ANATOMY OF STATE CAPTURE

An abstract sculpture of a lion, constructed from numerous dark grey, three-dimensional geometric shapes. The base of the sculpture is composed of many small, dark grey triangles arranged in a grid-like pattern. Above this base, the sculpture rises into a more complex, jagged form made of larger, dark grey geometric shapes, including triangles and rectangles, which together create the silhouette and texture of a lion's head and mane. The lighting is dramatic, coming from the upper left, which casts sharp, bright highlights on the surfaces of the geometric shapes and deep shadows in the recesses, emphasizing the three-dimensional quality and the sharp angles of the construction. The background is a dark, solid grey, which makes the sculpture stand out prominently.

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15

THE REAL ROGUES THAT RUINED SARS

Robyn Foley

Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes. – Benjamin Franklin, in a letter to Jean-Baptiste Leroy, 1789 (Smyth, 1907, p. 69)

The renewal of governance structures was viewed as central to the promise of a “New Dawn” for South Africa. On becoming President on 15 February 2018, Ramaphosa established several commissions to investigate those institutions that had been plagued by scandal and evident deterioration during the Zuma era. One of these was the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service (SARS) (known as the Nugent Commission), established in May 2018 (President of Republic of South Africa, 2018).

Based on the Commission’s interim report, Ramaphosa fired Tom Moyane, Commissioner of SARS, on 1 November 2018 (Smit & Ritchie, 2018). Under Moyane’s leadership (2014-2018), SARS went from being a “model public institution” to an organisation facing a crisis of (mal)governance (Nugent Commission, 2018a, p. 21). The final report notes “[t]here can be little doubt that the catastrophe at SARS is attributable to a massive failure of elementary principles of governance coupled with pervasive breaches of integrity” (Nugent Commission, 2018a, p. 168).

15.1 WHY THE REAL “ROGUES” CAPTURED SARS

There are many stories to be told in terms of how and why SARS was captured, with some still playing out. One that has become synonymous with the tax collection agency is that of the so-called “rogue unit”. This chapter focuses on the implications of the rogue unit scandal and the role it played in decimating SARS.

Tax agencies’ primary mandate is to collect revenue for the state, but they also function as an unofficial lifestyle auditor (Thompson, 2020). Curtailing an agency’s ability to go after those that lie about their tax obligations and the origin of their wealth, is possibly the most obvious motivation for the capturing of SARS.

It is important to highlight that SARS is an integral part of the machinery within government that monitors, reports and pursues those that use a variety of methods to illicitly transfer their wealth offshore. Within large-scale corruption, it is critical that accumulated wealth is transferred to overseas tax havens and countries that are less discerning in terms of how a foreigner's wealth is derived. Even though a significant amount of wealth transfer is facilitated by banks and other financial institutions (see Chapter 17), the "old school" methods of smuggling high valued goods or even physical cash across borders (to hide their ill-gotten gains from the tax authority) are still frequently used by various criminal syndicates. As the principle customs authority in South Africa, SARS plays the crucial role of monitoring all goods and physical forms of wealth (including cash) that cross the country's borders. One of the primary focus areas of the High Risk Investigations Unit (HRIU) (the so-called rogue unit) was investigating the illicit transfer of wealth offshore. A possible alternate motive is the accumulation or rather the retention of rents for a broader shadow state network, by either lowering taxes due or increasing refunds for those that are favoured by the shadow state. A prime example being the Gupta family who received an illegal tax refund of approximately R240m (Van Wyk & Cowan, 2018). As highlighted by Judge Nugent (Nugent Commission, 2018b, p. 9):

SARS is an institution that is vital for the welfare of the country. It is also a complex organisation. And it is one that is particularly vulnerable to corruption, bearing in mind that over R1 trillion passes through its hands each year.

Having access to and being able to leverage sensitive personal information against potential opponents is an added benefit for those that use state institutions to political ends, although this does not appear to be an explicit motivation in South Africa's case. In the case of SARS, it was the "rogue unit" narrative that was seemingly used to neutralise opponents of the shadow state (see Chapter 11). The last potential motive is the extraction of rents through large service contracts. The shadow state would need to dismantle various SARS structures, particularly its investigative and enforcement capacity (i.e., the rogue unit); centralise control over the institution by putting in place compliant senior officials and minimise dissent by creating "a culture of fear and intimidation" (Nugent Commission, 2018a, p. 4).

15.2 OUTSOURCING STRATEGIC THOUGHT: BAIN & COMPANY INC.

The transition of SARS from what it was to what it became was brought about by events that are shocking. We think what occurred can fairly be described as a premeditated offensive against SARS, strategized by the local office of Bain & Company Inc, located in Boston, for Mr Moyane to seize

SARS, each in pursuit of their own interests that were symbiotic, but not altogether the same. Mr Moyane's interest was to take control of SARS. Bain's interest was to make money. (Nugent Commission, 2018a, p. 27)

The statement above provides perhaps the most concise description of the collusion racket that unfolded. The Commission's report details how a US-based multinational consultancy company, Bain & Company Inc. (Bain) helped facilitate the wholesale decimation of SARS. Bain is one of the "Big Three" global management consultancies with the Boston Consulting Group and McKinsey & Co, as well as the "Big Four" auditing/consulting firms (KPMG, Pricewaterhouse Coopers [PwC], Ernst & Young and Deloitte) that dominate the global market of "professional services". What precisely the professional services entail is difficult to define, as they span almost the full spectrum of business activities, and as their services are focused on providing the private sector with competitive advantage, it is mostly secret. This is both true in terms of services they provide, as well as the way they are operate. None of these firms are publicly listed and as such are not required to be transparent about their operations or finances. There are several aspects of this industry that need to be questioned, particularly in relation to how they enabled state capture (Thakur, 2019). It is for this reason that understanding the story of Bain's role in the dismantling of SARS is so important.

15.2.1 How to Dismantle an Institution

Within three months of appointment in September 2014, Moyane suspended most of the Executives, halted all projects related to the ongoing Modernisation Programme and kicked off the restructuring of the organisation (Sole, 2014). The only motivation provided was that it was in response to the negative press coverage around the supposed rogue unit operating within the revenue service enforcement department.

On 11 November 2014, a memo was sent to then Minister of Finance Nhlanhla Nene, requesting approval for the SARS "transformation and turnaround". The "perfectly bizarre" motivation for undertaking a complete restructuring of a massive organisation, based on *Sunday Times* media articles seemed to be of little relevance (Nugent Commission, 2018a, p. 42). According to Nene, he was only responsible for approving the process of appointing external consultants and not the justification or outcomes thereof. Thus kicked off what the Nugent Commission justifiably called a "procurement sham" (Nugent Commission, 2018a, p. 43).

The request for proposals for "independent" services to provide SARS with a "diagnostic evaluation" was issued on 11 December 2014 with a value of more than R2.38m and a closing date one week later. Questions were raised at the Commission as to how it was possible for Bain to have completed some of their bid documents

in the space of a day (by 12 December) without prior knowledge. There were also questions asked about Bain's offer of 50% discounted professional fees as this seemed deliberately set up to enable Bain to increase their fees for any follow-on contracts that might materialise. Vittorio Massone, the Head of Bain in Africa at the time, professed that there was nothing untoward in how the process unfolded. Emails provided to the Commission, however, indicate that Bain was already the preferred service provider. Massone had already emailed Siphso Maseko, Group CEO of Telkom, on 4 December to find out if it was possible for SARS to piggyback off an existing contract Telkom had with Bain, but the proposed procurement process dodging did not materialise (Nugent Commission, 2018a).

Following the sham procurement process, Bain was awarded Phase 1. The bid adjudication mandated that Phase 2 would go back out to market, but Bain was directly awarded the work, which amounted to "approximately R164 million calculated at its ordinary rates less an initial discount of 12%" (Nugent Commission, 2018a, p. 50). Had Bain's services been extended to Phase 3, they could have received a further R50m. Ultimately Bain would repay R217m worth of the fees (with interest) that it had accumulated for about 18 to 20 months of work (Nugent Commission, 2018a).

While the process for contracting Bain was underway, Moyane aggressively stamped his authority on SARS management structures. By 14 December 2014, he had placed several senior Executives on suspension (a decision later overturned by labour court) and suspended his meetings with SARS Executives. Moyane also stopped all Modernisation projects without consulting the Chief Executive responsible for the programme, Barry Hore, prompting Hore to resign in December 2014. Moyane effectively shut down and turned off the taps to SARS' primary sources of institutional knowledge and expertise (Nugent Commission, 2018a).

The implementation of the proposed new structure for SARS became known as a "new operating model", but, as the Nugent report highlights (Nugent Commission, 2018a, p. 51):

The new organisational structure of SARS was often called the 'new operating model' but that is a misnomer. An operating model is a strategy upon which a structure is built. There was no new strategy upon which the structure was rebuilt by Bain. It did no more than restructure the organisation, based largely, according to Mr Massone, upon what Bain considered to be 'best practice', drawn from Bain's second-hand knowledge of other tax collection agencies, with little insight, nor any apparent interest, into why SARS had been structured in the way in which it was, and in what direction SARS was headed.

There are theoretically many ways in which an organisation can be structured, the efficiency of which is dependent on how it is operationalised and managed. There are, however, three critical points in terms of how Bain carried out its work and how the new operating model was derived, adopted and then implemented.

First, according to Massone's testimony, Bain was limited to engaging with a list of individuals provided by Moyane. As a result, there were several persons whose insights might have better informed Bain, not included in the consultations. Second, Bain put forward four operating models it had developed based on organisational "design principles" for SARS. One of these was the decentralisation of power and control, but Moyane opted to go for a fifth and contradictory option. As noted in the Nugent report, "[t]he most significant change insisted upon by Mr Moyane was to combine the roles of overseeing individual tax and of corporate tax respectively into one division called 'Business and Individual Tax' (BAIT), reporting direct to the Commissioner" (Nugent Commission, 2018a, p. 50). Third, the implementation of the "new operating model" would negatively impact critical functions at SARS. The Large Business Centre (LBC), focused on providing end-to-end services for large tax-paying companies in various sectors and accounting for about 30% of revenue collected, was dismantled and its services fragmented under different line Managers. Overall control of all tax collection was, however, then consolidated under the new BAIT department reporting directly to the COO, Jonas Makwakwa, who was one of the few senior Managers not pushed out upon Moyane's appointment (Nugent Commission, 2018a).

When the *Sunday Times* exposes were at their peak, Moyane had already disbanded the HRIU, but the implementation of the new operating model led to the dismantling of other enforcement-related departments, such as the High Court Litigation Unit and a department focused on developing strategies to address tax non-compliance. The latter department and more importantly its function were not comprehensively catered for in the new structure (Nugent Commission, 2018a).

Phase 2 was to help implement the proposed new operating model. Bain had developed various plans and was responsible for tracking and monitoring the progress of the SARS structural transition. Regardless of the potential merits that there might have been to Bain's restructuring proposals, their implementation resulted in an exodus of highly skilled technical staff. The dismantling of the LBC made about 200 Managers redundant, and many former employees testified as to how they were either demoted, overlooked for new positions or placed in positions that served no function. The new SARS Commissioner, Edward Kieswetter, estimates that about 3 000 highly skilled employees left SARS during Moyane's reign – more than 2 000 experts resigned, 550 retired and about 600 faced disciplinary processes (De Lange, 2019; eNCA, 2019).

15.2.2 The Back Story: Getting to Sit at the President's Table

Moyane took to the courts to have his dismissal overturned. The High Court was scathing in its judgment noting that the case had no merit and went further to condemn the way Moyane took “every conceivable opportunity” to attack and insult President Ramaphosa and Judge Nugent. Punitive costs were issued for what the court considered to be “an abuse of the [court] process” and the judgment notes that “the conduct of [Moyane] in these proceeding is “particularly reprehensible” (High Court of South Africa: North Gauteng, 2018, p. 59).

Dissatisfied with the ruling, Moyane approached the Constitutional Court, which dismissed the application to appeal (Constitutional Court of South Africa, 2019). Former President Zuma made a submission to the Constitutional Court supporting Moyane, stating that it was never his intention for the Nugent Commission to make findings regarding employees (Maughan, 2018). Even though Zuma may have initiated the process for its establishment, it was Ramaphosa that promulgated the commission (National Treasury, 2017; President of Republic of South Africa, 2018). And as the sitting President, it was Ramaphosa's prerogative to act on the Commission's interim recommendations. For this to be publicly questioned by his predecessor was quite remarkable.

According to testimony presented by Pravin Gordhan at the Zondo Commission, Zuma appeared to already have a candidate in mind as SARS Commissioner – Moyane (Zondo Commission, 2019). Moyane was not able to complete his tenure as National Commissioner of Correctional Services because he had reached the legislated age limit of 60 years (Sapa, 2013). Within a month of leaving his post, it would appear that Moyane already had his heart set on becoming the next SARS Commissioner and according to Bain “[i]t would appear that Mr Massone understood that Mr Moyane was the President's intended appointee to be SARS Commissioner well before it happened” (Bain & Company, 2018).

Massone's supplementary submission to the Nugent Commission (after questions about his prior engagements with Moyane were raised during oral testimony) identifies the first meeting between Moyane and Bain to have occurred on Sunday 13 October 2013 with at least eight subsequent meetings. Email evidence attained by the Commission appears, however, to indicate more meetings. Massone details how the various meetings related to the progressive development of a SARS institutional strategy but insisted that there was nothing untoward in these engagements. For Massone, the year-long sequence of pro-bono engagements was considered normal practice of the company, what they refer to as “CEO coaching” (Massone, 2018, p. 3).

Indeed, it would seem that this practice has been a crucial part of Bain's business model, as recorded in an article dating back to 1987: "The creator of 'relationship consulting', Bain has built its business on the close ties that it develops with chief executives" (Perry & Caminiti, 1987).

Massone's submission revealed that, over the course of four presentations made by Bain to Moyane, the seeds for a "profound strategic refresh" at SARS were sown (Bain & Company, 2014, p. 20). The presentations consisted of "the SARS2.0 (dated 13 October 2013), *TM first 100 days* (dated 26 May 2014), 'Potential SARS organisation chart and focus areas' (meta dated 27 July 2014) and SARS2.0 'What needs to be done' (dated August 2014)" (Massone, 2018, p. 18). The SARS2.0 presentation is explained as an "out-side-in" document that provides a broad overview analysis of the organisation. The other documents then go further, outlining a strategy for how to structure management at SARS, focused on creating a "sponsorship spine" and "identify individuals to neutralise" (Bain & Company, 2014, p. 7). The *TM first 100 days* document talks of a "framework and key actions" required, namely to "1-Keep the ball rolling", "2-Gain the high ground" and "3-Take control". With language such as this, it is easy to see why Judge Nugent refers to these presentations as "a strategy more appropriate to a corporate takeover".

Significantly, what these presentations collectively illustrated was that "[a] decision was taken that the organisational structure of SARS would be changed even before Bain and Mr Moyane had spoken to anyone at SARS" (Nugent Commission, 2018a, p. 39).

Bain had engaged with government officials prior to its work with Moyane. In his statement, Massone provides an account of various other engagements, including meetings held with then President Zuma. Massone says he was introduced to Zuma in August 2012, by Siphso Maseko, who had received "CEO coaching" from Bain prior to becoming the CEO of Telkom in April 2013, and that most of the meetings with Zuma were to discuss "Project Phoenix". Project Phoenix was only one of several strategic projects that Bain presented and discussed with President Zuma over the course of at least 12 engagements from 2012 to 2014, a breakdown of which is presented in Table 15.1 below.

TABLE 15.1 Breakdown of the various meetings Bain had with former President Zuma

Start Date	Meeting purpose	People Present
11 Aug 2012	Vittorio Massone introduced to Jacob Zuma by Siphso Maseko. Purpose was to discuss Project Phoenix ⁱ .	Vittorio Massone, Duma Ndlovu, Jacob Zuma and Siphso Maseko
23 Aug 2012	To discuss Project Phoenix	Massone, Ndlovu, Zuma and Maseko. Jabu Mabuza (the Chairman of Telkom) may also have been at this meeting.
27 Oct 2012	To discuss Project Phoenix	Massone, Ndlovu, Zuma, Maseko and Mabuza
25 Apr 2013	To discuss Project Phoenix and to begin conceptualising Project Elephant ⁱⁱ	Massone, Ndlovu, Zuma and Maseko (possibly others)
04 Aug 2013	To discuss Project Phoenix	Massone, Ndlovu, Zuma and Maseko (possibly others)
25 Feb 2014	To discuss the central procurement agency (CPA) ⁱⁱⁱ	Massone, Ndlovu, Zuma and Tom Moyane (in passing)
26 Apr 2014	To discuss CPA & ANC manifesto implementation plan ^{iv}	Massone, Ndlovu, Zuma and Fantas Mobu
22 May 2014	To discuss "new entrepreneurship and Small and Medium sized Enterprises (SME)" strategy ^v	Massone, Ndlovu, Zuma and Mandia KaNozulu (Ndlovu partner at Ambrorite)
May 2014–Jul 2014	Several meetings (unclear the number) to discuss "100 days' plan" for ANC manifesto implementation ^{iv}	Massone, Ndlovu, Zuma and possibly others
06 Jul 2014	To discuss Project Sirius ^{vi}	Massone, Ndlovu, Zuma and Busi Mabuza (Chairman of the IDC)
28 Jul 2014	To discuss Project Phoenix	Massone, Ndlovu, Zuma and possibly others
According to Vittorio Massone, the respective projects were described as follows:		
<p>i) <i>Project Phoenix (which was initially called Sisekelo) "was aimed at creating a national and regional ICT champion, leapfrogging economic development and transformation in urban and rural areas, creating a world class generation of professionals and infrastructures and maximizing the impact of government in the delivery of services to South African citizens". (Massone, 2018, p. 12)</i></p> <p>ii) <i>Project Elephant was a proposal for a new infrastructure delivery agency. "The idea was to change the way infrastructure deployment was done through the creation of a delivery agency that would take care of the most important infrastructure and then find improvements in the methodology that was used to plan the infrastructure and incentivise suppliers in delivering on time and within budget (later called project Elephant). Elephant was based on a set of global best practices." (Massone, 2018, p. 13)</i></p> <p>iii) <i>"The idea behind the CPA was to create an agency that would manage procurement for central government and create opportunities for significant savings in expenses and investments, improve the quality of supply and increase transparency." (Massone, 2018, p. 14)</i></p> <p>iv) <i>"[T]he idea of a workshop to be launched after the new government administration in order to create their 100 days' plan was presented at this meeting ... The workshop (simply described, a more interactive form of presentation where ideas are generated and exchanged by the attendees) was aimed at ensuring the best delivery of the promises of the ANC Manifesto in the upcoming elections consistently with the recommendations of the National Development Plan. It was to focus on the prioritisation of the most important projects and the creation of a better process for the collaboration between government departments, the private sector and state owned entities." (Massone, 2018, p. 15)</i></p> <p>v) <i>"The idea behind this presentation was to acknowledge that SMEs were a potential major driver of employment and growth which was underdeveloped and to discuss a number of possible actions (regulatory framework, dedicated ministry, creation of incubators and specific funding." (Massone, 2018, p. 16)</i></p> <p>vi) <i>"Sirius was aimed at re-shaping South Africa's energy sector. This included the need for a turnaround at Eskom, similar to what was then being done at Telkom." (Massone, 2018, p. 16) (see Chapter 2 of this book, Section 2.6.1, page 51)</i></p>		

Source: Vittorio Massone (2018) statement to the Nugent Commission

Present at most of Bain's interactions with President Zuma was Dr Duma Ndlovu and it was Ndlovu that introduced Bain to Moyane. Ndlovu in partnership with Mandla KaNozulu had established a "communications, events, project management and strategic stakeholder management specialist company" called Ambrorite (Pty) Ltd. In November 2013, Bain entered into a contract with Ndlovu's company Ambrorite for "business development and stakeholder management" (Bain & Company, 2013). The contract contains several insightful clauses that are worth noting, below are just three examples:

1. Under the current context section, it is highlighted that "Ambrorite intelligence has allowed Bain in the last few months to acknowledge that in the next few years a number of State Owned Enterprises and Agencies will be subject to leadership and strategic changes and will require significant transformation and tum-around processes".
2. For Ambrite the task of strategic analysis and intelligence gathering entailed "[gathering] data and information on consulting spend and competitive landscape in the different possible target clients" and "[identifying] key priority targets in the Government/SOE sector (an initial analysis performed by Ambrorite for Bain preliminary shortlisted company like SA Revenues Service (SARS), SA Post Office (SAPO), SITA, Eskom".
3. Assisting with Bain's brand positioning entailed "[identifying] the key opinion leaders and stakeholders in the public sector, in particular those who, even if not directly decision makers on consulting spend, have key roles in deciding or influencing future policies..." and "Help in translating those messages in a concrete set of actions: events, meetings, articles and publications, ...".

It remains unclear as to how much Ambrite was paid for their services, but the contract indicates a R100 000 monthly retainer, with additional "success fees" of between R100 000 and R200 000 a month for any work that materialised as a result of their services. The principle service provided to Bain was access to intelligence and to influential decision-makers in the public sector. Though undoubtedly valuable, it is difficult see how the services provided to Bain do not amount to a form of "contractualised" influence peddling. To be clear, there is nothing in South Africa that prohibits or regulates these kinds of "business development" services and these types of activities are common practice throughout the world. Similarly, there is also nothing strictly illegal in the President or any other government official meeting with consultants and private sector actors. But that does not mean that they are good practices or that they do not have negative implications for a functional democracy.

WHO TORE SARS

TIMELINE OF THE INDIVIDUALS, COMPANIES & FIRMS THAT SAW THE PLANNING & DISMANTLING OF SARS

APART?

Over 3000 highly skilled employees exited SARS during Moyane's tenure.

According to the new SARS Commissioner, Edward Kieswetter, it is estimated that more than 2000 experts resigned, 550 retired & approximately 600 faced disciplinary processes during this period.

UNIVERSAL GRAPHICS KEY

- In The Public Interest
- The Power Elite
- The Casualties
- The Misleading Press
- The Expensive Enablers and Fixers

THE STRUGGLE TO SAVE SARS BEGINS

Pillay, Gordhan & JvL win Press Ombudsman hearing - ST ordered to retract.

Zuma fires Finance Minister Nene & replaces him with Des van Rooyen. Then forced to replace van Rooyen with Gordhan 5 days later.

Mass Dubai power-elite gathering organised by the Guptas - Moyane is there at same time but denies meeting.

Gordhan halts SARS plans to 'assess situation' - Moyane ignores instruction & continues his strategic refresh.

Hawks send Gordhan list of '27 questions' re: 'Rogue Unit' just before his budget speech in parliament.

ST publicly admits poor reporting after Press Ombudsmen finding.

After Gartner didn't find anything wrong with Hore's procurement processes, Grant Thornton is appointed to re-look his modernisation program for procurement irregularities - 'Project Lion' (R12.5ml).

Financial Intelligence Centre (FIC) submits reports to SARS containing serious allegations against Makwakwa about Monyeki payments - he is suspended pending investigation by Hogan Lovells.

Bain recontracted for Phase 3 (R50ml) - operational improvement initiatives in customs collection.

NPA Charge Pillay, Gordhan & Magashula with fraud relating to the early retirement, pension payout & reappointment of Pillay.

After follow-on work (Phase 3) for SARS concludes at a cost of R9.8ml & R8.7ml, Gartner is no longer needed at SARS.

On finding email proof supporting Pillay's valid early retirement NPA withdraws charges on Pillay, Gordhan & Magashula.

Grant Thornton delivers 'inconclusive' report & recommends extending the 'Project Lion' contract for R50ml. National Treasury declines.

Zuma fires Gordhan & Jonas - Malusi Gigaba made new Finance Minister.

PROJECT SARS 2.0 UNRAVELS

Media reports emerge that SARS pays Guptas (who have no active bank accounts in SA) tax refunds of approximately R240ml.

KPMG International withdraws findings & conclusions on their 'Rogue Unit' report - revealed report was 'copy & pasted' from an MM&M memo.

Still under criminal investigation, Makwakwa returns to SARS.

Ramaphosa sworn into Presidency following Zuma's resignation.

Ramaphosa suspends Moyane - pending outcome of disciplinary proceedings.

Ramaphosa appoints retired judge Robert Nugent to head up the Nugent Commission of Inquiry (NCI), to look into governance & administration at SARS.

NCI hears damning testimony about Moyane & his destructive collaboration with Bain that led to gaps in tax collection compliance.

Judge Kroon backtracks on finding 'Rogue Unit' unlawful & admits they did not interrogate the Bain/Moyane 'New Operating Model'.

Moyane makes a filing at ConCourt to have the Nugent Commission of Inquiry dismissed.

Ramaphosa fires Moyane following a recommendation in the Interim Nugent Commission Report.

THE REBUILDING OF SARS BEGINS...

2016

2017

2018

15.3 AND THE CONSULTANTS KEEP ON COMING

15.3.1 Gartner and Company

A question raised during the Nugent Commission was the explicit exclusion of the examination of the SARS Information Technology (IT) infrastructure and development plan in the scope of works contracted to Bain. SARS' IT system is central to its strategic vision, functional mandate and at the heart of the institution's original modernisation programme. Without a substantive explanation, the exclusion of IT from the Bain contract would appear to be to allow for a second, equally lucrative contract to be awarded to some other party. This other party would be the international IT company Gartner Inc. and their preferred local broad-based black economic empowerment (BBBEE or BEE) partner Rangewave, owned by Mr Patrick Monyeke. Monyeke had been present at one of the undisclosed meetings held just five days prior to Moyane's appointment (Nugent Commission, 2018a).

As has been seen in other examples of state capture (see Chapter 10), one of the best ways to ensure that one wins a tender is to write up the bid specifications oneself. Mr Neville Willemsse, Gartner's representative in South Africa, was approached by Monyeke to do just that, giving Gartner a significant advantage over any potential competition. Like Bain, Gartner was awarded a Phase 1 contract to undertake an assessment of the IT strategy (about R12m), followed by Phase 2 (about R144m) and various Phase 3 contracts (approximately worth at least R18.5m). Of these fees, Rangewave would have received between R50-R70m (30% to 40%) (Nugent Commission, 2018a).

Various SARS employees and technical experts provided testimony to the Commission that raised the question of the need for Gartner's services, as well as the value for money of said services. Perhaps the most inexplicable portion of Gartner's work was in relation to the expansion of its initial Phase 1 scope of work to review the modernisation procurement process for any irregularities. The extension was requested by the acting COO at the time, Jonas Makwakwa (Nugent Commission, 2018a). It is unclear what the purpose was, other than to undermine the work done under SARS' previous management. Gartner evidently did not find any significant evidence of procurement irregularities, but this response was not satisfactory for SARS and in mid 2016 it contracted Grant Thornton to undertake a forensic investigation, at a cost of about R12.5m. This investigation came to naught, but Moyane appeared determined to find some fault with the modernisation programme and submitted a request to the National Treasury for a deviation on the contract with Grant Thornton to undertake more work (Nugent Commission, 2018a, p. 73). The National Treasury declined the request (Nugent Commission, 2018a).

15.3.2 Coincidence or Connections: Where Tom goes, Patrick Follows

One of the biggest and still unanswered questions is why Monyeke approached Gartner on behalf of SARS in the first place. No one from SARS could provide any explanation as what capacity Monyeke was acting in and it seems he did not have any contractual relationship with SARS. As neither he nor Moyane have provided any clarifying explanation, one can only assume that this was an informal arrangement, discussed and agreed to outside of normal government processes. It is known that Monyeke and Moyane are at the very least acquaintances, though many media reports suggest a close friendship. There are many incidences where Moyane's various position of influence in government appears to coincide with Monyeke securing lucrative contracts. Some of the allegations detailed below overlap with other cases of state capture presented in Chapters 10 and 12 in this book, namely the Bosasa corruption at the Department of Correctional Services and the capture of South African Social Security Agency (SASSA).

The story of Monyeke's role in the capture of the SASSA stretches back to the initial constitutionally invalid tender that was awarded to Cash Paymaster Services in 2012. The various court challenges (from High Court to ultimately the Constitutional Court) that ensued provided several revelations in terms of how the award came to be and the roles played by Moyane and Monyeke are particularly worth mentioning. Moyane was Chair of the Bid Adjudication Committee Chair and convened the final approval meeting in the absence of the only committee member (National Treasury official Willie Mathebula), who had raised concerns around the proposal and the committee's decision to change the scoring after oral presentations. Monyeke was a technical adviser for the bid evaluation process and is alleged to have contributed to CPS winning the lucrative social grants contract. He would continue to be involved in the social grant payment system and SASSA, when he was appointed to Minister Bathabile Dlamini's Ministerial Advisory Committee. He was also allegedly involved in several other potentially corrupt deals at the Department of Correctional Services, before, during and after the time Moyane was Commissioner.

There are also investigations around unexplained money transfers to Moyane's second-in-command Makwakwa, which were flagged by the Financial Intelligence Centre (FIC). A complex web of alleged corruption and money laundering has emerged, all tied to a February 2015 payment of R17.87m from the Department of Water and Sanitation (DWS) to a debt-collection company called New Integrated Credit Solutions. At the time Monyeke was the sole director of Mahube Payment Solutions, which appears to have received a payment of approximately R4.5m from New Integrated Credit Solutions, the reasons for which have yet to be fully explained (Comrie, McKune & Sole, 2016; Haffajee, 2017a; Van Wyk, 2018). Both the later

allegations of potential corruption, relating to correctional services, and the payments made by New Integrated Credit Solutions are still currently under investigation, by the Special Investigative Unit (Evans, 2019) and the Hawks (Haffajee, 2017a) respectively.

The FIC report was submitted to Moyane flagging that millions of rands had been deposited into the accounts of Makwakwa and his wife Kelly-Ann Elskie, who was also a SARS employee (Haffajee, 2017a). Moyane initiated an internal enquiry that seemingly cleared Makwakwa of all charges and reinstated him. Moyane allegedly hampered the investigation undertaken by Hogan and Lowell and a follow-on investigation by PwC and the disciplinary hearing is considered flawed. This would later be used as one of the charges levied against Moyane by then Minister of Finance Gordhan to motivate for his removal as SARS Commissioner (Gordhan, 2018a; Omarjee & Cronje, 2018).

15.4 THE ROGUE UNIT RACKET

Moyane used the narrative around the supposed rogue unit as a motivation for undertaking “the process of re-launching the SARS brand by embarking on a comprehensive overhaul of the organisation in all aspects” (Nugent Commission, 2018c, p. 42). With Bain to be appointed as the “independent consultants” and the rogue unit narrative driving the “massive ‘transformation and turnaround of SARS’” (Nugent Commission, 2018a, p. 42), the institutions investigative capabilities were in effect stripped bare.

There are several investigative units within SARS that correspond to different aspects of tax enforcement. The supposed rogue unit was mandated to investigate individuals and companies suspected of committing criminal offences such as large-scale tax evasion, trading illicit goods and smuggling. The unit was not static in terms of its functions or structure and had undertaken several different transformations, consecutively being named the Special Projects Unit (SPU), National Research Group (NRG) and HRIU (from late 2009-2014). Prior to its dismantling, the unit (with other SARS investigative units and criminal justice entities) had been central to pursuing several high profile tax evaders – including Brett Kebble, David King, Glen Agliotti, Ivan Khoza, Lolly Jackson, Radovan Krejcir (particularly in relation to the cigarette trade) and Tigon and Gary Porritt (case still ongoing) (Haysom, 2016; Haffajee, 2017b).

The main allegation has been that the unit was established illegally, that it conducted covert operations and illegally intercepted the communication of targeted political connect individuals, under the leadership of the Minister of Finance Pravin Gordhan and senior officials Ivan Pillay, Oupa Magashula and Johann van Loggerenberg (Head

of the unit), amongst others. The story of the rogue unit and the events and actions that fuel the narrative dates back at least 13 years to 2007.

The latest investigations by the Public Protector launched in October and November 2018 were triggered by complaints laid by an anonymous source and an Economic Freedom Front Member of Parliament. This was around the time the Nugent Commission released its interim report, recommending Tom Moyane be fired (Smit & Ritchie, 2018; Public Protector, 2019b). As already mentioned, the Public Protector's report has been taken on judicial review.

The details and allegations entangled in the narrative are numerous and range from the salaciously absurd to more complex interpretations of law that remain matters of dispute. The more complex allegation, however, lies in the extent to which the unit could have been considered to have been established and operated “covertly” or undertaken “covert intelligence gathering” and whether or not any of those actions would be considered illegal.

Most of the investigations have not focused on any one allegation or specific area of SARS enforcement operations. Both the Sikhakhane and KPMG investigations scope were expanded to include perceived new areas inquiry or allegations, seemingly in response to *Sunday Times* media reports (Sikhakhane, 2014; KPMG, 2015). Only three seem to have become rooted in the real-politic. Two gained traction through an investigation by the Hawks, based on a case opened by Moyane in May 2015, which resulted in the National Prosecuting Authority (NPA) instituting criminal charges against the previously mentioned SARS officials. In his testimony at the Zondo Commission, Gordhan outlined how he believed the criminal charges were used to allegedly apply political pressure (and potentially as a cover) for him to be removed as Minister of the National Treasury (Gordhan, 2018b).

The first allegation relates to the early pension payout that Gordhan authorised for Pillay. The charges were later withdrawn after a supposed hostage drama unfolded and it emerged that Gordhan had received a lawyer's opinion clearing the payout and reinstatement. This legal opinion was for some unknown reason not included in the docket (*News24 Wire*, 2016; Van Wyk, 2017; *Fin24*, 2018). These allegations have absolutely nothing to do with the establishment or operation of the supposed rogue unit but do form the basis of a second Public Protector report finding against Gordhan, which has also been taken on legal review (Public Protector, 2019a).

The second allegation that had found its way into the hands of the NPA specifically relates to what has become known as Project Sunday Evenings. There is little factual evidence in the public domain to clarify what transpired, but this “story” seems to have emerged from Moyane's office. Two SARS employees and members of the SPU, Helgard

Lombard and Johan de Waal, approached the commissioner to “spill the beans” on events that had occurred seven years prior (Rampedi, Hofstatter & Wa Afrika, 2015). In 2007, Van Rensburg, head of the newly established SPU at the time, was approached by Gerrie Nel, a top prosecutor at the Directorate of Special Operations (DSO or “Scorpions”), and asked to install surveillance and interception devices in NPA offices. This was apparently in response to the number of leaks originating from this office and concerns over the sensitive nature of some of the high-profile cases at the time, such as the investigation into Jacki Selebi. Van Rensburg requested Lombard and De Waal to undertake the interception operations. It is alleged that Pillay sanctioned the operation and then requested copies of the interceptions. It also is understood that all the operational costs were covered by the NPA (KPMG, 2015).

There are, however, several details of the case that remain unclear or disputed, such as who authorised the operation and in what capacity the operation was undertaken. Was there an official agreement in place between SARS and the NPA?¹ Why were only certain individuals charged and not others? In short, the details of who, what, when and why all remain unclear, this is in part because the full docket outlining the details of the allegations and the supporting evidence has not been made public (Cowan, 2018). The NPA has since dropped the charges against Van Loggerenberg, Pillay and Van Rensburg and it is unlikely that full closure on this matter will be realised (Hotz, 2020; NDPP, 2020).

On reviewing the various investigations, it appears that it is the allegation relating to Project Sunday Evenings that forms the basis for the opinion that the investigative unit at SARS (NRG at the time) was conducting “covert intelligence gathering”. The challenge with this idea is that other than the fact the two individuals had been employed by SARS at the time, there appears to be little evidence that the operation had anything to do with SARS or a rogue unit. It was not paid for nor formally authorised by SARS officials. The KPMG report lists several other operations of the unit that entail surveillance of goods and premises, but all of which would be considered permissible according to the legal opinion provided by Wim Trengove in late 2015 (KPMG, 2015; Nugent Commission, 2018a). This legal opinion was not made public until the Nugent Commission, and, though acknowledged, is not considered in the findings of the Public Protector’s report in any meaningful way (Public Protector, 2019b).

1 Section 6 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act allows for “Interception of indirect communication in connection with carrying on of business” (Republic of South Africa, 2002). If the interception associated with Operation Sunday Evening was initiated and paid for by NPA for the purposes of monitoring NPA business, it is unclear why this would be illegal.

The confusion created (if not manufactured) through the rogue unit narrative is ultimately found in the deficiencies of South Africa's legal framework governing the intelligence capabilities of law enforcement and security sector. There are several gaps, loopholes, contradictions and overlaps in the various laws that govern intelligence, investigative authority, rights of privacy and the various law enforcement mandates. These are all matters that should be of concern to ordinary South Africans, as outlined in Chapter 14. They can have major ramifications for the potential abuse of state monopoly on violence and provide significant opportunity for the abuse of these powers (Duncan, 2020; Neille, 2020).

The last allegation that has been specifically tied to Gordhan is that the establishment of the rogue unit was itself illegal (Public Protector, 2019b). It is not disputed that the unit operated outside of the broader knowledge of SARS general operations, but this was done with the knowledge and supervision of senior management. How this "secretive" nature of operations is considered illegal remains unclear. The KPMG, Sikhakhane and Public Protector reports all rely on the National Strategic Intelligence Act to highlight that SARS was not part of listed national intelligent services. In this act, however, the term "intelligence" specifically relates to information required to "protect or advance the national security" (Republic of South Africa, 1994, 2013). It specifically identifies what is considered a threat to national security, including acts of terrorism, undermining "constitutional order of the Republic" and "exposure of economic, scientific or technological secrets vital to the Republic" (Republic of South Africa, 1994, 2013). SARS tax enforcement does not seem to fall within any of these. As highlighted by the Nugent Commission (Nugent Commission, 2018a, p. 76):

Why such a unit was considered to be unlawful is not clear to me. While the National Strategic Intelligence Act prohibits the covert gathering of certain intelligence, that applies to intelligence concerning threats to the safety of the state, which hardly applies to intelligence relevant to collecting tax. That members of the unit might at times have acted unlawfully, that SARS employment policies might have been breached, that members might unlawfully have acquired and used equipment, all of which came later to be alleged, I see no reason why SARS was and is not entitled to establish and operate a unit to gather intelligence on the illicit trades, even covertly, within limits.

When the unit was established in 2007, it was envisioned that it would collaborate with (and to some extent could form part of) the National Intelligence agency (NIA). A memorandum requesting that additional funding be allocated to the NIA was approved, but the collaboration did not materialise. The NIA does not appear to have made any substantive appearance in any of the various investigations into the rogue unit. This is quite strange because if it is, as argued by Sikhakhane and the

Public Protector, the mandate of NIA (now SSA) to collect the alleged type of “covert intelligence”, then why did they not agree to house the unit as was proposed in 2007? Hopefully, through the various court processes the truth will finally emerge and the matter of the “rogue unit” will finally be put to bed.

15.5 THE CONSEQUENCES: ISN'T IT TIME TO STOP DRINKING THE “CORPORATE KOOL-AID”?

When revenue collection is compromised the consequences are one or more of three. Government programmes must be curtailed, or taxes must be raised, or money must be borrowed, all of which prejudice the country. (Nugent Commission, 2018a, p. 16)

Like most cases of state capture, it is difficult to quantify how much the capture of SARS has cost the country. The decline in economic activities and in taxpayer morale and the efficiency of the tax collection are all variables that impact the amount of revenue that the state can extract from the citizenry and business. These have been negatively affected by state capture (Brown & Malary, 2019). Revenue collection has fallen short year-on-year of what the state needs to meet its budgeted obligations. The accumulated impact of this underperformance in tax collection is estimated to be R100bn, if not more (Nugent Commission, 2018a; Brown & Malary, 2019). The tax base is already strained and coupled with challenges of increased unemployment, a decline in economic activities and lower taxpayer morale, the task of tax collection is that much harder (Brown & Malary, 2019; Marrian, 2019b).

Since the release of the Nugent Commission's final report, Edward Kieswetter has been appointed as SARS Commissioner and has begun the arduous process of rebuilding the organisation. The LBC has been re-established, several of Moyane's Executive team have left and some experienced employees have returned (Marrian, 2019a; SARS, 2019). It will take time, effort and significant resources to attain the institutional capabilities, including investigative and enforcement capacity, demolished under Moyane's reign.

The fallout from the Nugent Commission has cost many of those private companies involved dearly, but have they been held accountable? KPMG retracted the recommendations from their investigation into the rogue unit and repaid its R23m worth of fees. When it was later revealed that these recommendations were a cut and paste from a legal opinion sent to them by SARS, the Executive responsible was fired (KPMG, 2017; Chabalala, 2018). Given the damage that resulted from the report, including the Hawks investigation and the laying of criminal charges based on their

recommendations, the response seems hardly commensurate. Gartner has denied any wrongdoing and has not responded publicly to the Nugent Commission's findings.

In response to the release and the damning findings contained in the Commission's final report, Bain apologised and committed to pay R217m back to SARS (Nugent Commission, 2018a; Marrian, 2019b). In a company media statement released in December 2018, Bain concedes that:

We accept that through various lapses in leadership and governance, Bain South Africa became an unwitting participant in a process that inflicted serious damage on SARS. We understand the justifiable anger felt by South Africans and are deeply sorry for what has happened to SARS and for our involvement. (Bain & Company, 2018)

In a later statement on 20 December 2019, however, they attempted to absolve themselves of any responsibility for what happened at SARS: "This [internal] investigation, which is now complete, did not find any evidence that Bain was involved in any scheme with Mr Moyane to damage SARS" (Bain & Company, 2019). This is just one example of the cleverly crafted statements of logic acrobatics which professionals deploy to deliberately avoid any sense of accountability. It is important to highlight that the internal investigation that is referred to has never been made public and has been drawn into question, by none other than the individual whom they appointed to oversee the "ethical rejuvenation" of the firm, Athol Williams. In October 2019, Williams resigned from Bain and in a public gathering in December 2019, he stated "When I ask questions, I get shut down. As an internal person, as a partner who has to stand up publicly and say 'they are doing the right thing,' for my own credibility, my own conscience and also for the good of SA, I couldn't be part of that ... It is obvious that they [Bain] have lots to hide" (Mahlaka, 2019). In an interview Williams further indicated: "I don't have additional evidence regarding SARS, but I do have evidence on other institutions" (Buthelezi, 2019). At the time, Williams indicated he would be making submissions to the Zondo Commission regarding Bain's role in state capture.

The aspect that needs to be noted in Bain's denial is the deliberate conjunction that is made between the action and a specific intent. Proving intent is almost always the most challenging aspect of any investigation. Even though the company may not have intended to "damage SARS", it is evident from the sequence of events and the evidence by the company itself that Bain undoubtedly "was involved in [a] scheme with Mr Moyane". The statement is in effect an untruth and the racket is the complicit silence from business, government, and society at large. The notion that this type of response is acceptable, if not expected, cannot be sustained if we want to stop the practices of state capture.

The role of private sector consultancies has been extensively documented, but they often do not receive the same extensive scrutiny and criticism as their public sector counterparts. There is often much controversy around their appointment processes, how they are paid and the various entities they “partner” with to be awarded said contracts. All of these are valid concerns, but the question that seldom gets asked is why they are appointed in the first place and what is the real value they provide to warrant their unashamedly exorbitant fees.

SARS “was held up in this country as a model public institution” prior to Moyane’s appointment (Nugent Commission, 2018a, p. 21). Consultants were bought in, even though “[m]any were puzzled at why it was thought necessary to ‘fix what was not broken’” (Nugent Commission, 2018a, p. 49). Often these consulting firms are bought in to “find” the problems to which only they can provide the solutions. The tactic of getting a foot in the door, with regards to procurement pricing and then ballooning contracts over time is a common occurrence. Behind all these contracts are the “business development partners”, outside advisors or preferred BBBEE partners that have links or connections to the people in power. These predatory business practises become reinforcing and self-perpetuating and will continue if left unchallenged.

Under the subheading ‘Honesty & Openness’ on Bain and Company’s website, they profess that “We [Bain] have a deep intellectual honesty, and the candor to tell it like it is in straightforward language. We remain open to the possibility that current beliefs could be wrong” (Bain & Company, 2020). One hopes that they look beyond their profit margins and candidly reflect on their role they have played in decimating one of South Africa’s crucial financial institutions.

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APPENDIX

Case Study in State Capture	Status	Summary Description	Investigation Body / Source of Evidence	Government Entity Implicated
Scandals Connected to Jacob Zuma, Guptas, Other Key Networks and ANC Politics				
The <i>State of Capture</i> report – focuses on Guptas' relationship with Jacob Zuma and their alleged influence on the affairs of state	First complaint was received in March 2016 and the report was released in November 2016.	Investigation into complaints of alleged improper and unethical conduct by the President and other State Functionaries, relating to alleged improper relationships and involvement of the Gupta Family in the removal and appointment of Ministers and Directors of State-Owned Enterprises (SOEs), resulting in improper and possibly corrupt award of State Contracts and Benefits to the Gupta Family's Businesses. The report details numerous allegations of the Guptas' involvement in affairs of the state and their irregular activities that enable rent extraction. The findings were not conclusive and the remedial action was to establish a commission of inquiry into state capture (to be appointed by the President, but with a judge selected by the Chief Justice). Litigation endeavoured to delay or prohibit the report's release and implementation of remedial actions, but failed, and the commission was established in 2018.	<ul style="list-style-type: none"> Public Protector, followed by litigation 	<ul style="list-style-type: none"> GCIS (<i>The New Age</i>) Eskom (Optimum) Transnet (Regiments/Trillian) Denel SAA (<i>The New Age</i>) SABC (<i>The New Age</i>) Department of Finance Transport (SAA) Communications (SABC & GCIS)
Zondo Commission	Established in 2018, with anticipated conclusion being the end of 2021.	Formally titled the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, the Commission was promulgated by then President Zuma in response to the remedial actions as outlined in the Public Protector's <i>State of Capture</i> report. As of June 2021, the Commission that started in August 2018 has held more than 418 days of hearings of over 330 testimonies (generating over 71 000 pages of transcript). The inquiry's terms of reference were expansive and, as such, the scope of investigations went beyond merely looking into the Gupta-related cases, covering other networks (e.g., Bosasa) as well as other government institutions (e.g., role of Parliament).	<ul style="list-style-type: none"> Zondo Commission 	<p>Various work-streams covering <i>inter alia</i>:</p> <ul style="list-style-type: none"> SOEs (Eskom, Transnet, Denel, SAA) Free State Provincial Government Bosasa SARS Law enforcement State Security Agency (SSA) <i>The New Age</i> & ANN7 Role of Parliament and ANC

Case Study in State Capture	Status	Summary Description	Investigation Body / Source of Evidence	Government Entity Implicated
Scandals Connected to Jacob Zuma, Guptas, Other Key Networks and ANC Politics				
Bosasa	Dating back to a 2009 SIU report. Investigations and various litigations are ongoing.	In 2019, former Bosasa COO, Anglo Agrizzi, testified at the Zondo Commission, detailing the acts and long history of corruption between various Bosasa companies predominantly owned by Gavin Watson, and numerous government entities/departments. The testimony of Agrizzi (and other former Bosasa employees) corroborated the findings of a 2009 SIU investigation that alleged corruption in several contracts Bosasa had with the Department of Correctional Services. Criminal court proceedings have been initiated based on the 2009 SIU investigation, along with new investigations initiated by SARS and other law enforcement entities.	<ul style="list-style-type: none"> Special Investigation Unit (SIU) Zondo Commission 	<ul style="list-style-type: none"> Department of Correctional Services Department of Justice Department of Home Affairs Department of Transport Various SOEs (e.g., SAPO, ACSA) National Prosecuting Authority (NPA) Members of Parliament
Arms Deal	Various investigations and sources, dating back to 1990s. Most significant source being through Seriti Commission. Corruption case against Zuma is ongoing.	Commission of Inquiry into allegations of fraud, corruption, impropriety, or irregularity in the Strategic Defence Procurement Packages (SDPP). Various court cases related to allegations of corruption against Jacob Zuma. On Monday, 24 October 2011, the President announced the Commission chaired by Judge Seriti. The findings of the Commission were that there was "no evidence" of corruption, but this is seen by many to have been a whitewash. The report was taken on review and set aside in August 2019. The corruption case against Zuma is ongoing before the courts.	<ul style="list-style-type: none"> Seriti Commission Various court cases 	<p>Initially:</p> <ul style="list-style-type: none"> South African National Defence Force Members of Parliament <p>Allegations also involve:</p> <ul style="list-style-type: none"> NPA SSA
Nkandla Security Upgrades	Investigation started in November 2012. Report on investigation was released in March 2014.	Report on security upgrades to President Zuma's homestead in Nkandla. The investigation found that the President unduly benefited from the upgrades and as part of remedial actions the President was required to pay back a portion of the costs of the upgrades. Zuma instructed that SAPS undertake their own investigation, which sought to rationalise the expenses (fire-pool report). Parliament accepted this alternative report, but major court cases followed, ultimately declaring that the Public Protector's remedial actions are binding. President and Parliament failed to uphold the Constitution. President ordered to "pay back the money".	<ul style="list-style-type: none"> Public Protector's <i>Secured in Comfort</i> report, followed by litigation 	<ul style="list-style-type: none"> Department of Public Works South African Police Service

Case Study in State Capture	Status	Summary Description	Investigation Body / Source of Evidence	Government Entity Implicated
Scandals Connected to Jacob Zuma, Guptas, Other Key Networks and ANC Politics				
Private Aircraft Landing at Waterkloof Airforce Base and Gupta Sun City Wedding	May 2013.	In 2013, justice, crime prevention, and security cluster (JCPS) – a cabinet structure composed of various ministries – undertook an investigation into the Landing of a Commercial aircraft at Air Force Base Waterkloof (report titled the same). The investigation revealed that the Guptas initially tried to organise a special landing at OR Tambo International Airport, but was turned down. They then approached the Indian High Commission who re-designated the wedding entourage as an official delegation to secure a landing at the Waterkloof base. The wedding held at Sun City was attended by a number of high-profile ANC politicians and was paid for in part by moneys looted from the Vrede Dairy Farm project.	<ul style="list-style-type: none"> Report by JCPS Zondo Commission 	<ul style="list-style-type: none"> Department of International Relations and Cooperation (DIRCO) Department of Defence Department of Transport
Free State Provincial Capture, includes Vrede Dairy Farm and Asbestos Contracts	Ongoing.	The Vrede Dairy Farm project was initiated by the Free State Provincial Government as a development project, however, in partnering with a Gupta-linked company Estina, government funds were looted. In 2018, the Public Protector released a report on their 2018 investigation, but it was taken on review and set aside by the courts. The second part of the investigation is yet to be finalised. The NPA laid criminal charges against Gupta associates and implicated government officials. Court proceedings are ongoing. Significant testimony and evidence have been presented at the Zondo Commission regarding the Vrede Farm case, as well as the asbestos inspection project (criminal proceedings are also underway). Both projects implicate high-profile politicians and senior officials manipulating government process.	<ul style="list-style-type: none"> Public Protector reports Zondo Commission Various court cases 	<ul style="list-style-type: none"> Free State Provincial Government
Irregular removal of National Director of Public Prosecutions (NDPP), Mxolisi Nxasana	Inquiry instituted in February 2015, but was cancelled in May 2015. This triggers the Constitutional Court cases that followed.	Inquiry into the fitness of Mxolisi Nxasana to hold office as NDPP. The Inquiry was cancelled after Zuma “agreed to let Nxasana resign”. He was paid R17m – the balance of his ten-year contract. Court cases followed detailing the abuse of the presidency powers by Zuma. Ultimately, Nxasana was ordered to repay R17m and Zuma’s appointed replacement, Shawn Abrahams, was ordered to vacate office. Constitutional Court found Zuma’s actions to be an abuse of power and in breach of his constitutional obligations.	<ul style="list-style-type: none"> Cassim Inquiry into fitness of Mxolisi Nxasana to hold office of NDPP initiated by Zuma, followed by litigation 	<ul style="list-style-type: none"> National Prosecution Authority
Political killings in KZN	Established in October 2016. The report was released in May 2018.	On 28 October 2016, the Premier of the Province of KwaZulu-Natal established a Commission of Enquiry into the Underlying Causes of the Murder of Politicians in KwaZulu-Natal (KZN).	<ul style="list-style-type: none"> Moerane Commission of Enquiry 	<ul style="list-style-type: none"> KZN Provincial Government KZN Local Governments

Case Study in State Capture	Status	Summary Description	Investigation Body / Source of Evidence	Government Entity Implicated
Scandals Connected to Jacob Zuma, Guptas, Other Key Networks and ANC Politics				
State Capture of State-Owned Enterprises and Government Departments				
Interference in operations at the SABC	The Ad Hoc Committee was established in November 2016 and final report was tabled on 24 February 2017.	Parliamentary Ad Hoc Committee on the SABC Board Inquiry into mismanagement and interference in SABC operations. Findings include evidence of Minister Faith Muthambi's interference in the organisation and editorial interference, in the firing of SABC 8 who protested censorship of the national broadcaster (on instruction from COO Hlaudi Motsoeneng). It should be noted that the inquiry was preceded by an investigation by the Public Protector. Details are contained in the 2014 report titled <i>When Governance and Ethics Fail</i> .	<ul style="list-style-type: none"> Parliamentary Inquiry Preceded by an investigation by the Public Protector 	<ul style="list-style-type: none"> SABC (Department of Communication)
Passenger Rail Agency of South Africa (PRASA)	Complaints were lodged in 2012 and the report was released in August 2015.	Several cases of "mismanagement and irregularities" regarding various contracts. Lucky Montana was CEO at the time. One of the remedial actions stipulated that National Treasury was to investigate all PRASA contracts from 2012 onwards with a value of R10 million or more. National Treasury implemented the remedial action which resulted in several investigations, the details of which were leaked to the public.	<ul style="list-style-type: none"> Public Protector's <i>Derailed</i> report on PRASA Numerous investigations 	<ul style="list-style-type: none"> PRASA Department of Transport
	In June 2017, Parliament directed 4 committees to investigate state capture. Committee hearings were not completed.	In terms of the parliamentary directive, the Portfolio Committee on Transport was requested to establish an Inquiry into State Capture at PRASA. However, the Portfolio Committee noted that PRASA was not mentioned in the Public Protector's <i>State of Capture</i> report and decided they would focus on the various investigation reports produced for National Treasury (as recommended in <i>Derailed</i> report).	<ul style="list-style-type: none"> Portfolio Committee on Transport 	<ul style="list-style-type: none"> PRASA Department of Transport
Eskom Inquiry into State Capture	In June 2017, Parliament directed 4 committees to investigate state capture. Public Enterprises Committee report on Eskom was released in November 2018.	Extensive hearings were held by the Committee detailing much of the evidence presented in the Public Protector's report. The Committee presented recommendations and compiled a final report detailing their findings. These included findings that Ministers Lynne Brown and Malusi Gigaba were negligent and had to be held accountable. Also recommended that criminal investigations be undertaken against the relevant Eskom executives.	<ul style="list-style-type: none"> Parliamentary Inquiry 	<ul style="list-style-type: none"> Eskom Department of Public Enterprises
Nugent Commission – SARS Inquiry	The Inquiry was constituted on 24 May 2018 and the final report was released in December 2018.	Commission of Inquiry into tax administration and governance by South African Revenue Service (SARS). Tom Moyane was fired based on the interim report released in September 2018. The inquiry found that Moyane, with the help of consultancy company Bain, had implemented restructuring of the organisation, resulting in gross mismanagement and erosion of SARS. Moyane motivated the restructuring based on the "rogue unit" narrative that has been the subject of several other debunked investigations and the subject of much litigation.	<ul style="list-style-type: none"> Judicial Commission of Inquiry Court cases around the "rogue unit" narrative 	<ul style="list-style-type: none"> SARS (National Treasury)

Case Study in State Capture	Status	Summary Description	Investigation Body / Source of Evidence	Government Entity Implicated
Scandals Connected to Jacob Zuma, Guptas, Other Key Networks and ANC Politics				
State Capture of State-Owned Enterprises and Government Departments				
Commission of Inquiry into Public Investment Corporation (PIC)	In October 2018, the Commission was constituted, and the final report was released in March 2020.	Commission of Inquiry into allegations of impropriety regarding Public Investment Corporation (PIC). There were extensive hearings on various 'dodgy' deals the PIC entered into and details of political and executive interference in the operations and decision-making processes of the investment agency.	<ul style="list-style-type: none"> Judicial Commission of Inquiry 	<ul style="list-style-type: none"> PIC (National Treasury)
South African Social Security Agency (SASSA)	Various Constitutional Court cases from 2011 to 2018 resulted in removal of CPS as service provider to SASSA.	In 2014, South African Social Security Agency's (SASSA) 2012 contract with CPS was found to be irregular and invalid, however, due to the importance of ensuring beneficiaries received grants, CPS continued to be the service providers until 2018. Following a March 2017 ruling, the Constitutional Court instituted a Section 38 Inquiry into Minister Bathabile Dlamini's personal liability for the narrowly averted grant payment crisis.	Primary sources: <ul style="list-style-type: none"> AllPay court case Black Sash court case 	<ul style="list-style-type: none"> SASSA
South African Airways (SAA) and SAA Technical	Court case to have Dudu Myeni declared a delinquent director was launched in 2017.	Court case was launched in 2017 by Outa and the SAA Pilots' Association (SAAPA) to declare Myeni a delinquent director in terms of the Companies Act, based on her actions while she was chairperson of the SAA Board. In 2020, the High Court declared Myeni a delinquent director for life. A significant amount of new evidence also emerged through the Zondo Commission, outlining how the operations at SAA were undermined and how Myeni and others abused their positions of authority.	<ul style="list-style-type: none"> Court papers Zondo Commission 	<ul style="list-style-type: none"> SAA SAA Technical
Gupta Family Naturalisation	In June 2017, Parliament directed 4 committees to investigate state capture. Final report was tabled 14 March 2019.	Portfolio Committee on Home Affairs Inquiry into the Gupta Family Naturalisation was established in terms of the Parliamentary directive. Hearings formally started on 12 September 2018. Final report was tabled on 14 March 2019. Questions were raised around contracts with Visa Facilitation Services. This matter is ongoing as of December 2020.	<ul style="list-style-type: none"> Portfolio Committee on Home Affairs 	<ul style="list-style-type: none"> Department of Home Affairs
Inquiry into State Capture related to Gupta-owned mines	In June 2017, Parliament directed 4 committees to investigate state capture.	Though the Committee drafted a term of reference for the Inquiry, the activities of holding hearings and consolidating the evidence never materialised beyond questions being put to then Minister Zwane.	<ul style="list-style-type: none"> Portfolio Committee on Mineral Resources 	<ul style="list-style-type: none"> Department of Mineral Resources

Case Study in State Capture	Status	Summary Description	Investigation Body / Source of Evidence	Government Entity Implicated
Scandals Connected to Jacob Zuma, Guptas, Other Key Networks and ANC Politics				
State Capture of State-Owned Enterprises and Government Departments				
Various investigations relating to State Capture at Eskom	2015	In 2015, Dentons produced an interim report on their investigations into Status of Business and Challenges at Eskom. Their investigation was halted.	▪ Eskom	▪ Eskom
	2017	In 2017, PricewaterhouseCoopers (PwC) was appointed by National Treasury to investigate Eskom's Coal Procurement Processes. Damning findings were made in relation to Gupta-owned Tegeta mine contracts and poor coal quality.	▪ Eskom	▪ Eskom
		G9 was contracted by Eskom to investigate the Trillian/McKinsey contracts. Interim report presented to Board of Eskom in August 2017. The investigation remained incomplete, and no report is available in the public domain. Evidence from the investigation was presented in the Parliamentary Inquiry into Eskom State Capture.	▪ National Treasury	▪ Eskom
National Treasury Fundudzi reports, related to Eskom and Transnet (x3)	Final reports compiled in November 2018 and released to the public shortly thereafter.	Investigations requested by National Treasury of alleged corruption at Transnet and Eskom. The three reports focused on Eskom (general), the contracts related to Trillian/McKinsey and Transnet Locomotives.	▪ National Treasury Fundudzi	▪ Eskom ▪ Transnet
Transnet Locomotive Contracts	Investigations commenced in December 2017 and reports on findings submitted during 2018.	Werksmans Attorneys was appointed in December 2017 to undertake an investigation into the 1 064 Transnet Locomotives procurement process, however, the investigation was halted. No report in the public domain.	▪ Werksmans	▪ Transnet
		Mncedisi Ndlovu & Sedumedi (MNS) Attorneys was then appointed to investigate 1 064 locomotives procurement process. The report is not in the public domain, but media indicates that recommendations mirror the Werksmans' findings and recommends that Molefe face criminal charges.	▪ Mncedisi Ndlovu & Sedumedi	▪ Transnet
Inquiry into State Capture at Transnet and Denel	In June 2017, Parliament directed 4 committees to investigate state capture. Committee hearings were not completed.	A detailed information booklet was prepared in relation to Transnet, however, hearings were not held before the end of term of Parliament. Following National elections in 2019, it was decided that outstanding Inquiries into state capture be postponed indefinitely until conclusion of the Zondo Commission.	▪ Portfolio Committee on Public Enterprises	▪ Transnet ▪ Denel

Case Study in State Capture	Status	Summary Description	Investigation Body / Source of Evidence	Government Entity Implicated
Scandals Connected to Jacob Zuma, Gupta, Other Key Networks and ANC Politics				
Law Enforcement and the Security Cluster				
Enquiry into Jiba and Mrwebi's fitness to hold office at NPA	Established in November 2018. Report was issued in April 2019.	Presidential Enquiry into the fitness to hold office of suspended NPA senior advocates Nomgcobo Jiba and Lawrence Mrwebi. NPA's deputy head Jiba, and Mrwebi, the head of the Specialised Commercial Crimes Unit, were suspended in October 2018 by President Cyril Ramaphosa. The Inquiry was headed by retired Constitutional Court Justice Yvonne Mokgoro. Jiba and Mrwebi were accused of improper conduct in their handling of cases involving former crime intelligence head Richard Mdluli, as well as former KwaZulu-Natal Hawks boss Johan Booysen.	<ul style="list-style-type: none"> ▪ Mokgoro Enquiry 	<ul style="list-style-type: none"> ▪ National Prosecuting Authority
High-Level Review Panel on the State Security Agency (SSA)	Established in June 2018 and final report was sent to the President in December 2018.	The High-Level Review Panel into the SSA was established by President Ramaphosa in June 2018. The key finding was a serious politicisation and factionalisation of the intelligence community over the past decade or more. This resulted in "an almost complete disregard for the Constitution, policy, legislation and other prescripts, and [turned] our civilian intelligence community into a private resource to serve the political and personal interests of particular individuals" (High-Level Review Panel on the SSA, 2018, p. ii).	<ul style="list-style-type: none"> ▪ Review Panel established by President Ramaphosa 	<ul style="list-style-type: none"> ▪ SSA
Various court cases against persons within law enforcement	Ongoing.	Though testimony and evidence have been presented at the Zondo Commission, it is understood that no definitive findings will be made regarding the capture of law enforcement under the Zuma administration. Since 2012 onwards, there were several court cases that were pursued against individuals in law enforcement, all of which have been either dismissed or withdrawn. Most noteworthy are the cases involved, amongst others: Anwa Dramat and Shadrack Sibiya of the Hawks (and Robert McBride from Independent Police Investigative Directorate [IPID]) for allegations related to the "Zimbabwean rendition" matter; Johan Booysen for alleged racketeering as part of "Cato Manor hit squad"; and the various senior officials accused of being part of the "rogue" intelligence unit at SARS. Other court cases that have provided significant evidence indicating the capture of law enforcement relate to the irregular appointed allies of the Shadow State capture network or the irrational removal of potential opponents holding senior positions in law enforcement. Example is the irregular removal of Mxolisi Nxasana as National Director of Public Prosecutions (NDPP).	<ul style="list-style-type: none"> ▪ Various court cases, proceedings in Parliament ▪ Zondo Commission 	<ul style="list-style-type: none"> ▪ NPA ▪ SAPS ▪ Hawks ▪ IPID

Case Study in State Capture	Status	Summary Description	Investigation Body / Source of Evidence	Government Entity Implicated
Scandals Connected to Jacob Zuma, Guptas, Other Key Networks and ANC Politics				
Investigations concerning Private Sector				
Budlender report on Trillian	Released in June 2017.	Trillian Holdings Board appointed Geoff Budlender SC to undertake investigations into State Capture allegations at Trillian Capital. Detailed accounts from whistle-blowers highlighted how information was withheld by senior management at Trillian.	<ul style="list-style-type: none"> ▪ Trillion 	<ul style="list-style-type: none"> ▪ Eskom
Collapse of VBS Mutual Bank	Investigation launched in April 2018 and the report was released in October 2018.	Minister of Finance placed VBS under curatorship with effect from 11 March 2018. In April 2018, the Deputy Governor of the South African Reserve Bank instituted an investigation into VBS. The outcomes of the investigation showed blatant fraud and corruption by senior executives/Board and how they extracted money from the bank. Municipal funds were illegally deposited with VBS (senior ANC and EFF politicians have been implicated).	<ul style="list-style-type: none"> ▪ SARB investigation report <i>VBS Mutual Bank – The Great Bank Heist</i> 	<ul style="list-style-type: none"> ▪ Several Provincial and Municipal Officials (Limpopo Government) ▪ SOEs (particularly PRASA)
SA Institute of Chartered Accountants' (SAICA) investigation into KPMG	Final report was handed to SAICA in December 2018.	SA Institute of Chartered Accountants (SAICA) established an Inquiry to investigate state capture related allegations of misconduct of its members who worked for KPMG. The Inquiry chaired by advocate Dumisa Ntsebeza held public hearings and handed its final report to SAICA in December 2018. Indications are that the final report will not be made public until all investigations and disciplinary hearings have been finalised.	<ul style="list-style-type: none"> ▪ SAICA 	<ul style="list-style-type: none"> ▪ Guptas
Bell Pottinger	2017 investigation by PRCA.	In 2016, the Guptas appointed British PR company, Bell Pottinger, who developed and promoted a campaign that underpinned the RET and WMC narratives. In 2017, there was an independent law firm review by Herbert Smith Freehills resulting in Bell Pottinger's expulsion from the Public Relations and Communications Association (PRCA).	<ul style="list-style-type: none"> ▪ PRCA ▪ GuptaLeaks ▪ Ongoing research on disinformation 	<ul style="list-style-type: none"> ▪ Guptas