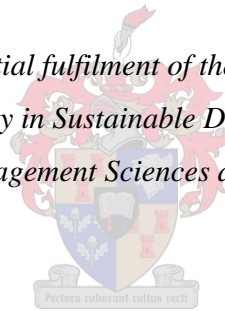


**Neopatrimonialism and State Capture: The Case of the South  
African Social Security Agency**

by  
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of Master of Philosophy in Sustainable Development in the Faculty of  
Economic and Management Sciences at Stellenbosch University*



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## Declaration

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## Abstract

Since 2016, when the term first entered South Africa's political-economic discourse, the colloquial use of the concept "State Capture" has come to be a representative descriptor of a state besieged by corruption. In 2017, a collective of academics formed the State Capacity Research Project (SCRCP) and released the *Betrayal of the Promise: How South Africa is Being Stolen* report (Bhorat, Buthelezi, Chipkin, Duma, Mondi, Peter, Qobo & Swilling, 2017), which was one of the first attempts to provide an academic framework for understanding this phenomenon. Drawing on neopatrimonial school of thought, the report argued, as do I, that State Capture extends beyond being a mere form of "grand corruption". Building on this framework, this thesis critically examines the theories of state capture and neopatrimonialism, and puts forward a conceptualisation of State Capture as a context-specific phenomenon, encompassing a much broader political project undertaken by the power elite, which results in a unique form of (mis)governance.

In July 2018, a follow-up case study was released, titled *How One Word Can Change the Game: Case Study of State Capture and the South African Social Security Agency (SASSA)* (Foley & Swilling, 2018), which was produced from the research undertaken for this thesis. The case study presented in this thesis centres around what is commonly referred to as SASSA-Gate, where in March 2017 a potential national crisis was narrowly averted when the Constitutional Court was forced to extend an already unlawful and invalid contract to ensure the continuation of payment of social grants to some 17 million beneficiaries. The foundation of the crisis is linked to the original invalid contract, which was entered into between SASSA and Cash Paymaster Services (CPS) in 2012, and which has been surrounded in controversy and allegations of corruption ever since.

At the centre of the SASSA-Gate crisis (and the main motivation for the awarding of the invalid contract) is the proprietary biometric card technology of CPS. From the research, it emerged that there are potential insights which might be gained by applying the conceptualisation of State Capture to the ever-increasing uncertainties associated with future developmental disruptions, such as those associated with the Fourth Industrial Revolution (4IR).

The research was undertaken as both a descriptive and an exploratory qualitative case study and is presented in a dense narrative format. Granular research methodology was adopted, where various data sources were combined and analysed from multiple perspectives and at different levels, and as such the findings of the research cannot be easily summarised. The principal outcome of the

research is the case study itself. The overall objectives of the research were primarily to provide a detailed account of the SASSA-Gate crisis and to further develop the theoretical framework for understanding the phenomenon of State Capture and how this relates to the concept of systemic neopatrimonialism. Ultimately, this research seeks to add further understanding of the current discourse on State Capture in South Africa and to provide a much needed, detailed account of how the shadow state operates and manoeuvres alongside and within formal government structures.

## Opsomming

Sedert 2016, toe die term die eerste keer in Suid-Afrika se polities-ekonomiese diskoers gebruik is, het die informele gebruik van die konsep “Staatskaping” ’n verteenwoordigende beskrywer van ’n staat in die greep van korrupsie geword. In 2017 het ’n groep akademici die State Capacity Research Project (SCRP) gestig en die *Betrayal of the Promise: How South Africa is Being Stolen*-verslag (Bhorat *et al.*, 2017) uitgereik, wat een van die eerste pogings was om ’n akademiese raamwerk te voorsien om hierdie verskynsel te verstaan. Gegrand op die neopatrimoniale denkskool, redeneer hierdie verslag, en ek ook, dat “Staatskaping” meer is as bloot ’n vorm van “grootskaalse korrupsie”. Gegrand op hierdie raamwerk, ondersoek hierdie tesis krities die teorieë van staatskaping en neopatrimonialisme, en doen aan die hand ’n konseptualisering van Staatskaping as ’n konteks-spesifieke verskynsel, wat ’n baie breër politiese projek omvat wat deur die mags-elite onderneem word, wat lei tot ’n unieke vorm van (wan)regering.

In Julie 2018 is ’n opvolg-gevallestudie uitgereik, getitel *How One Word Can Change the Game: Case Study of State Capture and the South African Social Security Agency* (Foley & Swilling, 2018), wat ontwikkel is vanuit die navorsing wat vir hierdie tesis onderneem is. Die gevallestudie voorgehou in hierdie tesis sentreer rondom wat oor die algemeen na verwys word as “SASSA-Gate”, waar ’n potensiële nasionale krisis naelskraap afgeweer is toe die Konstitusionele Hof gedwing was om ’n reeds onwettige en ongeldige kontrak te verleng om te verseker dat die betaling van sosiale toelae aan ongeveer 17 miljoen begunstigdes sou voortgaan. Die basis van die krisis hou verband met die oorspronklike ongeldige kontrak, aangegaan tussen SASSA (die Suid-Afrikaanse Sosiale Sekuriteitagentskap) en Cash Paymaster Services (CPS) in 2012, wat sedertdien omhul is in kontroversie en bewerings van korrupsie.

Te midde van die “SASSA-Gate”-krisis (asook die hoofmotivering vir die toekenning van die ongeldige kontrak) is CPS se patentregtelike biometriese kaarttegnologie. Uit die navorsing het dit duidelik geword dat moontlike insigte verkry kan word vanuit die toepassing van die konseptualisering van “Staatskaping” op die immer-groeiende onsekerhede wat geassosieer word met die toekomstige ontwikkelingsontwrigtinge, soos daardie wat geassosieer word met die Vierde Industriële Revolusie (4IR).

Hierdie navorsing is onderneem as beide ’n beskrywende en ondersoekende gevallestudie en word voorgelê in ’n kompakte narratiewe formaat. Granulêre navorsingsmetodologie is onderneem,

waarvolgens verskeie databronne gekombineer en geanaliseer is vanuit verskeie perspektiewe en op verskillende vlakke; as sulks kan die navorsingsbevindinge nie maklik opgesom word nie. Die hooftuitskoms van die navorsing is die gevallestudie self. Die algehele doelwitte van die navorsing was primer om 'n omvattende beskrywing van die “SASSA-Gate”-krisis te verskaf en om die teoretiese raamwerk vir die begryp van die verskynsel van Staatskaping verder te ontwikkel, en hoe dit verband hou met neopatrimonialisme. Op die lange duur poog hierdie navorsing om meer kennis te bou rakende die huidige diskoers van Staatskaping in Suid-Afrika en om 'n broodnodige omvattende beskrywing te verskaf van hoe die skadu-regering naas en binne formele regeringstrukture werk en maneuvreer.

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Given the magnitude and gravity of the impact that State Capture has had on South Africa's political economy, I am truly humbled to have been able to contribute to the SCRП. It is in this regard that I wish to thank the Open Society Foundation (OSF) for recognising the value of the research and providing the funding to undertake the research that is presented in this thesis. It should be noted that the conclusions, findings, and views expressed in the research are my own and not those of the OSF.

It is with immense gratitude that I thank Lynette Maart, director of the Black Sash Trust, for facilitating and assisting in the distribution and coordination of the review process from the case study. In addition, I thank all those (who requested not to be identified) who assisted in reviewing the case study. Your clarifications and comments contributed significantly to the validation of the research.

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## List of Acronyms and Abbreviations

4IR	Fourth Industrial Revolution	ICT	Information and communications technology
ABSIP	Association of Black Securities and Investment	IDTT	Inter-departmental Task Team
Adv.	Advocate	IFC	International Finance Corporation
ANC	African National Congress	IIMS	Integrated Inmate Management System
ANCWL	African National Congress Women's League	IMC	Inter-ministerial Committee
ANCYL	African National Congress Youth League	IP	Intellectual property
AOD	Acknowledgement of debt	ISS	Institute for Security Studies
ATM	Automatic teller machine	JSE	Johannesburg Stock Exchange
BAC	Bid Adjudication Committee	MAC	Ministerial Advisory Committee
B-BBEE	Broad-based Black Economic Empowerment	MoA	Memorandum of agreement
BEC	Bid Evaluation Committee	MLP	Multi-level perspective
BEE	Black Economic Empowerment	MP	Member of parliament
BSC	Bid Specification Committee	MTT	Ministerial Task Team
BVI	Business Venture Investments	Nasdaq	National Association of Securities Dealers Automated Quotations
CAO	Compliance Advisor/Ombudsman	NDA	National Development Agency
CC	Close Corporation	NEC	National Executive Committee
CEO	Chief executive officer	NEDLAC	National Economic Development and Labour Council
CFO	Chief financial officer	Net1	Net 1 UEPS Technologies Inc.
CoGTA	Cooperative Governance and Traditional Affairs [Department of]	NGO	Non-governmental organisation
COO	Chief operations officer	NPA	National Prosecuting Authority
CPI	Consumer price index	NPS	National payment system
CPS	Cash Paymaster Services	NSSF	National Social Security Fund
CSIR	Centre for Scientific and Industrial Research	NT	National Treasury
CSSD	Comprehensive Social Security Document	PACSA	Pietermaritzburg Agency for Community Social Action
CVM	Cardholder Verification Method	PanSALB	Pan South African Language Board
DA	Democratic Alliance	PASA	Payment Association of South Africa
DCS	Department of Correctional Services	PCSD	Portfolio Committee on Social Development
DG	Director-General	PFMA	Public Finance Management Act
DOJ	Department of Justice [United States]	PIC	Public Investment Corporation
DSD	Department of Social Development	PMG	Parliamentary Monitoring Group
DWS	Department of Water and Sanitation	PoS	Point-of-sale
EFT	Electronic funds transfer	RAF	Road Accident Fund
EMV	Europay, MasterCard, and Visa	REC	Research Ethics Council
EPE	EasyPay Everywhere	RET	Radical economic transformation
FBI	Federal Bureau of Investigation	RFI	Request for Information
FIC	Financial Intelligence Centre	RFP	Request for Proposal
FICA	Financial Intelligence Centre Act	RSA	Republic of South Africa
FNB	First National Bank	SABC	South African Broadcasting Corporation
GEAR	Growth, Employment and Redistribution	SACP	South African Communist Party

SAHO	South African History Online	SDG	Sustainable Development Goal
Sapa	South African Press Association	SEC	Securities and Exchange Commission
SAPO	South African Post Office	SITA	State Information Technology Agency
SARB	South African Reserve Bank	SIU	Special Investigations Unit
SARS	South African Revenue Service	SOCPEN	Social pension
SASCOC	South African Sports Confederation and Olympic Committee	SOE	State-owned enterprise
SASSA	South African Social Security Agency	TTT	Technical Task Team
Sasstec	SA Security Solutions and Technologies	UIF	Unemployment Insurance Fund
SC	Senior Council	UN	United Nations
SCM	Supply Chain Management	US	United States
SCOPA	Standing Committee on Public Accounts	USA	United States of America
SCRP	State Capacity Research Project	VAT	Value-added tax
SDA	Special Disbursement Accounts	WEF	World Economic Forum
		WMC	White Monopoly Capital

# Chapter 1: Introduction

## 1.1 Introduction

The challenges that we face in the 21<sup>st</sup> century, such as climate change, social injustice, extreme poverty, and economic inequality, are multifaceted, complex, and intertwined. In an effort to tackle these challenges, in 2015 the Sustainable Development Goals (SDGs) were drafted and adopted by the United Nations General Assembly (United Nations [UN], 2016). The SDGs identify and categorise 17 objectives that focus on addressing social and environmental challenges collectively to promote sustainable human development, which calls for changes to current economic, social, and political paradigms and fundamental evolutions in our collective ways of knowing, understanding, and doing.

Achieving these goals requires promoting and navigating a multiplicity of transitions, addressing immediate demands in light of perceived and real future constraints (and opportunities), and attempting structural transformation within systems that have deeply embedded expectations of “how the world works”. In order to achieve a goal, it is important to not only consider the long-term development objectives, but also to situate those objectives within the local context of the legacies from the past, the current circumstances, and the futures unknown.

In South Africa, the legacy of the apartheid regime is still very much reflected in the felt reality for the majority of South Africans who, nearly 25 years into democracy, are still subject to hardships of extreme poverty, high levels of unemployment, and unabated inequalities. Arguably one of the most successful interventions that the government has adopted to address these challenges was the introduction and progressive expansion of the country’s social assistance programme, in the form of social grants (Bhorat & Cassim, 2014; Khan, 2013; Woolard, Harttgen & Klasen, 2010).

These challenges that South Africa faces cannot be relegated to the legacy of apartheid alone. In 2016, the Public Protector issued the *State of Capture* report (Public Protector, 2016a), in which the key findings of the investigation into potential corruption between state officials and the Gupta family close to then president Jacob Zuma were set out. In May 2017, a collective of academics, including Bhorat, Buthelezi, Chipkin, Duma, Mondi, Peter, Qobo and Swilling (2017) released the *Betrayal of the Promise: How South Africa is Being Stolen* report (hereafter referred to as the *Betrayal of the Promise* report). The report provides a high level conceptual framework for understanding the phenomenon of “State Capture”, outlining the mechanics by which state

institutions are repurposed and the shadow state is formed. The report draws strong parallels between the colloquial use of the term “state capture” in South African discourse and much broader concept(s) of neopatrimonialism. Much of the literature on neopatrimonialism points to the negative impact that this type of dominance model has on the state’s ability to steer and progress the nation’s development agenda (Bach, 2012). This could potentially be one of the factors explaining “the steady ‘regressivity’/diminishing ‘progressivity’ of the social grant system” (Khan, 2013: 573) and the stagnant (if not diminishing) state of South Africa’s development.

As argued in the *Betrayal of the Promise* report (Bhorat *et al.*, 2017), I argue that it is necessary to expand the understanding of “State Capture” from merely the typical activities of bribery and corruption to a broader political project. This requires extending academic enquiry beyond just the financial flows of ill-gotten gains and definitively criminal activities, to include the currency of power, the bartering of political favours by manipulation of state institutions (trading of fear and favours), and determining the various costs this places on South African citizenry. The research presented in this thesis builds upon the conceptual framework set out in the *Betrayal of the Promise*, by critically examining the theories of state capture and neopatrimonialism, focusing not only on the possible acts of corruption, but also the power dynamics that enables them.

It is these aspects of the political project that this case study seeks to unpack, through examining the South African Social Security Agency (SASSA), with particular focus on what is commonly referred to as the SASSA-Gate debacle. SASSA-Gate refers to a sequence of events that culminated in a potential national crisis narrowly being averted in 2017 (and again in 2018). This was when there was a real risk of non-payment of social grants to an estimated 17 million South Africans unless an unlawful and invalid contract was extended with the service provider, Cash Paymaster Services (Pty) Ltd (hereafter referred to as CPS).

The case study illustrates that power elite driving the political project of State Capture not only seek to subvert and bend the “rules of the game”, but if the opportunity arises and it is to their benefit, they are willing to break these rules entirely. The question that emerges is: What are the likely implications of this phenomenon when there are no rules to start with?

At the centre of the SASSA-Gate crisis is the proprietary biometric card solution of Net1 UEPS Technologies Inc. (hereafter referred to as Net1), a United States (US)-based multinational corporation and the holding company of CPS. The consequences of the state’s (or rather a specific political elite’s) insistence of adopting this service provider’s proprietary biometric technology

could provide insight into the potential unforeseen (and perhaps darker) consequences that might come with the disruptive technologies/innovations of the Fourth Industrial Revolution (4IR).

Academic discourse around the current exponential technological advancements is yet to settle on a concept that adequately encapsulates the potential enormity and vast extent of the associated development implications. Since being introduced at the World Economic Forum (WEF) in 2016, 4IR is increasingly being adopted as a colloquial term for conceptualising the developmental disruptions of forthcoming technological era. Thus, for the purposes of this research, 4IR is utilised as a heuristic term for describing the changing technological paradigm. The research, however, limits the exploration of 4IR to the non-industry standard, biometric technology of CPS, as an illustrative example of disruptive innovation.

## **1.2 Background: How the Research Came About**

In an interview with the South African Broadcasting Corporation (SABC), speaking on the sidelines of the Commission on the Status of Women at the 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" (SABC Digital News, 2016a).

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 to be promoted to finance minister (SABC Digital News, 2016b). 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.

When I started this journey of pursuing a master's degree at the end of 2016, the concept of State Capture was only beginning to emerge. Like most South Africans, I was by no means in any position to fully comprehend or appreciate what the evidence contained in the Public Protector's *State of Capture* report meant for the country when it was released on 2 November 2016 (Public Protector, 2016a). My initial research proposal was focused on exploring the potential for Universal



Basic Income in South Africa and what it would mean for the country's social protection system and the economy. It is the events that followed the release of that report that would ultimately lead to the research that is presented in this thesis.

Because my initial research topic was intimately linked to the country's social security system, it in turn entailed the examination of the administrative institution of SASSA. It was while embarking on the planned initial research that I began to follow the increasing media reports of confusion around what was going to happen and how grants would continue to be paid come 1 April 2017 when the 2012 irregular and invalid contract between SASSA and CPS expired. As the months unfolded, it became apparent that trouble was brewing. The following statement was made by the then SASSA chief executive officer (CEO), Thokozani Magwaza, during a presentation to the Parliamentary Portfolio Committee on Social Development (PCSD) on 1 February 2017: "If you've got to choose between paying the grants and irregular, and if the country's going to burn on the 1<sup>st</sup> of April and the irregular, I choose the country not to burn" (SABC Digital News, 2017).

This statement highlights the magnitude of the crisis that was unfolding before South Africa's eyes. The fact that a senior accounting official of the government was in parliament, plainly stating that he would knowingly enter into unlawful contract, was unprecedented. The looming crisis was the risk that some 17 million grant recipients would not receive the grants that they depended on come 1 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 payment of the grants would continue. Yet, until there was clarity on how the 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.

In response to this imminent threat, a collective of civil society organisations, led by the Black Sash Trust, approached the Constitutional Court to intervene. 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 to (Constitutional Court of

South Africa, 2017a: 8). Ultimately, on 17 March 2017, the court ruled that the invalid contract between SASSA and CPS would continue for a year and the crisis was thus averted.

With the crisis averted, the country was not given time to recover, because on 30 March 2017, then president Jacob Zuma in a late-night announcement made a cabinet reshuffle. What was shocking about the reshuffle was that Zuma decided to, with no rational justification given, fire the then Minister of Finance, Pravin Gordhan, and he did not remove Minister of Social Development Bathabile Dlamini, who had only days earlier been issued a scathing rebuke from the highest court in the country. This was just one in a long list of seemingly “irrational” and inexplicable public moments, where decisions and actions made by the former president and his administration were seemingly taken with disregard for what was good for the country and appearing to have been for his own narrow interests. These moments include, among others, the Marikana Massacre in 2012 (Alexander, 2013); the landing of the Gupta plane at Waterkloof Air Base in 2013 (Staff Writer, 2013a); in 2014 the Public Protector’s report, titled *Secured in Comfort* (2014), addressed the undue benefit Zuma received in relation to an approximately R225 million security upgrade to his Nkandla homestead; the firing of Minister of Finance Nhlanhla Nene in 2015 (including the over-the-weekend appointment of Des van Rooyen) (Areff, 2015); the release of the *State of Capture* report by the Public Protector (2016a); and the cabinet reshuffle in March 2017 (Chirume, Hendricks, Furlong & Damba-Hendrik, 2017).

The nation responded, embarking on mass protests throughout the country, and so did the academic community. I was humbled by the opportunity to join the State Capacity Research Project (SCRP) to provide research assistance in the preparation of the *Betrayal of the Promise* report (Bhorat *et al.*, 2017), which was released in May 2017. Working on the research for the *Betrayal of the Promise* report, I began to recognise the stark similarities between the dubious activities that had been taking place at the state-owned enterprises (SOEs) and what had happened at SASSA. It was at that point I decided to abandon my initial intended research, which, although potentially useful, would not address the immediate challenges facing the country. I recognised that my research efforts could provide greater value by focusing my attention on better understanding the theoretical concepts behind the State Capture and determining how the SASSA-Gate crisis materialised.

Following the release of the *Betrayal of the Promise* report, the SCRCP was additionally tasked to compile detailed studies of the different cases of State Capture in South Africa. The study of the SASSA-Gate crisis was selected to be one of the SCRCP cases, and in July 2018 we released the report titled *How One Word Can Change the Game: Case Study of State Capture and the South*

*African Social Security Agency* (Foley & Swilling, 2018). The research undertaken for the SCRP is thus the central focus of this master's thesis.

Since SASSA irregularly awarded the grant payment contract to CPS in 2012, there has been a plethora of investigative reporting on allegations of corruption surrounding the awarding of the tender to CPS; some emanating from the court filings in the litigations. Most of the allegations relate to Minister Dlamini's indirect connections to the Black Economic Empowerment (BEE) partners of CPS and its US-listed holding company, Net1. Significant questions have also been raised regarding the role that the external advisors played in the decisions and actions that culminated in the SASSA-Gate crisis. It is these relationships between and events surrounding the informal networks of actors and formal government institutions that this case study research seeks to unpack, within a conceptual framework derived from the theoretical concepts of state capture and neopatrimonialism.

### **1.3 Problem Statement**

Since 2016, colloquial discourse on South Africa's political economy has been dominated by the concept of State Capture. The release of the *Betrayal of the Promise* report (Bhorat *et al.*, 2017), which drew extensively on the neopatrimonial school of thought, was aimed at providing an academic understanding of this phenomenon. The report argued that State Capture, at least in the context of South Africa, is more than just a form of "grand corruption" of SOEs but is rather a much more extensive part of a political project undertaken by a group of political elite. The political elite driving this project not only seek to subvert and bend the "rules of the game", but if the opportunity presents itself and is to their benefit, are willing to break these rules entirely. The question that therefore emerges is: What are the likely implications of this phenomenon when there are no rules to start with? Herein is the challenge that the unfolding 4IR and the associated increasing advancement of disruptive innovations may present.

The preliminary investigation indicated that there appears to be a distinct disconnect between the concepts of state capture and neopatrimonialism, in both economic and political theory. Similarly, there also appears to be a lack of academic enquiry into some of the relationships or links between the political economy and technology or innovation studies, particularly as it relates to governance, corruption, and the associated impacts of disruptive technologies. The SASSA-Gate crisis, due to the people involved and how it was able to occur, presents a unique instance through which these gaps in academic research may be explored.

## 1.4 Research Questions and Objectives

The broad research questions that emerge from the problem statement are as follows:

1. What is the difference or relationship between state capture and neopatrimonialism, and how might either of these concepts be applicable to the SASSA-Gate debacle?
2. How is a state institution “captured” and what are the potential consequences thereof?
3. How did technology (particularly biometric technology in this case) play a role in the SASSA-Gate crisis, and what can be learned from this case study in terms of the relationship between state capture, neopatrimonialism, and future technology disruption?

By answering the above research questions, this study seeks to achieve two principal objectives, namely:

1. to unpack a detailed account of the SASSA-Gate crisis and to establish if there are any insights that pertain to the phenomenon of State Capture and how they relate to neopatrimonialism; and
2. to explore if there are any broader political, social, and economic aspects that government, academia, and society in general should consider as we navigate through the exponentially rapid unfolding of the 4IR.

## 1.5 Goals and Rationale for the Study

Maxwell (2013) identifies three main types of goals for research, namely personal, intellectual, and practical. Maxwell (2013: 219) explains that “[p]ersonal goals are those that motivate you to do this study; they can include a desire to change some existing situation, a curiosity about a specific phenomenon or event, or simply the need to advance your career”. As indicated in Section 1.2, this case study emerged from a desire to “change” (or rather understand) the existing situation, where it is evident that the actions and decisions taken under the Zuma administration were not in the best interest of the country, the consequences of which have a profound negative impact on the country’s development. The country now faces the immense task of unravelling and repairing the damage done by this Zuma-centred political project, and, as such (a possible benefit which this research may provide) 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.

This search for greater understanding, “gaining some insight into what is going on and why this is happening”, relates directly to the intellectual goals of this research (Maxwell, 2013: 220). With the theories of state capture and neopatrimonialism already identified as potential academic explanations for understanding the events that occurred under the Zuma administration, the aim of the research is therefore to explore the relationship and links between these two concepts and how they apply to the South African context. The second aim, which emerged through the case study itself, is to explore the potential need for further investigation and enquiry into the relationship dynamics between technology/innovation and the political economy.

Ultimately, the practical goal of the research, linking the personal and intellectual goals, is to provide a “formative stud[y] ... that [is] intended to help improve existing practice rather than simply to determine the outcomes of the program or practice being studied” (Maxwell, 2013: 222). The intended improvements relate not only to assist in addressing the real-world problem of State Capture but are also aimed at contributing to the academic discourse surrounding the various theoretical concepts.

## **1.6 Approach to the Research Design and Methodology**

*Practitioners continue to ply their trade but have difficulty articulating what it is that they are doing, methodologically speaking. The case study survives in a curious methodological limbo (Gerring, 2004: 341).*

As clearly stated in the title of this thesis and as described in the problem statement, this research is first and foremost a case study. However, as indicated in the statement above, defining a case study, methodologically speaking, seems yet to be adequately addressed in academia. Most agree that case studies are inherently a form of qualitative research, predominantly applied in fields of study concerned with human affairs, as it is in this case. Baxter and Jack (2008: 545), in referencing the case study research design developed by Robert Yin, provides four situations in which a case study approach would be considered preferential, all of which are applicable to this research; namely when:

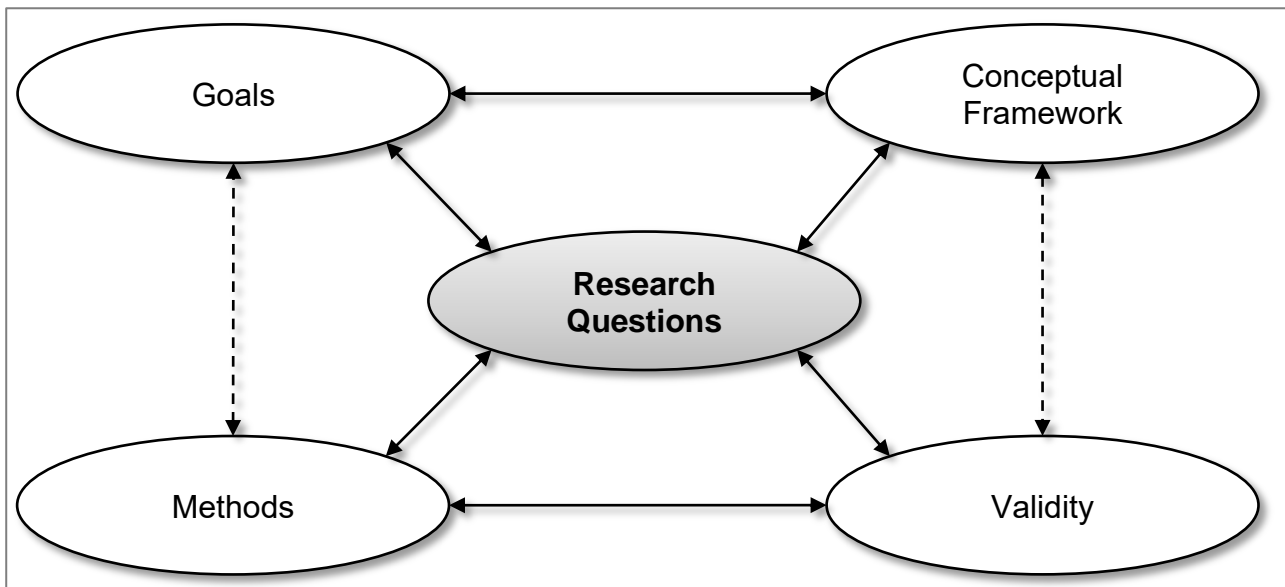
*(a) the focus of the study is to answer 'how' and 'why' questions; (b) you cannot manipulate the behaviour of those involved in the study; (c) you want to cover contextual conditions because you believe they are relevant to the phenomenon under study; or (d) the boundaries are not clear between the phenomenon and context.*

Baxter and Jack (2008: 544) highlight that the advantages of utilising a case study is that it “facilitates exploration of a phenomenon within its context [and] the issue is not explored through one lens, but rather a variety of lenses which allows for multiple facets of the phenomenon to be revealed and understood”. This is particularly useful for the purposes of this case study as the concepts that are utilised emanate from different disciplines and, as such, provide different lenses through which the case can be explored. Drawing from the research questions and objectives identified above, the purpose of this case study is both descriptive and exploratory in nature.

Creswell (2014: 21) notes that unlike most traditional quantitative types of research design, which are often well defined in terms of a linear sequence of tasks required for conducting a specific type of research, “qualitative approaches allow room to be innovative and to work more within researcher-designed frameworks”. In agreement, Maxwell (2013: 214-215) asserts that qualitative research design

*...should be a reflexive process operating through every stage of a project [where] the activities of collecting and analysing data, developing and modifying theory, elaborating or refocusing the research questions, and identifying and dealing with validity threats are usually going on more or less simultaneously, each influencing all of the others.*

Rather than present a list of sequential tasks, Maxwell (2013) presents an “Interactive Model of Research Design”, which focuses on five key components of a research study and outlines the reflective connections between one another (see Figure 1). The five components are the goals of the research, the conceptual framework, the research questions, the methods used, and the validity of the research.



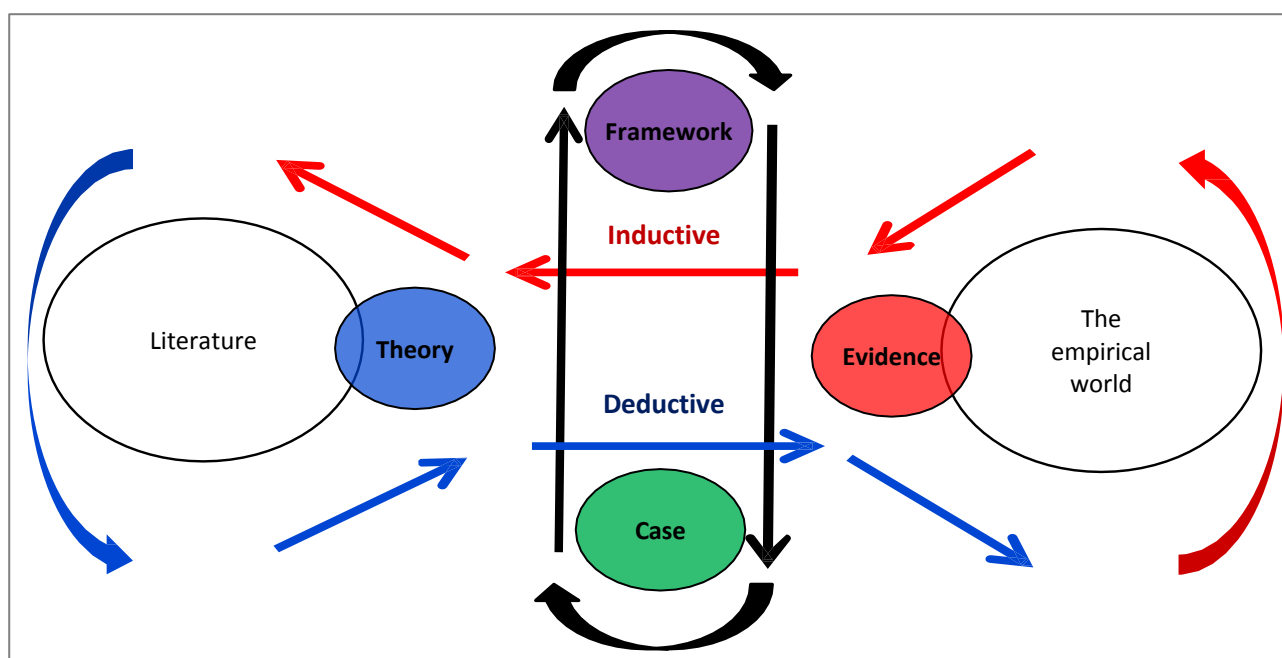
**Figure 1: Interactive Model of Research Design**

Source: Maxwell (2013: 217)

In terms of case study research, however, one key element is missing from Maxwell's model, which is the case itself. The real-world context of a case study undoubtedly affects all these components of the research and, as such, Maxwell's (2013) Interactive Model of Research Design must be supplemented with an approach that caters for the empirical world. In order to address this, the research design applied for this case study follows from the "abductive approach to case research" (called Systematic Combining) developed by Dubois and Gadde (2002), and later refined by Alrajeh, Fearfull and Monk (2013). Dubois and Gadde (2002: 556) describe systematic combining as "a nonlinear, path-dependent process of combining efforts with the ultimate objective of matching theory and reality". This is a process where there is continuous and concurrent evolution and refinement of the theoretical framework, empirical investigation (or data collection), and the case analysis.

Like Maxwell (2013) and Creswell (2014), Dubois and Gadde (2002) recognise that the traditional research design of sequentially phased research activities does not allow the flexibility or reflexivity required to unleash the full potential of case study research. They argue that by enabling the researcher to move "'back and forth' from one type of research activity to another and between empirical observations and theory, [the researcher] is able to expand his understanding of both theory and empirical phenomena" (Dubois & Gadde, 2002: 555). The process could possibly best be described as being iterative; however, there is actually no specificity as to when or how the "matching" of the theoretical and the real need takes place.

To translate this process into research design, certain initial steps are required. As with almost all research, an initial literature review and a preliminary empirical investigation (i.e. problem identification) are required. The literature review forms the basis for developing the conceptual framework, and the preliminary investigation lays the foundation for the case itself. At the same time, the theory assists in defining the boundaries and parameters of the case study, and the evidence collected during the empirical investigation guides how theory is translated into the conceptual framework. Figure 2 provides a graphic representation of systematic combining, as presented by Alrajeh *et al.* (2013).



**Figure 2: Research process using abductive approach**

Source: Alrajeh *et al.* (2013: 1)

The research methods utilised for the research consisted of a literature review, desktop research, and observations. For ethical reasons it was decided not to include interviews as part of the research methods. However, to ensure the validity of the research, the case study was distributed to and reviewed by several individuals with direct involvement in or knowledge of the events covered by the case study or with expertise related to SASSA and South Africa's grant payment system. The application of Maxwell's (2013) Interactive Model of Research Design means that in this research the case study parameters, methods, and validation, as well as the ethical considerations and limitations of the study, are all affected by the conceptual framework. It is for this reason that the next chapter will provide the conceptual framework for the case study. The remaining components of the research methodology will be unpacked in further detail in Chapter 3.



Like most qualitative case study researchers, I prescribe to the constructivist paradigm in principle. According to Baxter and Jack (2008: 545), citing Miller and Crabtree (1999: 10),

*[c]onstructivists claim that truth is relative and that it is dependent on one's perspective. This paradigm 'recognizes the importance of the subjective human creation of meaning, but doesn't reject outright some notion of objectivity. Pluralism, not relativism, is stressed with focus on the circular dynamic tension of subject and object'.*

However, for the purposes of research itself, due to the nature of the topic and goals of the research, a “pragmatic worldview” was adopted. Creswell (2014: 10) muses that “pragmatism as a worldview arises out of actions, situations, and consequences rather than antecedent conditions (as in postpositivism)”. Often associated with mixed-methods studies, this worldview allows enquiry to be relatively intellectually flexible, as “[p]ragmatism is not committed to any one system of philosophy and reality” and “[p]ragmatists do not see the world as an absolute unity”. With pragmatism the primary focus is placed on the research problem and pragmatists will use all and any approaches available in order to better understand the problem. Pragmatism does not demand that reality be necessarily either “independent of the mind or within the mind”; this in turn allows for a plurality of worldviews. For instance, since this case study centres on the potential corrupt acts and/or intentions of individuals with political power, the risk of subjective biases (be they my own or of potential participants) is extremely high. To mitigate against this risk, the primary method adopted for this case study (namely document analysis) was selected with a view of maintaining a high degree of objectivity in undertaking the research.

One of the major criticisms of pragmatism stems from its underlying rejection of the notion that there exist absolute truths. For pragmatist, “there are no first principles and that all human knowledge is empirical, including theories of knowledge” (Scott & Briggs, 2009: 228). This presents two key challenges with pragmatism, the first being that it does not provide for a definitive epistemological methodology. And the second, related challenge is that “[w]ithout a careful ethical grounding, pragmatic practice risks boiling down to an unreflecting ethical relativism or at least will find it difficult to avoid the suspicion of mere opportunism and utilitarianism” (Ulrich, 2007: 4). Both criticism can be overcome through by adopting an appropriate methods of research (such as triangulation) and being reflective throughout the research process (Scott & Briggs, 2009; Ulrich, 2007). It is also important to note one of the major advantages of the pragmatist approach, which is particularly relevant to the research is highlighted by Kadlec (2006: 541) when she states that:

*The political, social, and economic challenges we face require that we arm ourselves not with fixed absolutes, but rather with a commitment to open-ended and flexible inquiry aimed not at final consensus about our aims, but rather at achieving a greater understanding of the consequences of our practices and policies.*

The final reflection on the approach to this research study is to draw attention to the five misunderstandings about case study research identified by Flyvbjerg (2011; 2006), which are presented in Table 1.

**Table 1: Five misunderstandings about case study research**

Misunderstanding	Flyvbjerg's counterarguments
1 "General, theoretical knowledge is more valuable than concrete case knowledge".	"Predictive theories and universals cannot be found in the study of human affairs. Concrete case knowledge is therefore more valuable than the vain search for predictive theories and universals" (Flyvbjerg, 2011: 304).
2 "One cannot generalize on the basis of an individual case; therefore, the case study cannot contribute to scientific development".	"One can often generalize on the basis of a single case, and the case study may be central to scientific development via generalization as supplement or alternative to other methods. But formal generalization is overvalued as a source of scientific development, whereas 'the force of example' and transferability are underestimated" (Flyvbjerg, 2011: 305).
3 "The case study is most useful for generating hypotheses; that is, in the first stage of a total research process, while other methods are more suitable for hypotheses testing and theory building".	"Case studies are especially well suited for theory development because they tackle the following tasks in the research process better than other methods: <ul style="list-style-type: none"> <li>▪ Process tracing that links causes and outcomes ...</li> <li>▪ Detailed exploration of hypothesized causal mechanisms</li> <li>▪ Development and testing of historical explanations</li> <li>▪ Understanding the sensitivity of concepts to context</li> <li>▪ Formation of new hypotheses and new questions to study, sparked by deviant cases" (Flyvbjerg, 2011: 306).</li> </ul>
4 "The case study contains a bias toward verification; that is, a tendency to confirm the researcher's preconceived notions".	"The case study contains no greater bias toward verification of the researcher's preconceived notions than other methods of inquiry. On the contrary, experience indicates that the case study contains a greater bias toward falsification of preconceived notions than toward verification" (Flyvbjerg, 2011: 311).
5 "It is often difficult to summarize and develop general propositions and theories on the basis of specific case studies".	"It is correct that summarizing case studies is often difficult, especially as concerns case process. It is less correct as regards case outcomes. The problems in summarizing case studies, however, are due more often to the properties of the reality studied than to the case study as a research method. Often it is not desirable to summarize and generalize case studies. Good studies should be read as narratives in their entirety" (Flyvbjerg, 2011: 313).

Source: Flyvbjerg (2011: 302)

In summation, Flyvbjerg (2011) attempts to address five of the general criticisms that case studies often receive. These criticisms are often based on the long-held contestation between quantitative and qualitative research, particularly with regard to theory, validity, and reliability, and the "positivistic" influence on social sciences. Of particular importance for this research and this case study is the notion that for a case study to contribute to "scientific development", it should yield

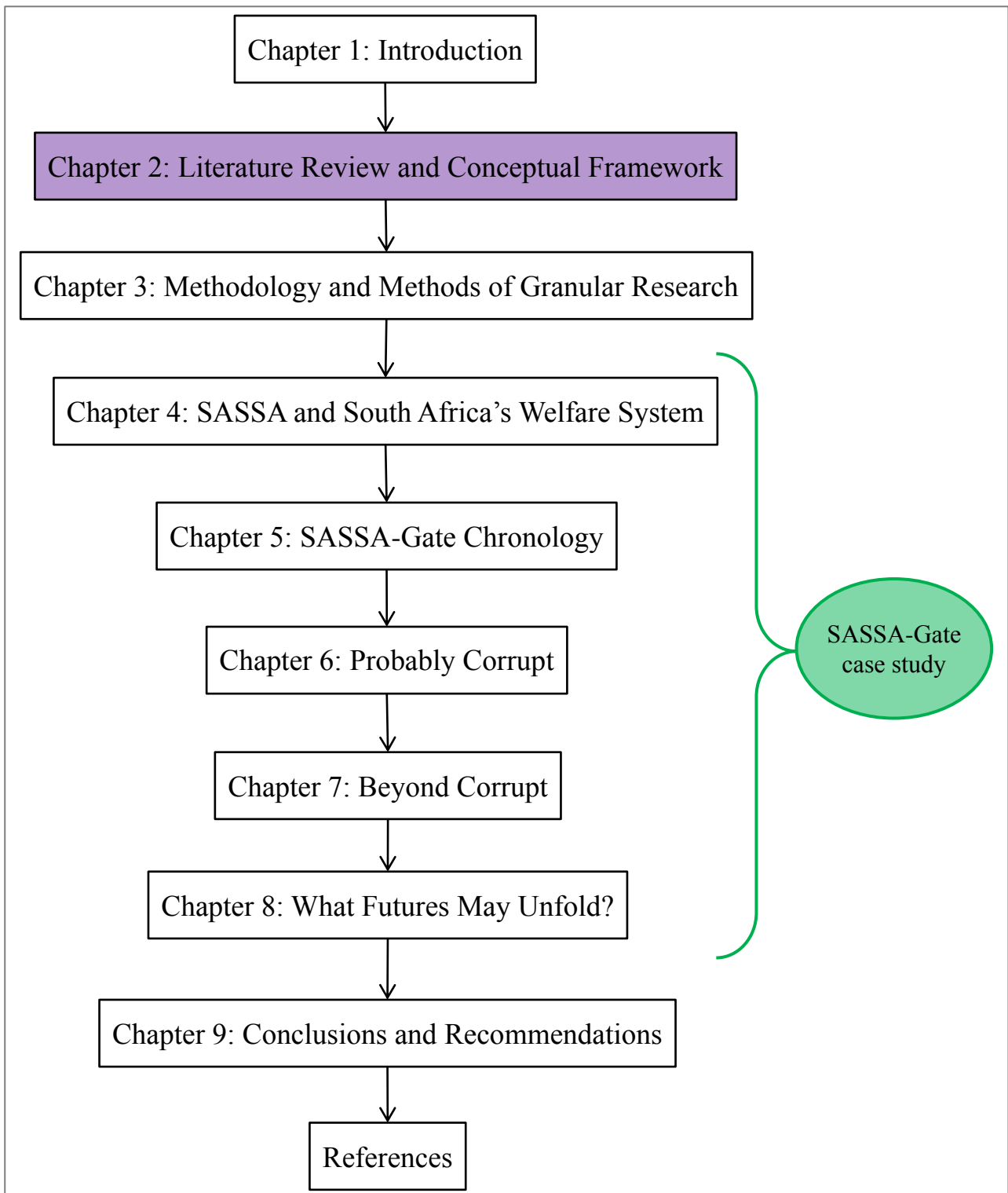
some form of generalised theory or outcome that can be easily summarised and is replicable. It must be categorically stated that this is most definitely not the objective of this case study.

This case study is a dense narration (based on granular research) of a single case of a context-specific phenomenon, which is State Capture. For Flyvbjerg (2011; 2006), one advantage that emanates from presenting dense narratives is that they are often embedded in and are reflexive of the complexity and contradictions of the real world. This can serve to guard against the perpetuation of narrative fallacies, which can result from the “human inclination to simplify data and information through over interpretation and through a preference for compact stories over complex data sets”(Flyvbjerg, 2011: 311). Flyvbjerg (2011) highlights that in order to undertake dense case study narration, the opposite of conventional ‘academic wisdom’ must be adopted, namely that rather than “closing” or summing up a case study, the outcomes of the case study should remain open. This openness can be achieved by providing in-depth exploration from multiple perspectives, at various levels, which is not consigned to any singular specific domain of academic enquiry. As highlighted by Flyvbjerg (2006: 238),

*[t]he goal is not to make the case study be all things to all people. The goal is to allow the study to be different things to different people ... Case stories written like this can neither be briefly recounted nor summarized in a few main results. The case story is itself the result.*

## **1.7 Structure of the Thesis**

Figure 3 outlines the structure of the thesis. As this case study is presented in a dense narrative format, the next chapter will provide the conceptual framework for the case study. Chapter 3 will present the research methodology and techniques and provide structure for the narrative for the case study. Chapters 4 to 8 present the case study itself, where at the end of each chapter a summary of the findings is presented. Finally, Chapter 9 presents the overall conclusions and recommendations of the research.



**Figure 3: Structure of the thesis**

## Chapter 2: Literature Review and Conceptual Framework

### 2.1 Introduction

This chapter presents an analysis of the relevant theories and literature that are relevant to this thesis and provides an outline of the conceptual framework for this case study. The first section provides a literature review of the concept of state capture and a critical review of neopatrimonialism, and examines the relationship and links between the two concepts. The analysis put forward serves to provide a high-level overview of the history behind the key theories and to explain the underlying ideas that relate to the case study itself. The second section presents the conceptual framework for the phenomenon of State Capture in South Africa, which is the object of the case study. It presents the key concepts and outlines, and expands on the characteristics and the modus operandi of State Capture as identified in the *Betrayal of the Promise* report. The third section seeks to explain what is meant by the 4IR in the context of the case study and provides a high-level overview of the factors and aspects of the 4IR that are considered relevant for the case study. The last section aims to provide a synthesis of how the case study and its context should be understood relative to the three theoretical framings.

### 2.2 Neopatrimonialism and State Capture

#### 2.2.1 State Capture versus state capture

At the end of 2017 the term “State Capture” was announced by the Pan South African Language Board (PanSALB) as the South African word for the year (Pijoo, 2017). The term found its way into the public lexicon following the release of the Public Protector’s *State of Capture* report (Public Protector, 2016a) in late 2016. The report detailed the findings of an investigation into the alleged corrupt relationship between senior government officials at various state institutions and a family (the Guptas) who were politically exposed and personally connected to then President Zuma (by way of his son). The report itself did not refer to the specific term “state capture”.

The term was seminally published in a report, titled *Seize the State, Seize the Day: An Empirical Analysis of State Capture and Corruption in Transition Economies*, by Hellman, Jones and Kaufmann (2000). The report was based on a study conducted as part of the Business Environment and Enterprise Performance Survey undertaken by the World Bank in 1999, with the objective of

providing an analysis of governance, corruption, and state capture in transitioning economies. In the report, it

*contrast[s] state capture (firms shaping and affecting formulation of the rules of the game through private payments to public officials and politicians) with influence (doing the same without recourse to payments) and with administrative corruption (‘petty’ forms of bribery in connection with the implementation of laws, rules, and regulations) (Hellman et al., 2000: ii).*

The survey was conducted across several post-communist countries and was referenced frequently in relation to the

*accumulation of economic power in the hands of the so-called oligarchs [which] was akin to a massive transfer of state assets into private hands, with the result of a weakening of the institutional and normative environments inherited from the Communist era (Bach, 2011: 288).*

Over the years there have been a few developments in terms of how state capture is defined and how it has been adopted. Dassah (2018) points out several of the different typologies for defining state capture and how these have been interpreted. The first type of descriptors relate to the institutions of the state considered to be captured, for example the Legislature, a specific department, law enforcement, Judiciary, parliament, etc. The second is to define state capture in terms of the organisation that is viewed as having captured said institution. These could be private sector firms (as was the case in the original application by Hellman *et al.*, 2000), but this could also include political leaders or any other external interest group. A third way of defining state capture is in terms of the extent to which the external interests have captured various state institutions. For instance, if it is a singular incident or institution, it would be considered “local” state capture; however, if the external interest captures more than one institution or is involved in multiple instances of corrupt activities with numerous individuals, it would be considered “global” state capture.

As highlighted by Bach (2011: 287), the meaning of state capture, due to the diverse interpretations and applications of the term, is “rather fuzzy”. In his description, Bach (2011: 287) asserts that “state capture was an attempt at measuring the extent to which the state is subject to ‘capture’ – or undue influence – by powerful vested interests”. From this perspective, the concept of state capture

is not distinguishable from influence or administrative corruption and it is not specifically focused on firm-level analysis or policy manipulation, nor is it limited to just financial forms of corruption. This thus opens the understanding of state capture to a much broader range of potential vested interests and a variety of exchanges and relationships between state officials and external actors. This broader interpretation of state capture would then appear to be a useful and fitting concept for describing the findings of the Public Protector's report on the alleged corruption that took place at SOEs to the benefit of the Gupta family and associates (Labuschagne, 2017).

The challenge in using the concept of state capture to describe the current state of South Africa's political economy is that it focuses explicitly on the activities of corruption and fails to recognise the political and social dynamics of what unfolded under the Zuma administration. Labuschagne (2017: 51) highlights this shortcoming of the concept and notes that "discussions around state capture are principally done from an economic context, not from a political perspective".

It is precisely this gap in the usefulness of the concept that the *Betrayal of the Promise* report sought to address by drawing from the neopatrimonialism school of thought (Bhorat *et al.*, 2017).

At this point, it is important to highlight that a distinction must be made between the theoretical concept of state capture, as discussed above, and State Capture (capitalised), which is used to encapsulate the distinct contemporary phenomenon that has occurred under the Zuma administration in South Africa. Here State Capture is used in reference not only to corruption (the focus of state capture as a theoretical concept) but also to a host of other actors, activities, and factors that culminate in a unique form of political (mis)governance.

With its limited application to predominantly economic studies, with the primary focus on measuring the impacts of state capture, this phenomenon is often examined at national (or rather macro-economic) levels, where multiple cases are observed, seldom at an institutional or sectoral level. This is perhaps why one aspect of state capture that does not appear to have been given sufficient consideration is to answer the question of how state capture occurs. Numerous attempts to find a detailed account or singular case study of how this form of corruption actually occurs have yielded no satisfactory results. In academic literature, there appear to be very few (if any) detailed accounts of actual events or occurrence of explicit state capture.

## 2.2.2 Critical review of neopatrimonialism theory

Neopatrimonialism theory is firmly embedded in the fields of political and development studies, and has emerged as a school of thought for explaining transitioning political regimes of emerging and developing economies, in particular reference to African countries. Its focus is on the political and organisational structures (or rather the dominance models) of state governance and defining characteristics of transitioning political economies.

Since the term “neopatrimonialism” was first used in the 1970s, it has been widely adopted for a range of different analyses and adapted to complement several different forms of enquiry. For the purposes of this research, it will not be feasible or necessary to undertake an in-depth exploration of the expansive history of literature on neopatrimonial theory. Instead, this review draws on previous work of different researchers who presented a variety of contemporary meta-analyses on neopatrimonial theory. These include, among others, Bach (2012), Van de Walle (2003), Bratton and Van de Walle (1994), DeGrassi (2008), Erdmann (2012), Erdmann and Engel (2006; 2007), Isaacs (2014), Kelsall (2011), Mkandawire (2015), and Pitcher, Moran, and Johnston (2009).

A commonly used description referenced by scholars (Bach, 2012; Erdmann & Engel, 2007; Mkandawire, 2015) is provided by Clapham (1985: 48), who defines neopatrimonialism as

*a form of organization in which relationships of a broadly patrimonial type pervade a political and administrative system which is formally constructed on rational-legal lines. Officials hold positions in bureaucratic organizations with powers which are formally defined, but exercise those powers ... as a form of private property.*

The concept is derived from Max Weber’s theories, developed in the early 20<sup>th</sup> century, on legitimacy and three ideal types of dominance, namely legal-rational, traditional, and charismatic (Weber, 1978). The legal-rational form of dominance is generally characterised as being based on impersonal bureaucratic logic and is prescribed by law, where authority is allocated, defined, and limited by law. Pitcher *et al.* (2009: 130) note the following:

*In other words, citizens comply because they believe the law grants authority to the ruler. The law, or a governing instrument such as a constitution, has a transhistorical rationality of its own that extends beyond the behavior of any individual leader. In theory, the leader*



*derives legitimate authority to act and expect obedience only insofar as he or she is accountable to the rule of law.*

Neopatrimonialism is derived from Weber's (1978) concept of patrimonialism, which is a type of traditional dominance, where "the right to rule is vested in the person; and the legitimacy of this person's authority is derived from popular acceptance of the norms, customs or beliefs commonly associated with traditional familial or household structures" (cited in Sigman & Lindberg, 2017: 2). Initially, when deployed by Eisenstadt (1973), the prefix "neo-" served to indicate that patrimonial characteristics were present in "modern" African states. There are two notable distinctions that can be made between neopatrimonialism and patrimonialism. The first is that under patrimonial rule there is no distinction between public and private; "the state was the personal domain of the rulers and they used the resources of the state to ensure the obedience of the population" (Duthie, 2015: 112). Under neopatrimonialism, however, the presence of a formal legal-rational bureaucracy requires the separation of public and private to be recognised, at least in principle. Second is that, as noted by Sigman and Lindberg (2017: 2),

*the traditional basis of patrimonial authority may be less pronounced in neopatrimonial settings than in more purely patrimonial ones (Roth, 1968). Rather than practicing loyalty, tribute or reciprocity, all of which tend to be rooted in shared customs or beliefs, practices in neopatrimonial settings may take on a more transactional character.*

It is specifically the transactional nature, by which personal or political allegiances between the ruler (or as referred to by some, the "strong man") and the subordinates (cronies) are established and maintained, that links neopatrimonialism with theories on clientelism and corruption. Both clientelism and corruption in turn require control over the distribution and management of rents, which often entails the centralisation of power and control over state resources (Kelsall, 2011). As a result of these seemingly natural correlations between these concepts, the application of neopatrimonialism tends to focus on three characteristics, namely "strong presidents [or presidentialism], clientelistic linkages between citizens and politicians, and the use of state resources for political legitimation [or rather corruption]" (Sigman & Lindberg, 2017: 1).

Neopatrimonialism is a concept that, although widely utilised and applied in a variety of studies, is not without a degree of ambiguity and contestation. Over the years, through numerous applications with varying interpretations in different fields of analysis, it has become somewhat of a "catch-all" concept to explain the failure of African countries to realise developmental ambitions (Erdmann,

2012). As indicated, there is expansive literature on the history of neopatrimonialism theory, which shall not be explored further in great detail; however, some of the characteristics that have prevailed in neopatrimonial theory are best summarised by Bach (2012: 221) as follows: “Neopatrimonialism provided the ‘common denominator’ for a range of practices that are highly characteristic of politics in Africa, namely nepotism, clannish behaviour, so-called ‘tribalism’, regionalism, patronage, ‘cronyism’, ‘prebendalism’, corruption, predation, factionalism, etc.”.

For Mkandawire (2015: 563), among others (Bach, 2012; DeGrassi, 2008; Erdmann & Engel, 2007; Gray & Whitfield, 2014; Pedersen, 2015; Pitcher *et al.*, 2009; Wai, 2012), “neopatrimonialism has become the convenient, all-purpose, and ubiquitous moniker for African governance”. Mkandawire (2015) and Wai (2012) highlight that, through its extensive application over time, particularly to the African context, the concept has become a reductionist generalisation of “African culture” conflated with the prevalence of corruption and underdevelopment, exhibiting a distinctly Afro-pessimism approach by Western scholars that it does not adequately reflect the complexity and diversity of Africa’s political reality. For Mkandawire (2015: 602),

*[t]he analytical template forged by the neopatrimonialism school has had the effect of flattening the African political and economic landscape – often rendering monochromatic the many colorful and varied characters who have taken the African political stage over the last half century.*

I agree with Mkandawire that the manner in which neopatrimonialism has been adopted over the years is unhelpful and with its current interpretation does not present a meaningful concept for truly analysing or understanding the political and economic dynamics of a state (be it in Africa or elsewhere in the world). I do, however, agree with several other authors (Bach, 2012; Erdmann & Engel, 2007; Pitcher *et al.*, 2009) that neopatrimonialism is still “useful as an organising concept”, even though it still presents a “major methodological challenge for empirical research” (Erdmann & Engel, 2007: 103-104).

Also critical of how the concept of neopatrimonialism has been applied to the African continent, Pitcher *et al.* (2009) suggest that most applications of the concept are seemingly adopted in a manner that delegitimises patrimonialism (and in turn neopatrimonialism) as a form of legitimate dominance. They argue, as do I, that the application of neopatrimonialism has historically been through a misinterpretation or misrepresentation of Max Weber’s theories on the ideal type of legitimate domination. The paragraphs that follow outline several issues with regard to the

“historic” or general application of patrimonial and neopatrimonial concepts that do not align with Weber’s original formulation of “ideal” types of dominance.

### 2.2.2.1 Conflation of ideal types of dominance with different types of regimes

*[Weber’s] use of the term ‘patrimonial’ delineated a legitimate type of authority, not a type of regime (Pitcher et al., 2009: 125).*

The statement above is the first major misrepresentation that is often made with regard to Weber’s theories, which is the conflation of ideal types of dominance with different types of regimes (Isaacs, 2014). In particular, it is the conflation of the formal legal-rational type of dominance with democratic regimes and the neopatrimonial type with authoritarianism. As a starting point, I make my own observation of Weber’s (1978: 941-1157) *Economy and Society: An Outline of Interpretive Sociology*, which is that in his explorations and explanations on the ideal types of domination, he did not limit or restrict the application of dominance to the level of the state (although this is specifically addressed). The main reason for pointing this out is that it helps to better understand the differences between the two main types of dominance.

Perhaps the best example of the legal-rational bureaucratic type of dominance can be found in large corporate companies where, theoretically, the appointment of a board of directors (separation of ownership and administration) and the CEO (the authority) is subject to prescribed rules, the structure of the company is formal, and the selection of personnel impersonal. In terms of patrimonial dominance, the Mafia would possibly serve as a suitable example where the head of the organisation is also generally the head of a family/kinship that undertakes the administration of the “business”, there are no fixed or written rules, and the business itself operates based on skewed power relations between the Mafia and the small business owners to whom they provide “protection services”. It must be noted that the criminality of this example is not to imply or delegitimise patrimonialism; it is just a good example and the counterargument would be that corporate companies are also often involved in criminal activities.

Being able to separate the notion of dominance from its application on state- or country-level analysis is important because it shows that Weber’s type of dominance is concerned with describing the way in which legitimate authority (over a hierarchical structure organisation) is derived and is characteristic of the systems under which that authority is exercised. It does not necessarily allude

to or imply any specific set of values or principles on which that authority is legitimised. Neither of the examples provided (corporate company or the Mafia) could be considered democratic.

The conflation of types of dominance with types of regimes has been a major source of contention for those critical of neopatrimonialism and yet even among those critical of this conflation, it is often reaffirmed. For example, Erdmann and Engel (2007: 114) initially acknowledged that not all legal-rational forms of dominance are necessarily democratic. However, they later state in their closing remarks that “neopatrimonialism corresponds with authoritarian politics, whereas legal-rational domination relates to democracy”.

While it is true that most, if not all, democratic regimes are more aligned to the legal-rational form of dominance, I would argue that it is not true that all legal-rational forms of dominance are democratic. A definitively undemocratic regime, South Africa’s apartheid government serves as a prime example of this fact. Under the apartheid regime, racial discrimination was “rationalised”, legislated, and regulated, much the same as it had been done earlier across the Western world. A feature of the apartheid regime was that it actually formalised and legislated traditional (semi-patrimonial) dominance under various pieces of legislation, starting with the Bantu Authorities Act, No. 68 of 1951 (South African History Online [SAHO], 2011).

*This Act decreed that chiefs, appointed by the South African government, would become local administrators of so-called ‘tribal areas’. This was the beginning of separate development, better known as apartheid. In 1959 a policy of Promotion of Bantu Self Government was adopted. This formed the basis for the ‘bantustans’, homelands for the original inhabitants of South Africa (Van Rouveroy van Nieuwaal, 1996: 52).*

This highlights a second aspect that Weber made explicitly clear, being that “[t]he forms of domination occurring in historical reality constitute combinations, mixtures, adaptations, or modifications of these ‘pure’ [ideal] types” (Weber, 1978: 954). This is to say that in reality there does not exist in any country, nation, or organisation that can claim to be a “pure” form of legal-rational or patrimonial dominance, but there will be a combination of the ideal types. Bratton and Van de Walle (1994: 459) were some of the first scholars to acknowledge this gap, when they stated that “while neopatrimonial practices can be found in all polities, it is the core feature of politics in Africa”. Attempting to reconcile the understanding that all states possess traits that are both legal-rational and patrimonial, “Van de Walle (2001a) and others suggest that countries may differ in the

extent of their neopatrimonialism along a unilinear continuum from ideal types of completely patrimonial on one end to completely rational-legal on the other” (DeGrassi, 2008: 110).

Erdmann and Engel (2007) and others (such as Isaacs, 2014) highlight that a significant academic gap in the historic application of the concept is the lack of recognition of the legal-rational aspects of neopatrimonialism. They contend that, in terms of its application to Africa, seemingly too much focus has been placed on the informal dynamics of neopatrimonialism and that insufficient attention has been paid to the formal bureaucratic rules. This is seemingly the case as, based on my research on neopatrimonial literature, I was unable to find a single case study (singular or comparative) that clearly articulates or examines the legal-rational aspects of the specific countries being analysed. The question that must therefore be asked is how one can determine the degree and extent to which neopatrimonialism (existence of both legal-rational and patrimonial) might actually exist in said country. It would seem then that the application of neopatrimonialism in comparative analysis has not in fact been to compare countries with regard to each country’s relative degree of patrimonialism or neopatrimonialism, but rather a comparison between these countries and an “ideal type” based on Western democracy ideals (Bach, 2011; DeGrassi, 2008; Gray & Whitfield, 2014; Isaacs, 2014; Mkandawire, 2015; Pitcher *et al.*, 2009).

#### **2.2.2.2 Reciprocity, accountability, and legitimacy**

*[Weber’s] use of the term patrimonial ... included notions of reciprocity and voluntary compliance between rulers and the ruled ... For Weber, patrimonialism was ... a specific form of authority and source of legitimacy (Pitcher et al., 2009: 125).*

The failure to explore and recognise the legal-rational component of neopatrimonialism might also be an explanation as to why there appears to also be a general lack of acknowledgement of the state in its entirety and not just the bureaucratic government (i.e. to include analysis of the broader population/society, private sector and “informal” institutions such as non-governmental organisations [NGOs] and the media). In not adequately accounting for the legal-rational characteristic of neopatrimonial dominance, implying the separation of public and private, scholars neglected to also recognise the other centres/actors with power that exist outside of formal government bureaucracy. In understanding the state, government is only one part of it and here exists a host of other public, as well as private, institutions that should be considered. This is an important factor to consider, particularly in relation to the role of the private sector in terms of economic power and development (corruption does not just take place within government, it

requires an external actor). The role of NGOs and independent media and their relationship dynamics with government are also key considerations regarding holding those in power of authority accountable. It is also equally important to consider the sovereignty of the state and the role of other external actors, particularly in the context of globalisation.

The importance of analysing the state in its entirety speaks directly to the third major misrepresentation that is often made with regard to Weber's theories on ideal types of dominance, namely the issue of legitimacy of authority. In most instances of its application, the "legitimacy" of the neopatrimonial dominance in the respective countries is never fully explored or stated in relation to the countries' specific formal legal-rational context. Legitimacy is not only determined by legal means; it is also established on "consensuses" of the populace. In terms of Weber, for a form of dominance to be considered legitimate, it requires that obedience (or submission) of the ruled to the commands or authority of the ruler would, by necessity, need to a certain extent be voluntary. As noted by Szelenyi (2016: 6), for Weber, traditional (or patrimonial) forms of dominance are considered legitimate "if those subordinated to authority accept their subordination, since they cannot define a better alternative and the staff of the person who issues commands has a firm belief that the master's claims (myths for his superiority) are valid".

Legal-rational forms of dominance are considered legitimate when "every single bearer of powers of command is legitimated by that system of rational norms, and his power is legitimate insofar as it corresponds with the norm. Obedience is thus given to the norms rather than to the person" (Weber, 1978: 954).

For neopatrimonialism it is important to determine how one differentiates whether obedience by subordinates is being given to the individual (the ruler) or if it is being given to the norms (the rules). Erdmann and Engel (2007: 114) assert that "[p]ublic norms under neopatrimonialism are formal and rational, but their social practice is often personal and informal". I would argue that this assertion is incorrectly stated and that it adds to the notion of imposing Western ideals, as opposed to examining the contextual realities of Africa and elsewhere. The legal "norms" of a country may be prescribed (legislated) as formal and rational, but these do not imply that social (or public) norms are also necessarily formal and rational. Botswana, which is considered by Pitcher *et al.* (2009) to be an exception to the general application of neopatrimonial theory, may be the best example of this. I propose that the main reason for Botswana being an exception is that it is a situation where the public norms and practised norms of those in authority are neopatrimonial in nature, but they are aligned and, as such, the country can be considered stable and legitimate. I agree with Pedersen

(2015: 142) when he states: “In trying to understand public administration in African countries, it appears to be as important to uncover such norms and practices as individuals’ neopatrimonial or rational-legal motivations.”

### **2.2.2.3 Regulated versus predatory forms of neopatrimonialism**

*For Weber, patrimonialism was not a synonym for corruption, ‘bad governance’, violence, tribalism, or a weak state (Pitcher et al., 2009: 125).*

The statement above made by Pitcher *et al.* (2009) is the last major misrepresentation of Weber’s theory on legitimate types of dominance. The general application of neopatrimonialism appears to have failed to recognise that patrimonialism is a legitimate form of dominance and that there is a necessary degree to which personal rulers are held accountable to those they rule over. This is a critical point, as under legitimate patrimonialism the ruler is required to govern in a manner that is in the interest of his/her subjects and not only in consideration of self-interests. In the majority of instances where neopatrimonialism is applied, it is when those in authority are only concerned with their own narrow interests and not those of the broader society. In short, neopatrimonialism is applied to instances of an abuse of power (hence the seemingly automatic association with corruption). There are indeed situations where legal and public norms are formal and rational, but practices of those in power are not aligned. This issue has to some extent been addressed by scholars who differentiated between “regulated” (where practices focus on effective rents distribution that can be developmental) and “predatory” (excessive rent-seeking, with distribution bias) types of neopatrimonialism (Bach, 2011). However, this differentiation is not often reflected in the application of neopatrimonialism, where the concept has seemingly become synonymous with the latter.

### **2.2.2.4 Is the concept of neopatrimonialism still useful?**

Given the issues raised above, the question that remains is in what way neopatrimonialism can remain useful. I would argue that there are two potential trajectories that neopatrimonial theory can follow in the future.

First would be that neopatrimonialism remains a concept that reflects a type of “ideal” dominance and continues to be applied for the purposes of political comparative analysis. However, I would argue that this would only be acceptable provided academics and scholars who utilise the concept in

this way take into account the issues that are described above. It should be acknowledged that over time, perhaps in response to critical views of the concept, it seems that these issues are increasingly being recognised and addressed in their application.

In their article, titled *Neopatrimonialism reconsidered: Critical review and elaboration of an elusive concept*, Erdmann and Engle (2007) provide possibly the best definition for a “post-Weberian” interpretation of patrimonialism and neopatrimonialism in particular relation to the state, which is that

*[n]eopatrimonialism is a mixture of two co-existing, partly interwoven, types of domination: namely, patrimonial and legal-rational bureaucratic domination. Under patrimonialism, all power relations between ruler and ruled, political as well as administrative relations, are personal relations; there is no differentiation between the private and the public realm. However, under neopatrimonialism the distinction between the private and the public, at least formally, exists and is accepted, and public reference can be made to this distinction. Neopatrimonial rule takes place within the framework of, and with the claim to, legal-rational bureaucracy or ‘modern’ stateness. Formal structures and rules do exist, although in practice the separation of the private and public sphere is not always observed ... the patrimonial penetrates the legal-rational system and twists its logic, functions, and output, but does not take exclusive control over the legal-rational logic. That is, informal politics invades formal institutions. Informality and formality are intimately linked to each other in various ways and by varying degrees; and this mix becomes institutionalised (Erdmann & Engel, 2007: 105).*

Within this definition, Erdmann and Engel (2007) no longer attempt to define dominance in the strict terms of Weber, but make several distinctions that may assist in finding clarity on the use of neopatrimonialism theory. In particular, they differentiate personal relations of patrimonialism and impersonal characteristics of legal-rational form, with the separation of the political and the administrative relations; they reaffirm the separation of public and private under the legal-rational; and they emphasise the existence (“invading”) of informal politics within formal institutions. I would argue that these differentials exist in all states (or any form of community or organisation) across the world and this again reaffirms the assertion that neopatrimonialism is in fact present in all regime types. The only distinction that Erdmann and Engel (2007) make with regard to neopatrimonialism is that “the patrimonial penetrates the legal-rational system and twists its logic, functions, and output” (Erdmann & Engel, 2007: 105). I would argue that this assertion cannot be



made unless the country is analysed within its own distinct legal-rational framework and its respective public norms and practices are assessed in order to determine legitimacy.

Erdmann and Engel (2007: 113) state that “[n]eopatrimonialism is a heuristic concept, derived from the works of Weber, for the comparative analysis of political domination”. Provided that this is explicitly stated up front by scholars in their adoption of the concept and that the underlying presumptions with regard to the analysis are clearly stated, this application of the concept is still relevant and useful. As illustrated in the discussion above, historical interpretations and applications in the comparison are specifically in relation to an ideal type of “Western democratic” legal-rational forms of dominance, which are considered the public norms, and where the neopatrimonial practices observed are predominantly predatory or corrupt in nature. The admitted irony, given my critical view of the concept’s application, is that it is in fact exactly under these suppositions that the concept of neopatrimonialism is applied to this case study of State Capture in South Africa. Section 2.2 outlines the context-specific description of neopatrimonial concepts applicable to this case study.

As indicated previously, neopatrimonialism is not only applied in political studies but is widely adopted in economic and development studies. Thus far, neopatrimonialism has been utilised as a “catch-all” explainer (the cause) for the economic development failures of African states, depicting a linear relationship between economic development and type of dominance. This again is a reductionist application of the concept and does not adequately address the interconnectedness and complexity of social, economic, and political realities of a state or its development. However, in its application to economic and development studies, neopatrimonialism has evolved to become a kind of undefined analytical framework for assessing the economic development and “good” governance (or rather institutional development) of a state. This then provides the second trajectory that neopatrimonialism theory could follow.

Rather than being a fixed set of ideal characteristics to define particular type(s) of state dominance, neopatrimonialism could be further developed into an empirical analysis tool (or formal framework) that links interconnected and related theories across a variety of disciplines and respective units of analysis and measurement. This would include, for example, political theories, such as regime types, freedom of the media, the strength of civil society, and the use of violence by governments; economic theories on rent management, corruption, market regulation and competition, and economic inequality; and social theories on societal norms and practices, individual freedoms and inequality, diversity or homogeneity of the populace, etc. Neopatrimonialism as an analytical

framework would then evolve from being a concept related to a fixed type of descriptive analysis to the collective analysis of a broad range of multidisciplinary interrelated phenomena.

Being derived from neopatrimonial theory, the framework would fundamentally need to account for both formal and informal relations and differentiate between norms and practices that are present in all aspects of the state. Catering for the informal dynamics (which by their nature are not fixed or definitive) requires the recognition that states are path dependent, and are continuously changing and evolving. As such, neopatrimonialism as a framework would therefore by necessity need to be expanded and specifically formulated to account for these complexities, but it is precisely through accounting for these complexities that the full value of neopatrimonial theory might be realised.

Developing such a framework is outside the scope of this research. However, the case study itself provides insights into neopatrimonial theory and the potential value that may lie in transforming neopatrimonialism from a fixed concept into an analytical framework.

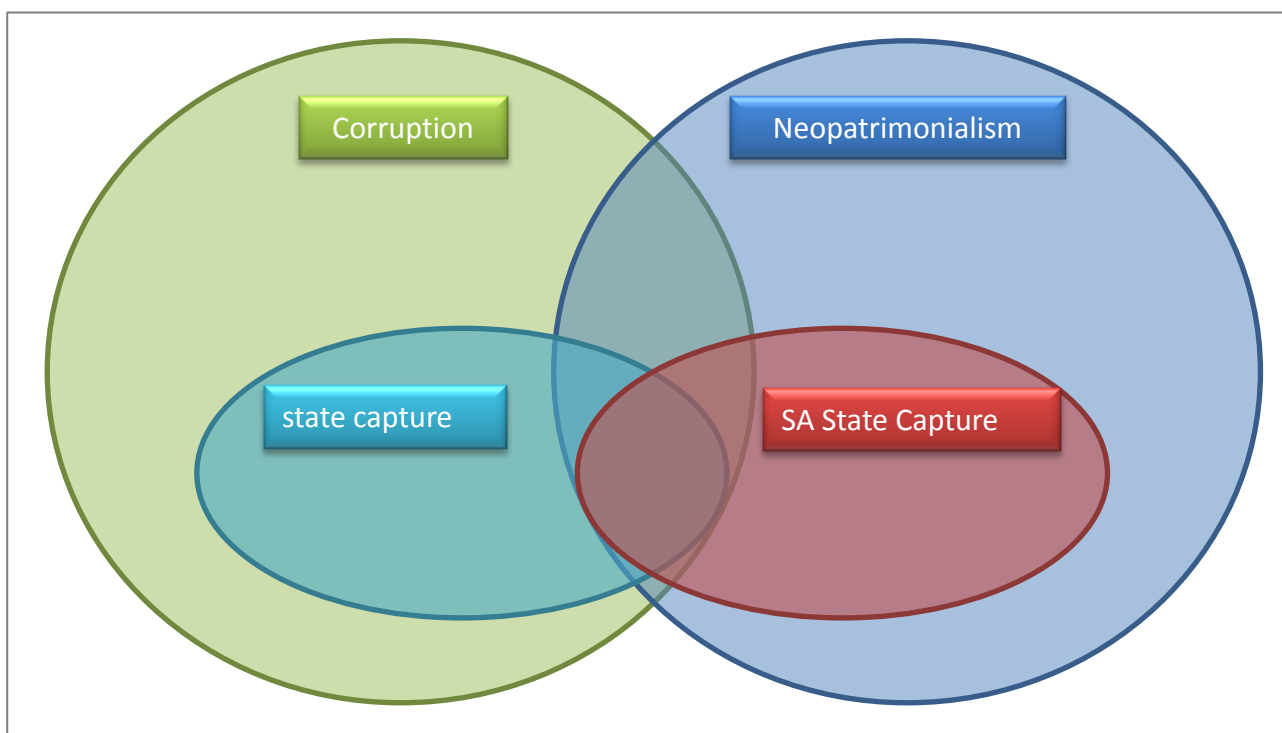
### **2.2.3 The link between state capture and neopatrimonialism**

The question that remains is how neopatrimonialism relates to state capture. Drawing the link between state capture and neopatrimonialism is not easy and very few authors explicitly address in any great detail the inextricable connection between these two theories. There is hardly any reference to neopatrimonialism in literature on state capture. Conversely, in literature on neopatrimonialism, very little recognition (or elaboration) is given to state capture, other than as being a type of “grand corruption”. Sindzingre (2012: 98), for instance, acknowledges that “the ‘capture’ of political processes, policies and institutions by private interest groups is a dimension of neopatrimonialism”, but does not elaborate further. Erdmann and Engel (2007: 96), in their article titled *Neopatrimonialism reconsidered: Critical review and elaboration of an elusive concept*, emphasised that they did not address the “problem of the political economy of neopatrimonialism, and the obvious relationship between rent-seeking and neopatrimonialism”.

This disconnect between the two theories is, however, puzzling, as state capture fundamentally speaks to the concept of neopatrimonialism. For state capture to occur requires the concurrent existence of a willing public official that is situated within the formal “legal-rational bureaucracy” and an external actor (private firm or an individual) who enters an informal exchange, which could be patrimonial (or neopatrimonial) in nature, from which both the external actor and the public official derive some form of undue benefit.

It is important to emphasise that corruption (and state capture, as initially defined) as a general concept is far broader than its applications in neopatrimonial theory; which is to say that, even though corruption (in various forms) is a characteristic of neopatrimonialism (according to its historic application), not all instances of corruption are neopatrimonial in nature. Establishing whether a particular instance of corruption is neopatrimonial in nature requires establishing whether a personal or political relationship exists through which the corrupt exchange is enabled. This entails examining not only what the corrupt activity is, but also who is involved and how it was achieved.

As outlined in the previous section, neopatrimonialism through its application has come to represent an undefined collective of interconnected phenomena and it could thus be said that state capture is a sub-type phenomenon of a predatory form of systemic neopatrimonialism. Figure 4 provides a graphic representation of how the concepts of neopatrimonialism, corruption, state capture, and the context specifically define South Africa's State Capture overlap.



**Figure 4: Interests of neopatrimonialism and state capture**

## 2.3 Conceptual Framework for South Africa's State Capture

### 2.3.1 Points of departure: Neopatrimonialism in South Africa

*Increasingly within the ANC, leadership behaviour appears to be characterized by neo-patrimonial predispositions and, while formal distinctions between private and public concerns are widely recognized, officials nevertheless use their public powers for private purposes (Lodge, 2014: 1).*

The statement above was made by Tom Lodge in 2014 in an article titled *Neo-patrimonial politics in the ANC*. The importance of highlighting the date of the article is that the notion of neopatrimonialism being a core fixture of South African politics is not new and had been identified some time before the revelations contained in the Public Protector's *State of Capture* report. For Lodge (2014), neopatrimonialism is deeply embedded within the ANC and is fundamentally rooted in the long history of the party. Lodge (2014), together with other scholars, suggests that the "patronage-based relationships formed the core of inter-elite alliances within the ANC in its early years" (cited in Beresford, 2015: 231). Patrimonial (and neopatrimonial) tendencies were reinforced and entrenched under the apartheid regime, where "during its time [in] exile, it became not only a dispenser of employment, welfare, education and scholarships to many who had fled South Africa, but was to become deeply entangled with criminal networks" (Southall, 2016: 81). Lodge (2014), Beresford (2015), and Southall (2016) all highlight that, since being elected into power, the extent of these patrimonial and neopatrimonial tendencies within the ANC has become increasingly more apparent. They all acknowledge that the increase of these tendencies was not only due to the gained control of the immense swaths of state resources, but is also in response to the highly skewed economy they inherited, where systemic inequalities of apartheid meant that the majority of the country's citizens were grossly underprovided for by the state. When Nelson Mandela was inaugurated as the first democratically elected president of the country, he made the following promise to the nation, on behalf of the ANC:

*... to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender and other discrimination ... [to] build [a] society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity – a rainbow nation at peace with itself and the world (SABC Digital News, 2015).*

It is this promise that the academics of the SCRP argue that the Zuma administration betrayed (Bhorat *et al.*, 2017). In the *Betrayal of the Promise* report, they argue that legitimate concerns of addressing the systemic injustices and addressing the issues of high inequality, poverty, and unemployment were used to mask and hide an ulterior agenda of extracting state resources for the benefit of a few power elite. If we acknowledge that South Africa has, since the dawn of democracy, operated under neopatrimonial dominance, I would argue that what the *Betrayal of the Promise* report outlined is how, under the Zuma administration, there was a distinctive change in the type of neopatrimonial dominance of the country, going from a regulated to a predatory form of neopatrimonialism.

It needs to be recognised that undoubtedly strong comparison can be drawn between the types of predatory neopatrimonialism phenomena that have occurred under the Zuma administration to those of the apartheid regime (Lodge, 2014). The challenge with drawing this comparison is that the apartheid government operated under a distinctly different legal-“ration” form of dominance and such comparison falls outside of the scope of this reach. There were most definitely significant acts of corruption and potentially state capture under Mbeki and even the Mandela administrations, the Arms Deal scandal being perhaps the most notable (Hyslop, 2005). However, because of the dismal state of the economy they inherited and the economic policies that implemented to address this, the access to rent seeking opportunities was limited. In addition, as noted previous, there appears to have been a distinctive shift in the nature and objectives of government under the Zuma administration, where it appears that decisions and actions made by the former president and his administration were taken with disregard for what was good for the country and appearing to have been for his own narrow interests.

It is important to highlight that the purpose of this case study is not to examine the history of neopatrimonialism in South Africa or to explore in detail why State Capture was able to occur, but rather to describe and define what the phenomenon of State Capture is and how it manifests within a government institution. As noted previously, for the purposes of this case study, State Capture is a term that is used to encapsulate the distinct contemporary phenomenon that has occurred under the Zuma administration in South Africa. In light of this, it is neither necessary nor practical (given the limitations of time for the study) to provide a fully detailed explanation of the political dynamics of and within the ANC. Similarly, it is not feasible for the case study to address all the various actors and activities involved in State Capture. The *Betrayal of the Promise* report focused on SOEs and the Zuma-Gupta network. However, as highlighted in the report, this is only one node of the State Capture network and looting of the state is only one of the many activities that constitute State

Capture. All of these aspects fall outside the scope of this case study, but I strongly recommend that they be explored as part of future research.

There are, however, several key points that are laid out in the *Betrayal of the Promise* report that are important for providing context in this case study. The first is to address how and why it was that Zuma came to be elected as president of the ANC at the national conference in Polokwane in 2007 and then in 2009 became president of the country. In the *Betrayal of the Promise* report, the SCRP argues that Zuma's election was in response to the approach and policies adopted by his predecessor, Thabo Mbeki.

Under Mbeki's presidency, South Africa's approach to addressing the socio-economic challenges inherited from the apartheid regime had three key features, which were encapsulated in the Growth, Employment and Redistribution (GEAR) economic policy.

This entailed the following (Bhorat *et al.*, 2017: 7):

- *Massive expansion of the grants system for the poor and the unemployed, focusing principally on mothers and the aged.*
- *A strong focus on 'deracialising' control of the economy through affirmative action policies designed to fast-track the placement of black people into management and senior management positions.*
- *Transformation of white ownership of the economy through BEE policies.*

This "developmental welfarism" approach (that placed confidence in market-driven transformation) was not aligned to the more radical dispositions of the party, which favoured a view that in order for meaningful development to take place, it required leveraging of state resources and under deliberate state intervention to speed up transformation (Bhorat *et al.*, 2017: 7). Also noted was that Mbeki shifted political power away from the ANC and was focused on building the Office of the Presidency to be the main centre of authority for determining the country's developmental trajectory. Zuma's election at Polokwane was in effect a retort to Mbeki's leadership approach and signalled the start of two interrelated transitions that would be the underpinning of the Zuma administration, namely (Bhorat *et al.*, 2017: 7):

- *The transition from traditional black economic empowerment (BEE), which was premised on the possibility of reforming the white-dominated economy (now depicted as white monopoly capital), to radical economic transformation [RET], which is driven by transactors disguised as a black capitalist class not dependent on white monopoly capital.*
- *The transition from acceptance of the constitutional settlement and the ‘rules of the game’ to a repurposing of state institutions that is achieved, in part, by breaking the rules.*

I, like the SCRP, do not have any argument against the very real need for “RET” in the country. The issue is that this legitimate call for action has been misappropriated and used to mask the corrupt exploitation of the state by a select few politically connected elite to the detriment of the rest of the country. This deception is in essence what State Capture is all about, as noted in the *Betrayal of the Promise* report (Bhorat *et al.*, 2017: 4):

*It is now clear that while the ideological focus of the ANC is ‘radical economic transformation’, in practice Jacob Zuma’s presidency is aimed at repurposing state institutions to consolidate the Zuma-centred power elite. Whereas the former appears to be a legitimate long-term vision to structurally transform South Africa’s economy to eradicate poverty and reduce inequality and unemployment, the latter – popularly referred to as ‘state capture’ – threatens the viability of the state institutions that need to deliver on this long-term vision.*

Drawing on the *Betrayal of the Promise* report, together with other literature on state capture and neopatrimonialism, the paragraphs that follow provide descriptions of key concepts that are used to define State Capture.

### 2.3.2 The constitutional and shadow states

*[W]e will refer to the emergence of a symbiotic relationship between the constitutional state and the shadow state. The **constitutional state** refers to the formalised constitutional, legislative and jurisprudential framework of rules that governs what government and state institutions can and cannot do. The **shadow state** refers to the networks of relationships that cross-cut and bind together a specific group of people who need to act together for whatever reason in secretive ways so that they can either effectively hide, actively deny or consciously ‘not know’ that which contradicts their formal roles in the constitutional state (Bhorat *et al.*, 2017: 6; Researcher’s emphasis).*

South Africa is a constitutional democratic state, in which public norms are based on the Constitution and all the citizens of the country are expected to act in accordance to the rule of law (or at least should be). The shadow state, however, does not prescribe to the values or principles on which the Constitution is based. Fundamentally, the practised norms of the shadow state are in contradiction to the public norms. Deception is the key tool for the shadow state in order for it to achieve its objectives, by corrupting and manoeuvring within the constitutional state. The ultimate objective of the shadow state is not only to subvert the Constitution, but, if allowed, to replace it – hence reference made in the *Betrayal of the Promise* report to a “silent coup” (Bhorat *et al.*, 2017: 3). This can only be achieved by changing public norms, often through deception that is rooted in populist politics.

It is important to note that in some instances individuals might not knowingly or willingly be part of shadow state activities. The motivations and intentions behind an individual’s actions vary and can be co-opted through cohesion or coercion. Deception also takes place within the shadow state itself, where individuals may not have full knowledge of the actual ultimate intentions/objectives of certain actions or decisions.

The second point is that the shadow state consists of not only individuals who are employed in government, but fundamentally includes external actors outside of government. This could include collectives within the political party, family and tribal affiliates, and a wide array of other actors. Most often this will also include at least one individual/company in the private sector, through which the intended benefits (financial, political, or both) for the power elite can be derived.

### **2.3.3 Power elite and Kitchen Cabinets**

In the *Betrayal of the Promise* report, the notion of a “power elite” (also referred to as the Zuma-centred elite) refers to

*a relatively well-structured network of people located in government, state institutions, SOEs, 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, fixers or middlemen' (Bhorat et al., 2017: 5).*

What distinguishes the “power elite” from the broader shadow state is that individual power elites are aware and supportive of the objectives of State Capture and they are in fact the drivers or managers behind the activities of the shadow state.

As indicated above, members of the power elite can serve various different roles (as elites, brokers, fixers, or middlemen) that are required to achieve a specific State Capture objective. These roles are not fixed and not are defined by any specific prescripts (as the shadow state operates without any fixed rules) and an individual might in fact perform multiple roles in different situations. Each of these roles, however, serves specific functions, which enable the power elite to repurpose and extract benefits from the constitutional mandates of the government.

For the purposes of State Capture, “elites” are considered those individuals who are in positions that yield exclusive power within the constitutional state. This would include ministers, deputy ministers, board members, and senior administrative positions such as CEOs of state companies. These are positions of oversight, ultimate accountability, and with executive/exclusive authority. “Fixers”, on the other hand, are involved at an administrative or operational level. They can operate formally or informally both within and outside of the constitutional state. Their function is to infiltrate and manipulate the processes and functioning of the state, and they serve as an accountability buffer between the elite and any illicit activities that are taking place within the government. The broker or middleman thus serves as a secondary buffer, where they reside in the shadow state and fall outside of any formal engagements or exchanges. Without having any direct involvement in any of the formal contracting, the middleman is free to interact with and between the various members of the shadows state, both within and outside of the government and the external benefiting party (be it a company, political party, or select group of individuals).

Determining exactly who the members of the power elite are is not an easy task, but they are often involved in multiple projects of the shadow state. Unlike instances of “petty” corruption, where a direct link can be made between the actions of the official and the illicit payment by the benefiting

party, the power elite can be a facilitator in one project and then be “paid out” (or derive benefit) from a completely separate project. This is what I refer to as “trading in fears and favours”.

The structures and settings within which the coordination and negotiations of and between the power elite occurs are what the SCRP refers to as Kitchen Cabinets. These can take place either in formal or informal structures, both inside and outside of the government. The *Betrayal of the Promise* report provides the following description:

*Kitchen Cabinets are small informal reference groups that are convened on an as-needed basis. They can also be shell structures that are activated when needed ... Kitchen cabinets can be once-off consultative events (e.g., with black business), or semi-permanent structures like inter-ministerial committees comprising people from different sectors and environments to tackle a common issue, or regular meetings with key networks (e.g., the Guptas or family networks). They are essentially how the competing nodes within the power elite coalesce and disperse to influence decision making (Bhorat et al., 2017: 15).*

#### **2.3.4 Repurposing the state**

*Repurposing state institutions refers to the organised process of reconfiguring the way in which 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 (Bhorat et al., 2017: 5).*

Corruption as a concept does not adequately cover the variety of other ways in which benefits can be illicitly extracted from the state by those in power. Repurposing, as defined above, is a concept that caters for a much broader range of activities that do not necessarily meet the strict definition of corruption. It also allows for activities that might not be explicitly illegal, but are definitively unethical (not aligned to public norms) and/or are an abuse, or rather a misuse, of power. Corruption is still of course one of the most predominant ways in which the state is repurposed.

### 2.3.5 The party political machinery: Clientelism and patronage

In our democratic (constitutional) system, any strongman is in turn reliant on maintaining political patronage in order to retain power, either through cohesion or violence (in the broadest definition of these terms). If we recognise that the Guptas only form one node of the network, 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 function they fulfil in terms of establishing and maintaining control over the shadow state. It is in this regard that those elites in the cabinet, as well as those elites outside government but within the ANC structures (in this case it is Dlamini, in her position as leader of the ANCWL), have an important role to play. As discussed in Section 2.2.2, clientelism is considered a key characteristic and is central to both regulated and predatory forms of neopatrimonialism.

State capture, as a form of grand corruption, is for the most part understood as an end in and of itself with the singular objective of looting the state. This is, however, 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. Manzetti and Wilson (2007: 949) highlight that “as long as corrupt leaders can satisfy their clientelistic networks by manipulating government resources, they are likely to retain political support”. Arguably, this is the basis from which all political parties operate and is the root of populist politics (Anciano, 2018). 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” (Manzetti & Wilson, 2007: 954). Social grants (in many cases the only source of income on which beneficiaries are able to survive) can be viewed as an example of this. The perceived progressiveness associated with the marginal increases in grants has allowed the government (or rather the governing party) to avoid implementing much more difficult reforms necessary for structural transformation (Khan, 2013). Social grants are one of the main motivators for people voting for the ANC and as such reaffirms that the association of the state function with the political party is also important for the power elites to maintain power (Plaut, 2014).

Van de Walle (2007: 3) draws a distinction between three types of clientelism. The first being termed “tribute”, which is used to denote the traditional form of distribution that occurs under the

“ideal” type of patrimonial dominance (and as such is not applicable to this case study). The second type is defined as “elite clientelism”, which is “the strategic political allocation of public offices to key elites, granting personal access over state resources” (Van de Walle, 2007: 3). This type of clientelism is a common occurrence under predatory forms of neopatrimonialism. The last type is “mass clientelism, which relies on the practice of using state resources to provide jobs and services for mass political clienteles, and usually involves party organizations and electoral politics” (Van de Walle, 2007: 3). Mass clientelism fundamentally has redistributive potential and, as such, can be found in both regulated and predatory forms of neopatrimonialism, and, as noted by Van de Walle (2007: 3) and others (such as Anciano, 2018), “should be associated with mass politics, including in the mature democracies of the West”.

Under State Capture in South Africa, both elite and mass clientelism are present and both serve the purpose of gaining and maintaining power. Mass clientelism serves to mobilise and maintain voter support for the ANC, and elite clientelism serves to develop and maintain political allegiances within the ANC itself.

### **2.3.6 The Long Game: Changing the rules of the game**

As highlighted previously, the key objective of the power elites is not only to abuse their temporary positions of power, but also to ensure the longevity of power. This can be done in two ways; the first is by maintaining satisfactory levels of mass clientelistic redistribution of state resources, as described in the previous section. Alternatively, this can be accomplished through influencing and changing (or rather transitioning) public norms to align with their “State Capture logics”. There are numerous ways in which public norms can be altered, some of which are particularly worth noting.

The first is achieved through diminishing mechanisms of accountability within the state. It is for this reason that a crucial aspect of the State Capture political project entailed the hollowing out of the state security and law enforcement institutions (Bhorat *et al.*, 2017). The second is to transform public norms to become aligned with the power elite’s practices. To quote from the *Betrayal of the Promise* report: “The aim of state capture is to change the formal and informal rules of the game, legitimise them and select the players allowed to play” (Bhorat *et al.*, 2017: 5). This was the principal task of the propaganda machines driven by Bell Pottenger and funded by the Guptas, whose messages from their own media outlets (the *New Age Newspaper* and the DSTV channel ANN7) repetitively called for the admonishment of White Monopoly Capital (WMC). The “inadequacies” of the Constitution were echoed and carried by these shadow state structures.

The third way to ensure the longevity of State Capture is more aligned with the general interpretation of state capture, which entails the manipulation of government policy, or rather the ignoring/changing thereof, with the specific intention of benefiting the shadow state. This can be seen throughout the political project of State Capture, where examples include, among others, the interference at the SABC by Faith Muthambi (Southall, 2016); Eskom coal procurement policy not aligned to Mining Charter requirements under the leadership of Brian Molefe (Eskom, 2016); and the new Mining Charter proposed by Mosebenzi Zwane – which specifically allowed for Broad-based Black Economic Empowerment (B-BBEE) to be applicable to naturalised citizens (Seccombe, 2017).

### **2.3.7 State Capture and the *modus operandi***

Drawing from the concepts defined above and combining the two theories of state capture and neopatrimonialism, to the specific context of the events that took place under the Zuma administration, State Capture can therefore be defined as follows:

State Capture is the formation of a shadow state, directed by a group of power elite, which operates within and parallel to the constitutional state (in both formal and informal ways) and whose objective is to repurpose state governance in order to derive benefits that align with the power elite's narrow financial or political interests – which are often in conflict with public norms and not aligned with the principles of the Constitution.

Under this definition, State Capture is a specific type of systemic neopatrimonialism, where public norms are founded on liberal democratic legal-rational forms of dominance; however, the practices of those in power are predatory in nature and resemble a patrimonial form of dominance in that they are informal and personal. State capture (in terms of the strict theoretic definition and a form of grand corruption) is just one of the more visible phenomena that have occurred under South Africa's State Capture. It is important to note, however, that there are several other phenomena that can be attributed to State Capture, including, but not limited to, the use and manipulation of media (capture of the independence of the media), securing control over law enforcement agencies (which enables but is not corruption), and using state resources to secure patronage (also not explicit corruption).

Drawing from the *Betrayal of the Promise* report, as well as other examples of what seem to be instances of State Capture in the media, it was possible to establish what might be considered the “typical” modus operandi of State Capture. In terms of the modus operandi for “capturing” a government institution, the shadow state undertakes the following tasks or actions from within the government itself:

- Securing control over the public service, in particular through the appointment of cabinet ministers, board directors, heads of strategic agencies, etc.
- Intentionally weakening key technical institutions and formal executive processes:
  - This often entails removing key top officials and replacing them with people who would not obstruct the objectives of the shadow state;
  - Having officials only in acting positions (limiting their ability to take long-term strategic decisions);
  - Appointing external advisors; and
  - Deploying persons (“fixers”) to intervene in the procurement process.
- Securing access to opportunities for repurposing the state by manipulating or changing the directives or objectives of the government:
  - In cases where the shadow state objectives are for the purposes of accruing wealth, this often centres around large-scale projects/contracts; and
  - There is often an element of “scope creep” in the contract, where the value is increased or the contract is extended, potentially indefinitely.
- Creating parallel political, governmental, and decision-making structures that undermine the functional operation of government institutions.

Most examples of State Capture also entail actions/activities that are undertaken by the shadow state, which are outside of the government. The following are applicable to the State Capture of SASSA:

- The companies that are awarded the contracts are either:
  - recently established (start-ups, with little experience);
  - complex joint ventures, with very little background/clarity of ownership or capability (B-BBEE deals often fall within this category); or
  - newly acquired reputable and established companies.
- Behind formal (often legal) contract agreements are the “brokers/middlemen” who broker the deals, where wealth is often accumulated through lucrative B-BBEE partnerships entered

into with a private sector company and then distributed across the informal network of the power elites.

- There is often a concerted effort by those in the shadow state to stifle or remove the competition or critics of shadow state operations.

## 2.4 Understanding of the Fourth Industrial Revolution (4IR)

Many “buzz words” are used to describe the exponentially emerging advances in a vast spectrum of technological developments. Some refer to or are more specially focused within the perspective of a field of study or a sector of industry, such as the “6<sup>th</sup> Wave of Innovation” focusing on green technologies in sustainability science and long-wave transition theory (Kurki & Wilenius, 2015; Swilling, 2013), or Industry 4.0 (Ślusarczyk, 2018; Morrar, Arman & Mousa, 2017), which is utilised in the fields of business, economics, and development studies. Others focus on the convergence and emergence of a potential stream of new technologies, such as Web 3.0 or the Internet of Things (Morrar *et al.*, 2017; World Economic Forum [WEF], 2016a). The challenge in finding an appropriate universal or all-encompassing descriptor for the future technological outlook is the uncertainty of how and which technologies will have dominance in the coming era of development. This is the nature of technology and innovation. However, what is certain is that there are likely to be significant disruptions to all aspects of human life. Emerging technologies/innovations already have a significant impact on the economy (automation in manufacturing), in politics (cyber warfare), and in society in general (social media).

It is important to note that for the purposes of this research, the terms “disruptive innovation” or “technology disruption” (which are considered interchangeable for this research) are applied in the broadest possible sense and are not based on the specific use in disruptive technology theory that is applied in business studies (McDowall, 2018; Christensen, Raynor & McDonald, 2015). It should also be noted that for the purposes of this research, the concepts of new technology and innovation are not considered mutually exclusive. For clarity, disruption is used to indicate “serious alteration or destruction of structure”, and innovation means “the change of something established by the introduction of new methods, ideas or products” (Kramer, 2018: 247). The introduction of a new technology (be it a product or tool, method or process, systems, etc.) implies innovation. However, innovation does not necessarily imply a new technology; it only requires that said technology is adopted or applied in a new way. For example in this case study even though the biometric technology utilised by CPS is relatively old, however, the application of the technology to enable financial transactions was at the time a unique capability. The preference for CPS’s solution, despite

it not being catered for under the National Payment System regulations and not aligning to industry standard payment methods, makes the use of the biometric technology a form of disruptive innovation.

Each year the WEF hosts an annual summit in Davos, Switzerland, where global business leaders, public sector officials, and academics (among others) meet to discuss and deliberate on the developmental state of the world. The theme of 2016's gathering was *Mastering the Fourth Industrial Revolution* (WEF, 2016b). The founder of the WEF, Klaus Schwab, believes that due to our advancements in technology, "we are on the verge of a revolution that will fundamentally transform the way we live, work and interact with each other". For Schwab, the difference of the coming revolution, in comparison to previous technological development, is due to the "merging technologies that blur the boundaries between the physical, digital and biological world" (Prisecaru, 2016: 61). This is arguably the first major international multi-stakeholder event that specifically focused on the broader potential social, economic, and to some extent political implications and changes that are likely to occur as a result of exponential disruptive technology development. It is for this reason that the term utilised for this case study is the Fourth Industrial Revolution.

I agree with Oosthuizen (2016: 370), who states:

*The reasons supporting the conviction that a fourth and distinct revolution is underway, and not merely a continuance of the third industrial revolution, is because of its velocity (4IR is evolving at an exponential rather than linear rate), breadth and depth (4IR is not only changing the 'what' and the 'how' of doing things but also 'who' we are), and systems impact (4IR sees the advent of transformation of entire systems, across (and within) countries, companies, industries and society as a whole).*

Most technologies and innovations are developed with the view of solving a problem or improving and adding value to a society. Technology and innovation can be considered as being "disruptive" when they fundamentally alter societal norms and practices, and change the way we live our lives. The "rules" that govern how society functions are inherently incorporated into the technology; however, the introduction of a new technology in turn disrupts how these functions manifest. This often means having to revise and adapt the "rules" to cater for the technology or in some cases it requires the establishing of new rules, where none were needed before (Klang, 2006).



The risks and opportunities associated with the 4IR are increasingly being identified and studied, particularly with regard to either a particular technology or a specific sector or industry. The energy sector, for instance, is undergoing a massive transformation with renewable energy technology, which presents significant opportunity in terms of reducing carbon emissions and mitigating the potential impact of climate change (Geels, 2011). The benefits associated with self-driving cars (reduced road accident deaths, for instance) come with the potential risk of massive labour displacement, which may result in millions of people becoming unemployed (WEF, 2016a). The extent of these potential technology impacts is beginning to filter into policy discussions and debates, particularly relating to specific sectors such as labour, education, and social protection.

The broader implications of the 4IR collective disruption, in terms of not only economic but more so the social and political systems under which any given society is governed, are difficult to tangibly identify or plan for. This creates an uncomfortable environment of uncertainty in which technologies emerging for altruistic developmental pursuits are confronted with the stubbornness of legacy structures of power and governance.

This uncertainty is illustrated by Schwab (2016), who explains that

*new technologies and platforms will increasingly enable citizens to engage with governments, voice their opinions, coordinate their efforts, and even circumvent the supervision of public authorities. Simultaneously, governments will gain new technological powers to increase their control over populations, based on pervasive surveillance systems and the ability to control digital infrastructure.*

The duality of the two potential outcomes of technology disruptions cannot be readily determined based on the technology alone. Ultimately, the outcomes of the unfolding 4IR will be as a result of a multitude of contextual factors, such as countries' socio-economic dynamics or a state's capacity to guide development and adapt exponentially to technology-driven change. As Schwab (2016) states:

*Ultimately, the ability of government systems and public authorities to adapt will determine their survival. If they prove capable of embracing a world of disruptive change, subjecting their structures to the levels of transparency and efficiency that will enable them to maintain their competitive edge, they will endure. If they cannot evolve, they will face increasing trouble.*

The broader impacts that the social, economic, and political context has on development outcomes are often pushed aside in technology and innovation discourse. Conversely, discourse around the impact and challenges that come with technology advancement appears to be equally downplayed in social and political studies (Klang, 2006). In short, there currently does not appear to be any collective or holistic theoretical framework or concept for defining the 4IR and what its disruptive implications mean for human development.

With that said, it is important to highlight that there are several emerging theoretical areas of research that are seeking to address at least some of these gaps. One example of a theory is the multi-level perspective (MLP) of socio-technical transitions, which is predominantly being explored and developed within the sector and discipline of energy research. Although in its early stages of conceptualisation, it potentially provides a starting point (or at least a point of reflection) for developing a multidisciplinary framework for addressing the 4IR.

#### **2.4.1 Technology transitions and disruptive innovation**

MLP has emerged in the field of energy research as a response to the global challenge of climate change, with the principal objective of understanding technology transitions and how they could be manipulated to speed up the transition from current forms of carbon-heavy energy production to renewable energy technologies (Wieczorek, 2018). Geels (2011: 26) defines MLP as follows:

*The multi-level perspective (MLP) is a middle-range theory that conceptualizes overall dynamic patterns in socio-technical transitions. The analytical framework combines concepts from evolutionary economics (trajectories, regimes, niches, speciation, path dependence, routines), science and technology studies (sense making, social networks, innovation as a social process shaped by broader societal contexts), structuration theory and neo-institutional theory (rules and institutions as ‘deep structures’ on which knowledgeable actors draw in their actions, duality of structure, i.e. structures are both context and outcome of actions, ‘rules of the game’ that structure actions).*

The MLP contends that technology transitions, which take place on a broader socio-technical landscape (first or upper level), are driven by several different interconnected socio-technical regimes (second or middle level) and that there is not a single set of factors that influence the way an alternative technology (referred to as niche technology, which is the third or lower level) emerges or is adopted. The value that this conceptualisation provides in terms of the 4IR is that it

entails a multidisciplinary approach and examines a problem or situation at different levels. The following extract is one of the more succinct explanations for MLP theory, provided by Wieczorek (2018: 204):

*The central level comprises of socio-technical regimes: sets of rules and routines that define the dominant 'way of doing things'. Regimes account for path-dependence, stability and are often locked-in, which hinders radical change. Regimes are stabilised by the socio-technical landscape, a 'broad exogenous environment that, as such, is beyond the direct influence of actors' (Grin et al., 2010, p. 23). Landscape encompasses such processes as urbanisation, demographic changes, wars or crises that can put pressure on regimes making them vulnerable to more radical changes. Regimes transform on condition of availability of alternatives that can fulfil the same societal function. Alternatives are developed in niches, protected spaces, that facilitate experimentation with novelties. In the context of the MLP, system transformation is driven by change agents and occurs in the outcome of mutually reinforcing contextual, landscape pressures, internal regime destabilisation processes and upscaling of innovations developed in niches.*

Since it was first introduced, several criticisms have been levied against the theory (Wilson & Tyfield, 2018); one of particular note is the lack of acknowledgement of political dynamics in the socio-technical regime (Cherp, Vinichenko, Jewell, Brutschin & Sovacool, 2018; Meadowcroft, 2009). MLP theory views technological transition from the perspective of technology development being driven by these social-technical systems, but it fails to recognise the “feedback loop” that is associated with the technological disruption. That is to say, it does not address the question as to how technology might affect the other various systems (or rather landscapes) within their own distinctive transition trajectories. The concerns are currently about the politics in technology development (entailing policy and regulation) and not the politics of technology disruption and the potential negative implications that might result from technology adoption or manipulation (Tyfield, 2018). As Cherp *et al.* (2018: 184) caution MLP scholars:

*While highlighting important connections between the technological, the social, and the political, such representation runs the risk of over-simplifying political phenomena by reducing them to a conflict over technological innovation: for example, between on the one hand, change-resisting incumbents and on the other hand, change-seeking newcomers.*

The main challenge with the application of this framework to the 4IR is the assumption of the exogenous nature of landscapes transitions in relation to technology adoption. Due the rapid exponential development of disruptive innovation, the assumption that the landscape transition will take place over longer periods of time must be called into question. Smith, Voß and Grin (2010: 441) highlight that the conceptualisation of landscapes includes, among others, “environmental and demographic change, new social movements, shifts in general political ideology, broad economic restructuring, emerging scientific paradigms, and cultural developments”. As discussed above, these are all matters of concern and are likely to be impacted by the 4IR.

MLP transition theory is relatively young; it is still very much in development and it is already expansive in terms of theoretical implications. However, its application is still relatively limited in that its focus is primarily on addressing one main (very legitimate) concern of transitioning to a low-carbon energy regime in order to address the problem of climate change. Due to its limited scope and the issues with regard to addressing political power dynamics, further explanation and examination of MLP theory are not necessary for this case study. However, it is important to note that these issues (and other emergent issues) will undoubtedly continue to be addressed as the theory develops (Geels, Schwanen, Sorrell, Jenkins & Sovacool, 2018). In a recent critical reflection on the concept of “disruptive innovation”, Kramer (2018: 248) highlights that

*[w]hen ... we speak of disruptive innovation in the energy system, the implicit understanding of virtually anyone I've ever spoken to – both during my time in industry and in academia – is that we're speaking here about technical and business innovation. But what about innovation in our institutions? In global governance? Or lifestyle change? I believe that, in the light of the challenges ahead of us, the narrow focus on the technical and the business-technical in the main-stream discourse of innovation is unjustified.*

#### **2.4.2 Informality and corruption**

As noted, MLP transition theory, which is currently embedded in sustainable development studies, is just one of the research areas that could provide insight into and contribute to our collective understanding of what and how the 4IR will unfold. There are several other areas of research that are worth noting, specifically in relation to this case study.

The first is that there appears to be increasing recognition of a need to address, or rather incorporate, “informality” into various areas of research related to technology development. As

noted earlier, a large amount of academic literature on technology and innovation disruption is concentrated either on the individual technologies themselves or within specific fields of research or disciplines. For example, Baumann (2013) provides a review of two books (*Shadow Economies of Cinema* and *Digital Disruption*) that are specifically concerned with how technological developments have impacted the distribution of movies in the film industry. Both these books are concerned with issues such as piracy (considered to be informal distribution) and the democratisation of media, and both discuss the various ways in which technology development (disruptions), such as DVDs and online streaming, has and continues to rapidly transform the film industry.

A second example is provided by Buchak, Matvos, Piskorski and Seru (2017), in a working paper titled *Fintech, Regulatory Arbitrage, and the Rise of Shadow Banks*. In this paper they examine the rise of what they refer to as “shadow banking”, which is the increased uptake of online financial services (such as those offered by “fintech” lenders like Net1) rather than utilising the services of traditional banking institutions. Buchak *et al.* (2017: 2) highlight that there are two possible hypotheses in relation to this shift by consumers. The first might be because of the “increased regulatory burden on traditional banks” and that “shadow banks exploit regulatory arbitrage” (i.e. the same formal regulations do not apply to these online financial service providers). The second is because of the “disruptive technology”, where Buchak *et al.* (2017: 2) note that “[f]intech shadow banks have gained market share because they provide better products, or because they provide existing products more cheaply, and their technology has disrupted the mortgage market”. Both these examples highlight the strong links between technology development and informality. Technology therefore both emerges from and in turn creates informality.

The second area of research that should be noted in terms of disruptive innovation and the 4IR, which follows from the informality of technology development and disruption, is that technology transitions and transfers have the potential to protract or even exacerbate corruption. This relates to the path dependency of socio-technical transitions, but it is further related to the exponential speed at which technology and innovation are advancing. As highlighted by Eggers, Baker, Gonzalez and Vaughn (2012: 18), who discuss the implications of disruptive innovation within the public sector,

*[t]he pressure to move quickly vastly increases the likelihood of fraud, waste and abuse. Cost overruns, time overruns, cancelled projects, poor project selection, bid rigging, false claims, corruption and kickbacks are just a few of the consequences of trying to move too fast to spend public money.*

Several case studies have explored the reality of the links between technology adoption and corruption. Sutherland provides two case studies that specifically examine the corruption within the telecommunications industries of two African countries, namely in Benin (Sutherland, 2011) and Morocco (Sutherland, 2015). Addo (2016) presents a similar case study, titled *Explaining 'irrationalities' of IT-enabled change in a developing country bureaucracy: the case of Ghana's Tradenet*. Addo and Sutherland both draw on neopatrimonialism theory as an explanation for the “irrationalities” and the failure of technology adaptation to local context. Although this is not something necessarily I agree with (in terms of the strict application of neopatrimonialism as elaborated on above), these articles do highlight the risks of corruption and that the concept of neopatrimonialism (the invading of informality in formal “rationality”) has bearing on technology adoption and transitions.

Following from conventional economic development theory, it can be assumed that corruption would hamper a country's ability to innovate. However, an article by Smith and Thomas (2015), titled *The role of foreign direct investment and state capture in shaping innovation outcome in Russia*, seems to suggest this is not necessarily the case. As they note:

*Corruption can affect innovation in two ways. It can either 'grease' or 'sand the wheel' of innovation (Leff 1964; Bailey 1966). Corruption can help remove rigid obstacles ('greasing the wheel'), for example, by acting as a hedge against political risks, so that it can boost the scope and scale of investment [or] corruption can slow the process of economic development since rigidities created by regulations are endogenous to the system. This means that once bureaucrats realise they can take advantage of regulations, they produce more regulations. Shleifer and Vishny (1994) argue that the highest bribes are not necessarily paid by those most efficient at producing, but by those most efficient at rent-seeking (Smith & Thomas, 2015: 782).*

## **2.5 Colliding Paradigms of Multiple Theories**

State capture, as a form of grand corruption, is often examined in terms of its impact on the economy. Often examined at a national level, it is primarily focused on incorporating high-level analysis of structures and governance of formal institutions and the financial implications thereof. However, the issue that state capture does not adequately address in terms of understanding what

has taken place under the Zuma administration is the informal and political aspects of what has transpired.

State capture takes place at the firm or institutional level. In its application it primarily describes or is concerned with the outcome of one particular type of interaction and does not refer to or reflect on the nature (why or how) of the event itself. The events themselves are distinct and discrete, with a specific set of actors and decisions.

Neopatrimonial theory has historically been associated with transitioning political economies, but its historic application in both political and development sciences is seen by many to be a reductionist concept that serves as an Afro-pessimist “catch-all” explanation for corruption and dysfunctional governance associated with the African continent. I, however, argue that the concept is still very useful, provided it is contextually applied, where both the legal-rational (formal and impersonal) and patrimonial (informal and personal) aspects of governance are addressed, and public norms versus authoritative practices are assessed honestly.

Systemic neopatrimonialism takes place at the national or regional level and entails multiple occurrences of a collective of different events or sub-phenomena. It describes the nature or characteristics of the governance model under which these events occur. This phenomenon consists of multiple actors, having multiple interactions, and takes place over a long period of time. As outlined in the conceptual framework, this case study is particularly focused on a specific instance of predatory neopatrimonialism, where state capture (as a form of grand corruption) is just one of many phenomena that constitute the State Capture of South Africa under the Zuma administration. As argued above, state capture potentially serves as an indicator of predatory neopatrimonialism; and how and why it takes place potentially serves to determine where a nation resides relative to Weber’s ideal types of dominance.

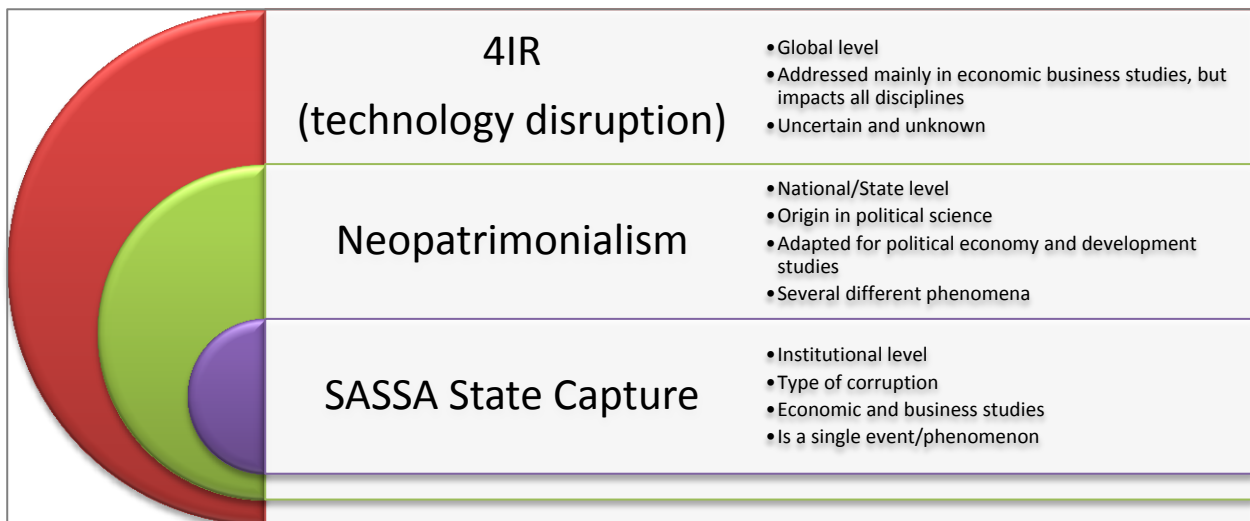
The 4IR is a long-term process and is taking place on a global scale. It is unknown and uncertain in its outcomes and how it will unfold. Technology disruption and disruptive innovation are just that, disruptive; and as such they will not be limited to sitting comfortably within one specific discipline, industry, or sector, nor fit neatly in the current formal structures of governments. The 4IR is in effect the recognition that the entire world is in a state of transition and as such presents opportunities for addressing some of the most significant challenges that the world faces. It does, however, equally present opportunity for the manifestation of predatory-type neopatrimonialism. Much like sustainable development theory emerged as a response to the progressive understanding

of realities of climate change and that human development can no longer ignore its interconnectedness with the environment, I espouse that due to the enormity of the implications, the 4IR should similarly be advanced within development studies. MLP, presented in Section 2.4, potentially provides an initial framework for further developing 4IR theory.

Following from the conceptual framework, which highlights that State Capture is a transition from regulated to predatory-type neopatrimonialism, it must be recognised that it cannot be considered a static state of existence. If we apply similar principles as those adopted in MLP transition theory (allowing for analysis at multiple levels and accounting for the interconnectedness of multiple complex systems), it is possible to situate the case study within each of the three underlying concepts of state capture, neopatrimonialism, and the disruptive innovation that comes with the 4IR. For this case, neopatrimonialism is used to describe the broader political landscape within which the socio-technical regime relates to the grant payment system (which incorporates SASSA, CPS, grant beneficiaries, etc.). The transitioning of the political landscape from a regulated to predatory form of systemic neopatrimonialism can be considered as the disruption, which is State Capture (or rather the associated corrupt activities of the power elite). This disruption “from above” allows for advancement of new/alternative technology (the niche) and in turn transitions the socio-technical regime.

In line with the MLP, Figure 5 provides a graphic representation of the different “layering” of the three main concepts/theories, in terms of their respective analytical timeframe, application, and scope. Understanding the relationship between the various concepts that apply to this case study makes it possible to identify three main commonalities that cut across all three concepts, namely the governance at an institutional level; the combination and accounting for both formal and informal “rules of the game”; and in this specific case of predatory neopatrimonialism, the underlying use of deception by those in power to derive personal/political benefit.





**Figure 5: The varying scope of the theory**

## 2.6 Summary

As in the *Betrayal of the Promise* report, I argue that the strict theoretical concept of state capture (as a form of “grand corruption”) does not adequately encapsulate the political dynamics of the State Capture that occurred under the Zuma administration. The theory of neopatrimonialism provides a heuristic concept for analysing State Capture; however, it is not without flaws. This chapter presents a critical review of neopatrimonialism that identifies and addresses some of the issues that have emerged through the historical application of the concept, particularly through its reductionist application to the African continent.

Following from the literature review and drawing on the work presented in the *Betrayal of the Promise* report, the second section of this chapter expands and refines the conceptual framework for the phenomenon of State Capture in South Africa. It presents the key concepts and outlines the characteristics and modus operandi of State Capture. For the purposes of this case study, State Capture is considered a predatory-type systemic neopatrimonialism, whereby a group of power elite oversee the operations of a shadow state with the intention of repurposing state institutions to fulfil their own narrow financial and political objectives.

Finally, this chapter provides an explanation of what is meant by the 4IR in the context of the case study, whereby it serves as a heuristic concept to describe the uncertainty associated with the ever-accelerating occurrences of disruptive innovation/technologies.

## Chapter 3: Methodology and Methods of Granular Research

### 3.1 Defining the Case Study

*Case studies are analyses of persons, events, decisions, periods, projects, policies, institutions, or other systems that are studied holistically by one or more methods. The case that is the subject of the inquiry will be an instance of a class of phenomena that provides an analytical frame – an object – within which the study is conducted and which the case illuminates and explicates (Thomas, 2011: 513).*

Although there are many different definitions of what a case study is, the one that has proved most useful for the purposes of this research is provided by Thomas, in an article titled *A Typology for the Case Study in Social Science Following a Review of Definition, Discourse, and Structure*. Thomas (2011: 513) emphasises the importance of defining and distinguishing between the object and subject in case study research when he notes that

*inexperienced social inquirers, especially students, [tend] to neglect to establish any kind of object (literally and technically) for their inquiries. Identifying only a subject, they fail to seek to explain anything, providing instead, therefore, a simple description in place of a piece of research.*

The subject of the case study is centred around the SASSA-Gate crisis. Focus is placed on the SASSA-Gate crisis, SASSA as an institution, and the grant payment system. However, it also includes the analysis of a host of other people, events, decisions, policies, and institutions. Further explanation of the scope and boundaries of the case study are outlined in the next section.

For Thomas (2011: 515), “the object constitutes, then, the analytical frame within which the case is viewed and which the case exemplifies”. The object of this case study is the context-specific phenomenon of State Capture in South Africa, as defined in the previous section. More specifically, it is the study of a sub-type phenomenon of State Capture (the class), which is related to both a type of predatory neopatrimonialism (at state level) and state capture (at institutional level). The secondary object of the case study relates to the disruptive nature of technology in development. As noted by Thomas (2011: 514), the object of a case study “need not be defined at the outset but, rather, may emerge as an inquiry progresses”. This was indeed the case, with regard to incorporating the 4IR into this case study.

Drawing from the research questions, objectives, and goals of the study, as outlined in Chapter 1, the purpose of the case study can be classified according to a number of different ways, all of which are useful when deciding on which methods to adopt for the research. For the purposes of this study, however, I have chosen to utilise Yin's (2013) classifications where a case study can be either exploratory, descriptive, or explanatory. As previously indicated, based on the objectives of the research, this case study is principally descriptive, in terms of the case and the application of State Capture, as defined in the previous chapter. As noted by Hancock and Algozzine (2006: 4), for "descriptive studies, information is collected for the purpose of describing a specific group with no intention of going beyond that group". This case study seeks to provide a complete description of the phenomenon of State Capture within the case-specific context. The research is, however, also exploratory, in that it simultaneously seeks to examine the application of theories of state capture, neopatrimonialism, and the implications these have in terms of development within the 4IR.

For the purposes of the case study, the concepts and modus operandi outlined in Section 2.2 serve as the propositions of the case study.

## **3.2 Boundaries and Scope of the Case Study**

There are several ways in which the boundaries of a case study can be determined. For instance, Creswell (2014: 14) states that "[c]ases are bounded by time and activity, and researchers collect detailed information using a variety of data-collection procedures over a sustained period of time". For Thomas (2011), the boundary and "shape" of the case study can be determined by considering whether it is a singular in-depth case or a multi-case comparative study. Baxter and Jack (2008) note that cases can also be bound in terms of place and the theoretical framework or the context of the case. For this case study it is important to consider all of these, as they help to focus the research.

### **3.2.1 Bounded in time**

As this case study emerged in response to the SASSA-Gate crisis, and following from the framework established in the *Betrayal of the Promise* report, the case study is primarily concerned with the events that took place under Zuma's presidency. One of the points of departure is that there was a distinct change to the approach to governance under the Zuma regime and, as such, the case study also examines what the situation was prior to Zuma being elected president. It is important to

note, however, that the exploration of what had transpired before the Zuma administration is limited only to information that is pertinent to the case analysis.

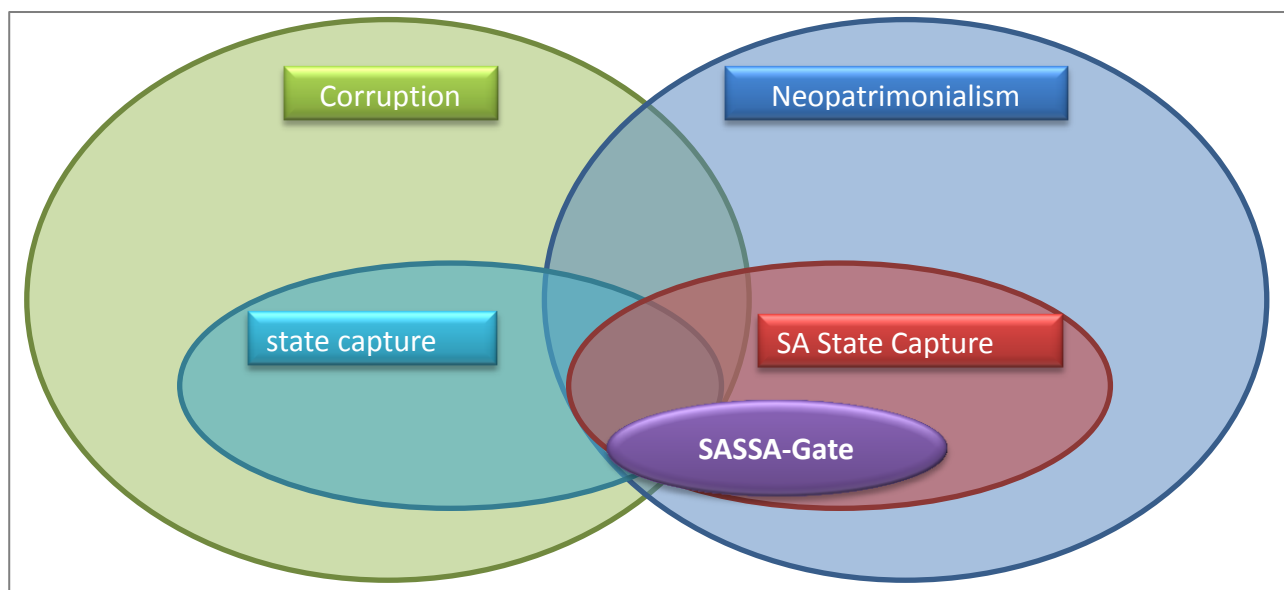
The case study also extends beyond the SASSA-Gate crisis (which was resolved by the Constitutional Court in March 2017) to examine the subsequent development to the grant payment system. The case study was “closed off” at the time when Jacob Zuma resigned as president of the country.

### 3.2.2 Bounded in place

The case study is of the context-specific phenomenon of State Capture in South Africa. However, as one of the critical actors in the case is the US-based multinational company Net1, the case study includes and makes use of information obtained from the United States of America (USA).

### 3.2.3 Bounded by context and theory

The boundaries of the case study can be determined by considering how the case in question corresponds with the theoretical framework. Figure 6, linking back to the conceptual framework, indicates the positioning of the SASSA-Gate case study within theories of neopatrimonialism and state capture.



**Figure 6: Situating SASSA State Capture in the theory**

Drawing from the definition, the object of the case study requires the research to examine not only the events that surround the SASSA-Gate debacle, the grant payment system, and SASSA as an institution, but is also to analyse a host of other people, events, decisions, policies, and institutions.

Upon reflecting on some of the criticism levied against the historic application of neopatrimonial theory, I identified that it was necessary for the case study to include several critical components that might otherwise not have been addressed. Rather than attempt to capture all the aspects that are included in the case study, Table 2 provides a brief description of some of the major components that have been included and outlines what has been specifically excluded from the case study, with motivations.

**Table 2: Scope of the case study**

Component	Description	Comments/Exclusion
People, decisions, and events	This component includes all those connected to or linked (formally or informally) to SASSA-Gate, the institution, and the grant payment system.	Only those who can be identified as potentially being part of the shadow state are investigated in detail.
Institutions and governance	Based on the country's legal-rational framework under which the constitutional state operates, this component includes the legislative framework for the social grant system and SASSA. Additional institutions that feature in the case study include National Treasury (NT), the South African Post Office (SAPO), parliament, and the Judiciary.	The role of parliament is not examined in depth in this case study, as the political capture of this arm of government is in and of itself a separate phenomenon of the State Capture project, with its own unique set of power dynamics. It is, however, utilised as a source of information for the case study.
Companies and the private sector	This component includes a detailed exploration of Net1 and CPS, in terms of contractual arrangements, company histories, and business strategy. B-BBEE partnerships are also included.	The case study recognises Net1's competition (in the form of AllPay and banks), but does not explore their service offerings. In addition, the analysis of Net1 is only concerned with its involvement in the grant payment system and does not provide a full assessment of the company itself.
Grant payment system	Includes a high-level overview and description of the changes to the system over time and outlines the key technical aspects that are needed to fully understand the case study.	Does not include an in-depth assessment of the system itself; rather, the case draws on the comments and analyses made by experts.
"External" factors and the broader populace	The governing party (ANC) and other connected or related events that include individuals critical in the case study. The case study particularly examines the impact of SASSA-Gate on grant beneficiaries and it includes civil society and the media.	Like parliament, the "capture" of the political party itself is a standalone case study in its own right. However, the role of the ANCWL is addressed in this case study.

### 3.3 Ethical Considerations

Following the general approach to qualitative case study research, my initial intention was to include interviews as one of the research methods. Due to the nature of the research, which entails

investigation of potential criminal activities by government officials, the research proposal was flagged by the university's Research Ethics Council (REC) as being medium-risk research. It was highlighted in correspondence from the REC (Graham, 2018: 1) that

*[p]articipants may well be directly involved or implicated in the case or incidentally, disclose evidence or make allegations to the researcher of suspicious or unusual activities/transactions ... [This] may necessitate the duty to report as per the Financial Intelligence Centre Act (s 32, 28, 28 A, 29, 31, 30) or the Prevention and Combating of Corrupt Activities Act (S34).*

Even though these concerns could have been addressed by putting in place procedures for addressing disclosure of criminality, the flagging of the risk served as a major reflection point for the research. The legal implications of the potential exposure to sensitive information aside, several other ethical issues may have emerged if I proceeded to include interviews as part of the research methods. All the ethical issues are primarily concerned with the potential risk of bias of the participants, my own, the audience, and the research in general.

The first issue is concerned with the practical and procedural aspects of the research. The positions and number of the potential participants that I would need to have gained access to would have presented a major challenge. Even though I was able to gain access to some of the former high-level government officials involved in the case, it is unlikely that those who were aligned with the shadow state objectives would have been willing to participate. If the participants were only those who were working against the shadow state, then the research was at risk of presenting a one-sided perspective of events. The modus operandi of the shadow state implies that those who oppose or obstruct are systematically and potentially unjustly removed from their bureaucratic positions. As such, participants may harbour resentment, which might influence what evidence they do or do not choose to provide. The potential risk of the research resulting in an unbalanced and incomplete account of the events might not have only affected my own understanding of the case, but may have also resulted in an unfair representation or depiction of those individuals involved.

According to Tracy (2010: 847), these concerns could all be considered to be examples of situational ethics, where the ethical practices “emerge from a reasoned consideration of a context's specific circumstances”.

As will be outlined in the chapters that follow, many unanswered questions still surround the SASSA-Gate debacle. A second ethical consideration is that, due to the research being based solely on information that is available in the public domain, there is a potential degree of uncertainty with regard to the accuracy of said information. However, this concern was addressed to the best of my ability through the approach adopted in the methods of identifying data sources, data collection, and data analysis. Until such time as there is a full ventilation of what had taken place and what the actual motivations and intentions were of those individuals implicated in shadow state activities, it would be neither just nor academically responsible to allow opinion or bias to corrupt the research. Although it is not possible to completely eliminate all possible instances of bias within the study, incorporating these ethical considerations in the reflective and iterative process of the research endeavoured to mitigate against this risk.

### **3.4 Research Methods and Analysis**

*Unique in comparison to other qualitative approaches, within case study research, investigators can collect and integrate quantitative survey data, which facilitates reaching a holistic understanding of the phenomenon being studied. In [a] case study, data from these multiple sources are then converged in the analysis process rather than handled individually. Each data source is one piece of the ‘puzzle’, with each piece contributing to the researcher’s understanding of the whole phenomenon (Baxter & Jack, 2008: 554).*

#### **3.4.1 Literature review and analysis**

As indicated in Chapter 1, the case study emerged from the work undertaken by the SCRP in the compilation of the *Betrayal of the Promise* report. However, this report did not provide a detailed background or literature review with regard to the neopatrimonialism or state capture concepts that were adopted. As such, when I embarked on this research journey, it was necessary to approach the various concepts anew, and a traditional literature review method was thus adopted for the case study. The purpose of the literature review was not only to provide a review of each of the various concepts or theories in isolation, but also to examine how these concepts were connected, linked, or overlapped. The literature review served to address the theoretical aspect of the first research question, which is: What is the difference or relationship between state capture and neopatrimonialism?

The first step of the literature review process was to define each of the various concepts and theories. As such, my initial approach was to look for “a literature review or a meta-analysis of research articles in the area the thesis is focused on” (Kaminstein, 2017: 2). This was particularly useful for neopatrimonialism; however, as the other two concepts are relatively new (academically speaking), there is little meta-analysis for state capture, and the 4IR is yet to be defined as an explicit academic concept. For state capture, the literature in which the concept was first defined thus served as the points of departure for the literature search. With regard to the 4IR, this required a much broader search in terms of technology and innovation development theories, and cross-referencing these with the political, economic, and development concepts of neopatrimonialism and state capture. Various techniques were applied in the search for appropriate literature, including utilising a literature search by drawing from references and citations and the progressive expansion of keyword searches (e.g. starting with state capture then moving to only capture, starting with state capture in South Africa, and looking at global literature).

### **3.4.2 Data sources and collection**

Documentation and video and audio recordings were used as the primary sources of data for this case study. Most of the data were collected from online sources, with one major exception being a cache of supplementary court filings and support documentation that I obtained in person when attending an inquiry. The following are the main types of data utilised in this research:

1. Legal court filings, including judgements, affidavits, heads of arguments, and support documentation;
2. Official government and company reports or documentation (such as letters, financial filings for public companies, government statistics, etc.);
3. Speeches and formal media statements (documented), as well as informal statements made to the media (audio, video, or reported);
4. Outcomes from meetings and engagements with the Legislature (primarily with national parliament, but also at provincial level), including written questions and answers, documents provided at oversight meetings, presentations, and video and audio recordings;
5. News media and investigative reporting; and
6. Other grey literature, such as reports by non-government or non-academic institutions (also used in the literature review).



A second source of data was direct observations, where I attended the six-day Section 38 Judicial Inquiry hearings, which were concerned with establishing whether or not Bathabile Dlamini (Minister of the DSD at the time) should be held personally liable for the costs of litigation in the Black Sash Trust case. Because of the ethical issues outlined in the previous section, I refrained from directly using the notes that I made while observing the Inquiry. This is in particular reference to the notes that detailed subjective observation (or rather opinion) of the ways in which witnesses responded to questions or their overall demeanour when giving testimony. It is important to note, however, that these subjective observations did prove very valuable in two ways.

The first is that they reaffirmed that my decision to specifically not pursue interviews as a method for the research was correct. For example, it was evident from the testimony given by Thokozani Magwaza (who was CEO of SASSA during the SASSA-Gate crisis) that he was anxious to tell his side of the story and it would appear he had a great deal of information he was hoping to make public through the Inquiry. As indicated above, the inability to control what information an interviewee would divulge in an interview could potentially have both ethical and legal ramifications.

The second and possibly more important way in which the direct observations (as well as indirect observations through video broadcasts) contributed to the research was to assist in determining what information should be pursued and where it might be found (in other words, as related to data collection). For example, when a witness appeared to be uncomfortable or unwilling to answer a specific question, the question itself would provide guidance on what needed to be investigated.

In terms of how data were collected and stored, I set up a specifically designed data management system, where when data were reviewed and deemed relevant to the case study, they would be collected (saved or documented) and they would then be categorised in terms of source, author or origin, date, type (based on the list above), and medium (document, web page, video, etc.). All data were then encrypted and stored on a secure online cloud, to which only I have access. Data collection and data analysis took place concurrently, with further elaboration provided in the next section. Table 3 provides a high-level overview and breakdown of which data were collected and utilised in the research for this case study.

**Table 3: Overview of data collected**

Data type/source		Date collected and reviewed
1	Legal court filings	8 different court cases relating specifically to the grant payment, CPS, and SASSA 5 other types of litigation (labour disputes, US civil suits, etc.) 350+ documents reviewed ± 30 hours observation and ± 18 hours video
2	Official government/company reports or documentation	100+ different reports or documents
3	Speeches and media statements	60+ different speeches and media statements ± 6 hours video
4	Outcomes from meetings and engagements with the Legislature	25+ parliamentary meetings 30+ documents ±18 hours video and audio
5	News media and investigative reporting	360+ news articles ±3 hours video
6	Grey literature for case study	50+ other types of case-specific grey literature
7	Articles, books, and other grey literature	250+ documents reviewed in the development of the conceptual framework

The accuracy and “trustworthiness” of the first four types of data were established based on where the data originated from. All these forms of documentation and evidence are formal (they have the assumed legal and normative legitimacy of “trustworthiness”) and within the public domain. When utilising the evidence sourced from the news media or other grey literature, particular care was taken to ensure that in the case of specific facts, these could be attributed to multiple sources. Alternatively, when there was only a single source for the evidence or the evidence was unsubstantiated or unproven (i.e. allegations of wrongdoing), it is explicitly stated as such.

### 3.4.3 Granular data analysis

Unlike most qualitative case studies, data from interviews and direct observation (in terms of evidence) were not adopted as sources of data for the research. As such, the approach to the data analysis was considered to be more aligned with that of historical studies. The only main difference between this case study and a historical study is that the data were collected and analysed while the events themselves were unfolding. Like historical studies, one of the main goals of the research is to present an in-depth, detailed account of what had transpired over a bounded period in time. This research required that I “enter into an in-depth learning process, to become intimately involved in data collection and to be a critical editor of texts” (Law, Stewart, Letts, Pollock, Bosch & Westmorland, 1998: 5). Like most qualitative research, the processes of data collection and data analysis took place concurrently (Yin, 2013).

The application of Maxwell's (2013) Interactive Model of Research Design required returning to the goals, objectives, and research questions of the case study. The research questions are admittedly very broad and open, and the main reason for this is that the case itself is broad. It consists of multiple events, involves a number of people and institutions, and is centred within a complex system, all interconnected by very different and distinct types of relationship dynamics. Rather than attempt to capture all the various questions that could be posed to limit or confine the research, I chose to instead incorporate the questions into the analysis itself. This fundamentally entailed that with each new piece of data that was collected, I would ask the basic questions of who, what, when, where, how, and why. This would then either lead to a new question that would need to be answered by new evidence or it would confirm or link to a previously obtained piece of evidence. Each piece of evidence was evaluated in terms of the boundaries of the case study, the credibility of the source of the evidence (data source), and how that evidence related to the conceptual framework. Table 4 presents a set of indicative questions that were asked.

**Table 4: Example of granular research questions**

Questions	People	Institutions and organisations	Decisions and events	Programmes and systems
Who?	Who are they connected to?	Who has "ownership" of the institution? Who is linked to the institution and how?	Who is involved in the event? Who made final decisions? Who was affected by the event?	Who developed and implemented the system? Whom does the system involve? Who is impacted by the system?
What?	What is their role/responsibility (objectives)? What is their background?	What is the objective? What does/did it do?	What led up to the event/decision? What was the outcome/impact of the event?	What was the system before and after? What are the issues?
Where?	Are they part of government, private sector, political party, etc.?	Where is it situated in terms of the state? Under what jurisdiction does it fall (legal and norms)?	Where were decisions made?	Where was the system developed and implemented?
When?	When did they become involved? Are they involved in other controversies?	When was it established? When did it experience change?	When did it take place?	When did the system change?
Why?	Why were they involved – constitutional vs shadow state?	Why were they involved – constitutional vs shadow state?	Why was the decision taken - what is the motivation or intention behind the decision?	Why the system was changed (motivation or intention)?
How?	How did they become involved? How did their involvement have an impact?	How did they become involved? How did their involvement have an impact?	How was the decision / event take place (formal or informal)	How has the system changed?

A data source could contain multiple pieces of evidence or the data source itself was the evidence. As such the documenting of evidence and then the cross-referencing and management of the

research data base were vitally important for the case study. All three forms of reasoning – deductive, inductive, and abductive – were applied in the analysis of the case evidence.

The systematic approach was applied to both the collection and the analysis of the data, which entailed first identifying the key dates and events (often linked to the legal court cases) and thereafter establishing a chronological matrix (see Appendix A). The chronological matrix entails the classification/coding of the empirical evidence divided into the following broad categories:

- Administration and politics: The movements of people in positions of administrative and political power.
- The litigation: This does not only include litigation concerning SASSA, but also other parties' litigations.
- Grant payment system: This is not restricted to the payment of grants, but also includes all other administrative functions associated with SASSA (e.g. changes in grant regulations, irregular payment to CPS, etc.).
- CPS and empowerment partners: This category examines Net1/CPS as a business, includes the various deals they have entered into with empowerment partners, and the developments with regard to other Net1 subsidiaries.
- Controversies and the parallel/shadow state: This is where there are key moments in which the rationale behind an action or event does not make “sense”. It also includes all the allegations levelled against individuals considered to be part of the shadow state.

This matrix was then complemented by a process of mapping data and evidence, in terms of the various formal and informal relationships between individuals and/or institutions (an example is provided in Appendix B), sequential causality of events or decisions, and changes to the systems or institutions. Utilising the chronological matrix, together with various network mapping processes, enabled for thematic analysis to be undertaken by applying different lenses, namely the constitutional state, the shadow state, the power dynamics, and what distinguishes this from straightforward corruption; and lastly to explore the case in terms of the much broader developmental (and State Capture) objectives.

### **3.5 Limitations of the Research**

By deciding not to include interviews as part of the research methods, the research was limited in a number of ways. The first is that by not conducting interviews, the potential value that might have

emerged from having multiple perspectives of the events that have unfolded was lost. However, the ethical risks associated with undertaking the interviews, was a trade-off I was prepared to make.

The second limitation associated with not conducting interviews was the inability to conduct triangulation of the research findings and outcomes, which is an important aspect of validation of qualitative research. In order to address this, as highlighted in Chapter 1, once the case study itself was in the final drafting stage, it was distributed to several individuals who have direct experience and intimate insight into SASSA, social development in South Africa, and the SASSA-Gate crisis for review. A second form of triangulation resides in the research design itself. The iterative process and continuous reflection, particularly as related to the matching process of theory to the empirical world and methods adopted for collection and analysis of data, ensured that even though the case study is a dense narrative and not easily summarised, the research remains credible (Flyvbjerg, 2011; Tracy, 2010).

The other main limitation of the study was with regard to the scope of the academic enquiry that could be undertaken within the given time and financial constraints, as well as the actual complexity of the subject matter. The objective of the research was not to explicitly develop new academic theory, but rather to explore if and how existing theory may be applicable to a specific case study.

In addition to the level of detail, the scope of the research was limited in terms of the extent to which various aspects of the case study was explored and/or assessed. For instance, as indicated in the bounded scope of the case study, even though the power dynamics and political aspects were included as part of the research, this did not extend beyond those who were directly involved in the SASSA-Gate debacle. As noted, extensive analysis of parliament and the governing political party, I argue, should be treated as standalone cases and separate sub-phenomena of State Capture.

### **3.6 Narration of the Case Study**

The narration of the case study follows directly from the approach to the analysis, where each of the following chapters presented each of the different lenses through which the case study can be explored. As the grant payment system evolves and develops as a result of the decisions and actions taken over time, it is necessary to incorporate a certain degree of technical information with regard to the system throughout the narration of the case study. These concise technical details are captured within text boxes. At the end of each chapter a summary is presented, which serves

specifically to outline the links between the different aspects of the case study and the particular theories to which they relate.

The next chapter provides the contextual basis from which this case study is explored. It presents a brief overview of the historical background of South Africa's social grants system, outlines the legislative and technical framework in which SASSA has been established, and lastly discusses the use of biometric verification technology as part of the grant payment system.

Chapter 5 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 and thus describes the case study through the lens of the constitutional state.

Chapter 6 provides an analysis of the so-called "SASSA-Gate" scandal in the context of the existence of a shadow state and particularly focusing on non-government actors. 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 RET. This section fleshes out the various allegations about with whom and how certain individuals from both outside and within state institutions were entangled in the CPS contracts in various ways.

Chapter 7 examines the political and power dynamics relevant to the case study. It discusses the political dynamics of the ANCWL and power elite Kitchen Cabinets' function, showing how these form an integral part of the political project of State Capture. It also provides an example of the other means by which the DSD and SASSA were repurposed, in particular with regard to the use of state resources to manipulate and secure legitimacy from the voting public.

Finally, Chapter 8 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 provides an analysis of subsequent events following from the March 2017 Constitutional Court judgement, particularly from the perspective of State Capture, and discusses the broader impact of the biometric technology in the State Capture project and on South Africa's social welfare system.

## Chapter 4: SASSA and South Africa's Welfare System

### 4.1 Introduction

This chapter 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 use of biometric verification technology as part of the grant payment system.

### 4.2 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* (Constitutional Court of South Africa, 2013: 3).

In 1994, when the democratically elected ANC government was instituted, the social security system that 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 equitably and fairly cater for all South African citizens. Access to social security is one of several socio-economic rights guaranteed in the South African Constitution of 1996, where Section 27 (1) (c) of the Constitution 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” (Republic of South Africa [RSA], 1996: 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 that 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” (RSA, 1996: 11).

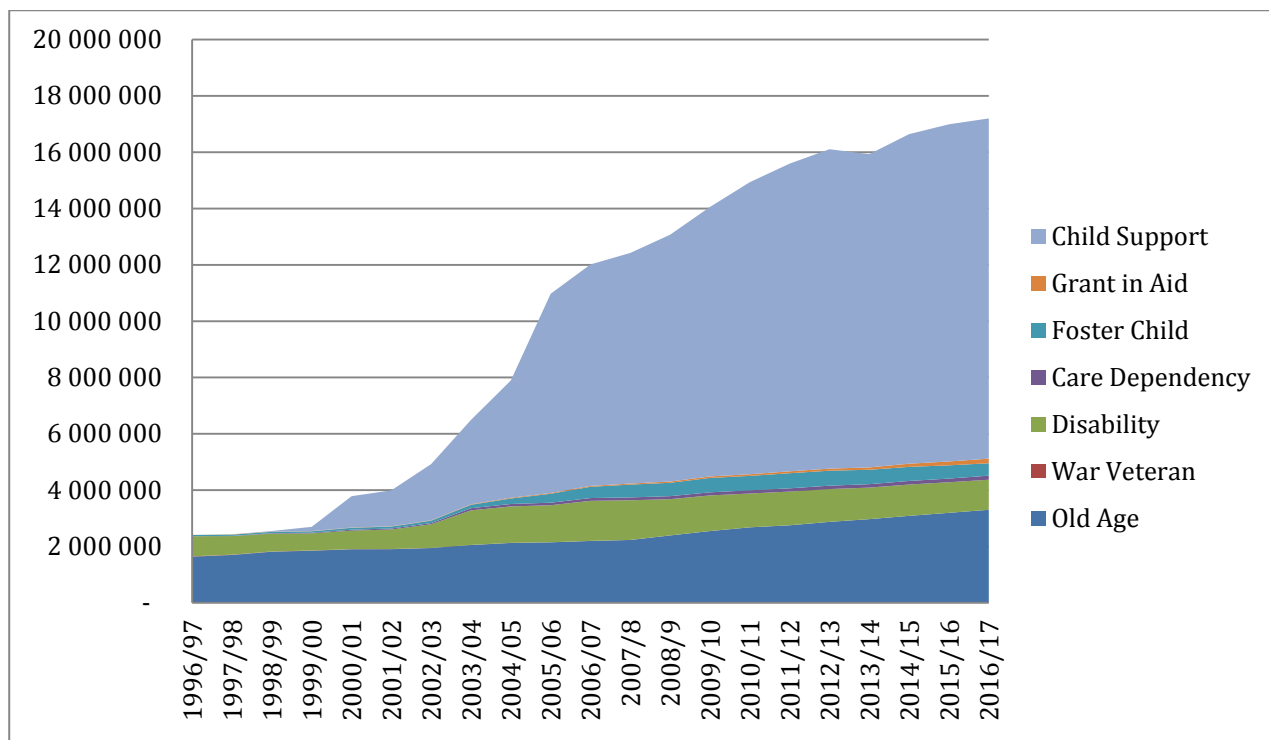
This caveat is a necessity, in that it allows for flexibility in terms of establishing of policy and the management of the state's budget and the country's fiscal sustainability. It is in this regard that the

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 (2002) 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 childcare grants and the use of biometric verification in the grant payment system.

Social grants were identified as a key component of the GEAR framework, which was adopted under the Mbeki presidency. Under Mbeki, 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 neoliberal economic policies (Khan, 2013). As a result, there 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 7 outlines the growth in number of grant beneficiaries over time.





**Figure 7: Growth in number of grant recipients**

Source: SASSA Annual Report 2016/2017 (SASSA, 2017a)

As of December 2017, there are currently 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, 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 5 provides a breakdown of the fixed grants, outlining grant type, number of beneficiaries, and monthly amount respectively.

**Table 5: 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%
<b>Total</b>	<b>17 200 525</b>	<b>100%</b>		<b>R138 317 544</b>	<b>100%</b>

Source: SASSA (2017a) and National Treasury (2017)

Research is currently being undertaken by 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 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”, which the research indicates are 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” (Smith & Abrahams, 2015: 15). 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” (Khan, 2013: 573).

Khan (2013: 575) highlights that social grants are no longer just a “stop-gap measure” for counterbalancing 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 that 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,

*[c]urrent 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 (Sachs, 2014: 19).*

The growth in social grant beneficiaries must also be noted, particularly with regard to Old Age Child Support grants, which had average growth rates of 3.7% and 20.2% (inclusive of programme expansion) respectively over the last five years (SASSA, 2017a). This harsh reality that the country now faces is not lost on SASSA, when it highlighted 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 (SASSA, 2017b: 56).*

### 4.3 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 (RSA, 2004a) and the SASSA Act, No. 9 of 2004 (RSA, 2004b) 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) is 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. The PFMA is directly related to and founded on one of the key tenets of the Constitution (RSA, 1996: 112), articulated under section 217(1), which states:

*When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*

Prior to the establishment of SASSA, the payment of grants was 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 (Constitutional Court of South Africa, 2013). The regulations attached to the Social Assistance Act 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" (Supreme Court of Appeal of South Africa, 2011: 4).

The objectives and mandate of SASSA, as outlined in section 3 of the 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 (RSA, 2004b: 6).*

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 of 2004, as well as

*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) (Supreme Court of Appeal of South Africa, 2011: 4).*

Where necessary or appropriate, the SASSA Act further makes an allowance for the Agency to, “with the concurrence of the Minister enter into an agreement with any person to ensure effective payments to beneficiaries” (RSA, 2004b: 7). This in effect allows 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 that provides a degree of separation between the administration and management of the entity and the Executive Authority, the CEO of SASSA reports directly to the DSD minister. In terms of the SASSA Act, the following are worth noting under the “Functions of Chief Executive Officer” (RSA, 2004b: 9-10):

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

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” (RSA, 2004b: 8). Ultimately, it is this agreement that 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” (DSD, 2015a: 36). 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 (COO). The use of the shareholder’s compact and the mechanisms for accountability they 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 the 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 the SASSA CEO’s decisions are overturned by the minister, it would effectively mean that the minister has assumed *de facto* the role of the accounting officer of the Agency.

#### **4.4 Biometric Technology and National Payment System (NPS)**

One of the functions of SASSA, as stated in the SASSA Act, is to “establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained” (RSA, 2004b: 16). What this mechanism entailed, its parameters, and how it was to be structured remained the prerogative of the Agency. Over the years, SASSA 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 that specifically focuses on fraud and corruption (SASSA, 2017a).

In her statement on 5 March 2017, in which Minister Dlamini briefed the media on the actions that SASSA was undertaking to ensure that the payment 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 (Dlamini, 2017a: 1).*

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 several loopholes 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 biometric technology and why it became a fundamental part of the government’s techno-political programme (Donovan, 2013).

In a 2013 working paper published by the Centre for Social Science Research, titled *The Biometric Imaginary: Standardization & Objectivity in Post-Apartheid Welfare*, Donovan (2013) examined the motivation behind the adoption of biometric verification in the grant 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 that 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 (poverty and unemployment). The second is how these objectives are defined and understood, as this directly relates to the effectiveness of any technology application. This would need to include having an

understanding of how a technology affects or impacts the broader systems of the institution, other government functions, and society in general.

### ***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 paypoint (Supreme Court of Appeal of South Africa, 2011).

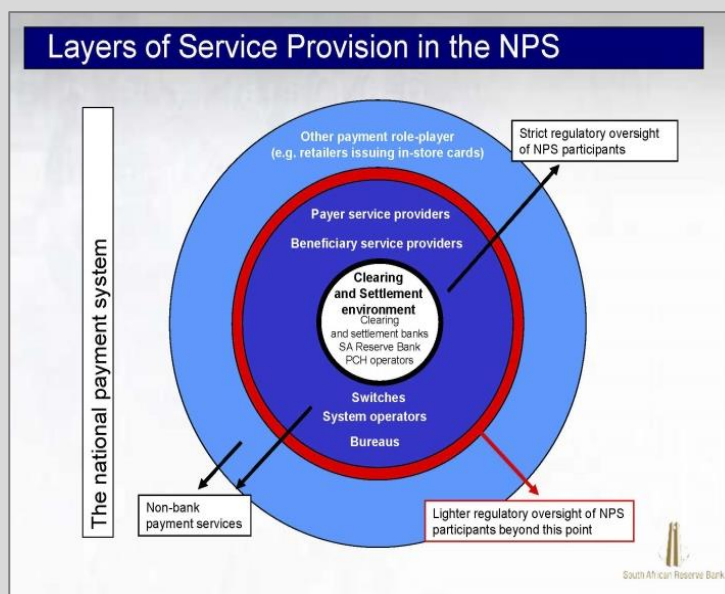
#### **Costs and fee structure:**

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

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

#### **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” (SARB, 2008: 1).



**Figure 8: Layers of service provision in the NPS**

Source: South African Reserve Bank (SARB, 2008)

**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, No. 78 of 1998, 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 (PASA, 2017).

**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. “**Inter-operability** 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” (Dlamini, 2017b: 3).

**Closed-loop:** “In a closed system, the card issuer is the scheme owner” (Banking Enquiry Panel, 2008: 230). 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 they partner with a bank that is connected to the NPS and are 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.

## 4.5 Conclusion

As highlighted in Chapter 2, I argue that neopatrimonialism, as an analytical concept, is contingent on being applied within a specified context and that it is necessary to establish the legal-rational and bureaucratic framework for the analysis. This chapter thus serves to provide the background for the case study in terms of the constitutional objectives and function of social grants, as well as the legal structures and bureaucratic systems through which these objectives are supposed to be realised, and grants are administered (by SASSA).



## Chapter 5: SASSA-Gate Chronology

### 5.1 Introduction

*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? (Constitutional Court of South Africa, 2017a: 6).*

The above is the opening statement from the scathing Constitutional Court judgment that 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 chapter seeks to answer the question as put forward by the Constitutional Court, by providing a high-level overview of the sequence of events, decisions that were made, and of the people involved.

### 5.2 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 (Adjudication Committee, 2008).

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

### 5.2.1 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, that outlined 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* (Adjudication Committee, 2008) (hereafter referred to as the *Narrative Report*), provided key insights into some of the challenges involved in providing payment service for grants, as well as highlighting some of the reoccurring issues that 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, titled *South Africa – All Is Not Well With Government Tenders*, it was stated that

*[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 (Sokomani, 2008).*

The lack of clarity regarding exactly which services SASSA required and how it envisioned the provisioning of the required services is undoubtedly one of the problems that 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” (Adjudication Committee, 2008: 15). They noted that the “refinement of criteria in the RFP caused more problems

... thereby rendering the entire evaluation process unreliable” (Adjudication Committee, 2008: 15). 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* (Arendse, 2009: 2-3).

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 well as 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* (McKune, 2012a).

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 SASCOC [South African Sports Confederation and Olympic Committee], 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. Arendse (2009), as well as a supporting statement by his secretary at the time, Colleen Beverley Bainbridge (2009). This was the first instance in which these statements had been made publicly available and were independently verified by *GroundUp* (Bejoy, 2016). When confronted

with these allegations, denials were put forward by all the implicated parties. Serge Belamant, the CEO of Net1 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” (Bejoy, 2016).

Adv. Arendse 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 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 (Bejoy, 2016). It would, however, appear that with regard to this specific allegation of corruption, no official follow-up action was initiated, nor was 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 that existed with CPS, Empilweni, and AllPay at the time. This would be the first instance when the DSD and SASSA would experience the risks that 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 with 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 that were imposed by NT and the Auditor-General. The statement made was 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) (DSD, 2009a).*

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 (DSD, 2009b). CPS would, however, use this act of "good faith" to supplement legal action that it would institute against SASSA for entering into an agreement with SAPO.

### 5.2.2 CPS versus 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 (DSD, 2009c).*

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 5 January 2009 (Supreme Court of Appeal of South Africa, 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 from October 2009 (High Court) 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's argument, but this decision would later be overturned by the Supreme Court of Appeal; in effect making the agreement between SAPO and SASSA valid (Supreme Court of Appeal of South Africa, 2011). 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 the payment of grants.

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 that the Agency would adopt. This turning point coincided 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 as 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 that 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” (North Gauteng High Court, 2009: 8). There are two potentially significant insights that 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. This is perhaps 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. However, 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 that was used and controlled by payment service providers for maintaining and upgrading payment facilities) towards funding a party for Jacob Zuma in December 2008 at Nkandla (Maphumulo,

2009). 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” (South African Press Association [Sapa], 2010). 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 dismissed (Sapa, 2010) and Molewa appointed Coceko Pakade, the then chief financial officer (CFO) of the DSD to the acting CEO position at SASSA (Maphumulo, 2009).

Makiwane challenged the dismissal in labour court (Labour Court of South Africa, 2010) 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” (Staff Writer, 2010). In the court papers he detailed how he had been asked to respond to 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’ (Labour Court of South Africa, 2010: 3).*

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 was ever substantiated. Makiwane later sued the DSD for reputational damages, resulting in a R6.7 million payout (Magubane, 2016). 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* 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 it 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 Postbank 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 (Adjudication Committee, 2008):

- approximately 70% of payments are done at paypoints, ranging from buildings that 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 paypoints, there is a complete lack of permanent and secure building structures with ample seating, ablution facilities, and water; and
- the security measures at these paypoints are not in line with the requisite norms and standards.

In response, service providers were required to provide SASSA with services that 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” (Supreme Court of Appeal of South Africa, 2011: 8). SASSA would have to continue contracting service providers to meet the demand for cash payment 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 that was carried/accepted by all major banks (linked into the NPS and was thus an 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 Postbank, 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” (Supreme Court of Appeal of South Africa, 2011: 7-8).

**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” (Supreme Court of Appeal of South Africa, 2011: 6).

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” (Supreme Court of Appeal of South Africa, 2011: 7).

**5.3 The Invalid 2012 CPS Contract**

In November 2010, arguably 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 SASSA (Maphumulo, 2009) and Vusi Madonsela was still the DG of the DSD.

Minister Dlamini appointed Ms Virginia Petersen as CEO of SASSA on 21 April 2011 (Cabinet, 2011), 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 that 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 (Constitutional Court of South Africa, 2013).

A number of the losing bidders, particularly the other provincial service providers (hereafter referred to as “AllPay”), 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 that 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” (Constitutional Court of South Africa, 2013: 4). This was due to the complex practicalities that would be involved in attempting to find a “just and equitable” remedy for correcting the flaws of 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” (Constitutional Court of South Africa, 2013: 5). The Supreme Court of Appeal dismissed the appeal and upheld the cross-appeal (filed by CPS); in effect making the tender outcome legal (Supreme Court of Appeal of South Africa, 2013). 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 suspension of the declaration was based on the premise that a new tender would be awarded after a proper procurement process and to ensure that the payment of grants was not interrupted, meaning CPS would continue to provide payment services in the interim. SASSA was ordered to report to the court on progress in respect of the new tender process and its outcome (Constitutional Court of South Africa, 2014).

The details that emerged through these court cases, including how the tender process unfolded and the various irregularities that 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 that “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; and a BEC evaluated the bids by following a two-stage evaluation process. The first stage entailed the assessment of the technical proposals that 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. The BAC would then examine the recommendations of the BEC and the evaluation process itself to determine if the recommendation is acceptable; if so, the contract would be awarded.

A total of 21 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%” (Constitutional Court of South Africa, 2013: 9), effectively leaving CPS as the only service provider in the running for being awarded the tender. The BEC being “satisfied with Cash Paymaster’s proposal on its financial

and preference-point merits” (Constitutional Court of South Africa, 2013: 9) recommended it 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 in later chapters). However, the five factors listed above 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” (North Gauteng High Court, 2012: 31). 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 that the Agency had 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 [SCM] practitioner), which was not in line with SASSA’s own SCM guidelines that required the BEC to consist of five members, one of whom should be an SCM practitioner (North Gauteng High Court, 2012). 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 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 had raised red flags with regard to the change in biometric specifications and how it influenced the bid evaluation, and that there appeared to be no comparative assessment on provincial level and the change in scoring, which was made following the oral presentations (AllPay, 2013).

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 that 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 for the monthly payment of a grant to a recipient (read biometrics) had gone from being a “preferred” requirement to a “must”. Both the competing bidders (AllPay and CPS) provided for the use of fingerprint biometrics in the process of beneficiary enrolment and reconciliation (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 never properly implemented.

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 that Bidders Notice 2 inferred in relation to the original RFP. The 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 6 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 6: Breakdown of BEC scoring for SASSA 2012 tender**

	Ramokgopa		Magasela		Earl		Nhlapo		Total	
	AllPay	CPS	AllPay	CPS	AllPay	CPS	AllPay	CPS	AllPay	CPS
<b>Before presentation</b>										
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
									<b>70,42</b>	<b>79,79</b>
<b>After presentation</b>										
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
									<b>58,675</b>	<b>82,44</b>
<b>Difference</b>										
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: Supreme Court of Appeal of South Africa (2013): AllPay Judgement

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. They highlighted 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 the tender, both 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 (North Gauteng High Court, 2012). 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 (Constitutional Court of South Africa, 2013: 40).*

It would later emerge, through investigative reporting by *amaBhungane* (McKune, 2016), that the agreement between CPS and its consortium partners (which had not been submitted to the courts) provided an empowerment model that was 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 that in effect rendered the partners' active participation in the provision of services to SASSA moot. 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” (Cash Paymaster Services (Pty) Ltd, Born Free Investments 272 (Pty) Ltd, Ekhaya Skills Developments Consultants CC & Reties Trading CC, 2011: 6). 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 that 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 (Constitutional Court of South Africa, 2013: 16).*

### ***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 were paid electronically into a bank account (Pulver & Ratichek, 2011).

The objectives of the payment services contract included:

- enhance payment services to beneficiaries, with the 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
- introduce the new requirement of biometric verification.

#### **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 paypoints where cash payments are distributed.



“Net1’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 paypoints 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’” (Pulver & Ratichek, 2011: 34).

**Card specifications and biometric verification:**

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

Participating merchants and the designated paypoints 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 (including VAT) per recipient (a recipient can receive more than one grant and/or could receive 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 (Staff Writer, 2014a).

## 5.4 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] (Dlamini, 2017a: 1).*

Following the two attempts to find a solid solution for distributing grants, the first being abandoned and the second being found invalid by the Constitutional Court, 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.

#### **5.4.1 Ministerial Advisory Committee (MAC)**

Before departing from her position as minister of the DSD, Molewa had established “a number of committees” (Parliamentary Monitoring Group [PMG], 2017a: 4), 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 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 paypoints”. Yet, no further detail could be provided on who was on these committees, how many committees there were, or what their various functions or objectives were. It could be assumed that one of these was the committee 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 (eNCA, 2017). 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 was, 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 (SASSA, 2013a).

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 (SASSA, 2013a).*

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 7). However, it is important to highlight that none of the committee members were actually from the DSD or from SASSA (SASSA, 2013a: 1). 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 SARB, had the necessary expertise with regard to the national banking system.

**Table 7: 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 Sipho Majombozi	BEd	Extensive experience with regulatory bodies, policy, and government
Mr Tim Masela	BCom	Extensive experience in central and commercial banking
Mr Patrick Monyeke	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 (IT) / Management Degree	Engineering and IT
Mr Barend Petersen	Honours BCompt.	ICT and ICT infrastructure
Mr Tim Sukazi	LLM in Commercial Law	Commercial law
Mr Andile Nyhonyha	LLB	Local and international commercial law

Source: Written Reply for Question to the Minister of Social Development: 295/2015 (DSD, 2015b)

In December 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 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 (Dlamini, 2017a: 2).

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 AllPay 2 ruling, 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 (Constitutional Court of South Africa, 2015).

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 that made the tender commercially 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 that 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 that was above the ceiling price (Sole & McKune, 2017).

The tenders were adjudicated in October 2015, in line with the Constitutional Court timelines and on 5 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 (Dlamini, 2017a).

#### 5.4.2 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 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 Monyeki (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 (Constitutional Court of South Africa, 2017b: 9).*

Of the five individuals listed above, only three of the respective 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 a 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” (Dlamini, 2017a: 2). 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 was the real source of the confusion surrounding how SASSA was to meet its obligations for taking over the payment of grants come 1 April 2017. Further discussion on the role the work streams played in the culmination of the ‘self-made crisis’ of March 2017 is provided in Section 5.6.

With the 2017 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 provided 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 are Andile Nyhonyha and Sizwe Shezi. Mr. Nyhonyha is a founder and director of Regiments Capital, which is linked through work that it undertook together with McKinsey at Transnet and Eskom (it should be pointed out that this was prior to the fallout between them and Eric Wood/Trillian) (Association of Black Securities and Investment Professionals [ABSIP], 2016). Mr. 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 from a R1.7 billion deal that 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 (Thamm, 2016).

Of the five work streams that 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 (DSD, 2017a). The value of the appointment was R7.6 million (DSD, 2017b).
- 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 that could be achieved as a result of implementing the proposed work stream solution (DSD, 2017a). The value of the appointment was approximately R4.4 million (DSD, 2017b).

- 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 payment of grants come 1 April 2017. The contracted value for the work was R35.8 million (DSD, 2017a).

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 (Serrao, 2017). 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" (Sole, 2017).

The second is linked to the investigations around unexplained money transfers to the 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, 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 (Haffajee, 2017). The link between Monyeki and Makwakwa appears to be related to the close friendship between Monyeki and SARS Commissioner, Tom Moyane (Serrao, 2017). 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.

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” (Dlamini, 2017a: 2). 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 payment 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” (Dlamini, 2017a: 2).

#### ***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 paypoints 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) (Minister of Finance, 2017). 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 (The Black Sash Trust, 2017; Van Rensburg, 2017).

In terms of payment type, 35% of transactions (there can be more than one electronic transaction by a recipient) take place at paypoints (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 (SASSA, 2017c).

It is important to note that the scope of the work streams extended beyond just the payment system and covered all of SASSA’s internal operations as well. From documents and information available, the following are 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 prepaid debit cards, 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 (Sole & McKune, 2017).
- 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 2014/2015 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” (SASSA, 2015: 22). In July 2016, PASA announced “a new specification for biometric authentication on payment cards across the country” (Staff Writer, 2016a).

### 5.4.3 Inter-ministerial Committee (IMC)

The *Betrayal of the Promise* report highlighted that ad hoc IMCs were key components of the constellation of Kitchen Cabinets that the Zuma-centred power elite used to exercise power. Many references have recently been made to the IMC on Comprehensive Social Security. The initial reference to this IMC was in connection with 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. 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 1 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”, De Villiers, 2017) 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 (Staff Writer, 2017a).*

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 (Dlamini, 2016a).

The CSSD is a policy document that puts forward a proposal for structural reform for South Africa’s broader social protection system. Some of the proposed changes include consolidating the various social protection programmes such as the Unemployment Insurance Fund (UIF), the 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 (Inter-departmental Task Team [IDTT], 2012).

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 payment 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 stipulated 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 8.3.

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' mandates or their approaches to finding a solution. This may lead 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 (Merten, 2017).*

This case study serves as a prime example, as further discussed in Section 5.5, of where the work of the government reaches a deadlock. NT refused to make a decision that it knew to be unconstitutional. SASSA seemed to be attempting to bypass its obligation to report to the Constitutional Court on its inability to take over payment of grants on 1 April 2017, for reasons that to this day remain unclear.

## **5.5 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 (Staff Writer, 2016b). Following Madonsela's departure, Coceko Pakade was appointed acting DG, and for a brief time Wiseman Magasela also fulfilled this role (Van Onselen, 2017). 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 (Van Onselen, 2017). 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 is 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, day-to-day operations continued at SASSA. The invalid and in effect illegal appointment of CPS as the service provider for the distribution of grants was of course the largest and arguably most significant contract that SASSA entered into at the time, but it is only one of the many services that the Agency procures from the private sector. Over the years there have been several contracts/expenses that 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 2016 (Dlamini, 2016b) 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 (SASSA, 2011). By 2012/2013, the recorded amount allocated as irregular expenditure for that year was R47.4 million (SASSA, 2013b) and in the 2016/2017 annual report it was 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 year in which Petersen was still the CEO) (SASSA, 2017a). 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 parliament (PMG, 2016), there were details as to some of the larger

contracts that have resulted in the recording of R1.4 billion in irregular expenditure. Some of the payments involved 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 was 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 to CPS (R316 million) for the “re-registration” of additional social assistance grants beneficiaries (SASSA, 2017a).

The payment that SASSA made to CPS, which was approved on 25 April 2014, was taken to court by Corruption Watch (2015) in an effort to have it reviewed and with the hope that the appropriate remedial action would follow. In the court papers filed by Corruption Watch, it highlighted 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 that 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 (Corruption Watch, 2015).

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 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 that were required to extend the re-registration timeframe. SASSA initially intended to oppose the legal action (Corruption Watch, 2015). However, in May 2017 the then CEO, Thokozani Magwaza, decided that the Agency would withdraw.

## **5.6 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 1<sup>st</sup> of April and the irregular, I choose the country not to burn (SABC Digital News, 2017).*

This statement, made by the then SASSA CEO, Thokozani Magwaza, during a presentation to the parliamentary PCSD on 1 February 2017, highlights the two crises that were unfolding before South Africa's eyes in March 2017. The first was the potential risk that some 17 million grant beneficiaries would not receive the grants that they depend on come 1 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 could not come to pass and that one way or another there was no option but to ensure that the payment 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.

The underlying cause of this crisis, however, is the second crisis – the governance crisis – whose story this section will unveil. As the Constitutional Court (2017a: 23) 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.*

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 1 April 2017. As noted in the scathing Constitutional Court judgement, the promise that it made in that submission never materialised.

On 15 March 2017, the Constitutional Court was called upon by a collective of NGOs, namely the Black Sash Trust, Freedom Under Law, and Corruption Watch (Amicus Curiae), among others, to seek urgent legal remedy to the impending potential crisis, of which SASSA and the DSD would be unable to ensure the payment of grants on 1 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” (Constitutional Court of South Africa, 2017a: 8), a situation that the court did not take kindly to.

*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 (Constitutional Court of South Africa, 2017a: 8).*

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 1 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 highlighted 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 (Constitutional Court of South Africa, 2017a: 8).*

### **5.6.1 How Did We Get Here?**

The events that 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 1 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 that indicated that SASSA would take over the payment of grants. The minister and SASSA's joint affidavit, drafted by Wiseman Magasela, who was acting CEO at the time, provided an account of the events that led up to the court proceedings (Magasela, 2017).

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 that 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 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" (Magasela, 2017: 11). What remains unknown is who exactly was responsible for drafting the plan in the first place, what 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.

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 1 April 2017. From the Constitutional Court judgement it would seem that all three legal opinions that were provided to SASSA were correct in their advice, as 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 (Constitutional Court of South Africa, 2017a: 9).*

The legal opinion of 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 that 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 1 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 SC on 10 November. Sikhakhane emphasised that the court was the correct place to seek clarity on how to proceed because it had already noted that 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” (Magasela, 2017: 18) (possibly implying the South African Postbank).

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 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 2 November) and the minister – on the proposed model for SASSA taking over the payment of grants.

On 9 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 the interactions taking place with and within SASSA, letters were exchanged between the project manager, Ms Mvulane, and CPS. CPS first initiated the communications in May 2016, enquiring as to how SASSA planned to take over grants, and CPS raised technical issues that 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 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 was 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” (Magasela, 2017: 24).

#### ***Text Box 5: The TTT’s options***

- **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 paypoints.

- **Option 5:** procuring the services of SAPO.
- **Option 6:** appointing a service provider for cash distribution to grant recipients who are currently using cash paypoints and utilising existing bank accounts to distribute grants through the banking sector to those beneficiaries with bank accounts (Magasela, 2017: 24).

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 implications of the remaining four options, however, all point toward a solution that would/could be connected to the NPS and be based on an open-architecture / open-loop model.

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 1 February that SASSA would be engaging with CPS to continue providing payment services, the CEO of SASSA sent a letter (7 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” (Magasela, 2017: 25). NT swiftly responded on 8 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 provided by 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” (Magasela, 2017: 26). Shortly thereafter it was withdrawn by the minister, with little explanation.

On the same day, the 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 1 April 2017. In an unexpected about-turn, SASSA sought to withdraw that application the next day. On 3 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 ... (Constitutional Court of South Africa, 2017a: 10).*

On 1 March, SASSA and CPS started negotiations regarding a new contract for providing payment services beyond April 2017. This, however, was short-lived. A Ministerial Task Team (MTT), which was formed on 8 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 the court to rule that the minister be held personally accountable for the crisis and be ordered to pay the costs for all council. 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 (Constitutional Court of South Africa, 2017a: 34).*

## 5.6.2 The Parallel Governance 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 requires. It is important to note that this particular role, at this particular time, is not one of the Court's choosing (Constitutional Court of South Africa, 2017a: 10).*

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” (Constitutional Court of South Africa, 2017a: 39). It was this order that would bring to light the details with regard to by whom and how decisions were actually 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. The Constitutional Court of South Africa (2017b: 3) stated: “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)”.

In response to this affidavit, the then CEO of SASSA, Thokozani Magwaza, aggrieved by the versions 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 mindboggling 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 had 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 bias all along towards ensuring that CPS would be awarded a new (and 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” (Constitutional Court of South Africa, 2017b: 3).

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 Ngoepe, which was heard in January 2018 in

order to determine if the minister should in fact be held liable in her personal capacity. The testimonies provided during the Inquiry substantiated, confirmed, and provided 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 1 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 frequently received updates from Mvulane directly during the year (SABC Digital News, 2018a). 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 the 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 5.4.2), 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 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 (SABC Digital News, 2018b). During the Inquiry it was also implied on several occasions that Ramokgopa was "bullied" (SABC Digital News, 2018c) into appointing the work streams, even though she had been advised against it (SABC Digital News, 2018d). 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 payment 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 that 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" (Constitutional Court of South Africa, 2017b: 8). 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 at the time was 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 (Dangor, 2017). 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" (Constitutional Court of South Africa, 2017b: 10).

It was shortly after these meetings that Dangor (who had by then been appointed DG on 2 November), Magwaza (then CEO), and Shezi started engaging with other organs of state that would either be directly affected by or have a direct impact on the implementation of any plan that 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 8.2). It was this fundamental disagreement over which payment model 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 that minimised CPS's role in the payment of grants going forward. The first was regarding the work that 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 included Ms Mvulane. They were due to present their findings and the six options 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 as 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" (Dangor, 2017: 8) at the time. Instead, it presented arguments against SASSA adopting an open-architecture model and in effect motivated the work streams' closed-loop model of payment. Neither the DG nor the CEO of SASSA were 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 12 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" (Dangor, 2017: 9). 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 obtain consent from the Constitutional Court for the extension.

Based on the outcome of this meeting, SASSA (assisted by Adv. Cassim) proceeded to draft a report for 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”. Neither the CEO of SASSA, the DG of the DSD, nor Mr Shezi was informed of this at the time (Dangor, 2017: 15).

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 (SABC Digital News, 2018c). Media reports allege that at the meeting the minister met with, among others, Mr Michael Hulley, President Zuma’s lawyer, and that it was he who advised the minister (McKune, 2017a). 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 obtained thus far. Hulley’s role will be discussed in further detail in the next chapter.

As previously 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 was 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 28<sup>th</sup>. 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 (Magwaza, 2017: 11).*

The issues around the legitimacy of Magwaza's actions and the assertion he made in the statement above highlight the institutional and governance challenges that 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" (RSA, 2004b). The seeming confusion around the allocation of the roles, functions, responsibilities, and legal obligations of the various players in the management of the country's social welfare system was the central debate of the Inquiry into 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 [in] concurrence with the minister also" (SABC Digital News, 2018e). 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) 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 (RSA, 2004b).

At a SCOPA briefing, which also took place on 28 February, MPs questioned Dangor and Mvulane on the negotiations that took place between SASSA and CPS. Mvulane indicated that negotiations were only set to start on the next day, 1 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 (PMG, 2017a). 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" (Wa Afrika & Saba, 2017). Ms Thamo Mzobe, who is the CEO of the NDA, was

appointed as acting CEO of SASSA. She too was placed on sick leave 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 1 and 3 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 that 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* (Wa Afrika & Saba, 2017).

It was said that after being summoned to sign the contract, she suffered a mild stroke (Wa Afrika & Saba, 2017). It was during this time that Dangor resigned, on 3 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” (Dangor, 2017: 21).

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 previously noted, an MTT, chaired by Minister Jeff Radebe (chairperson) was formed on 8 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 to CPS, through a self-created emergency” (Dangor, 2017: 19).

In the initial judgment on the 2017 SASSA-Gate crisis, the Constitutional Court stated the following 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 (Constitutional Court of South Africa, 2017a: 34).*

## **5.7 Summary**

This chapter outlined and provided a detailed account of how, from the perspective of the constitutional state, State Capture manifests within a government institution. It illustrated several aspects of the State Capture modus operandi that were identified in Chapter 2. First was the securing of control over the public service, in particular through the appointment of cabinet ministers. Initially, Zuma appointed Edna Molewa as the minister of the DSD in 2009; however, she was later relocated to the Department of Environmental Affairs and was replaced by her deputy minister, Bathabile Dlamini, in 2010.

The second component of the State Capture modus operandi entailed the intentional weakening of key technical institutions and formal executive processes. In this case it was by removing key top officials and replacing them with people who would not be obstructionist. Having officials only in acting positions limits their ability to take long-term strategic decisions. Persons who appear to be part of the shadow state, such as Michael Hulley, were involved in the procurement process. Also worth noting was the appointment of the work streams and the instruction from Dlamini not to interfere, which limited the ability of the Agency officials to carry out their mandate.

The third element of State Capture from within government entailed securing access to opportunities for repurposing the state by manipulating or changing the directives or objectives of the government. In this case in particular, it involved the manipulation of tender processes that resulted in the contract 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.

In cases where the shadow state objectives are for the purposes of accruing wealth, this type of manipulation of procurement processes often centres around large-scale projects/contracts. The tender for the payments of social grants was worth an estimated R10 billion and was the largest contract of its kind in South Africa at the time. There is also often an element of “scope creep” in contracts, where the value is increased or the contract is extended, potentially indefinitely. As previously indicated, there was the irregular extension of the “re-registration of grant beneficiaries” and there were the seemingly deliberate delays that led to the Constitutional Court having to extend the invalid contract in March 2017.

The last aspect of State Capture that takes place both within and outside of government, is the creation of parallel political, governmental, and decision-making structures that undermine the functional operation of government institutions. In this case, it was the establishment of a parallel governance structure where the recommendations of an external advisory team (the work streams that reported directly to the minister) were elevated above those of SASSA officials. The meetings with Michael Hulley (advisor and lawyer to Zuma) also played a key role in this aspect.

There is one aspect of the shadow state operations that takes place both within and outside of the government that should be recognised, namely that there is often a concerted effort by those in the shadow state to stifle/remove the competition or critics. In this case, some examples include changing the biometric requirement, the minister attacking/rejecting the banks as an option for the payment of grants, the various law suits Net1 lodged against SASSA (including the case against SASSA/SAPO agreement), the attacks on NT for not consenting to a new illegal SASSA/CPS contract in 2017, and many more examples.

## Chapter 6: Probably Corrupt

### 6.1 Introduction

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 that unfolded within the broader context of state capture as the Zuma-centred political project that relies on the construction of a shadow state. This chapter will focus on two 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 who appear to reside within the shadow state and act behind the scenes to ensure that the objectives of state capture are achieved.

### 6.2 What is the Deal with CPS?

#### 6.2.1 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 (Constitutional Court of South Africa, 2013: 33).*

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 that provide a variety of payment technology solutions and financial services, including CPS, was incorporated in Florida in May 1997 and later 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) that 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 (Staff Writer, 1999). In the years that followed, Aplitec would go on to acquire Moneyline (Pty) Ltd and New World Finance (Pty) Ltd (both micro-lending businesses) (Net1, 2006) and later in 2006 Prism Holdings Ltd, which focused on “secure transaction technology, solutions and services”, which later became the owner of EasyPay Ltd (Net1, 2008).

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 (Lapping, 2017). What had not been as prominently covered in the news media was that the largest investor in Net1 was 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 (Torkelson, 2017a). 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’” (Gouws, 2017).

Being a 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. These types of deals do not, however, 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, 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 that implied that of the 74.54% that CPS indicated the empowerment consortium partners were to “manage and/or execute” (McKune, 2016), they would enter into a “service agreement” whereby CPS would actually do the

work for 74.45% of the transaction fee (CPS (Pty) Ltd *et al.*, 2011). 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 towards the end of 2016 by *amaBhungane*, presumably after all investigations by the various authorities had or were in the process of being suspended (*amaBhungane*, 2017).

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 Belamant (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, and which in no way appeared 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" (McKune, 2016).

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) (CPS (Pty) Ltd *et al.*, 2011).

On 26 January 2012, just nine days after having been awarded the SASSA grants payment contract, Net1 entered into 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 Foundation" (Net1, 2012a: 1). The consortium is led by Mosomo Investment Holdings (Pty) Ltd (Mosomo), whose CEO is Mr Kgomoiso Brian Mosehla. At the time, Serge Belamant (CEO of CPS/Net1) denied that this BEE deal was connected to being awarded the tender (Brümmer, 2012). It is thus assumed that this deal was not a replacement or alternative to the consortium that 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” (Net1, 2012a: 1). 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 allocated 4.1 million and 300 000 shares respectively. The cost of the shares was R60/share (25% of the JSE market price at the time) (Wierzycka, 2017). 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 in the new Net1 B-BBEE 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” (Net1, 2016).

Just a day after the announcement, on 17 April 2014, the Constitutional Court handed down the AllPay 2 remedial order, which suspended the ruling of invalidity to ensure that the payment 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 that has since been deemed irregular and has been taken to court for review. Excluding value-added tax (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 ( $\pm$ 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 (Net1, 2016).

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, be just one big coincidence.

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 that 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.

### **6.2.2 How to milk money from the poor**

*No party has any claim to profit from the threatened invasion of people's rights*  
(Constitutional Court of South Africa, 2017a: 28).

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 that were to be made in the proposed new contract for CPS to continue to distribute grants beyond 1 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 (Constitutional Court of South Africa, 2017a: 27).*

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 (Raborife, 2017). 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 (SASSA, 2017d). 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 that 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 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 was established in 2014 (see Section 5.5), 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.

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 was 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 ... (Net1, 2008: 6).*

In the MoA, CPS indicated 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” (CPS (Pty) Ltd *et al.*, 2011: 6).

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 that could result from allowing a company that pays grants to also sell secondary financial services to beneficiaries. The 2012 contract between SASSA and CPS stated that the “Contractor [CPS] shall not use data belonging to SASSA for any purpose other than for the performance of the services” (McKune, 2017b). 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 had 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 to 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. Net1 highlighted that “[it 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” (Net1, 2008: 6). It would appear from a statement made when responding to the 2015 tender that Net1 no longer viewed the distribution of social grants as 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 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 (Staff Writer, 2015).*

It is the selling of secondary financial services that became a bone of contention between CPS and SASSA. The issue was CPS’s ownership and control of grant beneficiary data. This matter 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 the Black Sash Trust, 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) that limited the type and amount of deductions that 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 (Matshediso, 2016).

In response to the new regulations, Net1, Grindrod (the bank that is partnered with CPS and which provides 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 that can be governed or controlled by SASSA once a grant is transferred to an individual’s private bank account, which is 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 therefore between Grindrod Bank and the recipient and not with SASSA, and as such is governed by standard commercial banking regulations. This is just one of the many factors that must be considered in SASSA’s approach to paying grants in the future and which will be discussed in Chapter 8. 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 (Maregele, 2017).

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 products and services ("ambush" marketing practices) (De Lange, 2017; Staff Writer, 2017b; Van Zyl, 2016; Mawson, 2015).

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.

One key unanswered question that the KPMG report skirts is how many EPE (a subsidiary of Net1 that 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 did not, however, indicate how many Moneyline accounts belonged to grant recipients (KPMG, 2017). Since the adoption of the new regulations that the DSD instituted, it became 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? A table in the report indicated that over 50% of the electronic funds transfer (EFT) debits from grant recipient accounts were for products and services related to these two Net1 companies alone (KPMG, 2017).

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 (Manyane, 2017).*

*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 (Torkelson, 2017b).*

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" (Net1, 2012b). 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's 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 (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 were to be found, it would require active participation from all 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.

### 6.3 In the Shadows

One of the critical questions that remain to be determined is: What are the possible financial benefits that 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 that 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 (US 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” (US SEC, 2015). The US DOJ in July 2017 also closed its investigation, with a similar caveat: “If the Department learns additional information, it may reopen its inquiry” (US DOJ, 2017). The Hawks’ investigation appears to have found no actionable evidence of wrongdoing. 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 (Chopra, 2015).*

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

### **6.3.1 The BEE partners and Lunga Newana**

As was highlighted and detailed in the previous chapter, 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 being 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 that had been taken to 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 funds into the provincial ANC (Wa ka Ngobeneni & Brümmer, 2004). 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 *Narrative Report of the Adjudication Committee in Respect of Payment Tender Service*, and making transparent the reasons for cancelling the tender (DSD, 2009c).

As previously 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. Arendse (2009) and his secretary at the time, Colleen Beverley Bainbridge (2009), 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 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 turned, where Arendse (2009: 4) indicated:

*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” (Arendse, 2009: 4).

As highlighted previously, the supporting statements of both Adv. Arendse and Ms Bainbridge have been published online and were independently verified by *GroundUp* (Bejoy, 2016).

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 that 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” (McKune, 2012a).

Fast-forward to the allegations of corruption that were hinted at in the 2012 tender. As detailed in the previous chapter, the main allegations of possible corruption centred 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” (McKune, 2012b). These allegations were put forward in AllPay’s original affidavit to the High Court in 2012. The court, however, found that no “notable” conflict of interest could be determined and it was thus not considered a factor in the case. Yako and Nhlapo were both board members of Reflective Learning Resources until early 2010 (McKune, 2012b).

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 of a conversation 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) (Staff Writer, 2013b). Tsalamandris alleged that 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” (Constitutional Court of South Africa, 2013: 53). 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”.

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” (Sidimba, 2013) when he indicated on the recording that “I don’t want to be seen because these guys are dangerous and there’s nothing that’s beyond them” (Sole, 2013).

*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 (Sole & McKune, 2017).*

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 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 (Deane & Wa ka Ngobeni, 2005). 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 that was run by Mazibuko-Skweyiya (wife of former DSD minister, Zola Skweyiya) (Staff Writer, 2014b).

Investigating the empowerment partnerships that 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 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'" (McKune, 2016).

*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." When approached, Bulelwa confirmed knowing Ncwana, stating: "Yes, I grew up with Lunga", but later 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. This, however, 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" (McKune, 2016). 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" (McKune, 2016).

A more direct link can be established in the major BEE deal that was undertaken between Net1 and the BVI consortium, led by Mosomo Investment Holdings (Pty) Ltd, whose CEO is Mr Kgomotso Brian Mosehla (Net1, 2012a). 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 payout, 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 the “re-registration” of beneficiaries (McKune, 2017c).

As mentioned previously, a number of investigations were undertaken in the 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 it is worth noting that one of the arguments that was put forward by the plaintiffs involved the then Minister of Human Settlements, Tokyo Sexwale (Ramos, 2015). In their complaint, based on media reports at the time, they highlighted two specific links between Sexwale and the 2012 tender. The first was 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* (Brümmer, 2012) 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”.

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 2012, 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” (Staff Writer, 2012). Presumably, this was 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 (McKune, 2012c).

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, who 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 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 (Soccer Laduma, 2017).

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]* (Brümmer, Sole & Wa ka Ngobeni, 2005).
- 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* (McKune, 2016).
- 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* (McKune, 2016).
- 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* (Hogg, 2017).

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* in March 2017, 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 (DSD, 2017c).*

The article revealed that there does in fact appear to be hard evidence of a possible corrupt relationship between Minister Dlamini and Ncwana, in the form of an SMS that 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” (News24 Correspondent, 2017).

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 (Saba, 2017).*

The following 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" (McKune, 2016).

### **6.3.2 Behind the scenes: 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 8 July 2009. Dangor, who was the COO and negotiating the extension of contracts for payment service providers at the time, was requested by Molewa to attend the meeting. 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 on 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 (Foley & Swilling, 2018).

This intervention by Hulley and Duduzani Zuma took place just three months after Jacob 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, Michael 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, that he had been appointed to provide “commercial, financial, legal, and operational advice” on the tender (McKune, 2012b). 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 for 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” (Ramokgopa, 2012: 73). 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” (Ramokgopa, 2012: 80).

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 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 SAPO, as well as the litigation CPS was pursuing against SASSA for its agreement with several banks, which involved directly paying into beneficiary bank accounts. Belamant, seemingly foreseeing the potential conflict of interest, indicated that once the new 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” (McKune, 2012b).

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 that could be secured by 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 on the requirements for the payment of grants. The dignity of beneficiaries was the principal requirement of 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 of biometric identification from “preferred” to a “must” (Foley & Swilling, 2018). 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” (Sole, 2013).

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 advisers were chosen specifically because they “would support what they [SASSA] were doing” (Sole, 2013). One of these advisers was none other than Patrick Monyeki, who would later be appointed to the MAC and go on to 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” (Sole & McKune, 2017).

As was previously noted, Monyeki was allegedly involved in several other potentially corrupt deals. The first was related to allegations of collusion in a contract between the DCS and the Sasstec group, of which he is a 15% shareholder (Serrao, 2017). 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 (SABC Digital News, 2018d). 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 (Serrao, 2017). The second is linked to the investigations of unexplained money transfers to SARS’s second-in-command Jonas Makwakwa, which had been flagged by the FIC. A complex web of alleged corruption and money laundering emerged from the investigations, 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 (Serrao, 2017). 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 that 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 Monyeki’s “close friendship” with Moyane that 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” (McKune, 2012d).

As was 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 that led to the “self-created” crisis in March 2017. It was also noted in Section 5.6.2 that in 2016/2017 Hulley entered 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. At 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” (McKune, 2017d).

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 5.5.2, during Dangor's testimony (at 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), but cross-examination did not establish the purpose of the meeting (SABC Digital News, 2018c). Although there are not many details of this meeting in the media, it is alleged that present at the meeting was a select group that included Hulley, Mvulane, and possibly even Tim Sukazi (McKune, 2017a). 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 that was recommended 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 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" (Wa Afrika & Saba, 2017). During the Inquiry, Magwaza testified to the heated exchange. Even though he did not highlight Hulley's role in the Inquiry, he indicated that the minister was adamant that the SASSA executives were not to interfere in the undertakings of the work streams and presumably the parallel shadow structures (SABC Digital News, 2018d).

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 possible conclusion is that he was directly representing President Jacob Zuma (DSD, 2017d). 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.

## **6.4 Summary**

This chapter explored and unpacked the aspects of the shadow state that take place outside of the government. In terms of the State Capture *modus operandi*, the characteristics, structure, and

formation of Net1, its subsidiaries, and the contractual agreements with the BEE partners all have similarities to those described in the conceptual framework. The first aspect is that when Net1 (Aplitec at the time) originally acquired CPS in 1999, CPS was already established (owned by FNB) and was already operating as a grant payment service provider. Up until that point, Net1 was primarily a technology development company, concerned with the development of IT systems for managing payments, but did not offer physical payment services. The second characteristic is the complex and opaque joint venture agreements of the BEE partnerships and the agreements between Net1 subsidiaries and Grindrod Bank.

The second aspect of the State Capture project that this chapter highlighted is the organisational “structure” of the shadow state and the various roles that are filled by various members of the power elite. In the SASSA case, for example (hypothetically or illustratively), Bathabile Dlamini would be considered part of the “elite” due to her position as Minister of the DSD and as president of the ANCWL. Michael Hulley (Zuma’s former lawyer), who played an active role in providing “legal opinions”, both in the awarding of the 2012 CPS contract and the 2017 SASSA-Gate crisis, could therefore be considered a “fixer”. The fixer creates an accountability buffer between the “elite” and any illicit activities that are taking place within government (i.e. Dlamini did not directly interfere in the bid evaluation). Lunga Newana could then be the “broker/middleman”, due to his personal and business relationships with Dlamini and Hulley (in government), and with multiple individuals who are involved with the BEE partnerships/deals with Net1. Without having any direct involvement in any of the formal contracting, the middleman is free to interact with and between both parties.

The figure in Appendix B provides a hypothetical example of the network of persons identified as potentially being part of the shadow state, with labels assigned to those who are specifically part of the power elite. It is important to note that this description and the figure are not intended to imply or insinuate corruption or illegality by any of the specific individuals listed. Rather, these serve as illustratively examples of how the power elite and shadow state operate, based on the conceptual framework and the evidence available in the public domain.

The last point worth noting with regard to this chapter is that it provided insight as to how the attitude, or rather the demeanour, of the government under the Dlamini (Zuma) administration differed to that of her predecessors. Highlighting that allegations of corruption existed before the Zuma administration is important; first with regard to the case that concerned CPS being awarded a tender in Limpopo, and the second the alleged attempted bribe of Adv. Arendse in relation to the

first SASSA grant payment bid. However, what is interesting and evident is that the two administrations have distinctly different approaches to addressing and dealing with allegations of corruption. When confronted with allegations of corruption, Zola's response was to provide the media and the public at large with greater transparency, by requesting and then releasing the *Narrative Report of the Adjudication Committee*. This response stands in stark contrast to the many instances of obfuscation, flat and unsubstantiated denials, and deflection that became standard under Bathabile Dlamini.

## Chapter 7: Beyond Corrupt

### 7.1 Introduction

The first section of this chapter outlines the party political dynamics of the ANCWL and Dlamini and Zuma. The second section is an assessment of the power dynamics of the events that unfolded, particularly with regard to the workings of the power elite in the Executive and the strategic manoeuvring by various Kitchen Cabinets. The third section describes an example of the other means by which the DSD and SASSA were repurposed, in particular with regard to the use of state resources to manipulate and secure legitimacy from the voting public. The last section highlights the role that other sectors of the state have played with regard to countering State Capture.

### 7.2 The African National Congress Women's League (ANCWL)

*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 (ANCWL, 2016).*

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 that the state, for one reason or another, chooses not to pursue. Significantly, this statement called into question the constitutional order. One interpretation is that the ANCWL concluded that too much power resides with the Judiciary. As argued in the *Betrayal of the Promise* report (Bhorat *et al.*, 2017), 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 the 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 neopatrimonial pattern found in newly liberated



nations. As outlined by Tripp (2001), 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 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 interest of their constituency.

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” (Ngalwa, 2015). At the conference, she became a member of the NEC of the ANC, as well as the National Working Committee (SASSA, 2016a). Following the national elections, she was subsequently made deputy and later minister of the DSD.

It was shortly after the 2015 ANCWL conference that the notion of the “Premier League”, consisting of the Free State, Mpumalanga, and North West premiers, emerged (Davis, 2015; Ngalwa, 2015). Going into the conference, it seemed that there was majority support for the incumbent ANCWL president, Angie Motshekga. However, it is alleged that the Premier League intervened during the conference. 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 (Bendile, 2017).*

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. It was reported that “ANC Women’s League members demonstrated in support of Jacob Zuma outside his rape trial in 2006, carrying signs that included wording such as ‘Zuma, rape me’” (Davis, 2015). 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” (Gouws, 2011: 96). 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. In 2017, Dlamini herself appeared to have provided protection for then Deputy Minister of Higher Education and Training, Mduduze 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 (Shoba, 2017).*

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 for the inclusion of men in the ANCWL delegation was, it was reported that Dlamini said that “women were too emotional” (Tandwa, 2017). There are many more examples that highlight the contradictions that exist between the ANCWL’s actions and the gender equality struggle that it professes to espouse.

### **7.3 The Kitchen 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 of the Promise* 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 that led up to the looming deadline of SASSA of 1 April 2017, but also how the events were presented to parliament and the public, as well as what transpired thereafter. Moreover, in particular, what role did SASSA-Gate play in the cabinet reshuffle in March 2017? What follows is a summarised recapitulation of events previously 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 grant payments by April 2017. What followed were numerous meetings with other government agencies (including NT and the SARB) that were previously described. They concluded 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 payment of grants based on an open-architecture model. It was at this stage that the conflict between Dlamini and Gordhan would begin to emerge. On 23 January, Dlamini sent Gordhan a briefing note that 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 1 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 go out on tender. This was Option 6 of the various solutions that the TTT had developed. On 7 February, Magwaza wrote to NT, requesting approval for deviation from standard procurement processes that would enable SASSA to extend the existing contract with CPS. NT swiftly responded on 8 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 were developing regarding the uncertainty around how grants would continue to be paid come 1 April. The activities and discussions in parliament were also contributing 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 previously 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 that 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 previously 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 the 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 1 April. Had this happened, the blame would have been placed directly on NT, which would have 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” (PMG, 2017b: 6). It would seem from this statement that Dlamini was (either willingly or unknowingly) misleading parliament; as NT had previously 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 the 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 8 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 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. 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 of 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 forever changed the political dynamics of the country. Even the Minister of State Security claims he had no knowledge of the “report”.

## 7.4 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 (Du Plessis, 2017).*

The above statement, made by Bathabile Dlamini at a Women's Day rally on 8 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 that 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 also allowed 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 that 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 (Plaut, 2014).

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) handed out food parcels at events held at Heinz Park and Phillipi in Cape Town on 1 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*, the Public Protector (2016b) 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* (Public Protector, 2016b: 8).

As part of the remedial action, the DSD and SASSA were required to develop a “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” (Smillie, 2016). A recent report by the new Public Protector found that these remedial actions still had not been adequately addressed and she again instructed the DSD and SASSA to implement the remedial actions (Public Protector, 2017).

## **7.5 The Constitutional State at Work**

The significant role civil society groups played, by approaching the Constitutional Court, must 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 that played a crucial role in preventing the rules from being abandoned, who defended the Constitution, and cast 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 following:

- 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 to ensure that those in power are at least held accountable in terms of their legal obligations, even though they seem impervious to political rebuke. The order it 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, the Centre for Applied Legal Studies, 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, who dedicated themselves to serving the interest of the public good, and spoke out when they witnessed improper acts (or statements) by those in power.
- The investigative reporting by brave men and women in the news media, such as *GroundUp*, *Business Day*, *Daily Maverick*, and *amaBhungane*, who asked the tough questions and exposed the lies.

## 7.6 Summary

In order to highlight the importance that the political power dynamics have in terms of how the state is governed, one needs to look no further than the trading of political favours (patronage) between Bathabile Dlamini and the Zuma-centred elites. Dlamini was a crucial political supporter of Zuma in the lead-up to the ANC Polokwane Conference, where in her position as Secretary-General she was able to mobilise significant support, resulting in Zuma being nominated for president by the ANCWL. For this support, Dlamini was rewarded with the position of Deputy Minister (and later Minister) of the DSD. Then, in 2015, her political status was elevated, allegedly through the support of the “Premier League”, to become president of the ANCWL.

The political position of power she wields in the governing party has undoubtedly protected her from having to account for her potentially corrupt (alternatively, extreme incompetent) actions that led to the SASSA-Gate debacle. This is evident by the fact that, despite the scathing Constitutional Court judgement against Dlamini in mid-March 2017, Zuma did not remove her from the position of Minister of the DSD in the last cabinet reshuffle of his presidency in late March 2017. Instead, Zuma removed a comparatively competent and effective Minister of Finance (Pravin Gordhan), without any rational motivation given to the public. This act showed to the country that the decisions Zuma was making as president were not in the interest of the country and were motivated by selective interests.

The political dynamics of the country, such as they are, mean that Dlamini is still seemingly protected by the political position/power she retains as president of the ANCWL. This is evident from the fact that President Ramaphosa (with a marginal national ANC conference victory), although he removed her from the position of Minister of the DSD, did not remove her from cabinet (transferring her to Minister of Women under the presidency).



On the face of it, the proposition of the actual intention behind the decision to not approach the Constitutional Court before entering into an agreement with CPS might seem admittedly highly speculative. However, without greater transparency and full ventilation of what actually took place over the weekend of 19 February 2017 (the alleged Kitchen Cabinet meeting that took place at Zuma's residence), and without a logical explanation as to by whom or why the decision was taken, it cannot be discarded from the realm of possibilities. What this serves to illustrate, however, are the diverse roles that the power elite may play and the different tasks they undertake as part of the shadow state.

By providing a brief summary of the findings of the Public Protector's investigation into the use of state resources for party political benefits, this chapter also highlighted one of the other main ways in which the state is repurposed under the project of State Capture. This is to reinforce voter support by maintaining and reaffirming the association of delivery of public services with the governing political party.

Lastly, this and previous chapters (and in effect this case study) served as an illustrative example, or rather motivation, for two of the main criticisms that were levied against the historical reductionist application of neopatrimonial theory. The first criticism is the lack of recognition paid to the contextual legal-rational bureaucratic systems that are actually in place within the given state that is being analysed. In the context of South Africa, it could be argued that the formal relationship between the accounting officer (the CEO) and the minister is not adequately defined under the SASSA Act. This flaw or gap in the legislation is in effect what allowed for the informal, personal (or political) relationships of the minister to drive the repurposing of the institution. The second issue is the failure to specifically recognise the other NGOs or private institutions of the state and the power they hold to counter the project of State Capture. The active involvement of the Judiciary (a pillar of the constitutional government), civil society (including the Black Sash Trust, Corruption Watch, Freedom Under Law, and others), independent media (investigative reporting), and competitive private sector market (evident by AllPay's initial law suit against the DSD, SASSA, and CPS) collectively prevented the possible full-scale looting of the state from actually taking place.

## Chapter 8: What Futures May Unfold

### 8.1 Introduction

*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 (Constitutional Court of South Africa, 2017a: 11).*

Since the Constitutional Court ruling on 17 March 2017, much has occurred regarding the SASSA takeover of grant payments. Yet it seems little in practice has changed; at least up until the resignation of President Zuma on 14 February 2018 (Staff Writer, 2018). Ramaphosa, having become president of the ANC, following the party's national conference in December 2017, was inaugurated as president of the country the following day. In the first cabinet reshuffle of his presidency on 26 February 2018, Ramaphosa relocated Dlamini to the Minister of Women in the Presidency and Susan Shabangu was made Minister of the DSD (*Times Live*, 2018). On 23 March 2018, the invalid contract between SASSA and CPS was yet again extended for an additional six months, to ensure that CPS continues to provide cash payment services to beneficiaries during the transition to the new SASSA/SAPO payment system (Constitutional Court of South Africa, 2018).

This chapter seeks to contextualise the SASSA-Gate crisis within the broader context of the very real and difficult economic, social, and political challenges that South Africa faces going forward. It provides an analysis of subsequent events following from the March 2017 Constitutional Court judgement, particularly from the perspective of State Capture, and discusses the broader impact of the biometric technology in the State Capture project and in turn on South Africa's social welfare system.

### 8.2 SASSA-Gate 2.0: Motivation versus Intent

On 10 April 2017, Minister Dlamini's long-time special adviser, Siphon Shezi, 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 (Thamm, 2017a).

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 the provisioning of services between and within different government entities. Having received this approval, Magwaza signed a cooperation agreement between SASSA and SAPO (Dzonzi, 2017).

On 19 July, Dlamini replaced Magwaza with “one of her close supporters and a fellow member of the ANC Women’s League”, Pearl Bhengu (Ensor, 2017). 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).

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 1 April 2018. This is when the extension of the invalid contract was set to come to an end. Towards the end of October, the panel presented a damning report to the Constitutional Court regarding the conduct of SASSA officials responsible for ensuring a grant 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’” (Thamm, 2017b).

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 was revealed through these meetings was that, following Magwaza’s exit from SASSA, there appears to have been a marked turn for the worse in the relationship between the two SOEs. 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 Postbank 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 Postbank could provide the services it had set out in its proposal. The CSIR submitted its report to SASSA on 15 September 2017 and on 6 October SASSA sent the Postbank an award letter, which offered to contract it for only one of the four services that SASSA required, namely “an integrated payment system which can also handle beneficiaries’ biometric data” (Herman, 2017a). 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 paypoints” (Mahlaka, 2017). This offer was rejected by the Postbank 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 8 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” (Herman, 2017b). 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”. This letter, together with 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 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 1 April (Thamm, 2017b).*

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 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 (Dlamini, 2017b: 3).*

The term "white label EMV standard" implies that at the backend of whichever system is adopted for these smart cards is 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" (Staff Writer, 2016a), 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) 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 (SDAs). 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 (Moabalobelo, Morienyane, Dube & Malumedzha, 2017: 6-7).*

SAPO proposed that each recipient would receive their own SDA debit bank account, much the same as is the case with the existing 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 explain the need for the card to be prepaid, where all grant funds would be held in a single holding

account and distributed to grant recipients based on their registry profile. However, 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 the 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 that 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 regarding 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 (Maregele, 2017). Without individual bank accounts, deductions could be restricted to those that 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” (DSD, 2017d: 1). 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. I 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 Act 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 that 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 (Sole & McKune, 2017).*

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 must be specified and defined in legislation before it can be enacted.

### **8.3 The Long Game**

On 8 November 2017, 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 South Africa was 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 (Staff Writer, 2017a). 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 1 April 2018. The agreement allocated SAPO the responsibility of carrying out all of the functions that it had proposed in its response to the RFP, but also catered for other banks to play a more prominent role in the distribution of grants and envisioned 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” (SASSA, 2017b: 55).



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” (Saba, 2018). 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 (SASSA, 2017b). Ultimately, the issue of physical cash payments would lead to yet another extension of the invalid contract between SASSA and CPS in March 2018 (Constitutional Court of South Africa, 2018).

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 (Dlamini, 2016a). Why the release of the document had been delayed for over four years is unknown. 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 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 would contribute to the fund) (IDTT, 2012).

As previously indicated, the relevance of the proposed CSSD, which was prepared by the IDTT, is that it would undoubtedly add an increased level of complexity to the challenge of SASSA taking over the payment 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 would 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 with regard 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 determined to implement a closed-loop system, even though this would go against government policy (IDTT, 2012).

It is important to highlight that the work streams' 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 that 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 (Ndlendle, 2017). To be fair, as members of the MAC, they were tasked to investigate how SASSA would take over the payment of grants. This is assumed to have been the long-term planning of 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" (Dlamini, 2017b) 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 that could provide this technology, this is definitely something that 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 that 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" (Sole & McKune, 2017). The staffing complement that SASSA would require in order to negotiate and manage these contracts, as well as the training requirements or the technical support that would be required to operate a system like this, also remain 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" (Thamm, 2017b).

## 8.4 The Ransom

The last statement of the previous section above was made in the report by the Panel of Experts, which was 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 manoeuvrings to favour a particular service provider with high-level political connections to 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 a 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 is still to be released. A figure of R2 billion is touted by SASSA, the DSD, and the minister as the amount of money that 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 beneficiary fraud. Still, there is no evidence to prove how effective the new CPS system would be.

Comparing the reported cases of fraud, as reported in SASSA's 2011/2012 and 2015/2016 annual reports, provides some insight into 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" (SASSA, 2012: 44). 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" (SASSA, 2016b: 55). This implies that the number of cases of reported fraud appears to have more than halved since CPS took over the payment 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” (SASSA, 2012: 44), and in 2015 it was indicated that the “monetary value of the finalised cases is R2 429 519” (SASSA, 2016b: 55). This indicates that there has been a major decrease in the amount of money that the state is able to recover from fraud. This, however, does not necessarily equate to the amount of money that 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 (SASSA, 2017a). 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” (Hawks, SASSA & SAPS Crime Intelligence, 2016). 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 incurred by beneficiaries. In terms of costs for beneficiaries, there is the matter of the transaction fees that 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 ATMs (Minister of Finance, 2017) and more than 50% of all grant recipient transactions take place using non-CPS compatible (PIN-based) ATMs and PoS devices (SASSA, 2017c), 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 R2 000). 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, must also 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” (Standing Committee on Community Development, 2016: 131). This is not a loss to the state or the taxpayer. This is money that 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. 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.

Besides the financial costs that result from the uncompetitive bidding processes or potential corruption, there is a greater economic cost that 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.

## **8.5 Is Technology a Solution or a Tool and for Whom?**

In order to fully appreciate the impact of the State Capture project, it is necessary to step back and examine what implications this project has had on the overall grant payment system. Drawing from the details presented in the text boxes and events that have transpired, the following is a summary of how the grant system itself has changed over time and the implication thereof. A tabulated breakdown of the changes to the grant payment system over time is provided in Appendix C.

As previously noted, prior to the establishment of SASSA in 2006, the responsibility for the payments of social grants resided with each of the respective provinces. They in turn entered into

contract agreements with various service providers, which included CPS, AllPay, and Empilweni. 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 scales of fraud to occur. When SASSA took over the contract from the provinces, it became clear that the systems needed to be consolidated, reconciled, and then standardised (Donovan, 2013). In 2007, SASSA released the first national tender for the provisioning of service provider(s) for the payment of grants, but in early 2009 (to much controversy, as previously discussed) it was announced that the tender had been cancelled (DSD, 2009c). At the time it was estimated that approximately 70% of beneficiaries received cash payments (Adjudication Committee, 2008). CPS had a higher percentage of cash payments compared to AllPay and Empilweni (Pulver & Ratichek, 2011).

With the tender abandoned, from 2009 to 2011, SASSA continued to renegotiate (when there was a shift from payment per beneficiary to payment per recipient) and extended the contract agreements with each of the various service providers and other banks (which was the cause of one of the legal disputes between CPS and SASSA). However, SASSA also entered into a new agreement with SAPO in 2009, whereby a new grant beneficiary would be afforded the option to open a “subsidised” SAPO Mzansi bank account. The main objectives of the agreements were to promote the use of electronic payment methods by grant recipients (which is cheaper for SASSA) and to promote inter-governmental cooperation and efficiencies.

Aggrieved by the SASSA/SAPO agreement, as well as the agreements that SASSA had with the banks to subsidise grant recipients’ banking fees, Net1/CPS instituted several legal cases against SASSA. In 2011, after having the High Court find in favour of CPS, the Supreme Court of Appeal ruled that the agreement between SAPO and SASSA was valid (Supreme Court of Appeal of South Africa, 2011). 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 the payment of grants.

By 2011, when the bid document was issued, there were approximately 14.5 million beneficiaries, where approximately 58% of the total 9.2 million recipients were paid electronically into a bank account (including SAPO and AllPay accounts). At the time it was estimated that almost two-thirds of the cash payments were made by CPS (Pulver & Ratichek, 2011).

As has been discussed at length, in 2012 CPS was awarded the (ultimately invalid) contract for the nationwide payment of social grants. A critical point to highlight, however, is that CPS was

awarded the tender because of its biometric technology, in particular because it was going to use voice verification for recipients who did not use biometric devices for receiving grants (Constitutional Court of South Africa, 2013). It would seem, however, that CPS misled SASSA when it indicated that it had voice biometric verification technology, as this was only implemented in 2014 (SASSA, 2014). More significant, however, is that the use of this voice verification technology was dropped within a matter of months after implementation (Staff Writer, 2014a).

As part of the contract, CPS was allocated the responsibility for the re-registration and payment (including into other bank accounts) of all grant beneficiaries. This was one of the main overall objectives that were outlined in the RFP, which served as the basis for the contract between CPS and SASSA. The other objectives included, *inter alia*, the following:

- *The overall intent is to shift from the current largely [so-called] cash-based payment model to [a] more electronic-based payment model ...*
- *... should cater for financial inclusiveness by allowing Beneficiaries to interact through the regulated National Payments System.*
- *The proposed solution should not burden Beneficiaries with transaction cost and should be able to accommodate a subsidisation for transaction costs, which costs should be included in the Bidder's Firm price.*
- *Bidders should note that SASSA's strategic intent is to migrate Beneficiaries to electronic payment systems to allow for their integration into the mainstream economy of the country. Such migration shall achieve at least a maximum of 20% cash payment Beneficiaries after four years from commencement of the contract (Pulver & Ratichek, 2011: 22).*

A Finmark Trust (2012) sample survey indicated that approximately 30-37% of beneficiaries received grants via actual physical cash paypoints. Cash payments require a CPS card and, as such, all beneficiaries who opted for the cash payment method received SASSA bank accounts.

As discussed in Section 6.2.2, Net1 and its subsidiaries have been accused of utilising grant beneficiary data obtained under the CPS contract to peddle their financial products to beneficiaries. In March 2015, when SASSA was in the process of issuing a new tender for the payment of grants, in line with the Constitutional Court judgements, the Black Sash Trust approached the court to ensure that the use of beneficiary data was restricted, in an effort to address the issue of the “illegal” and immoral deductions from grant recipients (Constitutional Court of South Africa, 2015). As previously discussed, this tender, it would appear, was designed to fail and ultimately was not

awarded. However, what should be noted is that CPS had decided not to bid for the tender. In its announcement, Net1 indicated that its business plan would henceforth focus on the “continued successful deployment of its EasyPay Everywhere bank account, its biometric ATMs and mobile portal, its suite of financial and added value service” (Staff Writer, 2015). In June 2015, Net1 launched its new low-income EPE account.

In an effort to stop deductions being made from grants, in May 2016 the DSD issued changes to Regulations 21 and 26A to the Social Assistance Act, No. 13 of 2004 (Matshediso, 2016). In response to the new regulations, Net1, Grindrod (the bank that is partnered with CPS and provides bank account services for grant recipients), and others approached the High Court to provide clarity on the regulations. The High Court ruled in favour of Net1, but this matter has since been taken to the Supreme Court of Appeal.

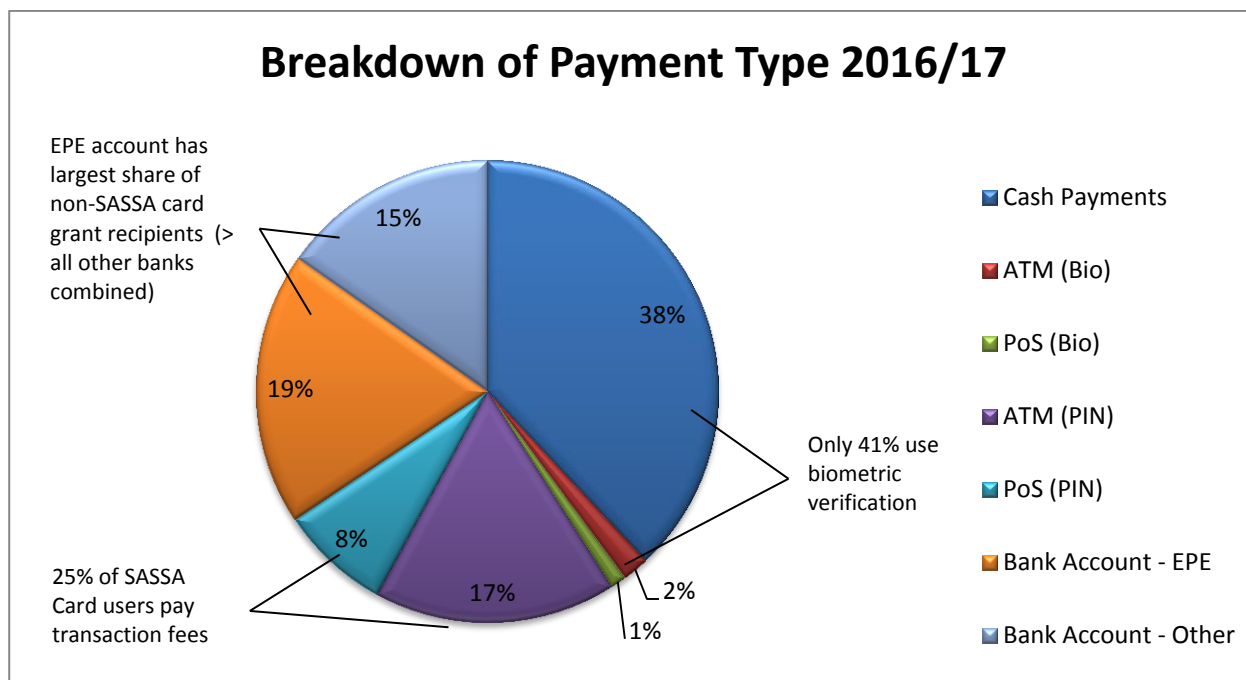
By the time the SASSA-Gate crisis reached its peak at the beginning of 2017, Net1 had managed to sign on approximately 1.95 million EPE bank accounts since its launch in June 2015 (Net1, 2017). It is unknown exactly how many of these bank accounts belong to social grant recipients; however, given the volumes of reporting on how grant recipients have been misled into opening these accounts, it is assumed that they account for the vast majority, if not all. To gauge if CPS had indeed met the requirements of the initial RFP, as indicated above, it is necessary to establish the breakdown of how grant recipients are paid.

Unfortunately, a comprehensive dataset is yet to be released into the public domain; however, the following estimates were determined by correlating and aggregating information contained in the RFP response to questions released by SASSA in early 2017 (SASSA, 2017c) and the presentation made by the Minister of Finance to parliament in March 2017 (Minister of Finance, 2017). The following points are highlighted, and a breakdown of the different payment methods is provided in Figure 9:

- At the time, an estimated 38% of grant payments were made in cash.
- Of the remaining grant payments, it is estimated that 19% of the recipients had their grants transferred directly to EPE accounts. Only 15% received payments into individual bank accounts with other banks.
- The remaining 28% of grant recipients received payments into SASSA/Grindrod accounts and used either ATMs or PoS to access their grants. Of these, only 3% utilised biometric



verification (Net1) ATMs or PoS devices. That means 25% of the recipients using the SASSA/Grindrod account were paying transaction fees for accessing their grants.



**Figure 9: Breakdown of grant payment type 2016/2017**

Based on this breakdown, it is clear that, firstly, the contract between SASSA and CPS did not result in a reduction in the percentage of cash grant payments. Secondly, less than half of the grant payments utilise the biometric verification system. Thirdly, an estimated 25% of grant recipients using the SASSA card are burdened with transaction fees; not to mention that the other 34% of the recipients who receive payment directly into their bank account would also be required to pay banking fees. Lastly, this highlights the monopoly market access that Net1 has attained through the invalid CPS contract. It would therefore seem that the objectives were definitely not realised.

As outlined in Section 8.2, in December 2017 the IMC announced that an agreement had been signed between SASSA and SAPO. The agreement has been referred to as a “hybrid model”, where SAPO was allocated the responsibility of carrying out the functions it had proposed in its response to the RFP (card production, banking services, and the integrated payment system), but also catered for other banks to play a more prominent role in the distribution of grants (SASSA, 2017b). It is difficult to see any major differences between this model and the system that was in the process of being developed prior to the 2012 contract. This is with one exception, being that between 2009 and 2011, there were multiple service providers and the grant system was not monopolised (or rather

controlled) by a single entity. As noted by the Panel of Experts, this still places the entire grant payment system at risk (Auditor-General, 2017).

The issue that remains, however, is to determine what role the actual technology of CPS and Net1 played in the SASSA-Gate debacle. The motivation put forward by the minister and SASSA for pursuing the use of biometric verification was primarily to prevent beneficiaries from defrauding the grant payment system. As discussed in the previous section, it cannot be ascertained if this objective was actually realised, particularly considering the number of grant recipients who do not utilise biometric verification. Interestingly, however, is that it seems that the adoption of the biometric verification has indeed improved the grant payment system – just not in the way it was lobbied for. The Panel of Experts reported that SAPO should speed up its adoption of the biometric verification technology, as there were numerous instances where old age pensioners and others experienced difficulty in reverting to a PIN-based form of verification (Auditor-General, 2018).

In light of the above, I would argue that the technology itself (the use of biometrics for payment verification) played little (if any) part in the SASSA-Gate crisis. Rather, the issues surrounding the technology are with regard to the manner in which it was represented and how it was utilised as a technical lever to manipulate both the procurement and grant payment systems. That is to say, technology on its own is amoral and has no value outside of its application. However, the technology can be utilised as a tool for deception and manipulation.

## **8.6 Summary**

In terms of the “Long Game”, this case illustrates how even the minor manipulation of policy and tender procurement can have long-term implications and in effect change the rules of the game. In this case, the change of just one word for the biometric specifications has had a major impact. Not only did it allow CPS to monopolise the market of selling financial services to grant recipients (which was the intention all along), but it also resulted in the regulations being changed (restrictions on deductions from social grants); it has possibly expedited the inclusion of biometric technology into the NPS (indicated by PASA’s announcement in 2016); and it has established several precedents and norms for beneficiaries (by providing access to financial services that were not available before, as well as by establishing a demand for biometric payment verification). All these implications can be viewed as disruptions of the socio-technical transitions within the financial sector and social protection landscapes. Only time will tell the full measure of the long-term impact that the insistence on biometric technology will have. There are still debates and uncertainty around

the grant payment system, as well as issues regarding the immoral deductions, the misuse of beneficiary data, and the various payment models (closed-loop versus open-architecture models). Further assessment is required in order to address these complex technical issues that have been highlighted throughout the case study.

This chapter did, however, show the more immediate impacts that have resulted from the adoption of the biometric technology, or specifically the impact of “how” (through State Capture and the manipulation of the tender processes) and “why” (the intention as opposed to motivations given) the technology was adopted. The argument put forward for the adoption of biometrics was specifically for the reduction of beneficiary fraud; however, the case study shows that there is no way to prove that this is true or that the amount/value of fraud “eradicated” is worth all of the costs/problems that the CPS contract has caused.

It is not possible to provide a comprehensive, all-encompassing estimation of the costs that can be attributed to the State Capture of SASSA. There are, in fact, several costs that must be considered and some are not quantifiable; however, the following have been identified:

- Cost of the 2012 irregular contract (estimated R10 billion over five years, as well as the cost incurred by the state as a result of the contract extensions). Added to this should be the legal costs related to the litigation of the contract.
- Opportunity cost to the state, in that seven years after the SASSA/CPS contract was signed, we are back at a point where SASSA is contracting with SAPO for the payment of grants. The weakening of SASSA as an institution should also be taken into account. This is not something that can be readily quantified; however, with the recent appointment of SAPO, it is evident that the appointment of CPS was arguably an unnecessary delay in the payment of grants being undertaken by the government itself.
- There is the highly questionable escalation of irregular expenditure at the DSD from only R8.8 million in 2007 to R1.4 billion in 2017. Included in this amount are the irregular payments of R316 million to CPS (for the re-registration of beneficiaries) and R43 million paid to the work streams.
- Of course there is the slow repressiveness of the value of grants themselves (where annual grants are increased at CPI, which is lower than real food inflation), the 1% increase of VAT, numerous fuel increases, etc. Even though this cannot be attributed directly to the State Capture of SASSA, this is the result of the fiscal and economic impacts/decisions of the Zuma administration.

- The most important is the costs to beneficiaries. There are no definitive figures for this as yet, but it is known that beneficiaries incurred potentially unnecessary costs relating to transactions fees by CPS/Grindrod. Then there are the monies lost that correspond with the “illegal”/immoral deductions from grants (in May 2016, Magwaza reported that at that stage “the total monetary loss due to the unlawful deductions was close to R800 million”).

## Chapter 9: Conclusion

### 9.1 Introduction

This last and final chapter seeks to provide closure to this master's thesis. It is, however, important to recall the premise upon which this case study was undertaken. Specifically, that the primary goal of this case study was to develop a greater understanding of the phenomenon that is State Capture and to gain “some insight into what is going on and why this is happening” (Maxwell, 2013: 220). As highlighted by Flyvbjerg (2006: 238),

*[t]he goal is not to make the case study be all things to all people. The goal is to allow the study to be different things to different people ... Case stories written like this [in dense narrative format] can neither be briefly recounted nor summarized in a few main results. The case story is itself the result.*

What this thesis presented was an in-depth qualitative case study of State Capture, where a granular research method was adopted in order to investigate and to deconstruct the dense narrative of the event, people, decisions, systems, and institutions that were collectively entangled in the SASSA-Gate debacle. The term “State Capture” was used to encapsulate the distinct context-specific contemporary phenomenon that occurred under the Zuma administration in South Africa, where:

State Capture is the formation of a shadow state, directed by a group of power elite, which operates within and parallel to the constitutional state (in both formal and informal ways) and whose objective is to repurpose state governance in order to derive benefits that align with the power elite's narrow financial or political interests – which are often in conflict with public norms and not aligned with the principles of the Constitution.

With the above duly noted, the paragraphs that follow summarise some of the main insights that I attained through and from this master's research journey, with only some of the significant aspects of the case study being outlined.

## 9.2 Summary of SASSA State Capture Case Study

One of the primary goals of this case study was to unpack a detailed account of the SASSA-Gate crisis and to establish if there are any insights that pertain to the phenomenon of State Capture. This case study highlighted the nature and dynamics of the Zuma-centred political project. It highlighted that State Capture is not just about corruption and is not limited to only one network (Zuma-Guptas). It is a slow and systemic erosion 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 power elite. 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 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. 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.

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 that Dlamini fixated on, there is truth that the solution provided by CPS reduced 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 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 potential financial gain, but also for political expedience and the manipulation of voters. It also illustrated how, when relinquished to private interests, a fundamental state function itself can be repurposed for commercial exploitation. This is the case where

Net1/CPS 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 thesis, corrupt activities may or may not have been 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 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 National Prosecuting Authority [NPA] under the Zuma administration), I would argue that there is potentially a case that 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 of 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 the “re-registration” of grant beneficiaries and the case of SASSA (and others) against CPS regarding the “illegal” deductions from grants, both of which are set 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 that this illegal act resulted from pure incompetence and it is the same incompetence that could therefore also be blamed for the events that unfolded in the crisis of March 2017 and appear to have continued unabated. By establishing a parallel reporting structure that excluded SASSA, the minister should arguably be held liable for the resulting mess. This was the purpose of the Inquiry that was instituted by the Constitutional Court, the outcome of which is still to be determined. There are, however, still many questions surrounding SASSA-Gate, the people involved, and the events, which the Inquiry was not tasked to answer. For example, little is known about the decisions taken while Ms Peterson was the 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.

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 heed 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 the 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.

### **9.3 Overall Findings of the Research**

#### **9.3.1 Understanding State Capture: Matching theory and reality**

The first research question sought to establish the difference or relationship between state capture and neopatrimonialism and how either of these concepts might be applicable to the SASSA-Gate debacle. As this research in part emerged from the work undertaken in the *Betrayal of the Promise* report, it was already known that the strict definition of state capture, as a form of “grand corruption”, provided by Hellman *et al.* (2000), was insufficient to adequately encapsulate the phenomenon that is State Capture under the Zuma administration.

Neopatrimonialism provides an alternative theory for State Capture, which incorporates not only the activities of corruption, but also focuses on the manner and motivations of this corruption. The theory of neopatrimonialism, however, has, through its various applications and interpretations over time, become somewhat of a “catch-all” concept (synonymous with poor governance, corruption, and failure in economic development) that still presents a “major methodological challenge for empirical research” (Erdmann & Engel, 2007: 103-104). Through the continuous review of the literature and while undertaking the iterative process of matching theory to the case study, several issues regarding neopatrimonial theory emerged; however, they were in turn addressed by the critical review of the literature. The issues identified regarding the application of neopatrimonialism theory entail the conflation of ideal types of dominance with different types of regimes, the failure to adequately explore and recognise the formal-rational component of neopatrimonial dominance, and the reductionist (Afro-pessimist) tendency to associate neopatrimonialism with abuse or misuse of power (which is countered by recognising regulated as opposed to predatory forms of neopatrimonialism). I argue that, provided these issues are acknowledged and accounted for, where



the underlying presumptions with regard to the analysis are clearly stated, the application of the concept is still relevant and valid.

State Capture is a context-specific type of systemic neopatrimonialism, where public norms are founded on a liberal democratic legal-rational form of dominance; however, the practices of those in power are predatory in nature and resemble a patrimonial form of dominance in that they are informal and personal. State capture (in terms of the strict theoretic definition and a form of grand corruption) is just one of the more visible phenomena that have occurred under South Africa's State Capture. State Capture, conceived of as systemic neopatrimonialism, also includes, but is not limited to, the use and manipulation of the media (capture of the independence of the media), securing control over law enforcement agencies (which enables but is not corruption), and using state resources to secure patronage and political leverage (also not explicitly corruption).

The conceptual framework and definition of State Capture were derived and developed from literature on both neopatrimonialism and state capture, together with reflections on the case study research itself. As such, the case study served to illustrate the conceptual framework, as discussed in the section above.

The summaries provided at the end of each chapter outlined the key aspects that this case study illustrated with regard to State Capture, as does the overall summary above. The paragraphs that follow outline the four general conclusions that can be drawn from this case study, particularly with regard to the broader State Capture project and the theories of corruption and neopatrimonialism.

First, the case study showed the existence of the shadow state and, more importantly, it showed how the shadow state operates both within and outside of government institutions, both through formal and informal ways. This was in essence the main objective of the case study – to unpack the modus operandi of State Capture as systemic neopatrimonialism, which entails the following:

- Securing control over the public service, in particular through the appointment of cabinet ministers. Edna Molewa in 2009 (then removed – possibly because of Molewa's refusal to award CPS the 2008 tender) and then Bathabile Dlamini in 2010 as minister of the DSD.
- Intentionally weakening key technical institutions and formal executive processes. In this case it was by removing key top officials and replacing them with people who would not be obstructionist, and having officials only in acting positions (limiting their ability to take long-term strategic decisions). The evident involvement of persons who appear to be part of

the shadow state (such as Michael Hulley) in manipulating procurement processes. The appointment of the work streams (and instruction not to interfere) also limited the ability of SASSA officials to carry out their mandate.

- Securing access to opportunities for repurposing the state by manipulating or changing the directives or objectives of government; in particular the manipulation of tender processes that resulted in the contract 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.
- Creating parallel political, governmental, and decision-making structures that undermine the functional operation of government institutions. In this case, it was the establishment of a parallel governance structure where the recommendations of an external advisory team (the work streams that reported directly to the minister) were elevated above those of SASSA officials. The meetings with Michael Hulley (advisor and lawyer to Zuma) also played a key role in this aspect.

Second, is that this case highlighted power dynamics that underpin and enable the capture of government institutions. In particular, the clientelistic relationships entailed in consolidating and maintaining political support, as well as the organisational network of personnel relationships that drove State Capture, were as follows:

- Dlamini was a crucial political supporter of Zuma in the lead-up to the ANC Polokwane Conference, where in her position as Secretary-General she was able to mobilise significant support, resulting in Zuma being nominated for president by the ANCWL. For this support, Dlamini was rewarded with the position of Deputy Minister (and later Minister) of the DSD.
- Dlamini could be considered as “elite” due to her position as Minister of the DSD and as president of the ANCWL. Michael Hulley (Zuma’s former lawyer), who played an active role in providing “legal opinions” both in the awarding of the 2012 CPS contract and the 2017 SASSA-Gate crisis, could then be considered a “fixer”, and Lunga Newana could be the “broker/middleman”, due to his personal and business relationship links to Dlamini and Hulley (in government), and with multiple individuals who were involved with the BEE partnerships/deals with Net1.

The third key aspect of state capture that this case showed is that repurposing of the state involves more than just corruption and rent-seeking, and that there can be personal and political motivations, in particular to address the aspect of mass clientelism required for both regulated and predatory

forms of systemic neopatrimonialism. In this case, it was illustrated in the Public Protector's report – *State and Party, Blurred Lines* – where the ANCYL distributed food parcels that were arranged by SASSA. There are many other examples of how SASSA resources (events, grant relief, etc.) have been used to garner favour and political support for the governing party.

Lastly, the critical aspect of State Capture that this case study highlighted is that, under a shadow state, there is often a conflict/contradiction between motivations that are put forward to the public and the actual intentions of the shadow state. This could be seen throughout the case study; however, perhaps the two most pertinent examples are the following:

- The contradiction with regard to the preferences that appear to have been given to Net1 and CPS, given the political rhetoric surrounding the calls for RET and calls for an end to WMC dominance in the economy. Net1 is a US-based company and the Constitutional Court was at pains to express its disappointment in the company's B-BBEE partnership arrangements.
- The original motivation (to reduce beneficiary fraud) for changing the technical specifications of the RFP, by changing just one word from “preferred” to “must”, which resulted in CPS being awarded the 2012 grant payment contract.

### **9.3.2 Development Studies: Be Aware of Informality in Disruptive Transitions!**

The third research question and second aim of this research emerged from the case study itself, namely to determine what role disruptive technology (biometric verification) played in the SASSA-Gate crisis and what can be learned from this case study in terms of the unfolding 4IR.

As discussed in the literature review, the notion of the 4IR is yet to be fully realised. Developing theory with regard to the 4IR falls outside the scope of this research; however, the use of biometric technology to manipulate the tender processes and then the grant payment system itself serves as a cautionary notice as to the potential negative consequences of the unfolding 4IR. As highlighted in the case study, the technology is not the actual issue, but rather the manner in which it was deployed in conjunction with the State Capture project, which resulted in negative impacts felt by beneficiaries, the institutional capacity of SASSA, and the social security system.

The case study showed that government can be a driver of technology adoption; the question of course is, to what end? The biometric adoption in grant payments has advanced the adoption of the technology in the financial sector. It has also improved the grant payment system (by making it

easier for pensioners who are unable to use PIN verification to access their grants), although not in the way it was promoted it would. Solomon (2018) put forward the following four main questions that should be asked with regard to adopting a new technology, all of which were applicable in the case of SASSA adopting the biometric verification; however, none were adequately addressed:

- *Should the technology be developed in the first place?*
- *If a technology is going to proceed, to what ends should it be deployed?*
- *If the technology is to go forward, how should it proceed?*
- *Once norms have been set, how will the field be monitored to ensure adherence?*

The key challenges that the 4IR presents do not lie in the development of the technologies themselves, but in how our socio-technical, political, economic, and governance systems are able to adapt and respond to the exponential rate of change. As highlighted in Section 8.5, technology on its own is amoral and has no value outside of its application. As noted by Kim (2017: 8),

*unlike many existing technologies developed with clear performance goals in mind, most technologies underpinning or driving the Fourth Industrial Revolution are being developed without clear end-results in view. This implies that the specific paths of technological development for the Fourth Industrial Revolution are much more likely to depend on how various actors of the innovation eco-system, especially those three main tripartite actors (university-industry-government), perceive the utility and risk of emerging technologies and structure the discussions of alternative futures of those technologies.*

## **9.4 Reflections on the Study**

### **9.4.1 Challenges of State Capture research**

This section discusses two of the main challenges that I faced while undertaking this case study research. There were of course several others, including time constants, financial constraints, etc.; however, the following were the two most significant.

#### **9.4.1.1 Bounded in time and scope**

The scope of the research was not just limited in terms of its cut-off date (the resignation of former president Zuma), 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 *Betrayal of the Promise* 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, was the political project of the Zuma-centred elite and as such it required focusing 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 outlined the Public Protector's report, titled *State and Party, Blurred Lines* (Public Protector, 2016b).

There are a number of allegations and examples in the public domain of 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 I hope this case study may be of assistance.

#### **9.4.1.2 Issues of unknowns and bias**

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 unintentionally be 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 attempted to minimise assertions and refrain from criticising any one 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.

While undertaking the research, there were several instances in the feedback from reviewers where sharp criticism and conflicting views were expressed with regard to certain 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 dealings 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 was 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 this case study, several of them also had equally potent allegations levelled 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 my hope that this case study might inform similar, further 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/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 solutions 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.

#### **9.4.2 The value of granular case study research**

The approach and methodology adopted for this case study were outlined and explained in Chapters 1 and 3. As previously noted, the research presented in this thesis is the outcome of an extensive exploration of the events, people, decisions, systems, and institutions that are collectively entangled in the SASSA-Gate crisis. This is an in-depth qualitative case study of State Capture, where a granular research method was adopted in order to investigate and construct a dense narrative.

The main features of the way this research was undertaken were that I did not confine myself to focusing on only one aspect of the case (I examined all relevant people, events, systems, and institutions), discipline, perspective, or theory, and kept the research questions open so as to allow for multiple levels of analysis to take place. It is important to recognise and appreciate some of the criticism that these types of case studies can receive, and to reflect on the benefits and limitations that this type of approach to qualitative research presents. Admittedly, this approach is not in line with standard approaches to case study research, which seek to produce generalised theory or provide outcomes that can be easily summarised and that are replicable (Flyvbjerg, 2011). The value of this type of research, however, resides in the fact that it is very good for unpacking complexity, particularly when multiple disciplines, theories, and perspectives are required to truly understand a phenomenon. Complex transitions present a unique challenge for standard approaches to case study research in that they do not have predictive outcomes. However, as this is primarily a descriptive and exploratory case study, the issue of establishing any form of predictive outcome is not applicable.

Granular research was useful for theory testing (for identifying gaps and flaws in theory), particularly in relation to neopatrimonialism and state capture. One of the advantages that emanate from presenting dense narratives is that they are often embedded in and are reflexive of the complexity and contradictions of the real world. The second advantage of applying this research method was that, because the research was not confined to a single discipline or level of analysis, it was possible to identify synergies between and within various theories.

One of the major challenges of this type of research is that it is highly time consuming. Not being easy to summarise and being left open-ended, it is possible that the content of case itself might fall victim to misinterpretation and misrepresentation.

## **9.5 Implications and Scope for Future Research**

The project of State Capture is messy, complex, and multifaceted. One of the main benefits of selecting SASSA as a case study was that it provides a rare and detailed example of 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. 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 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 deductions for low-income financial services. For each of these lenses, further investigation and enquiry are necessary, but it is my hope that this report can serve as a foundation from which said explorations can emerge.

The limitations on the scope and timeframe of the case study present two other areas, or rather trajectories, for further research. The first is in relation to other sub-phenomena that fall within State Capture. As highlighted in Section 3.5, the case study was limited in terms of the extent that some of the indirect role players and institutions could be explored and/or assessed. For instance, as indicated in the bounded scope of the case study, even though the power dynamics and political aspects are included as part of the research, this does not extend beyond those who are directly involved in the SASSA-Gate debacle. As noted, extensive analysis of parliament and the governing political party, I argue, should be treated as standalone cases and separate sub-phenomena of State Capture.

As was highlighted in the critical review on neopatrimonial theory, it is also important to recognise those institutions of the state that fall outside of the government, as well as those institutions in government that might not have been repurposed for the objective of looting state resources but that



serve other functions for the State Capture project. As noted, state capture (in terms of the strict theoretical definition and a form of grand corruption) is just one of the more visible phenomena that have occurred under South Africa's State Capture. It is important to note, however, that there are several other phenomena that can be attributed to State Capture, including, but not limited to, the use and manipulation of the media (capture of the independence of the media), securing control over law enforcement agencies (which enables but is not corruption), and using state resources to secure patronage (also not explicit corruption).

It is important to recall that the purpose of this case study was not to examine the history of neopatrimonialism in South Africa or to explore in detail why State Capture was able to occur, but rather the aim was to describe and define what the phenomenon of State Capture is and how it manifests within a government institution. For the purposes of this case study, State Capture is a term that is used to encapsulate the distinct contemporary phenomenon that has occurred under the Zuma administration in South Africa. However, it is acknowledged within the case study that certain neopatrimonial (or rather specifically clientelistic) practices were definitely occurring before Zuma. I proposed that the Zuma administration represented a transition point where the country moved from a regulated to predatory form of neopatrimonial domination. I thus also recommend that further research be undertaken to establish whether and to what extent this transition has actually occurred.

The other main limitation of the study was with regard to the scope of the academic enquiry that could be undertaken within the given time and financial constraints, as well as the actual complexity of the subject matter. The objective of the research was not to develop an explicitly new academic theory, but rather to explore whether and how existing theory may be applicable to a specific case study. For neopatrimonialism and the 4IR, I propose that both concepts should be developed further in terms of establishing theoretical and analytical frameworks, which would need to address the interdisciplinary dynamics of each of the respective concepts.

## 9.6 Closing Remarks

In May 2017, a collective of academics released the *Betrayal of the Promise* report. The report provided a conceptual framework for understanding the phenomenon of State Capture, outlining the mechanics by which state institutions are repurposed and how the shadow state is formed. The subsequent release of the Gupta Leaks e-mails and revelations contained therein have reaffirmed the findings that 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 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 the long-awaited action finally being taken by the 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 a "corruption"-based narrative of State Capture and to neglect to interrogate the other less conspicuous networks of Zuma elites and the 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 that 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. These very ideals and principles were (and to some extent still are) under threat.

This case study of the State Capture of SASSA serves to emphasise the call to expand our understanding of State Capture from merely the typical activities of bribery and corruption to being a broader political project. The significance of this case study is that it showed that State Capture goes beyond the Zuma-Gupta network and is not contained in 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 SOEs (a preferred locale for the Guptas), but this case study demonstrated how State Capture has infiltrated other spheres of government and infected its fundamental social service functions as well.

Lastly, and arguably most importantly, this case study showed 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. This case study does not present a smoking gun, in terms of corruption or state looting, although there are several questions that are raised in this regard. It is possible that grand-scale looting was actually prevented due to the interventions by AllPay, the Judiciary, civil society, and the media. This case study served to highlight that State Capture extends beyond the narrow objective of extracting monetary wealth. In this case it showed that repurposing of state institutions serves a political objective, and that State Capture can actually result in the repurposing of a fundamental function of government itself. Here the constitutional obligation of the state – the administration of social grants – was handed to a private company, knowing that this function would be repurposed to enable said company to profit from the poor.

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## Appendices

### Appendix A: Timeline of the SASSA-Gate

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
Pre 2005		Grants were managed at provincial level (non-standardised and fragmented)	Legal case in 2005, which 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 Ramathodi) and involved allegations of tender manipulation and channelling of funds into the provincial ANC.
2005 - 2006		SASSA is established. Fezile Makiwane was appointed as SASSA CEO. At the time Dr Zola Skweyiya was Minister of Social Development		SASSA takeover the provincial service provider contracts for grant payment. Contracts existed with CPS, Empilweni, and AllPay at the time	In 2006 Annual Report, Net 1 highlight that they were already providing lending in South Africa. The business strategy clearly indicates that the company's objectives include selling financial services to beneficiaries.	
2007	May			SASSA and South African Post Office entered into a Memorandum of Understanding to work together on grant payment. Grant Tender #1 Nine bids were received in response to the RFP for grant payment service providers.		
2008	Sept.			Grant Tender #1 BAC recommends to the CEO that no award be made	In late 2006 Net 1 purchased Prism Holdings Ltd, which focused on "secure transaction technology, solutions and services" and which later became the owner of EasyPay Ltd (Net1, 2008).	Adv. Norman Arendse (BAC Chair) alleges an attempted bribe in favour of CPS

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
2009	Mar.			SASSA initiate talks with SAPO in regard to taking over grants payments. SASSA extend contracts with respective service providers on a temporary basis		
	May	Zuma appoints Edna Molewa as Minister of DSD and Bathabile Dlamini deputy minister				
	July	Fezile Makiwane (SASSA CEO) is placed on special leave following a probe by the Special Investigations Unit (SIU) into alleged misuse of funds		SASSA CEO Makiwane concluded the Letter Agreement with SAPO - back dated to January of that year		Dangor attends a meeting (Dlamini arranged) with Hulley and Duduzani Zuma, where it is proposed 2008 tender be reopened and contract awarded to CPS. This is rejected by Dangor and Molewa.
	Nov.		CSP wins HC case against SASSA and SAPO, setting aside the decision to enter into the agreement and interdicted SASSA from contracting with SAPO			
2010	Apr.	Makiwane is dismissed. Coceko Pakade, the then CFO of DSD, appointed as acting CEO SASSA.				
	Nov.	Bathabile Dlamini is appointed Minister of DSD				
2011	Mar.		SCA upheld the appeal by SASSA (regarding SAPO agreement) and overturned previous ruling of HC in favour of CPS			

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
	<b>Apr.</b>	Ms V.L. Petersen was appointed CEO of SASSA		Grant Tender #2 SASSA published RFP for social grants payment service provider		
	<b>June</b>			Grant Tender #2 Bids are received for SASSA Grant Tender.	CPS enters MoA with Born Free Investments and Others for SASSA Grant Payment Contract.	Bidders Notice 2 is issued, by Ms Peterson. Hulley, Monyeki and Moyane were all involved in the Bid Adjudication process.
<b>2012</b>	<b>Jan.</b>			Grant Tender #2 SASSA awarded a contract to CPS	Net1 enter new (separate) BEE deal with Business Venture Investments 1567 (Pty) Ltd (BVI)	BEE deal with BVI appears to be separate from MoA. In both cases there appear to be individuals who are linked to a friend of Dlamini and Hulley, namely Lunga Ncwana (former ANCYL member linked to Brett Kebble and allegations of improper political party funding)
	<b>Feb.</b>			SASSA concluded the contract with Cash Paymaster to provide services for payment of social grants		
	<b>Apr.</b>			CPS commenced its services for grant payments		
	<b>Aug.</b>		AllPay HC case against SASSA and CPS declares tender process unlawful, but do not set aside agreement			
	<b>Oct.</b>	Vusi Madonsela no longer DG of DSD, acting position filled by Coceko Pakade (Jan 2013) and then Wiseman Magasela (April 2013)				

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
2013	Early 2013	In May Coceko Pakade officially appointed DG of DSD	AllPay appeal to SCA for remedial action to be instituted against SASSA and CPS is dismissed		Feb 2013 - FSB prohibited Smartlife from carrying on any new insurance business.	
	Aug.					Dlamini appoints the Ministerial Advisory Committee (MAC).
	Nov.		AllPay 1 Judgment handed down by Con Court - The appeal succeeds and the order of the Supreme Court of Appeal is set aside.			
2014	Apr.		AllPay 2 Con Court - outline remedial actions. CPS to remain service provider while SASSA finds new service provider. Also stated that 1) CPS is performing an “organ of state” function due to social grants 2) SASSA to protect personal and confidential data of social grant beneficiaries	SASSA BAC approved the R316 million payment for the ‘re-registration’ of grant beneficiaries.	Net1 had concluded the conditions of BEE deal with BVI.	The BEE deal was concluded just days before the R316mill payment was made. The closeness of the cost of the BEE deal and the payment is also worth noting
	Aug.				Net1 repurchased shares to repay the BEE loan agreement (in June) and BVI would sell back the remainder of its shares for cash amount R97.4 million and a 12.5% ownership in CPS	Appears that the CPS MoA for the SASSA contract was never implemented, however no clarity has been given on this matter.

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
	<b>Dec.</b>			Grant Tender #3: SASSA initiates the re-issuing of the bidding process for grant payment services in line with Con Court ruling	National Credit Regulator (NCR) asked the National Consumer Tribunal (NCT) in Sept 2014 to cancel the registration of Moneyline, on the basis that it included child and foster child grants in affordability assessments of customers, in contravention of the National Credit Act.	Ministerial Advisory Committee recommended that SASSA should build its own payment system; and that work-streams should be established
<b>2015</b>	<b>Mar.</b>	Thokozani Magwaza appointed as Acting DG for DSD	AllPay 3: 24 March, Court rules on RFP requirements for Grant Tender 3.			
	<b>May</b>				Net 1 UEPS Technologies (CPS) announced its withdrawal from Grant Tender #3. In June Net 1 starts operations of the EPE bank accounts	
	<b>July</b>				FSB withdraws its prohibition on Smart Life to conduct new business	Dlamini sends letter to SASSA CEO to instruct her to appoint work streams, which were members of the MAC, namely: Tim Sukazi, Mpolokeng Tankiso Parkies and Patrick Monyeki. Also included Andile Nyhonyha (founder and director of Regiments Capital) and Sizwe Shezi (trustee of two of Zuma's trusts). Both were supposed to be included leaders of work streams, but this did not happen.
	<b>Aug.</b>	Bathabile Dlamini became president of the ANCWL				MAC draft report indicating that it should be disbanded "to speed up processes"

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
	<b>Oct.</b>			Grant Tender #3: was adjudicated however the tender was not awarded due to "non-responsive Bids"		The fixed fee for the service providers was set at a rate, which was lower than what SASSA was paying at the time. No explanation for this has been given, but some suggest that the bid was 'engineered to fail'
	<b>Nov.</b>		SASSA filed progress report to the Con Court - set out the steps in terms of which SASSA proposed to assume the duty to take over the payment function		Dec - Net1 announced that 600 000 EasyPay Everywhere (EPE) accounts have been opened since the launch of this product in June 2015.	
<b>2016</b>	<b>Apr.</b>			SASSA acknowledges it is unlikely it will be able to take over the payment of grants in April 2017	On 11 March 2016, the Tribunal ruled that the complaint was valid and that there were "good reasons" to investigate Moneyline. Moneyline are appealing the ruling	It is still unclear as to what work, if any was undertaken for SASSA taking over the payment of grants come April 2017.
	<b>May</b>		Net1, Grindrod and others approached the High Court to provide clarity on the changed regulations, pertaining to the issue of the 'illegal' deductions. In May 2017, the High Court ruled in favour of Net1	DSD issued amendment on regulations (Regulations 21 and 26A to the Social Assistance Act, No. 13 of 2004) to further limit 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		

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
	<b>June</b>	May Ms Virginia Petersen leaves. Statement issued announcing Magwaza as CEO; however, Ms Raphaahle Ramokgopa was appointed Acting CEO. Magwaza was acting DG at the time.		Legal Opinion 1 - Adv. Cassim SC and Mostert was forwarded to Ms Mvulane and the acting CEO of SASSA Ms Ramokgopa	CPS/Grindrod transferring money from the SASSA bank account. 1.1 million SASSA beneficiaries with EPE bank accounts by June 2016.	
	<b>July</b>					Work-Streams are appointed, include the following: Sukazi, Parkies and Monyeki.
	<b>July to Dec.</b>	Nov - Mr Thokozani Magwaza is appointed CEO and Zane Dangor is appointed DSD DG		MTT request a progress on the transition for payment of grants. Appears SASSA Management do not know/have plans for transition. Legal Opinion 3 - SASSA obtained a further opinion from senior counsel (Adv. Muzi Sikhakhane SC). SASSA issued a public request for information (RFI) aimed at assisting it to formulate a public request for proposal (RFP).		Work-streams had issued the first draft report - confirming that SASSA would not be able to over grants. Present Work-Stream model for Grant Payments and Legal Opinion 2 - Adv. Wim Trengove SC. First indication of difference in opinion on proposed SASSA payment model. Work-streams want new contract with CPS, SASSA Exec do not want to continue with CPS
	<b>Mid to late Dec.</b>					Several meetings take place with Hulley and senior DSD & SASSA officials, where Hulley allegedly shows strong support for CPS.

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
2017	Jan.			The TTT (technical task team for NT, DSD, SARB and others) was formalised - tasked to develop the most viable options to enable SASSA to pay Social Grants. TTT then (24th Jan) presented 6 options for addressing grants crisis. Agreement reached to extend CPS services short term (12 months) on provision that long-term solution is Open Architecture model and the Con-Court approval.		Dlamini sent document to Gordhan (NT), the day before the TTT presented its options, critical of the idea of using the banks (Open Architecture model) and preference for Work-Stream Model. In response NT rejects this option, opting instead for an option presented by TTT (Open Architecture model). The differing views are aired in public.
	Mid Feb.			Meeting took place with DSD, SASSA and Work streams. All agreed to limit extension to 12 months and that the future long-term payment model would use the NPS. Magwaza writes a letter to SAPO requesting assistance.		Dlamini had instructed report not to be file with the Con-Court. Dlamini and Mvulane meet with Michael Hulley and the "new approach" is adopted (SASSA would not seek Con-Court consent, but would only inform the court once new contract was in place).
	End Feb.	Mr Magwaza goes on sick leave and Ms Thamo Mzobe appointed acting CEO	An affidavit that Magwaza had signed was filed with the Constitutional Court. This was not based on a Work-Streams report. Black Sash approach Con Court (separate to the AllPay case) for urgent relief to attain clarity on how grants would be paid come April 2017. (Start of the Black Sash case).			



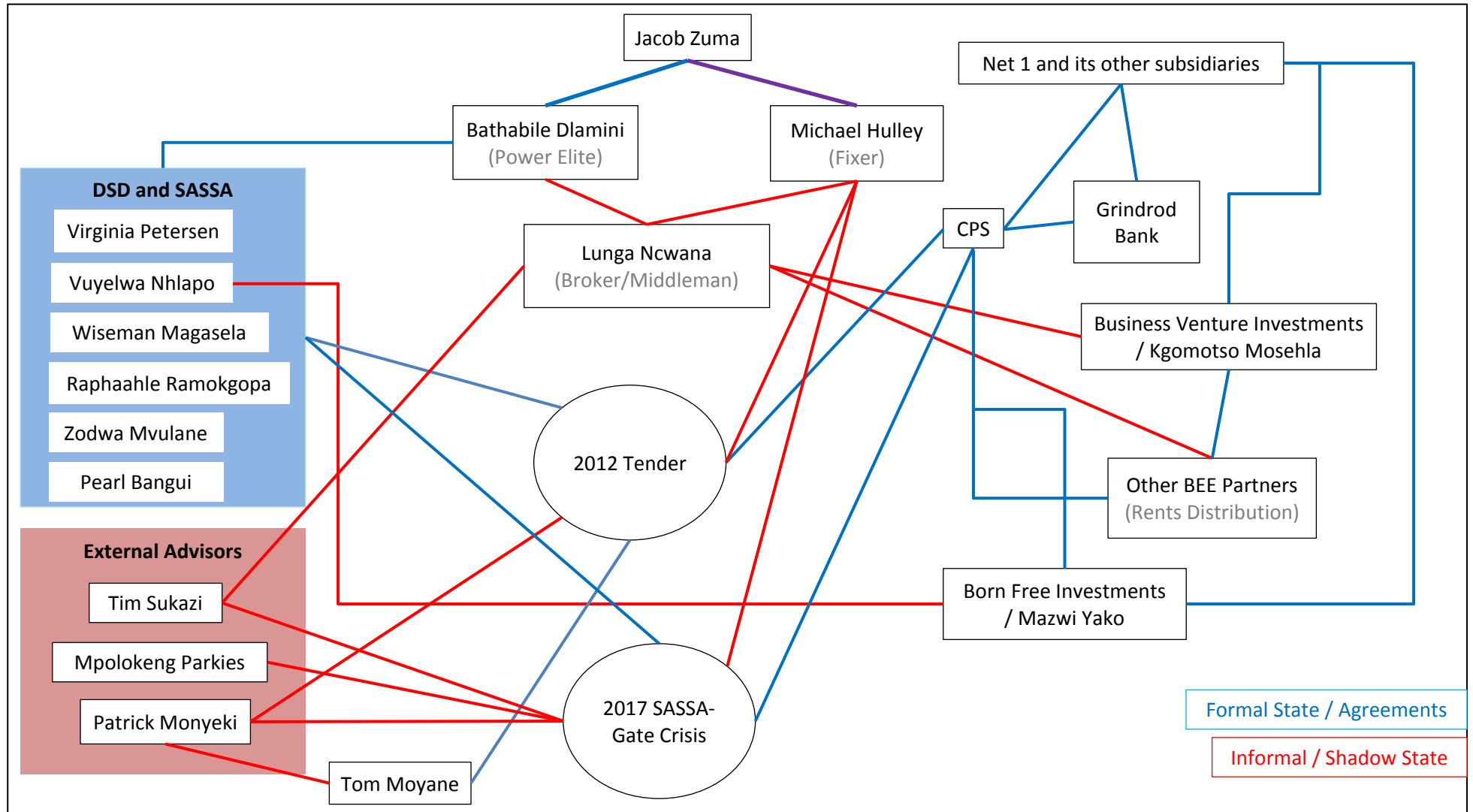
Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
	<b>Early to mid – Mar.</b>	Zane Dangor resigned DG of Social Development. Ms Thamo Mzobe also goes on sick leave and Mr Wiseman Magasela appointed acting CEO SASSA. Magwaza returned to work from sick leave a few days later.	1) After Dlamini retracted Magwaza filing and with new Black Sash Case underway, Con-court directed questions for DSD and SASSA to respond. 2) DSD & SASSA submit affidavit to Con-Court signed by Wiseman Magasela in acting CEO capacity. 3) Con Court hears arguments in the case and handed down ruling on the 17th March. 2012 invalid contract is extended	Acting SASSA CEO Mzobe leads negotiations with CPS. They agreed in principles, but were still subject to approval by the Minister and the NT. NT was not present at the meeting. [Inter] Ministerial Task Team ("IMTT") decided to scrap the negotiations with CPS.		
	<b>End Mar.</b>	Zuma reshuffles Cabinet. Dlamini remains Minister of DSD in spite of scathing Con Court judgment				Zuma reveals to SACP that he intends to fire Pravin Gordhan and Mcebisi Jonas, based on the suspect "intelligence report". Zuma calls back Pravin from US investor tour
	<b>Apr.</b>	Special adviser Siphon Shezi was been fired	Magwaza and Dangor file affidavit with the Con Court in response to 'misleading' statement made by Dlamini in defence as to why she should not be held personally liable.			Revelations, in the SMS sent from Dlamini to then former DSD DG Zane Dangor, accusing the pair of conspiring with Magwaza (SASSA CEO) and a former lover of attempting to extort money from Lunga Ncwana

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
	<b>May to mid-July</b>		SASSA withdraw from the Corruption Watch court case to review the R316m irregular payment to CPS for 're-registration' of beneficiaries	Letter from Treasury allowing for deviation of process for SASSA and SAPO to enter agreement and Magwaza signs letter with SAPO for co-operative agreement for payment of grants	(From Net 1 Annual Report) At July 31, 2017, EPE had more than 2.0 million active accounts, compared to 1.95 million at April 28, 2017.... Since July 1, 2016 we sold approximately 250,000 new policies related to our simple, low-cost life insurance products, in addition to the free basic life insurance policy provided with every EPE account opened.	Magwaza cancels the Work Stream Contracts (R43 million already paid for the 3 year contracts which were to amount to a total budget of R47)
	<b>Mid July to Oct.</b>	Mr Thokozani Magwaza is resigns as CEO and Pearl Bhengu becomes acting CEO		RFP issued to SAPO for response. RFP reviewed by CSIR, but BAC recommendation do not seem to take it into account. SASSA make offer to SAPO for it to undertake only one of the functions for payment of grants. SAPO responds indicating that they reject the offer.		Panel of experts, appointed by the Con-Court to monitor SASSA's Progress. Filed a report which raised a red flag on SASSA's progress towards taking over grants after the CPS contract extension (April 2018).
	<b>Nov.</b>			SCOPA and the Social Development Portfolio Committee called the DSD, SASSA, and SAPO to provide parliament with an update. The committees then called on the IMC to intervene.	Moneyline will oppose an application by the National Credit Regulator (NCR) to cancel its registration for alleged reckless lending to social grant beneficiaries.	a letter from the DG of NT to the CEO of SASSA were distributed to the MPs. it was stated that "SASSA should not have approved the disqualification of SAPO on three areas"
	<b>Dec.</b>			An agreement between SASSA and SAPO was signed		Pearl Bhengu signs off on suspect payments (all just under R500k – non-competitive) for 4 events, with a total expense of R20m. Timing coincides with ANC national conference

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
2018	Jan.		The Section 38 Enquiry (into Dlamini possibly being held liable for the litigation regarding SASSA-Gate) started on 22 January 2018.			It was reported that CPS was claiming +- R1 billion in damages from SASSA - speculation it relates to disputes prior to the 2012 contract.
	Feb.	14 Feb. Zuma resigns and Cyril Ramaphosa becomes president of SA.				
	Mar.	27 March Ramaphosa decided to relocate Bathabile Dlamini from DSD to the Ministry of Women, under the Presidency. Susan Shabangu appointed Minister of the DSD.	23 March 2018 Con Court allows further extension of the CPS contract for six months, to allow for the transition of the payment of grants to the South African Post Office (SAPO). Court again criticised Dlamini and Bhengu for the delay. Corruption Watch wins High Court case against CPS for the R316m irregular payment for 're-registration' of beneficiaries. Ordered to pay amount + interest.	SASSA takes over direct payment to beneficiaries individual bank accounts. SAPO starts transfer of recipients to the new system. CPS still required carrying out the pay-point distribution of grants (approximate 2.8 million recipients). Electronic payments are made directly to Grindrod SASSA accounts, but no agreement or plan in place to transfer these recipients to the SAPO system.	By March there were +- 2.4 million grant recipients who were transferred onto EPE account. Confirmed by Panel of experts, majority of these did not submit written notification for payment into separate bank account (as required by Regulation 21). CPS could only provide electronic 'mandates'.	Grindrod charges recipients R10 account fees (+ additional transaction fees) for use of these accounts (mostly to cover R9.50 Net 1 service fee).
	Apr.	Abraham Mahlangu appointed as acting CEO. Pearl Bhengu "requested to be sent back to her provincial post in KwaZulu-Natal"	Judge Bernard Ngoepe files report on the Section 38 Enquiry into Dlamini possibly being held liable for the litigation regarding SASSA-Gate.			
	May			A tender process initiated by Dlamini, to find replacement for CPS (still providing cash payments) was cancelled. Shabangu sets up a technical committee to address cash payments. Cash payments now add to the SAPO contract.		

Timeline		Administration and Politics	The Litigation	Payment of Grants	CPS and BEE partners	Controversies and the Parallel / Shadow State
	<b>June</b>					Panel of Experts file report with the constitutional court. Alleged that CPS was sabotaging SASSA/SAPO efforts (by denying access) for transfer onto the new system. Also raised issues of misinformation and ambush marketing being used to get grant recipients to open EPE accounts.
	<b>July</b>		SASSA begun a process of instituting legal proceedings against Grindrod Bank to recover excessive bank charges carried by social grant beneficiaries.	At the begin July there were several issues with the new SAPO systems, resulting in nearly 800 000 recipients not being able to access their grants. In addition there in ongoing strike action at SASSA and SAPO.		

### Appendix B: Example Illustration of Shadow State Network



The figure presents a mapping of the persons identified as potentially being part of the shadow state, with labels assigned to those who are specifically part of the power elite. **Please note, the graph does not imply or insinuate corruption or illegality on the part of any of those individuals included.**

## Appendix C: Overview of Changes to the Grant Payment System

Timeline	Pre-2009	2009 - SAPO agreement	2011	CPS Contract 2012-2017	2016/2017	New SAPO payment model
<b>Payment Model</b>	Provinces held contract were transferred to SASSA. There was no standard model.	Contracts with cash payment service providers were extended. There was a shift from payment per beneficiary to payment per recipient. SASSA had agreements with SAPO and other banks, with the objective to move grants payment from cash to electronic.		CPS responsible for re-registration and payment (including into other bank accounts) of all grant beneficiaries. CPS won the tender because of its biometric technology - in particular because it was going to use voice verification for recipients which were not using their biometric devices for receiving grants. This was only implemented for a limited time in 2014, but was not suitable.		Referred to as a Hybrid Model, this will in effect return to the basic principles of the SAPO agreement. SAPO will however manage the integrate payment system, which will keep track of all recipients that utilise the SASSA/SAPO card. Indication is that SASSA would also enter into agreements with other banks (assume to subsidise banking fees for recipients that have grants transferred directly).
<b># of Grant Beneficiaries</b>	13 072 173		14 935 832		17 000 000	
<b>Estimated total # of Grant Recipients</b>	8 063 017		9 200 000		10 500 000	
<b>Cost Implications</b>						
<b>Cost to SASSA</b>	Varied. average handling charge of contractors amounts to R32.11 per transaction	Varied. SAPO proposed “a once-off fee of R13.68 for every beneficiary account opened and thereafter a monthly fee of R14.59 per beneficiary”. There was also still subsidisation of other banks		SASSA paid a fixed monthly fee of R16.44 (including VAT) per recipient		Costs vary based on service per beneficiary (i.e. bank/electronic service is R6.71 vs. cash payment R55.60).
<b>Cost to Beneficiaries</b>	No fees for cash. Some cases banking fees subsidised.	No fees for cash. Under the Mzansi (SAPO) accounts SASSA subsidised admin fee, allowed for some free withdraws as well as transactions (in line with the Mzansi account)		Private bank account charges are for the beneficiary. Under CPS fees are charged where beneficiaries do no use Net1/CPS biometric devices (e.g. at PIN ATMs). However there were (higher than normal) fees charged for		Private bank account fees might in future be subsidised (at present remain cost to beneficiary). SAPO/SASSA account has no admin fee, include 3 free transactions, mini statement, and account enquiries (similar to previous offering). At present Grindrod is charging

Timeline		Pre-2009	2009 - SAPO agreement	2011		CPS Contract 2012-2017	2016/2017	New SAPO payment model		
						transaction from non Net1/CPS devises and ATMs.		beneficiaries R10 admin fee for using the old SASSA/CPS card and account.		
Payment Methods (%)										
<b>Cash Payments</b>		5 644 112	70%	Separate contracts for cash payments in the different provinces. CPS had higher percentage of cash payment compared to AllPay and Empilweni	3 864 000	42%	In 2012 Finmark Trust study it is indicated that approximately 30-37% receives grants via cash payments. Cash payments require CPS card	4 000 000	38%	Plan to reduce the number of cash pay points by using existing SAPO sites. Initially cash payment was put out on tender, but is now included in SAPO contract. CPS contract extended only for this function. Cash payments will require SAPO card. Expect to reduce cash pay points to cater for less than 1 mill beneficiaries.
<b>Electronic Payments</b>	<b>ATM (Bio)</b>	2 418 905	30%	±500 k beneficiaries opened Postbank accounts, +-1 mill held Sekulula (ABSA/AllPay) accounts. It is assumed CPS and Empilweni also provided electronic payment and that other bank accounts could also be used by beneficiaries.	5 336 000	58%	Under the previous model it was more competitive, but less standardised. Figures given by SASSA do not appear to separate between SASSA/CPS Grindrod accounts and the EPE/Grindrod accounts.	2 900 000	2%	SASSA pays directly into recipient bank accounts (including Grindrod where they still use the old SASSA/CPS/Grindrod card). SAPO-SASSA card is meant to replace the Grindrod cards, but no agreement in place for this. In the interim EPE/Net1/Grindrod have been on a misinformation campaign to get beneficiaries to open EPE accounts.
	<b>ATM (PIN)</b>								17%	
	<b>PoS (Bio)</b>								1%	
	<b>PoS (PIN)</b>								8%	
	<b>Bank Account - EPE</b>								19%	
<b>Bank Account - Other</b>	1 600 000	15%								