

Ms. Kerry Naidoo  
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Dear Ms. Naidoo,

## McKinsey and Company responds to the Enablers of State Capture investigation

I write in response to your letter dated 25 February 2020 to Open Secrets. In this letter McKinsey takes issue with aspects of our joint investigation with Shadow World Investigations into the “The Enablers: The bankers, accountants and lawyers that cashed in on state capture” which was submitted to the Zondo Commission on 04 February 2020. The contents of this investigation are also reflected in an edited format in an article published in the *Financial Mail* on 06 February (you cc’d the editor of Rob Rose in your correspondence and I do the same).

Your letter meanders through important matters which are in the public interest given the impact of state capture on South Africans. I will seek to address only the relevant issues you raise:

### 1. Request for correction

1.1 You raise a concern that you were not contacted to provide comment prior to publication. Kindly note that evidence concerning alleged malfeasance by McKinsey & Company was already in the public domain and hence we did not regard it as necessary to provide you with an additional right to response.

### 2. McKinsey’s work at Eskom

2.1 You claim that, “it is demonstrably false to claim that the 09 February 2016 letter resulted in Eskom paying Trillian R565 million”. In responding to this claim by McKinsey we draw your attention to the following:

- In a related footnote you refer to McKinseys “...regret for not having been more responsive to Advocate Geoff Budlender SC when he initially inquired about these matter and causing confusion.” We draw your attention to the fact that Advocate Budlender SC concluded that McKinsey was not just unresponsive but that your firm had made a “false denial” to him about McKinsey’s relationship with Trillian. This suggests not only lackadaisicalness but a serious breach of integrity on the part of McKinsey & Company.
- We concur that the letter sent by McKinsey partner Vikas Sagar to Eskom on 09 February authorising them to pay Trillian directly was not the only cause of payment. The court judgement to which you refer confirms as much. We will amend this text to reflect the following facts which are a matter of public record:

- McKinsey commenced work with Trillian in September 2015 approximately 16 months before they refused to work with Trillian in March 2016. In Vikas Sagar's letter he authorises payment under their professional services contract which began on the 17th of September 2015, this again despite several Trillian whistle-blowers indicating no work was ever carried out by Trillian.
- McKinsey partner Vikas Sagar wrote the February letter that authorised Eskom to pay Trillian directly, despite him knowing no contract existed.
- The Parliamentary report notes on Page 54 that, "McKinsey worked as the de facto legitimising vehicle for Trillian's access to Eskom work and payment." The report goes on to add that, "...in stark contradistinction with Dr Fine's statements, observes that McKinsey's acceptance of Trillian's extraction of fees is problematic...in any event McKinsey's potential use of Trillian to extract rents from Eskom may constitute criminal conduct."
- The Parliamentary Report on page 57 and page 58 also records the evidence of whistleblower and the former CEO of Trillian, Ms. Bianca Goodson who made it clear that Trillian was never expected by McKinsey to actually do any work to get paid. She states that McKinsey senior partners told her to "just take your 30% and go". The report attributes this statement to Lorenz Jungling a McKinsey partner.
- The Budlender report also noted that Eric Wood (as CEO of Trillian) used the McKinsey letter authorising payment to tell Eskom to pay them. He notes in paragraph 103 and 104 that "The letter from Mr Sagar is also confirmed by an e-mail from the CEO of TMC to [mabelaet@gmail.com](mailto:mabelaet@gmail.com) (Mr Edwin Mabelane, who I understand is the chief procurement officer of Eskom) referring to a meeting the previous night, and noting 'McKinsey issued a letter to Eskom stating that payment should be made directly to Trillian.' I conclude that the denial of McKinsey is false. Why they made a false denial is for them to explain."

2.2 You claim that, "The passage also carries the false implication that McKinsey was aware of Trillians ties to Mr. Essa when it considered Trillian as a potential B-BEEE partner at Eskom".

The passage does not make this assertion and the implication you draw is your own. We simply make fair comment in critiquing what we view as a lack of due diligence on the part of McKinsey in establishing the identity of the beneficial owner.

2.3 You claim that, "The passage similarly leaves an inaccurate impression that McKinsey was aware of a reported effort by Mr. Eric Wood to secure investment from the Guptas in Regiments and that the failure of such an effort is what precipitated his departure to Trillian." We do not make this inference and suggest that this is your interpretation.

2.4 You claim that, "Many of these errors also appear in the diagram titled: 'Sandton State Capture Mile' on Pg. 47 of the report. Please see our answer in 2.2. and 2.3 above.

2.5 You claim that, "In these and other references to the "unlawful contract" with Eskom, the report appears to conflate the proposition that Eskom failed to follow applicable procurement requirements in connection with the Turnaround Programme with the proposition that the contract with McKinsey was procured by corruption or other unlawful influence." On Page 76. of the report we make it clear that it was Eskom's failure to comply with the law despite internal advice. We also draw your attention to the observation of the Parliamentary Portfolio Committee which we quote on these pages which stated that, "it is highly improbable that a company as sophisticated as McKinsey could, in good faith, have acted on the assumption that contract based on a sole sourcing arrangement and on the applicable remuneration structure was lawful." It is

common cause and accepted by McKinsey that your firm received payment in terms of this unlawful contract. We record the fact that these fees were repaid on Page 78. of the report. The report thus does not make the allegation that the contract was procured by corrupt means.

### **3. McKinsey's work with Regiments at Transnet**

3.1 You object to our contention on page 60 that, "Fine confirmed that although McKinsey became suspicious of the relationship between Regiments Capital and the Gupta family in 2014 (two years after partnering), they did not cease working with them until February 2016.

We concur with your view that the comment made by Fine to Parliament concerning Regiments in 2014 did indeed refer to Niven Pillay and Brian Hlongwa and not the Gupta Family. We will update the report accordingly.

3.2 You further add that, "McKinsey continued the relationship only after receiving confirmation from Regiments on 28 August 2014 that: (1) "the allegations in the press are baseless," (2) Regiments had policies for "the promotion of honest and ethical behaviour" and a "corporate governance framework specifically address[ing] issues such as bribery, corruption, conflict of interest and disclosure of interest"; and (3) Mr. Pillay "step down from the Executive Committee of the Consortium" and Eric Wood would "assume the lead role on the part of Regiments." In response to this we draw your attention to further paragraphs in our report which indicate that McKinsey & Co demanded a change in personal at Regiments that saw Eric Wood (a known Gupta acolyte) take control of the project to the satisfaction of McKinsey & Co.

3.3 You object to the inference in the FM article that, "McKinsey bent over backwards to help Regiments and Gupta-linked company Trillian to extract millions from Eskom and Transnet." You contend that, "We strongly disagree with the statement that McKinsey knowingly aided either Regiments or Trillian in engaging in any acts of corruption to secure business from state-owned entities." Kindly note that the inference of corruption in the term 'bending over backwards' is not what we suggest. Our understanding of the term is to *be extremely helpful/go out of ones way to assist*, which in this instance the evidence suggests McKinsey was.

### **4. The 1064 locos transaction**

4.1 You draw our attention to a quote from the FM article which states that, "McKinsey partnered with Regiments Capital part-owned by Essa, to rewrite the business case and justify a R16bn escalation cost." We concur that this will require a correction by the FM to better reflect the text from the investigative report stating that, "McKinsey partnered with Regiments Capital part-owned by Essa, to rewrite the business case. Once McKinsey exited the business relationship Regiments capital justified a R16million escalation in costs."

### **5. McKinsey's work globally**

5.1 You draw our attention to what you refer to as an inaccuracy in the text in the report and the FM article which states that, "Following the murder of Washington Post journalist Jamal Khashoggi in the Saudi Arabian consulate in Turkey, the New York Times, revealed that McKinsey had provided the Saudi government with the names and details of dissidents who were subsequently targeted by the government." You go on to point out a correction published by the New York Times which states that the document was published for [McKinsey] internal use, not for the Saudi government."

We wish to place on record that our research team had not seen the correction in the New York Times until now. However, we note your subsequent statement via Twitter in which you indicate that your company is, “urgently investigating how and with who the report was shared.” In the interim the FM article will be updated to reflect your denial and internal investigation.

Kindly provide us with an unredacted copy of this report and all other documents pertaining to your internal investigation which could shed some light on how and why this McKinsey report may have landed in the hands of Saudi government authorities and subsequently resulted in serious human rights abuses.

Yours sincerely,



Hennie van Vuuren  
Director: Open Secrets

cc. Rob Rose, Editor – Financial Mail  
Andrew Feinstein, Director - Shadow World Investigations