regulations Face Court Challenge*. [Online] Available: <https://www.fn24.com/Tech/Companies/new-social-grant-regulations-face-court-challenge-20160605>; de Lange, I. 2017. *Social Grant Deductions Allowed, Court Rules*. [Online] Available: <https://citizen.co.za/news/south-africa/1507959/social-grant-deductions-allowed-court-rules/>; Staff Writer. 2017. *Court Allows Deductions on SASSA Accounts*. [Online] Available: http://www.itweb.co.za/index.php?option=com_content&view=article&id=161608.

One key unanswered question that the KPMG report skirts is how many of the EPE (a subsidiary of Net1 which operates separate and standalone Grindrod Bank accounts) clients are grant recipients. The KPMG report showed that almost 70% of the Moneyline account holders had EPE cards (also referred to as green cards). It does not, however, indicate how many Moneyline accounts belong to grant recipients.²²⁰ Since the adoption of the new regulations which the DSD instituted, it has become mandatory for those wanting to receive a loan to open an EPE account. Given that the EPE account is also with Grindrod, they only require consent from a grant recipient and thereafter all subsequent grant payments are directly deposited into this standalone account, which then allows for deductions under standard banking regulations.

Another question would be: Given that the report appears to focus primarily on transactions relating to Moneyline and Smartlife, what other Net1 companies are involved in selling products and services to grant recipients? From a table in the report it was indicated that over 50% of the electronic funds transfer (EFT) debits from grant recipient accounts were for products related to these two Net1 companies alone.²²¹

Are Net1's business practices illegal? Probably. Are they ethical? Highly unlikely. Is the company's business strategy sound - arguably yes, if profits are all that matter.

Beyond the mindboggling complexities described above, what matters is the harsh reality of the grant recipients. The monthly experience of grant beneficiaries has been well documented by reporting by *GroundUp* and NGOs such as the Black Sash Trust. Below are just a few examples of beneficiary experiences:

In other cases where deductions of loans and prepaid electricity were made, some grant recipients have admitted entering into such deals. "I know about deductions. I took a loan of R1 000 from SASSA in November, and they deduct R200 every month. I also buy electricity with my EasyPay card and they deduct that R50," said 70-year-old Angelina Mese. "Although there are rumours the EasyPay card is

illegal, I was enjoying using it because I can also access my money at banks. I can even buy airtime when I need it," she said. However, some recipients who admitted to signing contracts complained that the deductions were continuing even after the contracts had lapsed. "I took a R700 from Net1 in March last year and I paid it in September. But even today, they still take my money," said a mother of four who only identified herself as Anna.²²²

Nomalanga's story began with her unwitting acceptance of monthly airtime deductions, which she has tried desperately to stop. Despite "smashing" her old SIM card, and buying a new one, Nomalanga still faces deductions for a cellphone number she no longer uses. She has sought help from SASSA, from CPS and from the Net1 Financial Services office, without any success. Because Grindrod Bank has no physical branches or even ATMs, Nomalanga cannot walk up to a customer service counter and ask for a stop order on the transactions. Because SASSA has no jurisdiction over EasyPay accounts, Nomalanga cannot turn to the Agency for help. Instead of receiving what she is due, she is stuck trying to beg MoneyLine for a loan.²²³

The complexity arises from the conflation of two separate systems: the first is the right to social assistance to alleviate extreme poverty and inequality – the state's mandate; the second is Net1's business strategy to use "our smart card-based alternative payment system for the unbanked and under-banked populations of developing economies."²²⁴ There are no simple solutions to the complexities that have emerged. To attempt to isolate the payment of grants from the rest of the country's finance industry would not be possible and to imagine that simply 'removing' Net1 services from the equation would solve the problem, would be equally naive. A precedent has been set and millions of grant recipients now have experience of and will continue to enjoy the benefits of having bank accounts, regardless of who pays the social grants, and Net1 is not the only provider of these services

²²⁰ KPMG. 2017. *Net 1 Applied Technologies South Africa (Pty) Ltd: Factual Findings Report on Agreed Upon Procedures*. [Online] Available: http://media.corporate-ir.net/media_files/IROL/73/73876/press/2.%20KPMG%20report%20April%202017.pdf.

²²¹ KPMG. 2017. *Net 1 Applied Technologies South Africa (Pty) Ltd: Factual Findings Report on Agreed Upon Procedures*. [Online] Available: http://media.corporate-ir.net/media_files/IROL/73/73876/press/2.%20KPMG%20report%20April%202017.pdf.

²²² Manyane, M. 2017. *Sassa Still in Hot Water over Grant Deductions*. [Online] Available: <https://www.iol.co.za/news/politics/sassa-still-in-hot-water-over-grant-deductions-8564981>.

²²³ Torkelson, E. 2017. *Deductions from Social Grants: How It All Works*. [Online] Available: <https://www.groundup.org.za/article/deductions-social-grants-how-it-works/>.

²²⁴ Net1. 2012. *NET1 | Overview*. [Online] Available: <http://www.net1.com/about/overview/>.

(although it would appear to have the monopoly). The void created by the withdrawal of these services would just be filled by some other company. If a solution was to be found, it would require all active role players, within and between the different government institutions, as well as those in the financial sector. The *de facto* operational conflation of SASSA, CPS, Grindrod, and various Net1 companies without clear agreements, mandates, and accountabilities has resulted in a deep structural institutional quagmire that cannot be unravelled and solved quickly. The litigious appetites of the players, the opacity of the shadow networks, and the weak governance and institutional weakness of the DSD and SASSA all combine to prevent any quick solutions.

4.2 IN THE SHADOWS

One of the critical questions that remain to be determined is: What are the possible financial benefits which could have been derived from the shadow deals and who, other than those already mentioned, might be involved? Unlike what has been established in terms of the Zuma-Gupta network, through the revelations from the Gupta-Leaks and documents from whistle blowers, in the case of the DSD and SASSA many intricate details remain hidden. However, from interviews and the information contained in the numerous court cases, investigative reporters, NGOs, and others have managed to piece together the puzzle which might reveal the true motivation behind all that has unfolded over the years.

It is important to note that following the initial Constitutional Court ruling in 2013, due to Net1 being a US-listed company, both the Federal Bureau of Investigation (FBI), under instruction from the US DOJ and the US markets regulator, the Securities and Exchange Commission (SEC), as well as the Hawks on two cases, undertook investigations into the allegations of corruption levelled against Net1/CPS. The SEC closed its investigation in May 2015 with the disclaimer that this “must in no way be construed that the party has been exonerated.”²²⁵ The DOJ in July 2017 also closed its investigation, with a similar caveat: “If the Department learns additional information, it may reopen its inquiry.”²²⁶ The Hawks’ investigation appears to have found no evidence of

wrong-doing. It should be noted, however, that in a statement on the matter Net1 indicated that

*[t]he Company has now received a written notice from the Hawks, stating that both cases were investigated and brought before two separate prosecutors for decisions. As both prosecutors declined to prosecute these matters, the Hawks have closed the investigations and regard the matters as finalized.*²²⁷

This indicates that there was potentially a case which could have been pursued. As there is no other readily available information on the cases, the details around the investigations remain unknown.

4.2.1 The BEE Partners and Lunga Ncwana

As was highlighted and detailed in the previous chapter, the rumours of corruption have surrounded the various attempts made by SASSA to secure a service provider for the nationwide payment of grants since the first 2007 tender was issued. This was, however, not the first time that CPS was caught in litigation and been party to irregular tender processes, with fingers pointing towards corruption of some kind.

In March 2009, City Press published an article alleging possible corruption in the then cancelled 2008 tender, referring to a legal case which had been taken to the court in 2005 in which it was found that the Limpopo Tender Board had irregularly awarded a grants payment contract to CPS for services over the period 2003 to 2006. The case was also the subject of an investigation by the Scorpions in 2004, in which high-profile ANC officials were implicated (such as former premier Ngoako Ramatlhodi) and involved allegations of tender manipulation and channelling of funds into the provincial ANC.²²⁸ Even though the details of the court case revealed a strong resemblance to the contracts of those with SASSA, it shall not be unpacked further here. What is relevant is that at the time it was alleged that there was a link between CPS and the minister’s wife, Mrs Thuthukile Mazibuko-Skweyiya, in the 2007 tender. The minister responded to these allegations by releasing the

²²⁵ U.S. SEC. 2015. *U.S. SEC Letter May 29 2015*. Washington, D.C.: United States Securities and Exchange Commission.

²²⁶ U.S. DoJ. 2017. *United States Department of Justice letter to Net 1*. Washington, D.C.: United States Department of Justice.

²²⁷ Chopra, D. 2015. *News Release: Net1 Reports Closure of Hawks Investigation in South Africa*. [Online] Available: <http://ir.net1.com/phoenix.zhtml?c=73876&p=irol-newsArticle&ID=2111893>.

²²⁸ wa ka Ngobeni, W. & Brümmer, S. 2004. *Ramatlhodi: Inside the Scorpions Probe*. [Online] Available: <https://mg.co.za/article/2004-05-14-ramatlhodi-inside-the-scorpions-probe>.

Narrative Report of the Adjudication Committee in Respect of Payment Tender Service, outlining the reasons for cancelling the tender.²²⁹

As already mentioned, it later emerged that there was an apparent attempt of bribery that had taken place during the tender adjudication process involving Adv. Norman Arendse, who was chair of the BAC for the 2007/2008 grant payment tender. The statements made by Adv. Arendse²³⁰ and his secretary at the time, Colleen Beverley Bainbridge²³¹, paint a graphic picture of how bribery might be instigated and pursued within the corridors of power. According to the statements on Sunday 21 September 2008, while working on finalising the BAC report (which ultimately recommended cancelling the tender) to be submitted to the SASSA CEO the next day, Adv. Arendse agreed to meet with Mr Gideon Sam, the then president of the South African Sports Confederation and Olympic Committee (SASCOC). The meeting was requested "to discuss a 'sports matter' and a 'business opportunity'". After an estimated 20-minute conversation around the 'sports matter' to which Sam referred, the conversation then turned, where Arendse then indicates:²³²

I gained the impression that this second matter was what Mr Sam had really come to see me about. The second matter related to the social grant tender referred to above. As mentioned above, I was at this stage involved in the finalisation of the draft report of the [B]AC.

Mr Sam appeared to be very aware of the tender process although he did not mention the names of persons or any details of the bidders or potential bidders.

Mr Sam advised me that he had been approached by Cash Paymaster Services ("CPS") since he knew me "pretty well" and that I would be "more likely" to listen to him. He described himself as a "consultant/lobbyist" for CPS and said that he had an open chequebook.

The meeting would end shortly thereafter with Arendse saying, "Just leave my chambers. You have a cheek, and you have abused your knowledge of me."²³³

As highlighted previously, the supporting statements of both Adv. Arendse and Ms Bainbridge have been published online and were independently verified by *GroundUp*.²³⁴

In an article by *amaBhungane* in 2012, the first insights into the connections between CPS, its BEE partner (Born Free Investments 272), and this alleged attempt at bribery began to emerge. The connection stems from the overlapping relations and friendships which existed between Mazwi Yako (the owner of Born Free), his "cousin-brother" Monwabisi Yako, and Gideon Sam. Sam confirmed that he was 'friends' with Mazwi and that he and Monwabisi were business partners. When confronted with the allegations of the attempted bribe, there were denials all round. Serge Belamant, the CEO of Net1, which owns CPS, stated that he had never heard of Sam and in turn Sam denied that the incident had even occurred, saying, "No, no. Not at all. I've never done social pensions. I am a sportsperson."²³⁵

Fast-forward to the allegations of corruption which were hinted at in the 2012 tender. As detailed in the previous chapter, the main allegations of possible corruption were around the BEC and the changing of the bid scores after the oral presentations. AllPay, the losing bidder, was particularly aggrieved by the fact that its score had been reduced significantly by two BEC members, across all of the scoring factors and not just those relating to biometrics (see Table 3). The two members were Mr Wiseman Magasela, Deputy DG: Social Policy in the DSD, and Ms Vuyelwa Nhlapo, CEO of the NDA. AllPay further argued that there was a conflict of interest for Ms Nhlapo (who was also chair of the BEC) and who "was in a business relationship" with CPS's empowerment partner, Mazwi Yako from Born Free Investment. AllPay declared this was a "conflict of interest" and that she had "irrationally lowered AllPay's scores to Cash Paymaster Services' benefit".²³⁶ These allegations were put

²²⁹ DSD. 2009. *Response by the Director General of the Department of Social Development Mr Vusi Madonsela on Allegations by City Press Published on 29 March 2009*. [Online] Available: http://www.dsd.gov.za/index.php?option=com_content&task=view&id=144&Itemid=106.

²³⁰ Arendse, N. 2009. *Statement of Norman Arendse*. *GroundUp*.

²³¹ Bainbridge, C.B. 2009. *Statement of Colleen Beverley Bainbridge*. *GroundUp*.

²³² Arendse, N. 2009. *Statement of Norman Arendse*. *GroundUp*.

²³³ Arendse, N. 2009. *Statement of Norman Arendse*. *GroundUp*.

²³⁴ Bejoy, R. 2016. *Corruption Allegations against Gideon Sam Come back to Life*. [Online] Available: <https://www.groundup.org.za/article/corruption-allegations-against-gideon-sam-come-back-life/>.

²³⁵ McKune, C. 2012. "Name Your Price" Bribe Offer for R7-Billion Tender. [Online] Available: <http://amabhungane.co.za/article/2012-02-24-name-your-price-bribe-offer-for-r7billion-rand-tender>.

²³⁶ McKune, C. 2012. *Zuma's Lawyer and the Mega Tender*. [Online] Available: <https://mg.co.za/article/2012-03-09-zumas-man-and-the-mega-tender>.

forward in AllPay's original affidavit to the High Court in 2012. However, the court found that no "notable" conflict of interest could be determined and was thus not considered a factor in the case. Yako and Nhlapo were both board members of Reflective Learning Resources until early 2010.²³⁷

During both the Supreme Court of Appeal and Constitutional Court hearings, AllPay sought to introduce new evidence in the form of a transcript of a recording between John Tsalamandris (a senior SASSA employee who was the secretary to the bid committees) and Roedolf Kay (the national coordinator of the SA Older Persons' Forum).²³⁸ Tsalamandris alleged the tender process was rigged. Neither court allowed the evidence: the Supreme Court of Appeal because the recording and transcriptions had not been adequately interrogated or corroborated by Tsalamandris; and in the case of the Constitutional Court, there was an affidavit by Mr Tsalamandris in which he disavowed any implication of irregularity or wrongdoing in the procurement process. The court ruled that "[i]t remains hearsay evidence and introduces no new independent evidence of major irregularities".²³⁹ It should be noted that when the transcript was revealed in the Supreme Court of Appeal court case, SASSA interviewed Tsalamandris and he indicated that there was "no factual evidence of corruption to follow up," the Agency said.

At the time, Corruption Watch said that according to the court papers, it was clear that "Tsalamandris feared for his life and his job at SASSA"²⁴⁰ when he indicated in the recording that "I don't want to be seen because these guys are dangerous and there's nothing that's beyond them".²⁴¹

You know I've been involved in both bid committees. The first one [2007/2008 tender] we didn't award because of the minister. This time [the 2012 tender was awarded] especially because of the minister. It doesn't matter who gets it. But it was just so blatantly dirty.²⁴²

To understand why Minister Dlamini would be referred to during a conversation, in which Tsalamandris was speaking in confidence, it is necessary to return to CPS's various BEE partners and their various connections with a close personal friend of Dlamini's, namely Lunga Ncwana.

Lunga Ncwana is arguably best known for his relationship with the now deceased mining magnate, Brett Kebble. Ncwana, who was a vocal and active ANC Youth League (ANCYL) member at the time, together with several others, became wealthy by signing up as Kebble's empowerment partners in numerous businesses. It is also well known that Ncwana channelled funding to various ANC structures on Kebble's behalf.²⁴³ It would later be revealed that Kebble had apparently committed fraud to the value of approximately R2 billion and had dished out millions to various political parties and influential politicians, including a company which was run by Mazibuko-Skweyiya (wife of former DSD minister, Zola Skweyiya).²⁴⁴

Investigating the empowerment partnerships which CPS entered into for the 2012 tender for the payment of grants, excluding Born Free Investments, which has been a long-standing BEE partner of Net1 (discussed above), it is curious how or why the two small businesses, with arguably no experience or expertise in social grant payments, were included as partners in the proposal. As a reminder, the first, Retles Trading CC, was a company established in 2008 by Bulelwa and Jongi Makoetlane, to supply textbooks to schools in the Western Cape from their modest home in Gugulethu, Cape Town. The second company, Ekhaya Skills Developments Consultants CC (Ekhaya), was a "small outfit, run by one woman who advertised that she provided 'skills training for employers'".²⁴⁵

amaBhungane investigated the two businesses and revealed that both were indirectly connected to Lunga Ncwana. First, it was revealed that the modest home in Gugulethu was "just around the corner from Lunga Ncwana's mother's house

²³⁷ McKune, C. 2012. Zuma's Lawyer and the Mega Tender. [Online] Available: <https://mg.co.za/article/2012-03-09-zumas-man-and-the-mega-tender>.

²³⁸ Staff Writer. 2013. Moseneke: Why Not Open a Graft Case? [Online] Available: <https://www.news24.com/Archives/City-Press/Moseneke-Why-not-open-a-graft-case-20150429>.

²³⁹ Constitutional Court of South Africa. 2013. AllPay vs SASSA and CPS. [2013] ZACC 42 (29 November 2013) - Judgment (AllPay 1).

²⁴⁰ Sidimba, L. 2013. Watchdog Takes Aim at Zuma's Lawyer. [Online] Available: <https://www.iol.co.za/news/politics/watchdog-takes-aim-at-zumas-lawyer-1577793>.

²⁴¹ Sole, S. 2013. Tape Implicates Zuma Lawyer in "farical" Tender. [Online] Available: <http://amabhungane.co.za/article/2013-03-22-tape-implicates-zuma-lawyer-in-farical-tender>.

²⁴² Sole, S. & McKune, C. 2017. Social Grants Payment Crisis - Everything You Need to Know but Were Afraid to Ask. [Online] Available: <http://amabhungane.co.za/article/2017-03-17-social-grants-payment-crisis-everything-you-need-to-know-but-were-afraid-to-ask>.

²⁴³ Deane, N. & wa ka Ngobeni, W. 2005. ANC Youth League in Dodgy New Deal. [Online] Available: <https://mg.co.za/article/2005-01-28-anc-youth-league-in-dodgy-new-deal>.

²⁴⁴ Staff Writer. 2014. ANC Ordered to Pay Back Kebble Cash. [Online] Available: <https://www.news24.com/SouthAfrica/News/ANC-ordered-to-pay-back-Kebble-cash-20140601>.

²⁴⁵ McKune, C. 2016. Serge Belamant, SASSA, and the "useful Blacks". [Online] Available: <http://amabhungane.co.za/article/2016-12-14-serge-belamant-and-the-useful-blacks>.

[...] [When approached] Bulelwa confirmed knowing him: "Yes, I grew up with Lunga." But she refused to answer further questions. *amaBhungane* then revealed that in the case of Ekhaya, the owner's brother, Patrick Ntshalintshali, had been doing work related to Net1 at the time. They approached Ntshalintshali to establish his involvement in the tender, but he denied having anything to do with the deal, but this would appear not to be true as he had signed "Ekhaya's contract with Cash Paymaster and attended SASSA's bid presentations on behalf of the consortium". Ntshalintshali was also working for Ncwana at the time, including "being the public face for a company that was secretly 95% owned by Ncwana's family trust".²⁴⁶

A more direct link can, however, be established in the major BEE deal which was undertaken between Net1 and the BVI consortium, led by Mosomo Investment Holdings (Pty) Ltd, whose CEO is Mr Kgomotso Brian Mosehla.²⁴⁷ Mosehla and Ncwana are business partners and close friends. Mosehla was the best man at Ncwana's wedding, which was also attended by Dlamini and Zuma's lawyer, Michael Hulley. As previously discussed, the BEE deal between BVI and Net1 effectively resulted in a 12.5% ownership in CPS and a R97.4 million cash pay-out, of which R83 million had allegedly been paid directly into Mosehla's personal bank account, with no debt, no investment, and at no cost to Net1 – thanks to the windfall received from the irregular payment by SASSA for 're-registration' of beneficiaries.²⁴⁸

As mentioned previously, a number of investigations were undertaken in the United States of America (USA), as Net1 (the parent company of CPS) is registered on the Nasdaq and subject to US anti-corruption laws. A class action lawsuit was launched against Net1 with the US District Court: Southern District of New York by disgruntled shareholders, who had suffered significant losses following from the negative impact of the various AllPay court cases. The case was ultimately dismissed, but worth noting is that one of the arguments that was put forward by the plaintiffs involved the then Minister of Human Settlements, Tokyo Sexwale.²⁴⁹ In their complaint, based on media reports at the time, they highlighted two

specific links between Sexwale and the 2012 tender. The first is in relation to Mosehla, who was a former 'key official' at Sexwale's company, Mvelaphanda Holdings (also referred to as the Mvela group). An article published by *amaBhungane* outlined the ways in which, through various business ventures, connections can be drawn between Sexwale, various people associated with the Mvela group, and Mosehla. One such Mvela associate was none other than Patrick Ntshalintshali. The Mvela group, however, "flatly denie[d] that Sexwale or Mvela Holdings have any financial interest, direct or indirect, in Mosomo Investment".²⁵⁰

The second connection with Sexwale related directly to the 2012 tender itself, namely that the then DG of his department, Thabane Zulu, sat on the BAC. It was alleged that one month prior to the BAC awarding CPS the contract, an amount of R1.4 million was 'mysteriously' transferred to his account. The story was first published by *The Sunday Independent*, in which it claimed to possess documentation indicating that an unnamed "intermediary deposited R2 m into the business account of African Access Information and Communication Technology, on behalf of the BEE company".²⁵¹ Presumably this is one of the BEE companies tied to CPS's bid, although this was never stated in the article. A few days later, Africa Access then paid Zulu R1.4 million. The allegations were at first met with vehement denials by all parties concerned. But their stories changed once they were confronted by *amaBhungane* with evidence in the form of bank records. Both Zulu and Africa Access Holdings admitted to the payment taking place, but provided an explanation that the amount was "related to his employment [as a director] at an African Access Holdings subsidiary", which he had left some 16 months prior to the payment. The matter was taken to the Public Protector and the SIU for further investigation.²⁵²

It would also seem that over and above connections with CPS's empowerment partners, Ncwana appears to be linked to at least one of the work stream leaders, which were appointed by and reported directly to Dlamini, namely Mr Tim Sukazi. Prior to his appointment to the MAC in 2013, Sukazi was best known for being an agent and manager for

²⁴⁶ McKune, C. 2016. *Serge Belamant, SASSA, and the "useful Blacks"*. [Online] Available: <http://amabhungane.co.za/article/2016-12-14-serge-belamant-and-the-useful-blacks>.

²⁴⁷ Net1. 2012. *Net1 Statement: Concludes BEE Deal*. Net1 UEPS Technologies Inc.

²⁴⁸ McKune, C. 2017. *The Minister, the Middleman, the Mansion and the New Corporate Kid*. [Online] Available: <http://amabhungane.co.za/article/2017-04-13-the-minister-the-middleman-the-mansion-and-the-new-corporate-kid>.

²⁴⁹ Ramos, D. 2015. *United States District Court Southern District of New York: Ruhama Lipow, et al. v. Net 1 UEPS Technologies Inc., et al. 13-CV-09100-Opinion and Order*.

²⁵⁰ Brümmer, S. 2012. *Tokyo Sexwale's Prints All over R10-Billion Tender*. [Online] Available: <http://amabhungane.co.za/article/2012-03-23-sexwales-prints-all-over-r10bn-tender>.

²⁵¹ Staff Writer. 2012. *DG's R1.4m "bribe"*. [Online] Available: <https://www.iol.co.za/sundayindependent/dgs-r14m-bribe-1268185>

²⁵² McKune, C. 2012. *Grant-Tender Beneficiary Flouts the Law*. [Online] Available: <http://amabhungane.co.za/article/2012-04-13-granttender-beneficiary-flouts-the-law>.

soccer players and coaches in South Africa, as well as an owner of the Mpumalanga-based TS Galaxy Football Club. In March 2017, it was rumoured that he was looking to take over Cape Town-based Igugu Lekapa's All Stars from its sole owner, Lunga Ncwana. The rumour was strongly denied at the time, but it is worth noting that Sukazi is the manager of All Stars coach, Patrick Mabedi.²⁵³

Whenever allegations of corruption were posed to then Net1 CEO, Serge Belamant, they were met with outright denials, obfuscation, and/or claims of ignorance. However, over the years several statements have raised important questions:

2005: *We don't get a R1,7-billion contract without being pretty close to the minister nationally as well as to the [provincial ministers].*²⁵⁴

2012: *Our BEE I won't even argue, was probably not the best BEE deal. But we thought, you know what, if we're going to win this or lose this because of BEE, well, so be it.*²⁵⁵

2016: *I cannot comment on Mr Ncwana specifically (I believe that I have met him a number of times – regarding, amongst other things, the funding of a soccer club – we did not fund it), except that if he did or does form part of our black empowerment lobbying group and assists with our business objectives, we would have no problem with his involvement or that of any other person(s) for that matter as long as these individuals adhere to [the US Foreign Corrupt Practices Act] rules and regulations.*²⁵⁶

2017: (post-resignation): *We have been acclaimed worldwide. We have won many different awards, very important awards. We have people like the ANC buying into the company and it took a long time to convince them.*²⁵⁷

There is nothing new about lobbying in South Africa and it is well known that most special interest groups provide funding

in a variety of ways to influence government policy, including research, sponsorship, etc. Still, unlike the USA and other developed democracies, South Africa does not yet have the same extensive regulations and laws that recognise and account for this type of activity in our political system. Only recently has parliament started the process of looking into party political funding.

According to numerous media reports over the years, Ncwana has been actively involved in the operations of the DSD for years, so much so that the DSD, responding to an article by *The Sunday Times*, stated:

It is disappointing that a newspaper of The Sunday Times' stature would not take this old and tired story forward by providing their facts and evidence to South Africans or at least quote people who are prepared to speak on the record [...]

For the past four years different media have been writing about this alleged relationship [of corruption between Minister Dlamini and CPS] but none of these investigations are bringing forth anything new but only speculation.

*It would have been easier and more credible of The Sunday Times to provide the evidence that the Minister received a bribe and at least show South Africa that these messages were indeed from the Minister.*²⁵⁸

The article revealed that there does in fact appear to be a hard evidence of a possible corrupt relationship between Minister Dlamini and Ncwana, in the form of an SMS which the minister sent to Zane Dangor. At the time of receiving the SMS (March 2017), Dangor was still the DG of the DSD, but he resigned a few days later. The SMS read

*You and Sipho [Shezi, adviser to the minister] have been used by [SASSA CEO Thokozani] Magwaza who is a friend to my former boyfriend who wanted to extort money from Lunga and could not.*²⁵⁹

²⁵³ Soccer Laduma. 2017. *Tim Sukazi Has Denied Reports Linking Him with Takeover of a Club*. [Online] Available: <https://www.soccerladuma.co.za/news/articles/categories/south-africa/tim-sukazi-has-denied-reports-linking-him-with-takeover-of-a-club/247753>.

²⁵⁴ Brümmer, S., Sole, S. & wa ka Ngobeni, W. 2005. *The Scandal Spreads*. [Online] Available: <https://mg.co.za/article/2005-06-09-the-scandal-spreads>.

²⁵⁵ McKune, C. 2016. *Serge Belamant, SASSA, and the "useful Blacks"*. [Online] Available: <http://amabhungane.co.za/article/2016-12-14-serge-belamant-and-the-useful-blacks>.

²⁵⁶ McKune, C. 2016. *Serge Belamant, SASSA, and the "useful Blacks"*. [Online] Available: <http://amabhungane.co.za/article/2016-12-14-serge-belamant-and-the-useful-blacks>.

²⁵⁷ Hogg, A. 2017. *Ousted Net1 Founder Serge Belamant: I Would Have Done Nothing Differently*. [Online] Available: <https://www.biznews.com/interviews/2017/09/04/net1-founder-serge-belamant/>.

²⁵⁸ DSD. 2017. *Minister Bathabile Dlamini Responds to Sunday Times*. Pretoria: Department of Social Development.

²⁵⁹ News24 Correspondent. 2017. *DA Wants Protector Probe into Dlamini's Alleged Ties to Businessman*. [Online] Available: <https://www.news24.com/SouthAfrica/News/da-wants-protector-probe-into-dlaminis-alleged-ties-to-businessman-20170409>.

Dlamini's "former boyfriend", only referred to as an intelligence official by the name of Cessaro, was reportedly side-lined when CPS was awarded the contract in 2012. *The Sunday Times* indicated that it was originally Cessaro's plan to set up a BEE partner. But it was then arranged that Ncwana would be the one to structure the deals. It is further alleged that "[t]he night after it was confirmed that CPS has won the contract, Lunga [...] came to celebrate at the minister's house. Cessaro was asked to give them some space. When he realised this, he was told he would get his share and he shouldn't worry".²⁶⁰ Below is an interesting comment that Dlamini made to a journalist, at the time of the reporting on her and Ncwana's relationship:

*You are not going to tell me who I am close with. Because then you must look at all politicians and who they are close to and who is funding their parties.*²⁶¹

4.2.2 Behind the Tenders: Hulley, Monyeki, Moyane, and More

When asked in an interview when he had first met Michael Hulley, Zane Dangor indicated that it was the night after Molewa's inaugural budget speech, on 08 July 2009. Dangor, who was the chief operations officer and negotiating the extension of contracts for payment service providers at the time, was requested to attend the meeting by Molewa. The meeting had allegedly been arranged by Deputy Minister Dlamini. In attendance were Michael Hulley (Zuma's personal lawyer) and Duduzani Zuma. The discussion was around the first 2007/2008 tender that had been cancelled and the challenges the DSD and SASSA were having with CPS in the various litigations and the negotiations of extension of payment services contracts. Hulley and Zuma suggested working with CPS to find a solution, but this could only happen if Adv. Arendse's recommendation to cancel the tender was not implemented. Dangor flatly rejected this, advising Molewa that this would be in direct contravention of the legal procurement processes, and the meeting ended shortly thereafter. Molewa agreed with the recommendations made by Dangor.

This intervention by Hulley and Duduzani Zuma took place just three months after Zuma's inauguration. It suggests that Net1/CPS enjoyed access and influence at the highest level. It also explains why Dlamini, a Zuma loyalist, so relentlessly supported the CPS approach after she became deputy minister, and then minister. Repurposing South Africa's grant system was clearly a key element of the Zuma-centred power elite's political project.

During the various court cases around the invalid 2012 tender, Hulley's involvement in the tender evaluation process became public knowledge. It would appear that the revelations about Hulley's involvement came from the Tsalamandris transcripts. Hulley's involvement, however, was also confirmed by SASSA, who had been appointed to provide "commercial, financial, legal, and operational advice" on the tender.²⁶² Corruption Watch was specifically concerned by the fact that SASSA never actually paid Hulley for these services, as it was alleged in the Tsalamandris recording that he was being paid by CPS. SASSA's explanation of this was that "Mr Hulley did not claim payment from SASSA since he rendered advice on an ad hoc basis, as part of his broader relationship with government".²⁶³ SASSA, in an affidavit submitted by Ms Ramokgopa, who was the project manager at the time, also flatly denied that Hulley had "worked for two years on the matter", indicating that Hulley's services were "only used when necessary".²⁶⁴ It would seem that this denial was false and misleading, based on two accounts.

The first account is by Serge Belamant himself, CEO of Net1/CPS. In an interview with the *Mail & Guardian* in 2012 he indicated that, in addition to providing the BEC and BAC with advice, Hulley had been brought in before 2012 to deal with all the various lawsuits that existed between SASSA and CPS at the time. It can be assumed that this included the litigation around SASSA's agreement with CPS, as well as the litigation CPS was pursuing against SASSA for its agreement with several banks, which were directly paying into beneficiary bank accounts. Belamant, seemingly foreseeing the potential conflict of interest, indicated that once the new

²⁶⁰ Saba, A. 2017. *The Minister, Her Ex-Lover and the Grants Debacle*. [Online] Available: <http://archive.timeslive.co.za/sundaytimes/stnews/2017/04/09/The-minister-her-ex-lover-and-the-grants-debacle>.

²⁶¹ McKune, C. 2016. *Serge Belamant, SASSA, and the "useful Blacks"*. [Online] Available: <http://amabhungane.co.za/article/2016-12-14-serge-belamant-and-the-useful-blacks>.

²⁶² McKune, C. 2012. *Zuma's Lawyer and the Mega Tender*. [Online] Available: <https://mg.co.za/article/2012-03-09-zumas-man-and-the-mega-tender>.

²⁶³ SASSA. 2012. *AllPay vs SASSA and CPS: SASSA Affidavit*.

²⁶⁴ SASSA. 2012. *AllPay vs SASSA and CPS: SASSA Affidavit*.

tender had been issued, these investigations were halted. In the interview he stated that “this entire investigation into the lawsuits was halted because they [SASSA] didn’t want anybody to somehow infer that these lawsuits and their resolution had anything to do with a potential tender award”.²⁶⁵

The second account comes from the interview with Zane Dangor, who was part of the BSC that prepared the RFP for the 2011/2012 tender. Dangor indicated that, upon the insistence of the then Deputy Minister Dlamini, citing a lack of security at SASSA’s offices and the need for a location which could be secured by the state security, the meetings and preparation of the tender documents took place in Michael Hulley’s offices. It was indicated that Hulley would sit in on the discussions around the requirements for the payments of grants. The dignity of beneficiaries was the principal requirement for the BSC and it was agreed that there needed to be interoperability for electronic payments (meaning that it needed to be able to be done within the NPS). It was during these meetings that the biometrics issue was first introduced. It was apparently agreed within the BSC that biometrics could be included in the tender. It was not, however, a mandatory requirement. Once the tender was issued, the BSC’s involvement ended. This means that the BSC was not part of the decision to issue Bidders Notice 2, which changed the requirements about biometric identification from “preferred” to a “must”. This was one of the main reasons that the Constitutional Court declared the contract invalid, as did Tsalamandris, when he noted that

*at a very late stage of the process, it changed the rules of the game. All of a sudden people are being told they must have biometrics. They were using biometrics as the key thing to kill AllPay.*²⁶⁶

Tsalamandris also indicated that three other technical advisers had been appointed to advise the BEC and BAC. They were paid “half a million” each by SASSA, and he insinuated that these advisors were chosen specifically because they “would

support what they were doing”.²⁶⁷ One of these advisers was none other than Patrick Monyeki, who would later become the technical work stream leader. According to Tsalamandris, Monyeki was instrumental in how the bid evaluation process played out, as he “was used to justify why we’re blocking technical”.²⁶⁸

As was previously noted, Monyeki was allegedly involved in several other potentially corrupt deals. The first is related to allegations of collusion in a contract between the DCS and the Sasstec group, of which he is a 15% shareholder.²⁶⁹ It should be noted that during the Inquiry, Magwaza indicated that Monyeki’s name appeared on an NT letter, in reference to potentially blacklisted individuals / service providers relating to DCS procurements.²⁷⁰ It is reported that the initial contract that was awarded in 2012 while Monyeki was a technical adviser ballooned from R500 million to more than R1.4 billion in 2015.²⁷¹ The second is linked to the investigations around unexplained money transfers to SARS’s second-in-command Jonas Makwakwa, which had been flagged by the FIC. From the investigations a complex web of alleged corruption and money laundering has emerged, all tied to a February 2015 payment of R17.87 million from the DWS in favour of a debt-collection company called New Integrated Credit Solutions. Monyeki was the sole director of Mahube Payment Solutions, which appears to have received a payment of approximately R4.5 million from New Integrated Credit Solutions, the reasons for which have yet to be fully explained.²⁷² Both of these alleged incidences of potential corruption are still currently under investigation, the first by the SIU and the second by the Hawks.

Both of these instances of alleged corruption have one thing in common: they are both linked to institutions which were under the leadership of Mr Tom Moyane. In 2012, Moyane was the National Commissioner of Correctional Services. He was appointed in 2014 as Commissioner of SARS by President Zuma, even though this is a decision for the Minister of Finance to make – the Minister of Finance at the time, Nhlanhla Nene, was instructed to simply ratify this appointment. It is

²⁶⁵ McKune, C. 2012. *Zuma’s Lawyer and the Mega Tender*. [Online] Available: <https://mg.co.za/article/2012-03-09-zumas-man-and-the-mega-tender>.

²⁶⁶ Sole, S. 2013. *Tape Implicates Zuma Lawyer in “farical” Tender*. [Online] Available: <http://amabhungane.co.za/article/2013-03-22-tape-implicates-zuma-lawyer-in-farical-tender>.

²⁶⁷ Sole, S. 2013. *Tape Implicates Zuma Lawyer in “farical” Tender*. [Online] Available: <http://amabhungane.co.za/article/2013-03-22-tape-implicates-zuma-lawyer-in-farical-tender>.

²⁶⁸ Sole, S. & McKune, C. 2017. *Social Grants Payment Crisis – Everything You Need to Know but Were Afraid to Ask*. [Online] Available: <http://amabhungane.co.za/article/2017-03-17-social-grants-payment-crisis-everything-you-need-to-know-but-were-afraid-to-ask>.

²⁶⁹ Serrao, A. 2017. *Moyane-Era Prisons Tender Referred to SIU*. [Online] Available: <https://www.news24.com/SouthAfrica/News/moyane-era-prisons-tender-referred-to-siu-20170814>.

²⁷⁰ SABC Digital News. 2018. *Inquiry into Social Grants Crisis: 26 January 2018*. Video. [Online] Available: <https://www.youtube.com/watch?v=acmITrQ36KM&t=3890s>.

²⁷¹ Serrao, A. 2017. *Moyane-Era Prisons Tender Referred to SIU*. [Online] Available: <https://www.news24.com/SouthAfrica/News/moyane-era-prisons-tender-referred-to-siu-20170814>.

Monyeki's "close friendship" with Moyane which is reported to be the main link to Makwakwa regarding the unexplained payments. Significantly, Tom Moyane was also the chair of the BAC for the 2012 SASSA grants payment tender. According to court records, Moyane convened the final BAC meeting, which took place in the absence of the only BAC member (NT official Willie Mathebula) who had raised concerns around CPS's BEE proposal and the BEC's decision to change the scoring after oral presentations. Moyane was informed that Mathebula would not be able to attend the meeting. Moyane convened the meeting anyway, stating that Minister Dlamini was really unhappy that the meeting would be postponed. Moyane obtained a legal opinion – assumed to be from Hulley – which indicated that the meeting could take place without Mathebula being present. In the final BAC meeting, Moyane told the other committee members that in his opinion the issues and questions raised by Mathebula were "really not serious questions that could have led us to postpone the discussions".²⁷³

As has been discussed in detail, Monyeki, as member of the MAC and the leader of the technical work stream, has since played a significant role in the events which led to the 'self-created' crisis in March 2017. It was also noted in Section 3.5.2 that in 2016/2017 Hulley would enter the fray once again. There were three meetings at which Hulley was reported to have been present: the first on 18 December, which took place at the Intercontinental Hotel at O.R. Tambo International Airport, which was attended by Dlamini, Dangor, Magwaza, and Ramokgopa. The second was on 30 December, allegedly at Hulley's offices in Durban, which was attended by both work streams and senior officials of SASSA and the DSD. However, Dangor refused to attend. In these meetings it appears that Hulley strongly supported the idea of negotiating a new contract with CPS. When questions were posed to Hulley, he initially denied any involvement in the matter. He later admitted: "My advice was sought [by Dlamini] upon what is permissible in terms of what the [Constitutional] court order says and what is impermissible."²⁷⁴

The third meeting was over the weekend before the presentation to SCOPA on 22 February, where the proposed

way forward for SASSA had changed dramatically. As indicated in Section 3.5.2, during Dangor's testimony (during the Inquiry into Dlamini's potential personal liability for the legal cost of the Constitutional Court hearing in 2017), he indicated that the minister had travelled to KwaZulu-Natal to meet with President Zuma on the Sunday (19 February), although cross-examination did not establish the purpose of the meeting.²⁷⁵ Although there are not many details of this meeting in the media, it is alleged that present at the meeting were a select group which included Hulley, Mvulane, and possibly even Tim Sukazi.²⁷⁶ It is believed that it is in this meeting that it was decided that a 'new' approach would be adopted, i.e. for SASSA to sign a new contract with CPS for a period of two years and that they would only inform the Constitutional Court of the new contract as opposed to first consulting the court with regard to their plans.

Dlamini's decision to act against the advice given in three separate legal opinions to approach the Constitutional Court regarding the extension of CPS's services was based on an unseen 'new legal opinion' that one can only assume came from Hulley. Significantly, this decision appears to have taken place outside the formal government structures, namely SASSA and the DSD, as well as outside the 'recommendations' of the irregularly appointed work streams.

It does indeed appear that Hulley's involvement in the SASSA saga was of major concern to SASSA and DSD officials and both Magwaza and Dangor objected to the new approach which was mooted by Hulley. The concern around Hulley's involvement was known by Dlamini, as is evident in an alleged exchange that took place in a SASSA Executive meeting (called for by Magwaza) on 20 February. Dlamini arrived uninvited to the meeting and "caused a scene, accusing the CEO of being a 'traitor'" for meeting with NT and added that "people should stop questioning Hulley's role as there was nothing wrong with him as he is President Jacob Zuma's legal adviser".²⁷⁷ During the Inquiry, Magwaza testified to the heated exchange. Even though he did not highlight the role of Hulley in the Inquiry, he indicated that the minister was adamant that the SASSA executives were not to interfere in

²⁷² Serrao, A. 2017. *Moyane-Era Prisons Tender Referred to SIU*. [Online] Available: <https://www.news24.com/SouthAfrica/News/moyane-era-prisons-tender-referred-to-siu-20170814>.

²⁷³ McKune, C. 2012. *More Questions over Hulley's Role in R10b Social Grant Tender*. [Online] Available: <https://mg.co.za/article/2012-12-14-00-fbi-probes-zumas-lawyer>.

²⁷⁴ McKune, C. 2017. *EXCLUSIVE: Officials Defied Dlamini on Social Grants*. [Online] Available: <http://amabhungane.co.za/article/2017-02-03-social-grants-officials-turn-on-rogue-dlamini-over-her-support-for-cps>.

²⁷⁵ SABC Digital News. 2018. *Inquiry into Social Grants Crisis: 02 February 2018 - Part 3*. Video. [Online] Available: <https://www.youtube.com/watch?v=GTyvwgSOkdA&t=1s>.

²⁷⁶ McKune, C. 2017. *Bathabile Dlamini's Game of Chicken*. [Online] Available: <http://amabhungane.co.za/article/2017-02-25-bathabile-dlamini-game-of-chicken>.

²⁷⁷ wa Afrika and Saba, M. & Saba, A. 2017. *Zuma Lawyer Fuels CPS Grants Chaos, "Stressed" Sassa Bosses Land in Hospital*. [Online] Available: <http://archive.timeslive.co.za//sundaytimes/stnews/2017/03/12/Zuma-lawyer-fuels-CPS-grants-chaos-stressed-Sassa-bosses-land-in-hospital>.

the undertakings of the work streams and presumably the parallel shadow structures.²⁷⁸

Shortly after the media started reporting on these meetings, the Presidency released a statement that it had no knowledge of Hulley's involvement and the DSD released a statement obfuscating the matter, by neither confirming nor outright denying Hulley's involvement. Instead, the DSD challenged reporters to produce evidence of the meetings. It is, therefore, highly certain that Hulley was involved. Given that he was probably not paid by the DSD/SASSA and that he was historically involved because of his "broader relationship with government", the only conclusion possible is that he was directly representing President Jacob Zuma.²⁷⁹ All his interventions seem to have been to bend the rules in favour of CPS, especially with respect to shifting the biometric requirement from a "preferred" to a "must" condition.

4.3 CABINET SHUFFLE

Malusi Gigaba was appointed Minister of Public Enterprises and Bathabile Dlamini as Minister of Social Development in 2010. As argued in the *Betrayal Report*, this reshuffle marked the start of concerted efforts by the Zuma-centred power elite to repurpose state institutions across a range of fronts. The focus to date has been on Gupta-linked strategies to capture and repurpose state institutions like Eskom, Transnet, and Denel. Insufficient attention has been paid to the capture and repurposing of the DSD/SASSA, where direct links to the Gupta network cannot be discerned (despite the involvement of Duduzani Zuma). In the March 2017 reshuffle, Gigaba became Minister of Finance and Dlamini kept her post as Minister of Social Development. There is a clear and direct line between the 2010 and 2017 reshuffles.

Did Dlamini wilfully create the SASSA-Gate crisis? To answer this, it is necessary to consider not only the events which led up to the looming deadline of SASSA of 01 April 2017, but how the events were being presented to parliament and the public, as well as what transpired thereafter. And, in particular, what role did SASSA-Gate play in the cabinet reshuffle in March 2017? What follows is a summary recapitulation of events already discussed, but in a chronological order linking together the constitutional and shadow state dynamics.

By November 2016, SASSA and DSD officials were faced with the stark challenge of having to find a way for SASSA to take over grants in April 2017. What followed were numerous meetings with other government agencies (including NT and the SARB) that have already been described. They came to the conclusion that the proposal set out by the work streams (which was supported by the minister) should not be the preferred closed-loop payment model. In January 2017, a TTT was established, consisting of senior technical officials from SASSA, the DSD, SARB, and NT. They were given the task of developing options for how SASSA would be able to take over the payments of grants based on an open-architecture model. It is at this stage that the conflict between Dlamini and Gordhan would begin to emerge. On 23 January, Dlamini sent Gordhan a briefing note which promoted the extension of CPS's services and the work streams model for the payment of grants by SASSA. This was just one day before the TTT would present their options to the heads of the respective departments for deliberation, presenting both short-term solutions for SASSA taking over the payment of grants in April, with the long-term objective of a SASSA system being developed, which would be based on the open-loop model connected directly to the NPS.

On 01 February, Gordhan wrote to Dlamini indicating that his preference was not to allow the contract with CPS to be extended and that the preferred model from NT's perspective was to negotiate with all interested banks, including SAPO. NT's perspective was to promote the use of electronic payment methods (which would exclude the biometric verification requirement) as much as possible and that only the cash distribution grants would then go out to tender. This was Option 6 of the various solutions that the TTT had developed. On 07 February, Magwaza wrote to NT, requesting approval for deviation from standard procurement processes which would enable SASSA to extend the existing contract with CPS. NT swiftly responded on 08 February, indicating it could not sanction the request for deviation without the Constitutional Court having been informed of and approving SASSA's proposal. At this point it was well reported in the media that there was a disagreement between the two ministers, which added to the confusion and anxiety that was developing regarding the uncertainty around how grants would continue to be paid come 01 April. The activities and discussions in parliament were also contributing

²⁷⁸ SABC Digital News. 2018. *Inquiry into Social Grants Crisis: 26 January 2018*. Video. [Online] Available: <https://www.youtube.com/watch?v=acmITrQ36KM&t=3890s>.

²⁷⁹ DSD. 2017. *Correction: The Department of Social Development Did Respond to the Sunday Times*. Pretoria: Department of Social Development

to the mix, where one solution would be presented to the Portfolio Committee on Social Development on one day and a different plan would be presented at SCOPA the next day.

After much debate and negotiating between and within the relevant parties, on 16 February it was agreed that SASSA would, dependent on the Constitutional Court's consent, seek to extend CPS's services for the period of a year in order to properly coordinate a transition of payment services from CPS to SASSA and the various other service providers it would procure in the medium term. It was agreed that a report outlining this plan would be drafted and sent to the Constitutional Court. It was at this point that Dlamini indicated that she wanted to further consider the solution over the weekend. Over that weekend, Dlamini reportedly met with Michael Hulley, who advised the minister to adopt the 'new approach'. As already highlighted, up until this point there was agreement by all parties (including SASSA and DSD officials, the TTT, and the work streams, and supported by three separate legal opinions) that SASSA would need to obtain consent from the Constitutional Court before it entered into any formal agreement which would be needed to ensure that grants continued to be paid after 31 March. The new approach was to adopt the work streams model (including biometrics, of course), as per Dlamini's wishes; however, SASSA would no longer seek consent from the Constitutional Court but would instead only file a report merely informing the court once the negotiations were concluded.

The question that needs to be answered is what advantage was to be derived from not first approaching the Constitutional Court. There does not appear to be any rational reason for this advice, other than a possible knee-jerk resistance to the Constitutional Court that has not been friendly when it came to Zuma's various cases. The risk that the Constitutional Court would make a ruling that jeopardised the payment of grants was low. This new approach placed NT in a very difficult position. It had already indicated that it would not approve any deviation without the Constitutional Court's consent. If NT had approved a deviation, it would have been complicit in allowing for an invalid and irregular contract being entered into between SASSA and CPS. This would set a precedent, which, from an institutional governance perspective, would be hard to recover from. On the other hand, if NT continued to refuse to allow the deviation (which it most likely would have done) and there had not been an intervention from Black Sash Trust and others, the risk of a contract not being signed increased and in turn increased the likelihood of beneficiaries

not being paid on 01 April. Had this happened, the blame would have been placed directly on NT, which would have then provided Zuma with a relatively legitimate reason to fire Gordhan.

In a presentation to the Portfolio Committee on Social Development on 22 February, Dlamini outlined the new approach, which was unknown to Magwaza and Dangor at the time. In response to a question regarding the discussion with NT and the filing of a report with the Constitutional Court, Dlamini indicated that, according to her, the "deviation [required from NT] and [the filing of a report with the] Concourt are separate processes".²⁸⁰ It would seem from this statement that Dlamini was (either willingly or unknowingly) misleading parliament; as NT had already indicated that it would not be able to approve the deviation without the Constitutional Court's consent. It was at this stage that it became apparent that a concerted effort was being made to set up NT to take the fall should negotiations with CPS not be sanctioned.

On 28 February 2017, a report was filed by SASSA at the Constitutional Court, signed by Magwaza. This was later retracted by the minister. It is at this point that Black Sash Trust instituted a separate application with the court to intervene and provide clarity regarding the interim contract between SASSA and CPS. The negotiations between the two organisations continued, without NT being present and without its approval. On 08 March, the MTT instructed that the negotiations be scrapped and started afresh, subject to NT's approval and the outcomes of the Constitutional Court hearings. On 17 March, the Constitutional Court ruled that the invalid contract between SASSA and CPS could be extended for a year and that in effect resolved the dispute between Dlamini and NT. In fact, it confirmed/supported the position NT had adopted all along, which was to disallow a deviation without prior consent from the court.

With the CPS matter temporarily 'resolved', Zuma needed an alternative legitimate excuse to fire Gordhan. On 20 March 2017, just three days after the Constitutional Court handed down its ruling on the SASSA debacle, a highly suspect and poorly crafted 'intelligence report' was presented to the South African Communist Party (SACP) in which it was indicated to those present why Zuma had grounds to fire Gordhan. This was obviously a Plan B. The argument that was also made at the time was that there had been a breakdown in the relationship between the Presidency and Minister Gordhan.

²⁸⁰ PMG. 2017. PCOSD: Minister & SASSA on readiness to implement Constitutional Court ruling. Cape Town: Parliamentary Monitoring Group.

This, however, was well known. Without some other reason for a fall-out between the pair, the president would have had to provide details of the deterioration in the relationship. It would seem that the motivations given by the president did not suffice, as the so-called 'intelligence report' was almost wholly rejected by those who had seen it and the backlash that followed has forever changed the political dynamics of the country. Even the Minister of State Security claims he had no knowledge of the 'report'.

4.4 SASSA'S SECOND FUNCTION: BLURRING THE LINES BETWEEN PARTY AND STATE

*"So when the leadership of the ANC takes a decision, we all follow. In the ANC you are given orders, you implement. If you want to question, you question after implementation," she said, to cheers of "viva" from the crowd.*²⁸¹

The above statement, made by Bathabile Dlamini at a Women's Day rally on 08 August 2017, highlights the underlying dogmatic ideology that serves to erase the invisible line between party and state that is embedded in the Constitution. This ideology directs attention away from those avoiding accountability and in effect allows for the emergence of the shadow state created by the silent coup. It is these blurred lines between party and state which perhaps 'allow' the political party collective to turn a blind eye when state resource are utilised to the benefit of the party. This establishes an ethical dilemma in that it then also allows the Zuma-centred power elite to loot and plunder state resources for their own personal gain.

Significantly, election poll research reveals that social grants are one of the main motivating reasons why many South Africans continue to vote for the ANC. The reality is that social assistance is a basic human right under the Constitution,

and precedence is now set in terms of the type and scope of social assistance which the state is required to provide by law. Nevertheless, social grants and their association with the ANC are arguably one of the most powerful tools the party can leverage when it comes to drumming up support and winning votes in elections.²⁸²

In December 2009, the Democratic Alliance (DA) lodged a complaint with the Public Protector against the DSD and SASSA. It was alleged in media reports that Julius Malema (then president of the ANCYL) was handing out food parcels at events held at Heinz Park and Phillippi in Cape Town on 01 December 2009 and that these food parcels had been purchased by SASSA. In her report, which was released in May 2016 and titled *State and Party, Blurred Lines*,²⁸³ the Public Protector found that SASSA had indeed, on the instruction of the then minister, Molewa, organised food parcels for the event, which had been organised by the ANCYL. Coverage of the event by the SABC clearly showed ANCYL and SASSA banners standing alongside each other. In her findings, the Public Protector found Minister Molewa's actions and SASSA's involvement to be improper and that

*[t]he utilization of SASSA resources and attendance at an ANCYL political event by SASSA and Departmental personnel, which was commissioned by the Minister through her request to the former CEO, abetted the ANCYL to achieve its party political objective and thus creating a conflict of interest and favouritism [...]. The conduct constitutes maladministration.*²⁸⁴

As part of the remedial action, the DSD and SASSA were required to develop "policy setting out the separation of state and party activities to ensure that no government organ be allowed to use its position to market political parties."²⁸⁵ A recent report by the new Public Protector found that these remedial actions still had not been adequately addressed and again instructed the DSD and SASSA to implement the remedial actions.²⁸⁶

²⁸¹ du Plessis, C. 2017. *ANC Leadership Race: No Space for Conscience, or Motshekga, in Dlamini's Women's League*. [Online] Available: <https://www.dailymaverick.co.za/article/2017-08-28-anc-leadership-race-no-space-for-conscience-or-motshekga-in-dlaminis-womens-league/#.WjG51tWWbDe>.

²⁸² Plaut, M. 2014. *South Africa: How the ANC Wins Elections. Review of African Political Economy*. 41(142):634-44.

²⁸³ Public Protector. 2016. *State and Party, Blurred Lines*. Pretoria:Public Protector.

²⁸⁴ Public Protector. 2016. *State and Party, Blurred Lines*. Pretoria:Public Protector.

²⁸⁵ Smillie, S. 2016. *Thuli Rocks ANC Votes Party*. [Online] Available: <https://www.timeslive.co.za/news/south-africa/2016-05-06-thuli-rocks-anc-votes-party/>.

²⁸⁶ Public Protector. 2017. *State and Party Funds*. Pretoria: Public Protector.

5

THE LINES BETWEEN THE DOTS

The underlying danger to us all is that when the institutions of government established under the Constitution are undermined, the fabric of our society comes under threat. A graphic illustration would be if social grants are not paid beyond 31 March 2017.²⁸⁷

Since the Constitutional Court ruling on 17 March 2017, much has occurred regarding the SASSA take-over of grant payments. Yet it seems little in practice has changed. At the time of the final drafting of this case study, on 20 February 2018, with less than two months to go, the country is faced with little clarity as to exactly how or even if SASSA, now in partnership with SAPO, will be able to take over the payment of grants by 01 April 2018.

This section now seeks to analyse the recent events from a 'state capture' perspective, referring in particular to the agenda pursued by the Zuma-centred power elite, and discusses the broader impact of the 'state capture' project on South Africa's social welfare system.

5.1 WHAT FUTURES MAY UNFOLD

On 10 April 2017, Minister Dlamini's long-time special adviser, Siphoshezi, was fired. This happened a day after *The Sunday Times* had reported on the SMS sent by Dlamini to Zane Dangor. In the SMS, Dlamini accused Dangor and Shezi of conspiring with Magwaza (SASSA CEO) and a former lover of attempting to extort money from businessman Lunga Ncwana.²⁸⁸

Just prior to leaving SASSA on 17 July 2017, Magwaza terminated the contracts of the work streams after NT had declared their appointment as irregular. At the same time, Magwaza also received approval from NT allowing for a

deviation from the standard procurement process, which would allow for provisioning of services between and within different government entities. Having received this approval, Magwaza signed a cooperation agreement between SASSA and SAPO.²⁸⁹

On 19 July Dlamini replaced Magwaza with "one of her close supporters and a fellow member of the ANC Women's League", Pearl Bhengu.²⁹⁰ With all three opponents (Dangor, Shezi, and Magwaza) out of the way and an ally now appointed as acting CEO of SASSA, the doors were reopened for the minister to ensure that she got what she wanted (at least until parliament intervened).

5.1.1 SASSA-Gate 2.0

The March 2017 Constitutional Court judgment included the establishment of a Panel of Experts plus the Auditor-General to monitor and evaluate SASSA and the DSD's progress in ensuring that SASSA takes over the payment of grants from CPS by 01 April 2018. This is when the extension of the invalid contract is set to come to an end. Towards the end of October, the panel presented a damning report to the Constitutional Court about the conduct of SASSA officials responsible for ensuring a grants payment system is in place by April 2018. The panel did not receive a copy of the SAPO RFP despite requesting it on numerous occasions from the department. They indicated that "the absence of a comprehensive implementation plan for SASSA's stated objectives providing adequately for risk management, risk mitigation and proposed alternatives should the 'course of action fail or an exit plan in respect of CPS' presents a 'serious risk'".²⁹¹

²⁸⁷ Constitutional Court of South Africa. 2017. *Black Sash Trust v Minister of Social Development and Others*: [2017] ZACC 8 (17 March 2017) - Judgment 1.

²⁸⁸ Thamm, M. 2017. *SassaGate: As Dark Clouds Gather, Bathabile Dlamini Fires Special Adviser Siphoshezi*. [Online] Available: <https://www.dailymaverick.co.za/article/2017-04-11-sassagate-as-dark-clouds-gather-bathabile-dlamini-fires-special-adviser-siphoshezi/#.WiG8FFWWbDe>.

²⁸⁹ Dzonzi, T. 2017. *Sassa Scraps Bathabile Dlamini's Advisory Teams*. [Online] Available: <https://www.fin24.com/Economy/sassa-scraps-bathabile-dlamini-advisory-teams-20170710>.

²⁹⁰ Ensor, L. 2017. *Bathabile Dlamini Names Pearl Bhengu Acting Sassa Head*. [Online] Available: <https://www.businesslive.co.za/bd/national/2017-07-19-sassa-names-pearl-bhengu-acting-head/>.

²⁹¹ Thamm, M. 2017. *SassaGate Reloaded: Expert Panel and AG Warn of Serious Risk in Future Social Grant Payments*. [Online] Available: https://www.dailymaverick.co.za/article/2017-10-18-sassagate-reloaded-expert-panel-and-ag-warn-of-serious-risk-in-future-social-grant-payments/#.WiG_wlWWbDd.

Alarmed by the report by the Panel of Experts and the fact that SASSA had missed four self-imposed deadlines for signing a contract with SAPO, SCOPA and the Social Development Portfolio Committee called the DSD, SASSA, and SAPO to provide parliament with an update as to what had happened and what was intended for the way forward. As meeting after meeting unfolded, it became clear that the disconnect between SASSA and SAPO would require an intervention.

What has been revealed through these meetings is that, following Magwaza's exit from SASSA, there appears to have been a marked turn for the worse in the relationship between the two state-owned entities. In summary, having received authorisation for the deviation from NT to bypass the normal competitive open-bid process, on 24 July SASSA issued an RFP for SAPO to submit a proposal, outlining which of the services SASSA required the Post Bank could provide. In August, SASSA indicated that a due diligence assessment, which was undertaken by the Centre for Scientific and Industrial Research (CSIR), was required in order to ensure the Post Bank could provide the services it had set out in its proposal. The CSIR submitted its report to SASSA on 15 September 2017 and on 06 October SASSA sent the Post Bank an award letter, which offered to contract it for only one of the four services which SASSA required, namely "an integrated payment system which can also handle beneficiaries' biometric data".²⁹² The remaining three services included the provision of "providing banking services (offering a prepaid debit card with a biometric data verification solution in line with the PASA), card production capacity for social grant beneficiaries, and the option of cash payments at pay points".²⁹³ This offer was rejected by the Post Bank on 20 October because it felt it had the capability to undertake the banking and card body production services (as these were actually its core competencies and that these services were inextricably connected). Furthermore, it argued that should SASSA only require the development of the integrated payment system, this could be better undertaken by a different state entity, such as the State Information Technology Agency (SITA).

After the two state entities could not reach an agreement, the portfolio committees combined their efforts and called in NT

to establish what had transpired. On 08 November, those representing the IMC on Comprehensive Social Security and Minister Jeff Radebe (who by then was the chair of the committee, even though it had been announced in March that President Zuma would undertake this role) reported back to parliament that it had set up a task team to intervene and that an agreement would be concluded by 17 November. It was in this meeting that copies of a letter from the DG of NT to the CEO of SASSA were distributed to the MPs. Although it is unclear who supplied this letter to the MPs, it nevertheless outlined serious flaws in SASSA's handling of the matter. In the letter it was stated that "SASSA should not have approved the disqualification of SAPO on three areas but rather seek to engage and explore options on possible ways to close the capacity gap or seek the intervention of the Inter-ministerial Committee". The NT DG found that the BEC and BAC did not appear to have used the CSIR due diligence report in reaching its conclusions and recommendations, and that the RFP specifications were "biased".²⁹⁴ This letter, together with all the history behind the invalid contract between SASSA and CPS, caused many of the MPs to raise concerns that SASSA was deliberately attempting to delay implementing a takeover of payment services, potentially leading to yet another self-created crisis come April 2018. Once again, the debate had already begun as to whether the contract with CPS would either need to be extended further or would CPS have to be contracted possibly under a different name/"through the back door". This sentiment seems to be confirmed by the report by the Panel of Experts, which stated:

*The stewardship of the state's duty in respect of social assistance needs to be addressed urgently by relevant role players and the measures taken by SASSA so far, together with proposed deadlines, are unlikely to enable a seamless transition to a new system for the payment of social assistance by 01 April.*²⁹⁵

The DSD has published a copy of the CSIR report on its website, which provides great insight into the possible motives behind the recent course of events. Much focus has been placed on the CSIR's assessment of SAPO's ability and capacity to address SASSA's requirements. The report also assessed these requirements themselves. The CSIR report

²⁹² Herman, P. 2017. *Post Office Offered Only One of Four Sassa Services*. [Online] Available: <https://www.news24.com/SouthAfrica/News/post-office-awarded-tender-to-assist-with-sassa-grant-distribution-20171024>.

²⁹³ Mahlaka, R. 2017. *The SA Post Office's Fight to Pay Grants*. [Online] Available: <https://www.moneyweb.co.za/news/sapos-fight-to-pay-grants/>.

²⁹⁴ Herman, P. 2017. *Sassa Should Not Have Disqualified Post Office - Treasury Letter*. [Online] Available: <https://www.news24.com/SouthAfrica/News/sassa-should-not-have-disqualified-post-office-treasury-letter-20171108>.

²⁹⁵ Thamm, M. 2017. *SassaGate Reloaded: Expert Panel and AG Warn of Serious Risk in Future Social Grant Payments*. [Online] Available: https://www.dailymaverick.co.za/article/2017-10-18-sassagate-reloaded-expert-panel-and-ag-warn-of-serious-risk-in-future-social-grant-payments/#:wG_wlWWbDd.

indicates that the requirement for the payment system to be open- or closed-loop was unclear in the RFP document. This is a key point as it has direct implications for understanding which payment model SASSA is/was pursuing and in turn might provide insight into the potential underlying motivation. From SASSA's response and from what was contained in the CSIR report, it can readily be assumed that the work streams model favoured a closed-loop system. From the statement made by Dlamini, in defence of her decision to only award the provisioning of the integrated payment system to SAPO, she inadvertently alerted us to this fact, when she explained:

Inter-operability within the National Payment System (NPS), including the utilisation of the ATM and retail point of sale network requires for the card to be EMV compliant as determined by Visa and MasterCard. EMV is the standard as defined by the three international companies that provide for inter-operability, specifically for international transacting. In South Africa PASA has prescribed only the EMV standard coupled with a MasterCard/ Visa card to operate within the NPS. Our research tells us that countries like Russia, China, and India utilise a white label EMV standard that allows for local inter-operability without the exorbitant costs of international transacting.²⁹⁶

The term "white label EMV standard" implies that at the backend of whichever system is adopted for these smartcards is a licensed proprietary technology, much like that which is owned by Net1/CPS.

The initial argument for contracting with CPS was because of its biometric technology and smart card solution. However, in July 2016 PASA announced "a new specification for biometric authentication on payment cards across the country",²⁹⁷ which would leave this argument meaningless. In addition, the CSIR report indicated that SAPO (whose current banking services operates an open-architecture system connected to the NPS) has proposed to utilise biometric match-on-card capability, enabling biometric verification, meaning that it would adopt a closed-loop model up until such time as the new PASA regulations are in place. The fact that more

than half of recipient transactions currently do not use the biometric verification is perhaps just a side note.

With biometrics soon to be incorporated into the NPS and having proposed a closed-loop solution, the question as to why SAPO still was not awarded the card and banking services remains. A possible answer may also be revealed in the CSIR report, which raised questions around the requirement for the cards to be specifically a 'prepaid debit card' and Special Disbursement Accounts (SDA). The report highlighted the following in terms of these two aspects:

The bidder is requested to provide SASSA with SDA accounts, but the type of these accounts is not clear and understood within the context of known forms of accounts in the South African banking system [...]. The rationale behind the need to inspect beneficiary's accounts is not clear, and could potentially force the bidder to be in violation of applicable laws in South Africa if not fully examined [...]. Whilst there might be a compelling business case, and tangible benefits that SASSA might derive, for collecting transactional information from beneficiaries' accounts, issues of legality need to be properly addressed [...]

SASSA also requested, in the RFP, that the beneficiaries be issued with a payment card, which is required to be a prepaid debit card [...]. It is difficult to reconcile the need for a prepaid card and SDAs. Technically, if SASSA opts for the prepaid card, it would not need SDA accounts as the prepaid card cannot be linked to an account [...]. For large volumes of cards and transactions of the scales of SASSA (i.e. 10 million plus cards), a prepaid card present a systemic risk for the bidder, as it would mean that all 10 million cards would need to access the one account holding all the funds, potentially bringing the system down.²⁹⁸

SAPO proposed that each recipient would receive their own SDA debit bank account, much the same as is the case with the current arrangement between CPS and SASSA-branded Grindrod Bank accounts that grant recipients currently hold. Perhaps one could assume that the SDA that SASSA is requesting is not an actual bank account, but rather a grant recipient registry 'account'. This would then explain the need for the card to be prepaid, where all grant funds would be

²⁹⁶ Dlamini, B. 2017. *SASSA Media Briefing in East London*. East London: Department of Social Development.

²⁹⁷ Staff Writer. 2016. South African Fingerprint Standard for Card Payments Launched. [Online] Available: <https://mybroadband.co.za/news/banking/173444-south-african-fingerprint-standard-for-card-payments-launched.html>.

²⁹⁸ Moabalobelo, T., Morienyane, L., Dube, E. & Malumedzha, T. 2017. *Review, Interpretation and Analysis of a Proposal by the South African Post Office (SAPO)*. Pretoria: Centre for Scientific and Industrial Research.

held in a single holding account and distributed to grant recipients based on their registry profile. But, as highlighted in the CSIR report, this would “present a systemic risk”, which is just one of the reasons NT was against the work stream model for payment of grants. This type of payment system could only really be established as a closed-loop system, to which a significant number of banking regulations, such as Financial Intelligence Centre Act (FICA) registration and privacy of account holders’ information, might not apply.

Considering the challenges which have resulted from Net1/CPS’s alleged misuse of recipient data, it is terrifying to even contemplate what might unfold when there is even less regulatory restriction and legal recourse on how recipients’ personal data are managed. Having unrestricted access to the personal details of more than 17 million of the most vulnerable and economically destitute members within our society is a powerful tool to have, particularly come election time in 2019.

Then there is the issue of ‘illegal’ and immoral deductions from social grants. As was previously noted, in May 2017 the High Court ruled that the new Social Assistance regulations (restricting deductions from grants) could not be applied to CPS and Grindrod, as grant recipients enter into an agreement to open individual bank accounts, which are governed by standard commercial banking regulations.²⁹⁹ Without individual bank accounts, deductions could be restricted to those which are in line with the new regulations. SASSA is already establishing a system by which authorised deductions take place before grants are transferred to recipients. This would explain why the DSD indicated in a statement that they “cannot afford another failed attempt by the banks to bank the unbanked! At least not with the social grant beneficiaries”.³⁰⁰ The irony of this statement, given its similarity to Net1’s motto, should not go unnoticed. The argument does appear to potentially have some merit. The CSIR report, however, highlighted that certain requirements in SASSA’s RFP would still imply that debit orders are permitted.

The question that needs to be asked is whether or not removing the banking service offering from the grant payment model would actually address the underlying problems. We would argue not, as the demand for most of these financial services

is now well established, the benefits which come with having access to banking services should not be discarded, and under the Social Assistance Regulations, beneficiaries can by law choose to have their grants paid into a personal bank account. The problem of micro-lenders and loan sharks will not disappear because beneficiaries no longer have bank accounts and beneficiaries could in fact be left worse off, with less protection against predatory lenders. Ultimately, the regulations governing financial transactions fall under the ambit of the SARB and there are many possible ways in which the issues surrounding ‘illegal’ and immoral deductions, as well as other deplorable commercial and finance practices which target the poor, could potentially be addressed.

There is one more possible motive for wanting to make the payment of grants take place via a closed-loop system that could be more controversial. This would be to control how and where grant recipients spend their grants.

SASSA should produce its own specialised bank card which would include biometric verification for every transaction and be able to “enforce spending at specific merchants”; “manage/restrict debit orders” and “provide protected and unprotected spending”, such as barring spending on alcohol.³⁰¹

As in the previous instance, the limitation on where/how recipients can spend their grants will not address challenges of alcohol abuse or other social issues. Perhaps more significant is that this motive amounts to an intentional act of social engineering, which may have problematic intended and unintended consequences. The ability to control and restrict where, how, and on what grant recipients choose to spend their grant money may be illegal and as yet there is no government policy on this matter. Social assistance is a constitutional right, and as such placing any restriction or conditionality on that right needs to be specified and defined in legislation before it can be enacted.

5.1.2 The Long Game

On 08 November the IMC on Comprehensive Social Security was called before parliament to help resolve the impasse between SASSA and SAPO. MPs criticised the IMC for not intervening sooner. No clarity was given as to why we were

²⁹⁹ Maregele, B. 2017. *Net1 Wins Case to Allow Deductions on Social Grant Accounts*. [Online] Available: <https://www.groundup.org.za/article/net1-wins-case-allow-debit-deductions-social-grant-accounts/>.

³⁰⁰ DSD. 2017. *Correction: The Department of Social Development Did Respond to the Sunday Times*. Pretoria: Department of Social Development.

³⁰¹ Sole, S. & McKune, C. 2017. *Social Grants Payment Crisis - Everything You Need to Know but Were Afraid to Ask*. [Online] Available: <http://amabhungane.co.za/article/2017-03-17-social-grants-payment-crisis-everything-you-need-to-know-but-were-afraid-to-ask>.

facing yet another potential self-created crisis come April 2018. It came as a shock to MPs that Minister Jeff Radebe (Minister in the Presidency for Performance Monitoring and Evaluation) was now the chair of the IMC, instead of President Zuma, as had been announced earlier that year in March.³⁰² In December 2017, the IMC announced that an agreement had been signed between SASSA and SAPO, in which SAPO would play a key role in implementing a 'hybrid model' for taking over of grants come 01 April 2018. The agreement allocates SAPO the responsibility of carrying out all of the functions which it had proposed in its response to the RFP, but also caters for other banks to play a more prominent role in the distribution of grants and envisions an increased role for "'second economy' merchants such as general dealers, corner shops, spaza shops, village banks, and cooperatives in township and rural areas outside of the 5-km radius".³⁰³

The agreement has been lauded by many as a "breakthrough, which would finally see the back of CPS and the emergence of a new service provider".³⁰⁴ This sentiment should be cautioned, however, given SASSA's and the DSD's less than flattering track record. The recent progress report filed by SASSA with the Constitutional Court raises several red flags and contains few details on exactly how the two agencies will be taking over the payment of grants. For instance, negotiations with the private banks, to provide accounts for grant recipients at reduced rates, have not yet been concluded. Biometric verification is still a mandatory requirement. SAPO is still in the process of developing the necessary technology (similar to that of CPS), with the associated card production capacity and does not yet have the backend system in place to manage grant payment integration. In addition, there is the issue of managing the physical cash payment distribution nationwide.³⁰⁵ This all appears to hint towards an inevitable further extension of the invalid contract with CPS.³⁰⁶ It remains to be seen what will come of the IMC's interventions and whether or not the agreement between SASSA and

SAPO will unfold without any controversy or disruptions, given the battle which has been waged in the media and in parliament.

The IMC was established in 2006 and was tasked with developing and preparing a long-term policy for a comprehensive social security system for the country. Towards the end of 2016, the IMC was 're-activated' for the release of the CSSD, which had been prepared in 2012.³⁰⁷ Why the release of the document had been delayed for over four years is unknown. The CSSD is a policy document, which puts forward a proposal for structural reform for South Africa's broader social security system. Some of the proposed changes would include consolidating the various social security programmes such as UIF, RAF, etc. under a single management structure called the NSSF. The policy also envisages the expansion of Social Assistance for Child Support and making Old Age grants applicable to everyone over a certain age. The most impactful recommendation is the introduction of a National Pension Fund, which would operate on a similar basis as the UIF (direct deductions from salaries which would contribute to the fund).³⁰⁸

As previously indicated, the relevance of the proposed CSSD, which was prepared by an IDTT, is that it would undoubtedly add an increased level of complexity to the challenge of SASSA taking over the payments of grants in the near future.

According to the plans put forward by the work streams, it would appear that there was some recognition of this long-term plan and they had proposed that their model should address some of the future requirements laid out in the CSSD, such as being able to interface with UIF and RAF, etc. (although not much detail is provided in regards to what this would actually entail). However, they seemed to selectively ignore the specific requirement of having to operate within the NPS. The minister and the work streams were still determined to implement a closed-loop system, even though this would go against government policy.³⁰⁹

³⁰² Staff Writer. 2017. *President Zuma Takes over Reins of Social Security Committee*. [Online] Available: <https://www.sanews.gov.za/south-africa/president-zuma-takes-over-reins-social-security-committee>.

³⁰³ SASSA. 2017. *Constitutional Court SASSA Submission: Sapo Agreement*. Pretoria: SASSA.

³⁰⁴ Saba, A. 2018. *Sassa Wants CPS for 6 More Months*. [Online] Available: <https://mg.co.za/article/2018-01-05-00-sassa-wants-cps-for-6-more-months>.

³⁰⁵ SASSA. 2017. *Constitutional Court SASSA Submission: Sapo Agreement*. Pretoria: SASSA.

³⁰⁶ Saba, A. 2018. *Sassa Wants CPS for 6 More Months*. [Online] Available: <https://mg.co.za/article/2018-01-05-00-sassa-wants-cps-for-6-more-months>.

³⁰⁷ Dlamini, B. 2016. *Minister Bathabile Dlamini: Tabling of Comprehensive Social Security Document at NEDLAC*. [Online] Available: <https://www.gov.za/speeches/minister-bathabile-dlamini-tabling-comprehensive-social-security-document-nedlac-25-nov>.

³⁰⁸ IDTT. 2012. *Comprehensive social security in South Africa Discussion document*. Pretoria. [Online] Available: https://www.gov.za/sites/www.gov.za/files/Comprehensive_Social_Security_in_South_Africa_a.pdf.

³⁰⁹ IDTT. 2012. *Comprehensive social security in South Africa Discussion document*. Pretoria. [Online] Available: https://www.gov.za/sites/www.gov.za/files/Comprehensive_Social_Security_in_South_Africa_a.pdf.

It is important to highlight that the work stream's proposal extended far beyond just the payment of grants. It called for an entire overhaul and replacement of most (if not all) of SASSA's administrative systems, including the legacy "SOCPEN" system, which is used to manage the social grant beneficiary register. The proposal indicates the development of an integrated web-based system which would cover the entire grant administration and payment system end-to-end, from grant applications, to card management, to call-centre interactions, etc. This is in fact a mammoth undertaking, which would take years to complete and cost billions. It is unclear if this was possibly the source of the R6.4 billion referred to by the minister and Ms Bhengu (SASSA acting CEO) or if that only relates to the payment system.³¹⁰ To be fair, as members of the MAC, they were tasked to investigate how SASSA would take over the payments of grants. This is assumed to have been the long-term planning for the Agency and it is unlikely that this extended past the conceptualisation of a possible model. It took the work streams just three months to 'flesh out the details' and prepare their proposal.

As previously highlighted, with the close-loop solution based on a "white label EMV standard"³¹¹ prepaid debit smart card technology, SASSA would have to license the backend proprietary/IP and technology indefinitely and even though there are several service providers which could provide this technology, this is definitely something which could be provided by Net1. The ongoing battle to set the rules of the game to suit Net1/CPS continues. In addition to the cards, SASSA would also be required to purchase/license thousands of compatible ATMs and PoS devices which would have to be distributed across the country. The motivation for this is that it "would grant SASSA the 'power' to dictate pricing as well as negotiate discounts from merchant chains and local stores".³¹² The staffing complement which SASSA would require in order to negotiate and manage these contracts, as well as the training requirements or the technical support which would be required to operate a system like this is also something that remains unclear. A human resources work stream was not involved in the development of this proposal. As highlighted by the Panel of Experts:

*The lack of cost justification by SASSA for implementing its insourcing proposal is a serious concern.*³¹³

5.2 PROTECT THE ELITES AT WHAT COST?

The last statement of the previous section above was made in the report by the Panel of Experts, which were appointed by the Constitutional Court to monitor SASSA's progress of taking over the payment of grants from CPS come April 2018. What is the cost of these highly complex and frequently opaque manoeuvres to favour a particular service provider with high-level political connections into the Zuma-centred power elite?

It has been shown thus far that when Zuma's administration took over in 2009, there was a distinct shift in favour of a privatised 'ideal' solution delivered by Net1/CPS in the form of its proprietary biometric technology. It can be questioned as to whether or not this solution could actually result in sufficient reduction in fraud to warrant the total cost of the solution, which is unknown as a full detailed audit of the profits and expenses of the five-year invalid contract are still to be released. A figure of R2 billion is touted by SASSA, the DSD, and the minister as the amount of money which has been 'saved' or 'returned to the state' as a result of some 150 000 grant recipients (which is less than 1% of the total number at the time) being removed from the registry in 2013 during the re-registration campaign undertaken by CPS (at an additional fee of R316 million). However, without reconciled data on grants dispersed and grants not collected or an understanding of how many recipients might not have approached SASSA to re-register, it should not be definitively stated that this amount is factually correct.

There was no way to assess the extent of fraud and corruption because the system was fragmented and not standardised. There can be no doubt that the re-registration process went a long way to reduce the systemic risk of fraud. Still, there is no evidence to prove how effective the new CPS system would be.

³¹⁰ Ndlele, S. 2017. *Sassa Still Unable to Give Clarity over Social Grant Payments*. [Online] Available: <https://www.iol.co.za/business-report/sassa-still-unable-to-give-clarity-over-social-grant-payments-11705442>.

³¹¹ Dlamini, B. 2017. *SASSA Media Briefing in East London*. East London: Department of Social Development.

³¹² Sole, S. & McKune, C. 2017. *Social Grants Payment Crisis - Everything You Need to Know but Were Afraid to Ask*. [Online] Available: <http://amabhungane.co.za/article/2017-03-17-social-grants-payment-crisis-everything-you-need-to-know-but-were-afraid-to-ask>.

³¹³ Thamm, M. 2017. *SassaGate Reloaded: Expert Panel and AG Warn of Serious Risk in Future Social Grant Payments*. [Online] Available: https://www.dailymaverick.co.za/article/2017-10-18-sassagate-reloaded-expert-panel-and-ag-warn-of-serious-risk-in-future-social-grant-payments/#:WlG_wlWWbDd.

Comparing the reported cases of fraud, as reported in SASSA's 2011/2012 and 2015/2016 annual reports, provides some insight as to what the impact of the CPS payment model has been. In 2011 it was reported that there was an "investigation into 2,488 fraudulent grants and the prosecution of 2,258 persons for grant fraud".³¹⁴ By comparison, in 2015 "a total of 1,122 fraud cases were received, 90 cases were finalised, 837 were closed, and 195 were still under investigation".³¹⁵ This implies that the number of cases of reported fraud appears have more than halved since CPS took over the payments of grants.

In 2011 it was reported that "[a] total of 5,487 persons signed acknowledgement of debts (AODs) valued at R56,8 million to repay the fraudulently paid grants",³¹⁶ and in 2015 it was indicated that the "monetary value of the finalised cases is R2 429 519".³¹⁷ This indicates that there has been a major decrease in the amount of money which the state is able to recover from fraud. But this does not necessarily equate to the amount of money which might be lost due to fraud. It is also important to point out that the ratio of cases of fraud finalised and successfully prosecuted relative to investigations for the respective years appears to have greatly reduced.

No details or amounts relating to cases of fraud (1 122) were provided in the 2016/2017 annual report.³¹⁸ However, in a presentation made in June 2016 by Thokozani Magwaza (acting DG of the DSD at the time) on syndicate grant fraud, he indicated that there was "a broader ongoing criminal investigation involving more than 4 776 fraudulent social grants amounting to more than R34.7 million identified to date".³¹⁹ Comparing these amounts with the 2011 and 2015 figures, it would appear that even though there has been a reduction in the number of cases of fraud, there is relatively little difference in the number of fraudulent social grants or the amounts lost due to fraud. That is to say, the way in which fraud is carried out seems to have changed, but the impact of fraud has not significantly decreased. It has gone from being cases of minor fraud by individual grant beneficiaries, to syndicated large-scale looting.

In order to holistically assess the costs versus benefits of the CPS system it is also important to consider the costs which are incurred by beneficiaries. In terms of costs for beneficiaries, there is the matter of the transaction fees, which recipients pay when they use standard ATMs to withdraw their grants. As indicated in Text Box 5, some 4.9 million recipients receive their grants from ATMs³²⁰ and more than 50% of all grant recipient transactions take place using non-CPS compatible (PIN-based) ATMs and PoS devices,³²¹ all of which incur transaction fees. Unlike most other banks, CPS/Grindrod has a scaled transaction fee that ranges from R6.11 to R22 (withdrawal of R50 to R2000). In the agreement between SASSA and SAPO before the 2012 contract with CPS, the account with SAPO would include two free withdrawals a month. Now even though it may seem that this is splitting hairs and counting cents, it is important to remember that for South Africa's poorest of the poor every cent counts and given that there are some 10.5 million recipients, those cents add up to millions of rands.

The costs that can be attributed to the 'illegal' and immoral deductions from grants recipients, which are most certainly fraudulent in nature, also need to be taken into account. In a meeting at the Parliament of the Province of the Western Cape on 31 May 2016, Magwaza reported that at that stage "the total monetary loss due to the unlawful deductions was close to R800 million, of which only R1.5 million has been recovered".³²² This is not a loss to the state or the tax payer. This is money which has in effect been stolen from the country's most vulnerable citizens - children, the elderly, and people with disabilities.

The insistence of the appointment of CPS, based on the biometric verification requirement under the auspices of preventing fraud, has arguably not resulted in any major financial savings for the state and could potentially have come at a loss, given the associated irregular (and potentially illegal) expenditure. But this has also in effect resulted in increased expenses for beneficiaries and opened the door for exploitation of the country's most vulnerable, by predatory lenders. Undoubtedly this has reduced the overall potential positive socio-economic impact for which grants are intended.

³¹⁴ SASSA. 2012. *SASSA Annual Report 2011/2012*. Pretoria: South African Social Security Agency.

³¹⁵ SASSA. 2016. *SASSA Annual Report 2015/2016*. Pretoria: South African Social Security Agency.

³¹⁶ SASSA. 2012. *SASSA Annual Report 2011/2012*. Pretoria: South African Social Security Agency.

³¹⁷ SASSA. 2016. *SASSA Annual Report 2015/2016*. Pretoria: South African Social Security Agency.

³¹⁸ SASSA. 2017. *SASSA Annual Report 2016/2017*. Pretoria: South African Social Security Agency.

³¹⁹ Hawks, SASSA & SAPS Crime Intelligence. 2016. *Social Grant Fraud Syndicate Take-Down*. Pretoria: South African Social Security Agency.

³²⁰ Minister of Finance. 2017. *Standing Committee on Public Accounts: SASSA and Related Matter*. [Online] Available: <http://www.parl.gc.ca/Committees/en/PAC/About>.

³²¹ SASSA. 2017. *Banking & Payments RFI Questions*. Pretoria: South African Social Security Agency.

³²² Standing Committee on Community Development. 2016. *Report of the Standing Committee on Community Development on the Briefing Meeting by the South African Social Security Agency (SASSA) on Tuesday 31 May 2016*. [Online] Available: http://www.wcpp.gov.za/sites/default/files/Atc_64-2016_6_Sept_2016_reports...Com.dev...eng_.pdf.

Besides the financial costs which result from the uncompetitive bidding processes or potential corruption, there is a greater economic cost which comes with the broader macro-economic implications of all that has transpired during the Zuma era. In this particular case it is important to consider the impact on and future outlook of the social grants system, where the number of people on social grants will undoubtedly continue

to grow because of the persistence of high unemployment and low growth rates. Low growth also means lower annual increases in fiscal revenue. Simply stated, there will be more people dependent on social assistance with fewer resources to meet this obligation and ultimately something will have to give.

6

CONCLUSION

This case study highlights the nature and dynamics of the Zuma-centred political project. It highlights that this is not just about corruption and not limited to only one network (Zuma-Guptas). It is a slow and systemic eroding of the social compact between the citizens of the country and those who were selected to lead by those same citizens, guided by the Constitution. It has demonstrated in detail several aspects of the modus operandi of the state capture project, in which both formal and informal means are simultaneously utilised to promote and achieve the financial and political objectives of the Zuma-centred elites. This modus operandi includes the removal of well-intentioned and effective government bureaucrats (who are not willing to fall in line), the manipulation of procurement processes to favour a single company (by changing just one word), and the commercial arrangements of the shadow network (supported or connected to the political elite) with said company to profit from the endeavour. This clearly shows that governance and accountability mechanisms were inadequate. The powers of the minister to intervene are highly problematic. The crisis might have been avoided if SASSA had an independent board of directors. However, as has been demonstrated in other SOEs, this does not automatically resolve issues of governance or guarantee that those in power do not plunder state resources. What is perhaps the most important intervention would be to clarify the roles of the minister / deputy minister and senior officials.

This case study firmly revealed that the challenges are systemic, stretching across and within all spheres of government and society. In the case of SASSA and the biometric system which Dlamini fixates on, there is truth that the solution provided by CPS reduces the opportunity for beneficiary fraud and exploitation. However, there exists another truth that this has resulted in a situation where a private sector company has now monopolised a state function and diminished the accountability of the government to society. Dlamini's CPS solution effectively took the social contract, which resided between the state and its citizens, and handed it to a for-profit organisation, which, if left to its own prerogative, is accountable to no one. The case study outlined how a state institution can be repurposed not only for financial gain, but also for political expedience and manipulation of voters. It also illustrates how, when relinquished to private interests, a fundamental state function itself can be repurposed for commercial exploitation. This is the case where Net1/CPS has utilised its role in the distribution of grants, having access

to the personal data of a market of 17 million poor people, to establish millions of clients for their financial products.

As was detailed in this report, there may or may not have been corrupt activities which are involved in SASSA-Gate. At the end of 2015 it was announced that the Hawks had investigated allegations of corruption levelled against Net1/CPS and brought their findings before two separate prosecutors, who decided then not to prosecute. There are no details surrounding the cases or the reasons for deciding not to prosecute, but given the wealth of information that has emerged since then (in terms of both the SASSA case and the seemingly compromised actions of the Hawks and NPA under the Zuma administration), we would argue that there is potentially a case which could be pursued. There are several court cases currently underway, which will undoubtedly shed more light on the SASSA-Gate debacle and hopefully provide us with a better understanding of how to rectify the shortcomings in the social welfare system. Most important of these is the case brought against CPS and SASSA, by Corruption Watch, with regard to the irregular R316 million payment for 're-registration' of grant beneficiaries and the case of SASSA (and others) against CPS regarding the 'illegal' deductions from grants, which is to be heard by the Supreme Court of Appeal.

The awarding of the 2012 contract was in effect deemed illegal and to date no individual has been held accountable for this illegality. If there was no case of criminal corruption, it would seem then that this illegal act resulted from pure incompetence and it is the same incompetence which could then also be blamed for the events which unfolded in the crisis of March 2017 and appear to have continued unabated. By establishing a parallel reporting structure which excluded SASSA, the minister should arguably be held liable for the resulting mess. This is the purpose of the Inquiry which was instituted by the Constitutional Court, the outcome of which will only be known after this report has been finalised. There are, however, still many questions surrounding SASSA-Gate, the people involved and events, which the Inquiry was not tasked to answer. For example, little is known about the decisions taken while Ms Peterson was CEO of SASSA (from 2011 to 2016), the role that Michael Hulley played in the crisis, exactly how much Net1/CPS has benefited from the unlawful contract, or the extent to which (if any) the BEE objective of government policy was achieved.

When the DSD, SASSA, and CPS put a gun to the heads of millions of South Africans by threatening to stop grant payments without an alternative, the stark erosion of state capacity was revealed. The significant role civil society groups played, by approaching the Constitutional Court, needs to be acknowledged. Together with officials who spoke out, this configuration has made it possible to keep the grant payment system more or less on track to the benefit of millions. Had there been no intervention, a likely possible scenario would have been that CPS was awarded a new contract, thus making possible massive profits for a company and its associated networks off the backs of South Africa's poorest. Thankfully, this did not happen. This case study highlighted the various actors/institutions which play a crucial role in preventing the rules from being abandoned, are defending the Constitution and placing light on the shadows in which the 'skeletons' hide. These are the unsung heroes who speak truth to power and give voice to South Africa's most vulnerable, in particular:

- The Judiciary, who time and again has been forced to walk the line of the separation of powers without crossing it, to ensure that recourse is found to address the failures of the Executive and ensure that those in power are at least held to account in terms of their legal obligations, even though they seem impervious to political rebuke. The order they made was seminal – without it 17 million South African citizens may not have received the grants on which they so desperately depend, through legitimate and legal means;
- The various NGOs and civil society advocacy groups, such as the Black Sash Trust and Corruption Watch, which have initiated litigation on behalf of the most

vulnerable and actively partnered and supported the government in the development of progressive social policy;

- The committed civil servants and whistle blowers, who refused to pander to political pressure, dedicate themselves to serving in the interest of public good, and spoke out when they witnessed improper acts (or statements) by those in power; and
- The investigative reporting by brave men and women in the news media, such as *GroundUp* and *amaBhungane*, who ask the tough questions and expose the lies.

With the end of the Zuma era and the surrounding scandals seemingly fading fast from memory, perhaps the most important objective of this case study was to serve as a cautionary tale, which we need to keep and carry through if we are to truly enter a 'new dawn' for South Africa. It showed that when it comes to implementing political ideals of policy into practice, the means by which this is done (the what, who, and how of implementation) are just as important as the motivation behind said ideals (the why). When state capacity is weak, those in power are able to manipulate the means of implementation for their own self-interest, often leading to possibly unintended yet disastrous outcomes. By not holding those involved to account and not addressing the incapacity of state institutions, the tendency to perpetuate the bending and breaking of rules will continue. The result will be the erasure and replacement of the social compact embodied in the Constitution. A silent coup is about the seizure of power by a power elite beholden only unto themselves. The story of SASSA and the social grants system during Minister Dlamini's term, narrated in this report, revealed the consequences of this betrayal of the promise of 1994.

ADDENDUM

As part of the review process for the case study on the South African Social Security Agency (SASSA) state capture, this report was distributed to several organisations and individuals who have direct experience and intimate insight into SASSA, social development in South Africa, and the SASSA-Gate crisis. The purpose of this addendum is to serve as a response to several pertinent comments that were received as part of this review process and provide added context and depth to the case study itself.

AN UPDATE TO THE REPORT

The recent changes to South Africa's political and economic landscape over the past few months have been vast and numerous, where new revelations and developments in the SASSA-Gate debacle emerged on an almost daily basis. In order for the case study to be published, it was necessary to draw a line regarding when to stop incorporating these new developments. For this case study it was decided that, given that the state capture project was centred around Jacob Zuma's presidency, the line would be drawn shortly after his resignation. Specifically noted in the report, final drafting occurred in late February 2018.

Since then, there have been several key developments that need to be recognised. The following are a brief summary of these developments:

- The first, and probably most significant, was Cyril Ramaphosa's (now president of South Africa) decision to relocate Bathabile Dlamini from the Department of Social Development (DSD) to the Ministry of Women, under the Presidency. Susan Shabangu is now the Minister of the DSD. Sharp criticism has been levied against Ramaphosa for not removing Dlamini entirely from Cabinet, particularly in light of her mishandling of the SASSA-Gate crisis and general mismanagement of the department. However, given her position within the African National Congress (ANC) (as a member of the National Executive Committee [NEC] and president of the ANC Women's League [ANCWL]) and the devastating blow the ANCWL received when only one woman was elected to be a member of the party's top six in December, to do so would have undoubtedly caused more political upheaval in the country.
- The second and arguably equally relevant development was the further extension of the contract between SASSA and Cash Paymaster Services (CPS) for a period of six months, to allow for the transition of the payments of grants to the South African Post Office (SAPO). The principle activity that CPS is still required to carry out is with regard to the pay-point distribution of grants where cash payments are made to an approximate 2.8 million recipients.³²³ A tender process that was initiated by Dlamini, for finding a suitable service provider to fulfil this function, has since been cancelled and at present it remains unknown how this function will be undertaken at the end of CPS' extension (in less than four months).³²⁴ In the ruling made by the Constitutional Court on 23 March 2018, required for the extension, significant criticism was again levied against Dlamini, together with Pearl Bhengu (the acting chief executive officer [CEO] of SASSA at the time). The criticism, similar to the previous judgment, was due to the Agency's inability to meet the March 2018 deadline (the events of which are detailed in the case study report), and both were instructed to explain why they should not be held liable for the costs related to this second extension. The matter is still to be decided by the court.
- Although judgment is yet to be made with regard to Dlamini's personal liability for the SASSA-Gate debacle, the report by Judge Ngoepe on the Section 38 Inquiry has been submitted to the Constitutional Court. In his review on the testimony given by Dlamini, although not putting forward any recommendation, Ngoepe was scathing in his comments. As reported in a Mail & Guardian article³²⁵, Ngoepe's report indicates that: Dlamini was evasive, her explanation on why she did not disclose the appointment of the individuals to work streams was "unconvincing" and "Dlamini failed to report on the work stream because she feared being held responsible in her personal capacity for the costs of the SASSA debacle."

³²³ Pijoo, I. 2018. *ConCourt Allows Extension of Sassa's Contract with CPS for 6 Months*. [Online] Available: <https://mg.co.za/article/2018-03-23-concourt-allows-extension-of-sassas-contract-with-cps-for-6-months>.

³²⁴ Herman, P. 2018. *SASSA Cancels Tender Process to Find CPS Replacement*. [Online] Available: <https://mg.co.za/article/2018-05-22-sassa-cancels-tender-process-to-find-cps-replacement>.

³²⁵ Herman, P. 2018. *SASSA Cancels Tender Process to Find CPS Replacement*. [Online] Available: <https://mg.co.za/article/2018-05-22-sassa-cancels-tender-process-to-find-cps-replacement>.

- In addition to the minister's removal from the DSD, Pearl Bhengu is no longer the acting CEO of SASSA. However, she is still employed at SASSA. In May 2018, shocking details emerged during a Standing Committee on Public Accounts (SCOPA) meeting, where it was indicated she had signed off on what appeared to be very suspicious payments in December 2017 (involving an amount of almost R20 million for four seemingly unscheduled events). All the payments signed off appear to suspiciously fall under the R500 000 ceiling for expenditure (not requiring a competitive bidding process) and the dates of these events appear to conveniently coincide with the lead up to the ANC elective conference.³²⁶ Further investigation of these payments, as with all of the more than R1 billion of irregular expenditure on SASSA's books, is ongoing.
 - There was disagreement between CPS and National Treasury (NT) with regard to how much CPS could charge SASSA for providing the cash distribution service. CPS was requesting ±R66 per beneficiary, which the NT rejected and put forward a counter-offer of ±R45 to R55 per beneficiary. In the interim, CPS has been charging SASSA based on the original fixed value amount of R14.5. Until the actual costs can be reconciled at the end of the contract's extension, this matter may continue to be somewhat contentious. In addition, there is still much open public debate as to the amount of profit which CPS and Net1 (or its other subsidiaries) have accrued from the entire SASSA-Gate debacle. There are a number of articles that provide extensive details on this debate,³²⁷ however, this matter will ultimately need to be settled by those involved or through the courts.
 - In the interim, additional costs and financial burdens have since been placed on grant recipients, namely that during the transition/rollout to the new SAPO SASSA bank card, Grindrod Bank is charging beneficiaries a R10 banking fee for using the CPS SASSA cards,³²⁸ and the increase in taxes and price escalations that directly impact the poor, such as increased fuel prices, the fuel tax, and the addition of 1% to Value-added Tax (VAT).
 - The High Court has ruled in favour of Corruption Watch in its case against CPS and SASSA, regarding the irregular R316 million payment for the "re-registration" of grant beneficiaries. The court ruled that CPS was to pay back the R316 million (with interest) to SASSA. It is understood that CPS/Net1 intends to appeal this judgment.³²⁹
 - As indicated in the main report, SASSA is appealing the High Court judgment, which found in favour of Net1 with regard to deductions made from grant recipients' accounts. However, as all SASSA grant beneficiaries will now apparently be transitioning to the SAPO payment system (which is structured to ensure that no such deductions can take place), it is not certain whether this case will still proceed. The question of how to address the exploitation of poor and vulnerable persons (be they grant recipients or not) by predatory lenders and service providers, still remains. There is need for reform (or at least better regulations) in the financial sector to ensure adequate consumer protections for low-income earners, and this should not be discarded with the removal of CPS from the grants payment system.
 - Net1 lodged a claim against SASSA for almost R 1.3 billion³³⁰, seemingly based on the litigation that it had dropped after having been awarded the 2012 tender. The details of this claim and further information on where they stand at present are currently unknown, but this is undoubtedly something to keep an eye out for in the future.
- It must be emphasised that the story of the SASSA state capture is far from over. Although it would seem that much progress has been made in removing CPS from the grants payment system, the most recent reports from the Constitutional Court Panel of Experts have raised significant red flags.³³¹ It would appear that Net1 (in partnership with Grindrod Bank) is intentionally attempting to sabotage the migration from CPS to SAPO, by implementing a misinformation campaign to get grant recipients to open EasyPay Everywhere bank accounts and not allowing SASSA

³²⁶ Thamm, M. 2018. *SASSAGATE: SCOPA Hears Details of Last-Minute R20m Procurement by Former Acting CEO Pearl Bhengu*. [Online] Available: <https://www.dailymaverick.co.za/article/2018-05-22-scopa-hears-details-of-last-minute-r20m-procurement-by-former-acting-ceo-pearl-bhengu/#.Wx-hGX-xXS...>

³²⁷ Thamm, M. 2018. *SASSAGATE: The SA Social Security Agency and Bathabile Dlamini's Gift to White Monopoly Capital*. [Online] Available: <https://www.dailymaverick.co.za/article/2018-05-31-the-sa-social-security-agency-and-bathabile-dlamini-gift-to-white-monopoly-capital/#.Wx-f23-xXSd>.

³²⁸ Thamm, M. 2018. *SASSAGATE: Life after CPS and Net1: SASSA Charts New Course for Social Grant Payments*. [Online] Available: <https://www.dailymaverick.co.za/article/2018-06-04-life-after-cps-and-net1-sassa-charts-new-course-for-social-grant-payments/#.Wx-fzn-xXSd>.

³²⁹ Thamm, M. 2018. *SASSAGATE: Net1 to Challenge Order to Repay R317m but Can CPS Afford It at All?*. [Online] Available: <https://www.dailymaverick.co.za/article/2018-03-26-sassagate-net1-to-challenge-order-to-repay-r317m-but-can-cps-afford-it-at-all/#.Wx-hOn-xXSd>.

³³⁰ Saba, A. 2018. *CPS Is Now Claiming over R1-Billion from Sassa*. [Online] Available: <https://mg.co.za/article/2018-01-11-cps-is-now-claiming-over-r1-billion-from-sassa>.

³³¹ Auditor-General. 2018. *Black Sash Trust v Minister of Social Development and Others: Sixth report to the Constitutional Court by Auditor-General and Panel of Experts*.

and SAPO employees access to sites where grant recipients receive their cash payments. There also does not appear to be any formal agreement between SASSA and Grindrod for the migration of electronically paid grant recipients who are still using the old CPS SASSA cards (which now appear to be considered as standard Grindrod bank accounts). In summation, it appears that SASSA has gifted Grindrod a significant number of bank accounts, apparently with no mandate from beneficiaries (as required by social grant Regulation 21(1)(a)) and with no plan to migrate these account holders onto the new SAPO/SASSA system. These beneficiaries are seemingly left with the burden of paying the higher than comparable average industry rates (R10 account fee and banking charges) and are not provided with clear guidance as to what the actual options available to them are. The lack of clarity surrounding the issue of what will happen with regard to cash payments at the end of the CPS contract extension in September 2018 is equally unsettling.

SCOPE OF THE RESEARCH

The scope of the research was not just limited in terms of its cut-off date, but it was also necessary to limit the extent to which the investigation would examine the historic activities in South Africa's evolving social security system. Although it is mentioned in the report, the details of events and the past dealings between CPS and other government departments were not fully drawn out. The reason for this is that the state capture, as described in the *Betrayal of the Promise* report, is the political project of the Zuma-centred elite and as such it required to focus specifically on the events that took place under his administration. The overlap and similarities between the activities that took place before Zuma should, however, not go unrecognised.

This overlap in nefarious activities is directly linked to an additional challenge that emerged when attempting to uncover the full story of the state capture project, namely the attempt to differentiate the "capturing" and exploitation of state institutions and resources for the benefit of the political party (which has arguably been the case long before Zuma's presidency), as opposed to the specific actions taken by the Zuma faction within the party, which looted the state for their own benefit. This is briefly touched on in the case study, in the section that outlines the Public Protector's report, titled *State and Party, Blurred Lines*.³³²

There are a number of allegations and examples in the public domain where state resources have been misused and misappropriated for party political reasons and arguably this type of practice should not be relegated to the ANC alone. These practices, although definitely neopatrimonial in nature, do not necessarily constitute state capture as defined in the *Betrayal of the Promise* report. The links and lines between neopatrimonialism and state capture are blurred and should undoubtedly be subjected to further academic enquiry and it is to this end that we hope the case study may be of assistance.

PERSONALITIES AND TECHNICALITIES: CHALLENGES OF STATE CAPTURE RESEARCH

As is the case in most instances where criminality is suspected, one of the greatest challenges faced when exploring a sequence of unfolding events is the ability to discern criminal intent. Similarly, where there are so many unknown factors that can be attributed to any number of decisions that were taken, allegations could be unintentionally made against individuals. In short, without full ventilation of events and intent, regarding those involved in the SASSA-Gate crisis, it would be incorrect to attempt to pass opinion off as fact. It is primarily for this reason that the case study attempts to minimise assertions and refrain from criticising any individual's motivations, capabilities, or character. At the same time it must be accepted that, when examining informal networks and the shadow state, these are sometimes unavoidable.

The insistence of the appointment of CPS, based on the biometric verification requirement under the auspices of preventing fraud, has arguably not resulted in any major financial savings for the state and could potentially have come at a loss, given the associated irregular (and potentially illegal) expenditure. But this has also in effect resulted in increased expenses for beneficiaries and opened the door for exploitation of the country's most vulnerable, by predatory lenders. Undoubtedly this has reduced the overall potential positive socio-economic impact for which grants are intended.

While undertaking the research, there are several instances in interviews and in feedback from reviewers where sharp criticism and conflicting views are held with regard to certain

³³² Public Protector. 2016. *State and Party, Blurred Lines*. Pretoria:Public Protector.

role players. For example, in the case of the former CEO of SASSA, Virginia Peterson, there is the instruction she gave in Bidders Notice 2 (which was unquestionably the reason for CPS ultimately being awarded the tender); however, she would later threaten to cancel the contract with that company over the improper use of grant beneficiary data (although she never followed through on this threat). This presents contradictory approaches to her dealing with CPS and as such it would not be justified to paint her with the broad brush of being complicit to corruption or demonstrating intentional malfeasance. As has been shown in many other cases of state capture, those involved in the events that unfold are not necessarily part of the shadow state. The use of coercion and the pressure placed on individuals are external factors that can only be recognised once they are ventilated in the public domain. Similarly, it is just as easy to paint all those who had attempted to thwart CPS's capture of the grant system as "heroes"; however, as was documented in the case study, several of them also had equally potent allegations levied against them that still have not been adequately addressed. For example, there were allegations that resulted in the suspension and resignation of Mr Fezile Makiwane and there is Dlamini's own claim that "[Zane Dangor] and Sipho [Shezi] have been used by [SASSA CEO Thokozani] Magwaza who is a friend to my former boyfriend who wanted to extort money from Lunga and could not". This messy reality of people, being complex and multifaceted, was aptly demonstrated during the parliamentary inquiry of state capture at Eskom and it is our hope that this case study might inform another such parliamentary undertaking (if it is not included in the judicial inquiry underway) in respects to the SASSA-Gate debacle.

This leads to a second area of difficulty with regard to state capture research, namely the temptation to comment on or criticise the technical capabilities of individuals or the value they contribute (i.e. quality of work). This is particularly the case when it comes to the work streams and the reports or proposals they produced. It could easily

be implied that their technical proposal was "poor"; however, without a full understanding of their mandate and the work environment (particularly within the parallel reporting structures), this would be little more than conjecture. Poor instruction habitually guarantees a poor outcome and this often has little to do with actual capability. For instance, a reviewer of the report noted that the work stream proposals did not present any solution for SASSA taking over the grants by April 2017. However, it would seem that they were not required to devise a short-term solution for removing CPS from the grant payment system in the first place.

CLOSING REMARKS

The project of state capture is messy, complex, and multifaceted. As outlined in the preface, one of the main reasons for selecting SASSA as a case study was that it provides a rare and detailed example in which a lot of this mess can be laid out and explored. It should, however, be recognised that this case study is by no means a comprehensive or complete telling of the SASSA-Gate story. As highlighted in the conclusion, there are still many details that are unknown and, as indicated above, there are many people whose involvement remains unclear.

There are also numerous lenses through which this case study can be viewed and explored, all of which could be beneficial in expanding our understanding of state capture and finding ways in which to address the damage that the state capture has caused the country. For instance, from a governance perspective, the setting up of a governing board for SASSA may be proposed (as had been proposed in the years of Minister Zola Skweyiya), or, from a regulatory perspective, financial regulations could be improved to address the issues surrounding the deductions for low-income financial services. For each of these lenses, further investigation and enquiry are necessary, but it is our hope that this report can serve as a foundation from which said explorations can emerge.

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