

THE CAPTURE AND RESTRUCTURING OF THE SOUTH AFRICAN REVENUE SERVICE (SARS)



A report by The Platform to Protect Whistleblowers in Africa (PPLAAF)
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Introduction

The concept of State Capture was first identified in 2000 and defined as “the efforts of firms to shape the underlying rules of the game (i.e., legislation, laws, rules and decrees) through private payments to public officials”¹. In South Africa, allegations of state capture have been at the forefront of public sector investigations, media reporting and political discourse for decades². Initially, these allegations came from speculation and hearsay in the media about the relationship between public officials and the Gupta family but gained momentum with increased public actions, such as the unlawful landing of private wedding guests of the Gupta family at a military base in 2013 and the removal of various executives and staff of key state institutions and state-owned enterprises.

With the release of the then Public Protector, Adv Thuli Madonsela’s State of Capture report in October 2016³, many of the allegations of state capture were confirmed. These allegations were further confirmed with the release of the Gupta leaks in May 2017, a tranche of emails between Gupta family members, their associates and public officials.

In 2017, the Public Affairs Research Institute (“PARI”) released the Betrayal of the Promise report⁴, which described State Capture as “*systemic and well-organised by people with established relations. It involves repeated transactions, often on an increasing scale. The focus is not on small-scale looting, but on accessing and redirecting rents away from their intended targets into private hands. To succeed, this needs high-level political protection, including from law enforcement agencies, intense loyalty and a climate of fear; and competitors need to be eliminated*”.

A large part of being successful in these aspects is the process of ‘repurposing’ state institutions. The concept of repurposing has been described by the PARI as “*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*”⁵. This definition will guide this report in the discussion on how SARS was captured and repurposed to benefit a specific group of individuals linked to, in particular, former Commissioner Tom Moyane and former President Jacob Zuma during his time as head of state between 2009 and 2018.

¹ Hellman, J. S. *Jones. (2000). *Measuring governance, corruption, and State capture—How firms and bureaucrats shape the business environment in transition economies* (No. WPS2312; p. 1). The World Bank. <http://documents.worldbank.org/curated/en/241911468765617541/Measuring-governance-corruption-and-State-capture-how-firms-and-bureaucrats-shape-the-business-environment-in-transition-economies>

² Further reference to understanding state capture: Hellman, J. and Kaufmann, D. ‘State Capture in Transition’, Submission to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the

Public Sector including Organs of State. Available at: <https://resourcegovernance.org/sites/default/files/documents/state-capture-in-transition.pdf>

³ Madonsela, T. ‘State of Capture’, Report by the Public Protector. Available at: <http://www.saflii.org/images/329756472-State-of-Capture.pdf>

⁴ Bhorat, H., et al. ‘Betrayal of the Promise: How South Africa is being stolen’, Public Affairs Research Institute. Available at: <https://pari.org.za/betrayal-promise-report/>

⁵ Bhorat, H., et al. ‘Betrayal of the Promise: How South Africa is being stolen’, Public Affairs Research Institute. Available at: <https://pari.org.za/betrayal-promise-report/>

Background to SARS

The South African Revenue Service (“SARS”) was formed in 1997 when the Customs and Excise Department merged with the Department of Inland Revenue. Although its development started low key, within a decade of its formation, SARS grew into a highly respected state institution, known for its efficiency and excellence in service delivery. SARS instilled either fear or awe in South Africans depending on their compliance, and the trusted state of the organisation was largely due to the leadership⁶. The structure and governance of SARS were designed to be an instrument towards democracy and economic freedom of South Africa, collecting revenue for the government to deliver on the promises to South Africans.

SARS became a case study for many academic papers and research worldwide, and many developed states came to South Africa to understand the gains made by SARS and imported these to their administrations. One such study done for Princeton University by David Hausman⁷ outlined how between 1998 and 2009, SARS improved tax compliance to such an extent, that they increased the number of taxpayers from 2.6 million people to 4.1 million people. SARS soon became the benchmark for similar international organisations and institutions.



“...within a decade of its formation, SARS grew into a highly respected state institution, known for its efficiency and excellence in service delivery.”

⁶ Van Loggerenberg, J. and Lackay, A. *Rogue*, Jonathan Ball Publishers, Jeppestown. 2016, Page 10 - 17

⁷ Hausman, D. 'Reworking the Revenue Service: Tax Collection in South Africa, 1999-2009', 2010. Available at:

https://successfulties.princeton.edu/sites/successfulties/files/Policy_Note_ID125.pdf

Repurposing and restructuring

As previously outlined, repurposing of an organisation requires an organisation to be restructured and reconfigured to change the way it is governed, managed and funded to serve a different purpose. To accomplish this reconfiguration, individuals involved in the process need to be placed in strategic positions. The appointments and dismissals of people in strategic leadership positions in SARS are therefore crucial.

Appointments and dismissals

Since its establishment in 1997, SARS has had the following Commissioners heading up the organisation:

Trevor van Heerden

In the establishment of the SARS in 1997, Trevor van Heerden (“van Heerden”) was appointed as the first Commissioner of SARS. He retired in this position in 1998 and stayed on as a specialist consultant at SARS, a role which he fulfils to this day.

Pravin Gordhan

Pravin Gordhan (“Gordhan”) was appointed in 1998 as deputy SARS Commissioner to van Heerden. Gordhan was then appointed Commissioner shortly after van Heerden

resigned in 1999 and remained in that position until 2009. During his tenure, SARS was “one of the best run and most respected agencies of the South African government, with a reputation for integrity and efficiency, and tax receipts improved impressively during Gordhan’s tenure”⁸.

When former President Jacob Zuma was elected in 2009, he appointed Gordhan as Minister of Finance, where Gordhan quickly gained a reputation as great as his predecessor, Trevor Manuel.

He was removed as Finance Minister following the 2014 elections by then-President Jacob Zuma and replaced with Nhlanhla Nene (“Nene”).

George (“Oupa”) Magashula

George “Oupa” Magashula (“Magashula”) was appointed SARS Commissioner from May 2009 until July 2013, when he resigned. A small part of an illegal telephone recording of Magashula on a cell phone passed to him by Timmy Marimuthu⁹, a convicted drug dealer and secret Crime Intelligence officer, suggested Magashula was having an inappropriate conversation with a potential female employee¹⁰. This recording was leaked to the media¹¹. The allegations in the press and Magashula’s conduct was

⁸ Renwick, R. *How to steal a country: State Capture and Hopes for the future in South Africa*, Jacana Media, Auckland Park, 2018, Page 39.

⁹ Harper, P. ‘Magashula wants answers’, News24, Available at: <https://www.news24.com/news24/southafrica/news/magashula-wants-answers-20161008>.

¹⁰ Yacoob, Z. & Sikhakhane, M. Fact Finding Inquiry into the alleged improper conduct of the Commissioner of the South African Revenue Services (SARS) Mr Oupa Magashula: requested by the Minister of Finance. Available at: [Report on inquiry into Oupa Magashula - DOCUMENTS | Politicsweb](#).

¹¹ Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 98.

ultimately investigated by Justice Zak Yacoob and Adv Musi Sikhakhane during an enquiry into allegations against the SARS Commissioner, commissioned by then Minister of Finance, Gordhan.

Ivan Pillay

Ivan Pillay (“Pillay”) was appointed acting SARS Commissioner in July 2013, after Magashula unexpectedly resigned. He resigned from SARS in May 2015 due to the unfolding events related to the capture and repurposing of SARS.

Tom Moyane

Tom Moyane (“Moyane”) is a close friend of former President Jacob Zuma and his family¹² and is best known in his position as the Commissioner of Correctional Services where he served until he was allegedly forced to retire¹³ ¹⁴. He served as head of the Government Printing Works and was key to the panel that was tasked to investigate the unlawful landing of the infamous Gupta-guests landing at the Waterkloof Military Airbase¹⁵.

Former President Jacob Zuma appointed Moyane as SARS Commissioner on 25 September 2014. Moyane, together with

Zuma, and certain current and former SARS officials, had already been meeting, planning and discussing the restructuring of SARS not long after Magashula’s departure in 2013¹⁶. One such key SARS official, who was to become Moyane’s right-hand man after his appointment, was Jonas Makwakwa. At the time he was the SARS Audit Group Executive. Moyane was dismissed from SARS by President Cyril Ramaphosa in 2018¹⁷.

Mark Kingon

Mark Kingon (“Kingon”) acted as SARS Commissioner following the suspension and dismissal of Moyane for a short while. In late 2018 he publicly apologised to current and former SARS staff for the failure in leadership at SARS, during the Commission of Inquiry into Tax Administration and Governance in 2018¹⁸.

Edward Kieswetter

In 2019, following the advertising of the position and setting up of an interview panel by former Finance Minister Nhlanhla Nene, a former deputy SARS Commissioner who had left SARS earlier for the private sector, Edward Kieswetter (“Kieswetter”), returned and was appointed as SARS Commissioner.

¹²Moyane, T. ‘Zuma’s late wife Kate was my ‘family sister’ – Tom Moyane’, Politicsweb, Available at: <https://www.politicsweb.co.za/news-and-analysis/zumas-late-wife-kate-was-my-family-sister--tom-moy>

¹³ Magome, M. ‘Axed prisons boss to walk away quietly’, IOL, Available at: <https://www.iol.co.za/news/politics/axed-prisons-boss-to-walk-away-quietly-1601333>

¹⁴ Mkhwanazi, S. ‘New SARS boss won’t sue minister over firing’, IOL, Available at: <https://www.iol.co.za/dailynews/news/new-sars-boss-wont-sue-minister-over-firing-1755354>

¹⁵ Staff Writer. ‘Moyane takes over the hot seat at Sars’, IOL, Available at: <https://www.iol.co.za/business->

[report/economy/moyane-takes-over-the-hot-seat-at-sars-1755608](https://www.iol.co.za/business-report/economy/moyane-takes-over-the-hot-seat-at-sars-1755608)

¹⁶ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018. Page 35

¹⁷ Fin24. ‘Ramaphosa: Why I fired Moyane from SARS’. 2018. <https://www.news24.com/fin24/Economy/moyane-fired-over-deeply-concerning-state-of-sars-ramaphosa-20181101>

¹⁸ IOL. #SARSInquiry: Kingon holds back tears as he says sorry to SA. 2018. <https://www.iol.co.za/business-report/economy/sarsinquiry-kingon-holds-back-tears-as-he-says-sorry-to-sa-17553366>

Apart from the commissioners employed at SARS, there were a few key role-players in the restructuring of SARS between 2014 and 2018.

Jonas Makwakwa

Shortly after Moyane arrived at SARS, following a host of resignations by senior executives, Jonas Makwakwa (“Makwakwa”) was appointed as acting Chief Operating Officer (“COO”). This appointment effectively made him second in command to Moyane at SARS and he would frequently step in as acting SARS Commissioner during Moyane’s absence. Former SARS Group Executive for Corporate Legal Services, Makungu Mthebule, described Makwakwa as very powerful and that Moyane relied on him for many things¹⁹.

Makwakwa was appointed as COO of SARS in December 2014²⁰ and appeared to be instrumental in Moyane’s actions to restructure SARS, driving the expensive renewal programme in SARS that Moyane embarked upon. He worked closely with Bain & Company, who was appointed to develop a new operating model and was part of the

driving force behind creating the SARS structure in place today²¹.

According to Cowan, there were also allegations that he interfered with tax matters of high-profile individuals, requesting that SARS officials write off penalties and interest of individuals he was in contact with²².

He resigned in 2018 when the media exposed how he had been depositing cash into ATM’s on many occasions, earning unexplained income and living well above his salary, unduly advancing the career of someone he was having an affair with at SARS, amongst other claims²³.

Evidence also demonstrated how he unlawfully and illegally shared data and records of SARS, its inner-workings and staff details with Moyane and Bain & Company before Moyane was appointed as commissioner²⁴. This evidence is to be given by Mr Atholl Williams (“Williams”), who was contracted for 16 months to oversee Bain’s investigation into their contracts and work with the SARS and their reporting to the Commission of Inquiry into Tax Administration and Governance by the South

¹⁹ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018

²⁰ SARS. Resignation of SARS COO. 2014. Available at: [https://www.sars.gov.za/Media/MediaReleases/Pages/PRETORIA%202022%20December%202014%20%E2%80%94%20The%20South%20African%20Revenue%20Service%20\(SARS\)%20wishes%20to%20announce%20the%20resignation%20of%20SARS%20COO.aspx](https://www.sars.gov.za/Media/MediaReleases/Pages/PRETORIA%202022%20December%202014%20%E2%80%94%20The%20South%20African%20Revenue%20Service%20(SARS)%20wishes%20to%20announce%20the%20resignation%20of%20SARS%20COO.aspx)

²¹ Van Wyk, P. ‘Jonas Makwakwa’s swift rise to power, and his abuse of it’, Daily Maverick, Available at: <https://www.dailymaverick.co.za/article/2018-06-29-jonas-makwakwas-swift-rise-to-power-and-his-abuse-of-it/>

²² Cowan, K. ‘SARS Inquiry hears how Jonas Makwakwa tried to meddle in VIP taxpayers affairs’. 2018. News24, Available

at: <https://www.news24.com/fin24/economy/sars-inquiry-hears-how-jonas-makwakwa-tried-to-meddle-in-vip-taxpayer-affairs-20180628>

²³ Van Wyk, P. ‘Scorpio: the Makwakwa Dossier, Part 2 – SARS No 2 was paid a bonus worth nearly R1million... while on suspension’, Daily Maverick, Available at: <https://www.dailymaverick.co.za/article/2017-11-23-scorpio-the-makwakwa-dossier-part-2-sars-no-2-was-paid-a-bonus-worth-nearly-r1-million-while-on-suspension/>

²⁴ Williams, A. ‘Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption’, para 113.

African Revenue Service (“Nugent Commission”). It is, however, important to note that the testimony of Mr Williams has yet to be tested through cross-examination.

Luther Lebelo

According to van Loggerenberg in his book *Rogue*, following Moyane’s arrival at SARS, he allegedly began to increasingly rely on Labour Relations executive Luther Lebelo (“Lebelo”) as a spokesperson for SARS, sidelining official SARS spokesperson Adrian Lackay²⁵. Lebelo and Makwakwa were among Moyane’s closest confidants. Ultimately Lebelo became the de facto spokesperson for SARS after Lackay was instructed in February 2015 not to speak on any matters related to employment at SARS²⁶. Lebelo was also promoted to the role of head of Human Resources. In that position, he would have been involved in the suspensions of Pillay, Richer, van Loggerenberg and Gene Ravele carried out by Moyane who, according to the Nugent Commission report, “*was bent on driving them out of SARS*”²⁷. Lebelo also attended meetings with taxpayers that were politically connected for reasons never explained²⁸.

In 2018, it was exposed how he had used almost R1million of taxpayer funds to mount a campaign to defend himself at the Nugent Commission which was never properly justified or approved^{29 30}. He was one of several senior executives suspended in 2019, and he resigned following an agreement with SARS that no further actions would be taken against him³¹.

Summary of the events

One of the primary questions for this report is why “capture and repurpose” SARS? According to Foley, there are several possible motives for capturing SARS³², including but not limited to:

- aiming to weaken tax enforcement particularly to the benefit of individuals in past conflict with SARS enforcement;
- using SARS as a means to target political opponents;
- extract the ‘rents’ from the state, either by lowering tax claims or by inflating refunds; and
- having access to personal information, as the nature of SARS business meant that there was extensive access to both

²⁵ Van Loggerenberg, J. and Lackay, A. *Rogue*, Jonathan Ball Publishers, Jeppestown. 2016, Page 4-5

²⁶ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 89.

²⁷ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 90

²⁸ Van Wyk, P. Scorpio: The curious case of ANC benefactor Robert Huang, a never-ending investigation and billions owed to SARS. 2018. Available at:

<https://www.dailymaverick.co.za/article/2018-01-23-scorpio-the-curious-case-of-anc-benefactor-robert-huang-a-never-ending-investigation-and-billions-owed-to-sars/>

²⁹ Brown, J. Judge Nugent: SARS is spending taxpayer money ‘like water’. 2018. Available at:

<https://www.news24.com/citypress/business/judge-nugent-sars-is-spending-taxpayer-money-like-water-20181021>

³⁰ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 15

³¹ SARS. ‘Media Statement’, 2019. Available at: <https://www.sars.gov.za/Media/MediaReleases/Pages/2-October-2019---Ms-Makhekhe-Mokhuane-and-Mr-Lebelo-resign.aspx>

³² Foley, R. ‘The Role of Bain and KPMG in capturing SARS’, Ahmed Kathrada Foundation Seminar: How Business Enabled State capture, 2019, Available at: <https://www.kathradafoundation.org/2019/10/03/bussiness-enabled-capture-presentation/>

personal and financial information of individuals and businesses, which would provide a life-style overview of all registered taxpayers.

To achieve the above, Foley, a researcher at the Centre for Complex Systems in Transition, described in a presentation how, for SARS to be captured, the existing structures and investigative and enforcement capacity of SARS would need to be dismantled, control of the organisational functions would need to be centralised and managed by individuals' part of the capture strategy, and a culture of fear would need to be created to keep other employees with integrity from speaking up³³. It seems that, in line with the requirements

discussed above to capture and repurpose SARS, the protagonists in this report were successful.

Culture of fear

Before Moyane taking over as Commissioner of SARS, the morale and pride in those working at SARS were very high. Those who worked at SARS between its inception in 1997 and 2014 believed that working at SARS was building on democracy and working for "the higher purpose", a phrase coined and promoted by Gordhan when he was Commissioner, and later perpetuated by both Magashula and Pillay³⁴. Some comments by employees, as outlined in the Nugent Commission Report³⁵:

Name of Employee	Comments
<p>Ms Seremane</p> <ul style="list-style-type: none"> joined SARS in 2009 as the executive for integrity promotion; and was subsequently dismissed. 	<p>'Well, I think it's the brand, SARS, the reputation SARS but certainly, it was the drive to actually contribute to the country realising that we have such a good institution that performs and [was] laying such a critical role in the country and I wanted to be part of that to contribute to the country'</p>
<p>Mr Ndlangalavu</p> <ul style="list-style-type: none"> joined SARS in 2001. 	<p>'There was a vibrancy, ma'am. People wanted to join the unit and the excitement and joy and SARS people I still want to believe even now are proud to work for SARS. I am a proud SARS official despite the challenges.'</p>
<p>Ms Mthebule</p> <ul style="list-style-type: none"> a trained lawyer who joined SARS in 2008. 	<p>'To summarise, I would say I had lots of fun [...]. You know cohesion that existed among colleagues, having leadership of a certain quality. People you felt you could look up to and learn from. I was a happy employee. Moreover, at that stage Minister Gordhan was talking about that term he liked, higher purpose [...]. I had support from colleagues, from bosses. I wasn't scared of approaching anybody.'</p>

³³ Foley, R. 'The Role of Bain and KPMG in capturing SARS', Ahmed Kathrada Foundation Seminar: How Business Enabled State capture, 2019, Available at: <https://www.kathradafoundation.org/2019/10/03/bussiness-enabled-capture-presentation/>

³⁴ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018

³⁵ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018

“The hallmark of good governance in an institution is the existence of a culture of healthy dissent.

Mr Moyane substituted instead a culture of fear and intimidation.”

Nugent Commission Report

However, after Moyane secured control as Commissioner of the organisation in September 2014 with Zuma’s blessing, he seems to have intentionally begun to weaken the organisation, with over 2000 experts resigning over three years, 550 of which had retired and approximately 600 facing disciplinary action³⁶. The post-2014 SARS was filled with fear, suspicion and distrust, with many employees not wanting to testify at the Nugent Commission because of fear for their jobs.

Mr Ndlantalavu recounted how, early in his tenure, Mr Moyane had a plethora of CCTV cameras installed, such that employees felt themselves under constant surveillance, so much so that some employees took to covering the camera lenses on their computers with tape, lest they be watched while they went about their work, fearful of any perceived misdemeanour that might result in disciplinary proceedings³⁷.

Current SARS Commissioner, Kieswetter, stated in his presentation to the Standing Committee on Finance on 4 July 2019 on the state of SARS³⁸, *“Internally, the organisation has been traumatised... A climate of fear and intimidation has been installed in the organisation, racial tensions are palpable. People openly talk about trauma.”* Kieswetter further outlined the internal culture of SARS as one lacking trust in the leadership, full of racial tension, intimidation and fear, and that many staff appeared to have a ‘broken spirit’³⁹. He further stated: *“The deliberate process of weakening SARS was initiated by the bogus claim of a Rogue Unit and the Nugent outcome speaks of denuding the organisation of skills”*. For SARS to be fully functional again, decades of stripping of skills, morale and capacity would need to be reversed and governance structures rebuilt. This climate of fear has been seen at several state institutions across South Africa, as part of the modus operandi when certain groups of

³⁶ Foley, R. ‘The Role of Bain and KPMG in capturing SARS’, Ahmed Kathrada Foundation Seminar: How Business Enabled State capture, 2019, Available at: <https://www.kathradafoundation.org/2019/10/03/bussiness-enabled-capture-presentation/>

³⁷ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018. page 25.

³⁸ Merten, M. ‘Rebuilding SARS one step at a time: Kieswetter tells MPs of a culture of fear and loathing’, Daily Maverick, Available at: <https://www.dailymaverick.co.za/article/2019-07-04-rebuilding-sars-one-step-at-a-time-kieswetter-tells-mps-of-a-culture-of-fear-and-loathing/>

³⁹ Khumalo, S. ‘Culture of fear and racial tensions at SARS, says Kieswetter’, Fin24, Available at: <https://www.news24.com/fin24/economy/culture-of-fear-and-racial-tension-at-sars-says-kieswetter-20190605-2>

individuals attempt to capture and repurpose state organisations. This has been particularly highlighted at the Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption (“Zondo Commission”), where dozens of witnesses have testified to the culture of fear created in state-owned entities.

Change of SARS operating model

Before Moyane took over as Commissioner in 2014, SARS based its compliance model on three aspects, namely Service, Education and Enforcement⁴⁰. Superimposed over this model was the continued modernisation of information technology advances, electronic filing, and segmentation of the tax base according to small businesses, individuals, tax practitioners, medium-sized enterprises and large businesses. The underlying philosophy of the model was to always encourage taxpayers to do the right thing, by providing a convenient and easy to use service offering and educating people on compliance. The enforcement strategy had three parts, namely reaching all taxpayers in all corners of the country, having the capacity to deal with complex tax crimes, and being able to leverage relationships with law enforcement to prosecute those in contravention of tax and customs laws.

⁴⁰Van Loggerenberg, J. and Lackay, A. *Rogue*, Jonathan Ball Publishers, Jeppestown. 2016, page 16-17.

⁴¹ Van Wyk, P. ‘Scorpio: the Makwakwa Dossier, Part 2 – SARS No 2 was paid a bonus worth nearly R1million...while on suspension’, Daily Maverick, Available at: <https://www.dailymaverick.co.za/article/2017-11-23-scorpio-the-makwakwa-dossier-part-2-sars-no-2-was-paid-a-bonus-worth-nearly-r1-million-while-on-suspension/>

According to SARS employees testifying at the Nugent Commission, SARS’ compliance and operating models were successful before Moyane’s appointment in 2014. Upon entering SARS, he immediately got to work on a total overhaul of SARS’ structure and compliance and operating model. It is estimated that, due to Moyane’s actions, by 2017 SARS was experiencing a revenue deficit of at least R50-billion, with predictions of that number growing⁴¹.

Bain & Company Inc and the restructuring of SARS

Bain & Company Incorporated (“Bain”) is a global management consulting company, based in Boston, Massachusetts, USA. They are considered to be one of three big consulting companies in the world, including McKinsey and Company (“McKinsey”)⁴² and the Boston Consulting Group (“BCG”).

According to the Nugent Commission report⁴³ and the statement by Williams to be presented at the Zondo Commission, Bain had been trying to get into public sector business for some time.

Williams is a Senior Lecturer at the University of Cape Town, Graduate School of Business in the Allan Gray Centre for Values-Based

⁴² It is of interest to note that McKinsey is also widely implicated in State Capture activities in South Africa, particularly in relation to advisory contracts with SOEs. A question could be asked about the organisational culture of these consulting companies and their actions and behaviour in developing countries.

⁴³ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 33

Leadership. He lectures and conducts research in Corporate Responsibility, Ethical Leadership, and is a Research Fellow in the Centre for Applied Ethics at Stellenbosch University. He has worked as a management consultant for over 15 years at various organisations including Bain. He has also held senior executive roles at Old Mutual, Rio Tinto in London and RMB Corvest. He was a former independent contractor to Bain, working from September 2018 until December 2019 to perform an oversight role of Bain's investigation into their contracts and work at SARS. He was also a part-time employee as a Partner in the South African business, serving on the Bain Africa Oversight Board from 15 May to 28 August 2019.

Based on his experience and position, Williams assisted the Nugent Commission with their investigation and submitted a statement to the Zondo Commission concerning his findings whilst consulting at Bain. Williams is scheduled to give evidence at the Zondo Commission, and Bain has applied to cross-examine Williams.

To assist in entering the public sector, Bain entered a "Business Development and

Stakeholder Management" contract with Ambrobrite (Pty) Ltd, now known as Kanoboya Consulting (CIPC number: 2009/020492/07) ("Ambrobrite")⁴⁴. Ambrobrite had two directors, namely Dumakude Mayivuke Ndlovu ("Ndlovu"), a well-known businessman in the entertainment and television industry, and a close friend of Zuma, and Mpumelelo Njabulo Ngema ("Ngema")⁴⁵.

Ambrobrite was also co-owned by creative artist Mr Mandla KaNozulu ("KaNozulu")^{46 47}. William claims to have found that, according to KaNozulu's website, media reports and a Bain email⁴⁸, he served as the Special Advisor to the Minister of Police, Mr Nathi Nhleko.

The head of the local office of Bain in South Africa, Vittorio Massone ("Massone"), disclosed to Nugent that he had multiple meetings with former President Jacob Zuma ("Zuma") between 2012 and 2014, the first of which was arranged on 11 August 2012 by Mr Siphon Maseko ("Maseko")^{49 50}. This meeting was also attended by Ndlovu. According to Atholl Williams ("Williams"), in his statement to the Zondo Commission⁵¹, Massone spoke widely and proudly of his proximity to Zuma.

⁴⁴ Williams, A. 'Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption', para 46.

⁴⁵ Williams, A. 'Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption', para 46.

⁴⁶ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 35, para 33

⁴⁷ Mandla KaNozulu is also known as Mandla Kheswa.

⁴⁸ Williams, A. 'Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption', para 46.

⁴⁹ Siphon Maseko was CEO of Telkom. He was also briefly considered for the position of GCE at Transnet under the tenure of Barbara Hogan but retracted his interest. Brian Molefe was eventually appointed as GCE of Transnet.

⁵⁰ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 35, para 25

⁵¹ Williams, A. 'Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption', para 76

Williams further confirmed that the global leadership of Bain was all aware of the meetings with Zuma and it was well known that the relationship with Ndlovu and Ambrobrite was to create connections with Zuma and other politically connected people.

Bain acknowledged these meetings in a public statement on 17 December 2018, outlining that Massone claimed to have had 12 meetings with Zuma between 2012 and 2014⁵². However, Williams believed that this number was understated, as it appeared that between 2012 and 2015, Bain representatives were meeting regularly with Zuma and his associates to actively create strategies and documents/proposals for the restructuring of state agencies and entities, alongside plans to structure entire sectors of the South African economy⁵³. In these meetings, amongst other things, they also discussed “Project Phoenix”, a strategy aimed at getting more public sector business⁵⁴.

According to Williams⁵⁵ *“While claiming that such restructuring would offer economic benefits and service improvement to South African society, the consistent theme is that of*

restructuring which, in my view, was aimed at bringing as many organisations and as many financial resources under more concentrated control, which would greatly facilitate state capture. Much like Bain did at SARS [...], the restructured public entities would be repurposed to serve an agenda most likely not in the public interest. Bain labelled these plans “reshaping the South African economy.” Bain also formulated plans to reshape the South African government, seeking to centralise procurement processes in state institutions. According to Williams, an email from Massone on 18 January 2014⁵⁶ appears to reveal how Bain had sight of plans for the large-scale restructuring of public institutions⁵⁷.

It was further discovered that Bain representatives were meeting with Moyane and Zuma more than a year before Moyane was appointed to SARS⁵⁸. Massone confirmed to the Nugent Commission that the first engagements with Bain were in 2013 before Moyane was removed from Correctional Services, for so-called ‘CEO coaching’ with a particular focus on what to do as SARS Commissioner⁵⁹.

⁵² Khumalo, S. ‘5 key takeaways from Bain’s statement on SARS’, Fin24, Available at: <https://www.news24.com/fin24/companies/financial-services/5-key-takeaways-from-bains-statement-on-sars-20181218>

⁵³ Williams, A. ‘Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption’, page 28 and Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 34

⁵⁴ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 35.

⁵⁵ Williams, A. ‘Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption’, page 30

⁵⁶ Williams, A. ‘Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption’, para 81

⁵⁸ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018. Page 33-34

⁵⁹ Foley, R. ‘The Role of Bain and KPMG in capturing SARS’, Ahmed Kathrada Foundation Seminar: How Business Enabled State capture, 2019, Available at: <https://www.kathradafoundation.org/2019/10/03/business-enabled-capture-presentation/>

In the year before Moyane's appointment at SARS, he met with a Bain representative, at least four times to discuss several aspects, including the actions of the first 100 days at SARS and developing a restructuring plan for SARS⁶⁰. According to Williams, Bain produced four documents for Moyane before Moyane was appointed SARS Commissioner⁶¹. One presentation document dealt with what Moyane had to do within his first 100 days at SARS⁶², including identifying and "neutralising" persons who were identified as "problematic" and "watch out" for others. The second document set out, with little to no proper research and no engagement with SARS at that time, the deficiencies in the internal structure of SARS and how to alter and change it.

Makwakwa was also present in the meetings with Bain and shared information with them that helped Bain formulate the recommendations for restructuring⁶³. At the time, Makwakwa was an employee of SARS, and he allegedly handed SARS information over to the Bain representative and Moyane. This exchange of information was in contravention of Chapter 6 of the Tax Administration Act, No. 28 of 2011, which

outlines that a SARS official may not disclose taxpayer's information or SARS confidential information other than for specific circumstances⁶⁴.

The 'diagnostic' and restructuring plan

Shortly after Moyane's appointment in October/November 2014, Moyane appointed Bain to review the SARS operating model, whilst at the same time disbanding the executive committee of SARS⁶⁵ based on several reports published by the Sunday Times newspaper, which have since proven false. Nugent commented in his interim report that using newspaper reports to disband the executive of SARS was 'extraordinary in any rational terms⁶⁶.

According to Williams, it appears Bain knew they would be appointed for this review, going as far as "pre-identifying teams" to work on the projects. The request for proposal (RFP) for this review was issued on 12 December 2014 and titled "Consultancy Services to Review the SARS Operating Model⁶⁷." Evidence indicates that Bain had already written the draft for the RFP two months before. Furthermore, Williams states that a

⁶⁰ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018. Page 35 – 38.

⁶¹ Williams, A. 'Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption', para 109

⁶² Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018. Page 37

⁶³ Williams, A. 'Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption', para 113

⁶⁴ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 132.

⁶⁵ Sole, S. SARS set for 'rogue unit' showdown. 2015.

Available at: <https://mg.co.za/article/2015-04-30-sars-set-for-rogue-unit-showdown/> and Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 75

⁶⁶ Ryan, C. 'Tom Moyane fired, leaving SARS in a state of "intrigue, fear, distrust and suspicion". 2018. Available at: <https://accountingweekly.com/tom-moyane-fired-leaving-sars-in-a-state-of-intrigue-fear-distrust-and-suspicion/>

⁶⁷ Williams, A. 'Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption', para 122

document dated October 2014 and titled “South African Revenue Service / Strategy and Operations review / Request for Proposal” was retrieved from a Bain computer by Baker McKenzie during their investigation⁶⁸.

Bain began their work immediately to produce a diagnostic evaluation report for the restructuring of SARS. According to the Nugent Report, the entire process was kept secret from the various division managers, with Moyane instructing who Bain should talk to, under the eye of a steering committee headed by Makwaka⁶⁹. Bain conducted interviews with 33 employees over only six days, an inadequate sample to take out of 14000 SARS officials⁷⁰. Managers who gave evidence at the Nugent Commission all stated that they were either not consulted or consulted in a perfunctory manner on the diagnostic process, and ultimately could not understand why the organisation needed restructuring⁷¹.

Ultimately, the original SARS operating model was stripped of its effectiveness. According to Judge Nugent⁷²:

“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.”

Also, according to Williams, it appears that Bain misrepresented the depth of their expertise, with the team working at SARS having no discernible experience in tax agencies⁷³. Essentially, thanks to their lack of research and understanding, Bain provided a restructuring plan for SARS that weakened oversight and destroyed a large part of SARS’ capacity, side-lining key senior executives and downsizing the SARS Business Centre⁷⁴.

⁶⁸ Williams, A. ‘Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption’, para 124

⁶⁹ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 50

⁷⁰ Van Wyk, P. For Moyane and Zuma, Bain was a team player. 2018. Available at: <https://www.dailymaverick.co.za/article/2018-09-04-for-moyane-and-zuma-bain-was-a-team-player/>

⁷¹ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 49

⁷² Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 51

⁷³ Williams, A. ‘Statement for Judicial Commission of Inquiry into Allegations of State Capture, Fraud and Corruption’, para 138

⁷⁴ Marian, N. ‘Sars and Treasury to pursue criminal charges against Bain & Co’, Mail and Guardian, Available at: <https://mg.co.za/article/2019-07-02-sars-and-treasury-to-pursue-criminal-charges-against-bain-co/>

Bain proposed four different new structures, but adopted a proposed fifth structure, largely influenced by Moyane himself⁷⁵. The new structure made the following changes, inter alia:

- a. Combined all taxpayers' affairs (both individual and business) into one division known as the Business and Individual Tax ("BAIT") unit. This unit was ultimately headed up by Makwakwa (Chief Officer);
- b. According to Dr Malobhele, head of the Compliance Division at SARS, the fragmentation of the compliance division and the disbanding of the compliance research unit ultimately meant there was no compliance programme for the newly established BAIT unit⁷⁶;
- c. Customs oversight diminished so drastically that inspection processes went from two days to 23 days, resulting in a massive decline in customs revenue collection⁷⁷;

- d. Fragmenting functions within the Large Business Centre which offered end-to-end service to SARS clients. Professor Nel of the South African Institute of Tax Practitioners told the Nugent Commission that this ultimately led to inefficiencies in SARS processes and declining taxpayers' morality and compliance, because of the frustration experienced by large businesses in particular when not getting the efficient service they had previously experienced⁷⁸. This statement supported submissions from other representatives of professional bodies such as Mr Retief, who is the chair of the National Tax Committee of the South African Institute of Professional Accountants.

The Large Business Centre generated approximately one-third of SARS' tax-related revenue⁷⁹.

⁷⁵ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 50

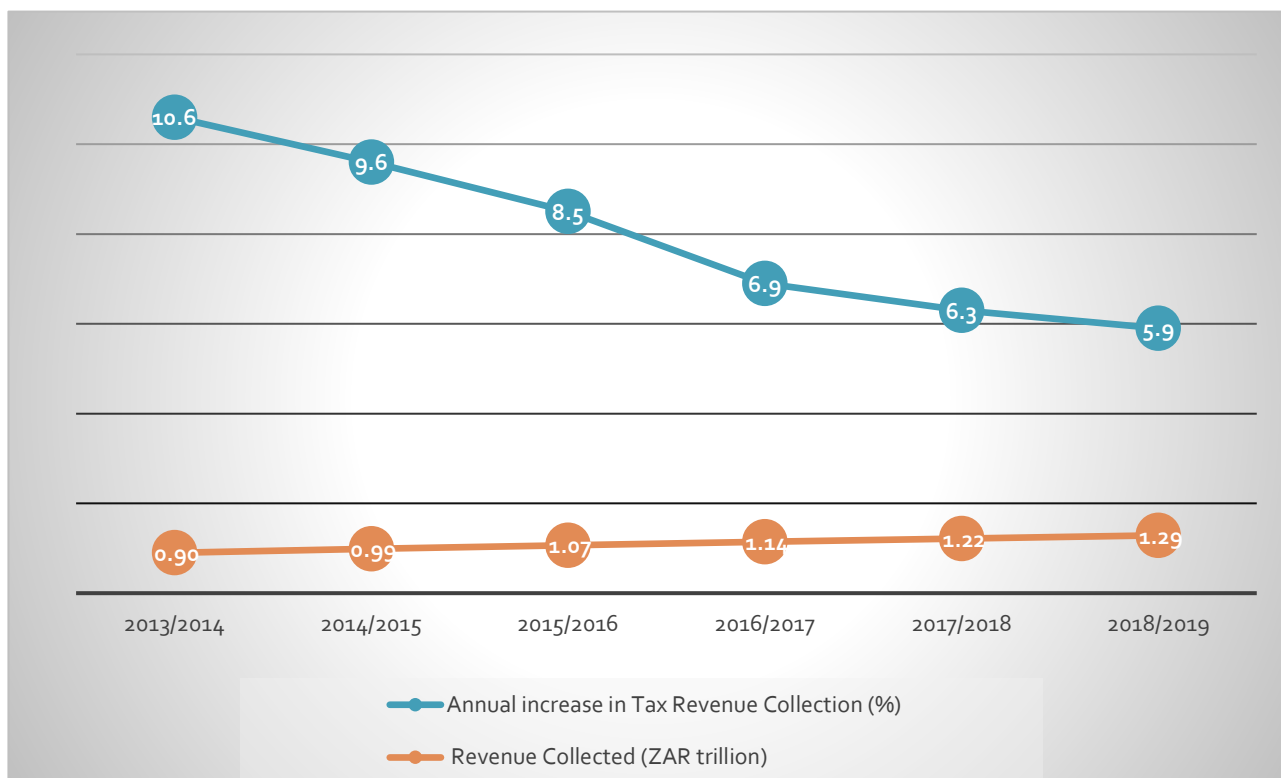
⁷⁶ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 53

⁷⁷ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 55

⁷⁸ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 52-53

⁷⁹ De Greeff, K. 'Boston firm admits 'massive failure' in plan to aid South Africa tax agency', New York Times, Available at: <https://www.nytimes.com/2018/09/02/world/africa/south-africa-tax-agency-bain.html> and Umraw, A. 'Nugent recommends criminal proceedings over SARS contract with global consultancy firm Bain', Times live, Available at: <https://www.timeslive.co.za/politics/2018-12-14-nugent-recommends-criminal-proceedings-over-sars-contract-with-global-consultancy-firm-bain/>

As a result of this restructuring, SARS has been experiencing massive shortfalls in tax revenue collection. The difference in annual collections can be seen below⁸⁰:



This shortfall also seemingly resulted in the first increase in VAT in 2018 since democracy in 1994, from 14% to 15% to try and cover the shortfalls in tax collection. This increase affected South African's at every level, but in particular, disproportionately affecting the poor and vulnerable⁸¹.

The effect on Enforcement, one of the pillars of the previous structure of SARS, was severe. Mr Dion Nannoolal of debt enforcement told the Nugent Commission⁸²:

"In the past, we could have brought a preservation order on a group of companies with maybe four or five signatures or six. Now we need anything between eight and 12 signatures. So, I can assure you we've lost, and I'll show you a submission, we have lost possibly hundreds of millions of Rands over the last few years because of these inefficiencies. Legal counsel approval takes 1 month to a year for approval on memos. In summary, it could take up to

⁸⁰ One is aware that there are many factors that may lead to a declining increase in year-on-year tax collection, but one factor that could be attributed to this is the downsizing of the business centre. SARS Tax Statistics 2013 – 2019. Available at: <https://www.sars.gov.za/About/SATaxSystem/Pages/Tax-Statistics.aspx>

⁸¹ De Greeff, K. 'Boston firm admits 'massive failure' in plan to aid South Africa tax agency', New York Times, Available at: <https://www.nytimes.com/2018/09/02/world/africa/south-africa-tax-agency-bain.html>.

⁸² Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 54

three years after the original transgression to proceed with a preservation order (as an example) or to commence collection steps.”

Nugent also commented that Moyane seemed to dismantle the governance of SARS, through this ‘restructuring’, reckless mismanagement and the destruction of institutional knowledge at SARS, by removing many individuals that had helped build SARS over the previous 20 years and displacing around 200 managers from their jobs⁸³. The Nugent Commission also questioned the approach, methodology and value of the restructuring plan produced by Bain, considering they seemed to ignore international benchmarks⁸⁴ and limited their interaction with critical SARS staff members.

Bain’s pricing

Bain appeared to have seen this restructuring project as a way to generate more business with SARS, regardless of whether it was needed. What came out of the Nugent Commission is that on 28 August 2014, Bain sent an email stating that they were to “undertake an ‘operational/strategic assessment’ of SARS, to set a platform for a ‘broader SARS transformational program’

expected to take six to twelve months⁸⁵.” This was before Moyane took office at SARS and the RFP was even issued.

The diagnostic of SARS took only six weeks and cost approximately **R2.38 million**⁸⁶. Judge Nugent raised major concerns with the fairness of the appointment of Bain⁸⁷, considering they knew about the project four months before it was released, and added a 50% discount to their fee to become in just below the next lowest bidder and come out the most competitive. But it appears that they cut costs under the promise of Bain receiving the contract for “Phase 2”, where they would be able to “remove” the discount and charge at the full rate. Bain was appointed to continue with “Phase 2” at a fee of **R164 million**, the actual restructuring of SARS, using a deviation process and not following proper tender procedures. According to Nugent⁸⁸:

“Although the Bid Adjudication Committee had been told the appointed service provider for phase 1 must ‘give recommendations that can be implemented by any service provider not them alone,’ and that any later work arising from phase 1 would be ‘go to market again’, that is not what occurred, nor was it intended by the conspirators to

⁸³ ⁸³ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 4

⁸⁴ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 21-26

⁸⁵ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 50.

⁸⁶ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 50, page 44

⁸⁷ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 47

⁸⁸ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 50

occur. Instead, phase 2 was awarded through a deviation from the ordinary procurement process, on spurious grounds, that earned Bain approximately R164 million calculated at its ordinary rates less an initial discount of 12%.”

The only way that phase 2 could have been confined to Bain is if it was an emergency or Bain was the only supplier. According to the Nugent Commission report, it seemed neither was true and from these actions, it appeared that Moyane and Makwakwa did not intend to return to the market for phase two⁸⁹. It is important to note that part of this restructuring process did not include Information Technology Systems (“ITS”) requirements. Contracts to restructure ITS were given to Gartner.

Modernisation program and Gartner

Part of the development of SARS was a modernisation program that began back in 2004⁹⁰, with a simple e-filing system. This modernisation program became one of SARS’ greatest strengths, implementing information technology systems that assisted SARS in its mandate and identified areas that required enforcement much quicker than before.

Barry Hore (“Hore”) who was the Chief Operating Officer (“COO”) of SARS, drove the

modernisation program. The Nugent Report outlines some of the extensive hand-over notes that Hore prepared, before his departure in January 2015, on the direction and future of the Modernisation Programme⁹¹:

1. *The Modernisation Programme was to run in three phases. The initial phase required SARS to create capacity, design the programme in detail and prepare the organisation for modernisation. In the next phase, SARS would implement the new business model throughout the organisation. The final phase of the Modernisation Programme was the delivery of world-class technology-driven services to support SARS’ new business model.*
2. *The Modernisation summary states “SARS anticipates further benefits with the Modernisation Programme in the next few years. These will be achieved by overhauling the systems and processes yet to be addressed by the modernisation programme, refining the innovations already implemented and introducing further new services and facilities.”*

The modernisation program aimed to improve the performance of SARS in service; enforcement and compliance; and cost

⁸⁹ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 46

⁹⁰ Van Loggerenberg, J. *Death and Taxes*, Jonathan Ball Publishers, Jeppesstown, 2018, page 102

⁹¹ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 61

efficiency, and that SARS would need to continually evolve, upgrade and refine the technology to best meet the needs of the organisation's operations. In September 2014, Pillay informed SARS employees that they had *"approved the SARS modernisation programme comprising 25 projects, of which 8 are legally mandatory projects and 3 are collaborations with other government agencies. The list of projects under modernisation is now the baseline and may only be amended with EXCO's approval. EXCO will review progress on the projects regularly. Several projects could not be accommodated within the current programme. The Programme Management Office will maintain a list of the proposed projects to plan for their implementation."*⁹²

However, despite the strides made with the modernisation program and the success SARS had already enjoyed, when Moyane took over as Commissioner in 2014, he decided without consultation to appoint an external service provider to conduct an independent review of the SARS Operating Model, Structure and its Modernisation Programme⁹³. Moyane also insisted that the rollout of any further modernisation plans be stopped until he had completed this review.

⁹² Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 62

⁹³ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 63

⁹⁴ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 65.

The appointment of Gartner

Gartner Inc ("Gartner") is a global research and advisory firm providing information, advice, and tools for leaders in IT, finance, HR, customer service and support, communications, legal and compliance, marketing, sales, and supply chain functions. Gartner did not have much of a presence in South Africa before 2016 but was represented through a sales agent and local senior managing partner Neville Willemse ("Willemse").

Willemse told the Nugent Commission that Monyeki approached him around December 2014 about a new Commissioner that began at SARS and had identified issues with the modernisation program to be addressed⁹⁴. Monyeki specifically discussed with Willemse details about an IT review contract SARS was about to publish⁹⁵. According to Willemse, Monyeki made it known to him that SARS specifically wanted Gartner to do an IT review of its systems and to draft the Terms of Reference for SARS⁹⁶. Willemse admitted to the Nugent Commission that he was not sure why Monyeki was involved in managing the process, nor did Gartner enquire about his involvement. They only knew that Monyeki had a close relationship with Moyane⁹⁷.

⁹⁵ Van Wyk, P. 'SARS Inquiry shines a harsh light on Gartner Chiefs', Daily Maverick, Available at: <https://www.dailymaverick.co.za/article/2018-10-24-sars-inquiry-shines-a-harsh-light-on-gartner-chiefs/>

⁹⁶ It is highly irregular that a supplier would draft the terms of reference for the contract they are bidding for.

⁹⁷ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 65

There were two phases to the project, phase one being to conduct a review of the modernisation programme, with further phase two implementation projects. Gartner received the initial phase one contract for R12 million. The phase two contract was also secured by Gartner, for an additional approximately R144 million. Along with additional contracts, Gartner earned approximately R200 million in fees to review SARS's information technology systems.

Willemse also claimed that SARS requested that Gartner subcontract part of the work to a subcontractor from their preferred Broad-Based Black Economic Empowerment (B-BBEE) supplier list. The request was that 30% of the work was then subcontracted to Rangewave, a business belonging to Monyeki. It was however noted that there was no formal agreement between Rangewave and Gartner⁹⁸. The IT system that was developed by Gartner was never implemented by SARS.

⁹⁸ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 66-67

Bain Timeline (Summary)

2012	2013	2014
<p>Bain meets Ambrobrite and Jacob Zuma</p>	<p>CEO Coaching Begins</p>	<p>Enter the New Leadership</p>
<ul style="list-style-type: none"> • Bain enters into a “Business Development and Stakeholder Management” with Ambrobrite to make "inroads" into state entities. • August 2012 - Massone as Bain representative takes first meeting with former President Jacob Zuma. This would be the first of more than 12 meetings with Zuma between 2012 and 2014 • Discussions begin around the restructuring of the state, for example, Project Phoenix. 	<ul style="list-style-type: none"> • July 2013 - Oupa Magashule resigns following allegations against him from an unlawful phone tap. • July 2013 - Ivan Pillay is appointed SARS Commissioner. • Aug/Sept 2013 - Moyane is "retired" as Commissioner of Correctional Services. • Oct 2013 - Tom Moyane is introduced to Vittorio Massone from Bain for "CEO Coaching". 	<ul style="list-style-type: none"> • May 2014 - Jacob Zuma is elected as President for a second term • May 2014 - Pravin Gordhan is replaced as Finance Minister by Nhlanhla Nene. • Oct/Nov 2014 - Tom Moyane is appointed as SARS Commissioner and starts at SARS. • Oct 2014 - Sunday times publishes the first of 30+ articles about the 'Rogue Unit'. • Oct 2014 - (dated) document by Bain outlining a full proposal on how to restructure SARS, two months before the RFP is issued • Dec 2014 - Jonas Makwakwa is appointed as COO of SARS • Dec 2014 - RFP for the restructuring of SARS is issued. • Dec 2014 - Monyeki approaches Gartner representative to do an IT review at SARS.

The 'Rogue Unit' story

The 'Rogue Unit' story was a narrative published in the media between 2014 and 2016, based on allegations against the members of the High-Risk Investigation Unit ("HRIU")⁹⁹ that was established at SARS, headed up by Johann van Loggerenberg ("Van Loggerberg"). The purpose of the HRIU was to act as an intelligence unit, investigating organised crime and tax evasion linked to the tobacco industry and illicit economy, amongst other high-profile matters¹⁰⁰. The 'Rogue Unit' story was used to discredit those SARS officials who were part of the HRIU to prevent further investigations into politically connected individuals. Harber¹⁰¹ states that SARS described the story as "*part of an "attack" on the tax authority – driven by key players in the highly lucrative world of tobacco smuggling.*"

Two weeks after Moyane became Commissioner of SARS, on 12 October 2014, an article appeared in the Sunday Times alleging that there was a 'Rogue Unit' inside SARS, carrying out illegal surveillance through the installation of listening devices in the home of former President Jacob Zuma¹⁰². This article would be the first of several articles released by the Sunday Times investigative unit, including an article

reporting that the 'Rogue Unit' had operated a brothel as cover. These stories would later be retracted by Sunday Times.

The 'Rogue Unit' story had a larger impact on the internal management structures of SARS. According to the Nugent Commission report, former SARS spokesperson Adrian Lackay warned Moyane about the initial story before it was published, urging him to take steps to counter it, but Lackay was ignored¹⁰³.

It is believed that the day after the Sunday Times report, "*Mr Moyane called together the members of EXCO and demanded to know what they knew about the reported 'rogue unit'. All the members disavowed any knowledge. The members of EXCO were summoned once again, on this occasion with their subordinates, and were asked once again what they knew, and the members EXCO once again disavowed any knowledge. Mr Moyane promptly announced that he had no confidence in the members of EXCO and that it was disbanded. The unit that was said to be 'rogue' was also closed down on the instruction of Mr Moyane.*"¹⁰⁴

Judge Nugent commented that he could not find a rational explanation for Moyane acting the way that he had, having only just arrived at SARS with virtually no experience, but "*immediately he denounced and humiliated*

⁹⁹ The unit was also known as the Special Project Unit (SPU) and the National Research Group (NRG) at various points of its development.

¹⁰⁰ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 75-76

¹⁰¹ Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 84.

¹⁰² Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 75.

¹⁰³ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 75

¹⁰⁴ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 74

his senior management who might be expected to have advised and guided him as he came to grips with his new role, and dissolved the body through which SARS was being managed. All that on the basis of no more than a newspaper report, and moreover, a report on an alleged unit of which at least most of the Chief Officers could not be expected to have had knowledge. I think the inference is inescapable that this was the first step in 'neutralising' possible detractors as foreshadowed in Bain's 'TM100 days' presentation."¹⁰⁵

The actions of Moyane also resulted in the resignations of Hore (as COO), Pillay and Peter Richer shortly thereafter. This opened up the position of COO for Makwakwa to step into. As Nugent states in his report, the 'Rogue Unit' story "*could not have come at a better time for Mr Moyane.*"¹⁰⁶

Taking into consideration Makwakwa's new positioning and his involvement with Moyane and the restructuring of SARS, one particular interaction with Van Loggerenberg also raises some questions. In his book, *Rogue*, Van Loggerenberg recalls a phone call with Makwakwa shortly after he had left SARS in early 2015: "...I asked Jonas Makwakwa [...], why they weren't doing anything about the brothel claims and why they were allowing the stories to stay in the public domain.

Makwakwa was a part of the so-called SARS Kroon board, tasked to look into these allegations. 'You know these guys never ran a brothel. You know it's nonsense. This story is harming SARS's reputation, Jonas,' I told him. Makwakwa answered with a giggle, 'No, there was a brothel. It was a mobile brothel.'"¹⁰⁷

Approximately two years after the initial reports, the Sunday Times retracted these allegations and apologised for the publication of the stories¹⁰⁸ in April 2016, and again in September 2018. After an internal review, it was found that the sources of the allegations in the 'Rogue Unit' stories were based on unreliable and unverifiable information. Some of the allegations were based on information obtained from Belinda Walter ("Walter"), a lawyer who was later identified as a triple agent working for the State Security Agency (SSA) and British American Tobacco, who had formed a romantic relationship with Van Loggerenberg, as well as leaks from anonymous persons inside SARS and unidentified intelligence operatives.

This was all brought to light when Bongani Siqoko ("Siqoko"), editor of the Sunday Times between 2016 and 2020, issued a public apology for the 'Rogue Unit' stories in October 2018, further announcing that all awards and prize money earned from the

¹⁰⁵ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 75

¹⁰⁶ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 76

¹⁰⁷ Van Loggerenberg, J. and Lackay, A. *Rogue*, Jonathan Ball Publishers, Jeppestown. 2016, Page 87

¹⁰⁸ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 75

stories would be returned.¹⁰⁹ Siqoko claimed that the *Sunday Times* had “inadvertently allowed sinister forces, who are hellbent on destroying our institutions, to abuse our trust and use some of our stories to carry out their objectives”. It was later revealed in an interview with Anton Harber that he had interviewed the journalists involved, and when he had questioned them on the sourcing and proof of the ‘rogue unit’ stories, in particular the ‘Rogue Unit Brothel’ story, he could not believe how weak it was. The following is an extract of a conversation with Siqoko from Harber’s book¹¹⁰:

“I said I want to be able to defend you, so tell me where this brothel was. In Durban, they said. I said where in Durban, one said Durban North and the other said it was behind a certain hill, so they argued. They didn’t know where it was. They said the brothel was mentioned in a document. But even that document does not say it. It says the guys had arrived at this house that belonged to the unit and there had been a party, and there were women, and it felt like a brothel. So I asked, how did they pay the women? Did we even go to this place?”

They did not agree when I said we should apologise. They felt their stories were solid, and they had done a thorough investigation. There were also issues of fairness and

balance. The culture here was to only start making calls to people they were writing about [on] Friday. They were scared of leaks, and there were some of these. My argument was that we are not fair to the people we are writing about.”

Investigative Panels

The allegations of wrongdoing by individuals at SARS and the HRIU resulted in the appointment of four separate investigative panels between June 2014 and February 2015, costing SARS millions in taxpayer’s money. These panels were made up of lawyers, advocates, senior state officials and accountants to investigate the allegations ultimately made in the *Sunday Times* articles¹¹¹, as well as the lawfulness of the HRIU itself.

These investigative panels became an important component of the disinformation that was spread via the media to discredit SARS officials and processes and were ultimately used, along with the newspaper articles, as a basis to suspend key executives such as Pillay¹¹².

It is important to note that the ‘Rogue Unit’ narrative itself only appeared in the *Sunday Times* in October 2014, after the Kanyane and Sikhakhane Panel were appointed, and

¹⁰⁹ Article: Bongani Siqoko, ‘We Got It Wrong, and for That We Apologise’. *Sunday Times* (14 October 2018), <<https://www.timeslive.co.za/sunday-times/news/2018-10-13-we-got-it-wrong-and-for-that-we-apologise/>>

¹¹⁰ Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 260 - 261.

¹¹¹ Van Loggerenberg, J. *Death and Taxes*, Jonathan Ball Publishers, Jeppestown, 2018, page 233

¹¹² Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 79-81

the investigation of a so-called 'Rogue Unit' was therefore not within the initial mandates of the first two panels.

The Kanyane Panel

It was Walter who, following the end of a turbulent relationship with Van Loggerenberg¹¹³, approached Pillay accusing Van Loggerenberg of giving her confidential taxpayer information and illegally intercepting communication. Following these allegations, Pillay established the Kanyane Panel between June and August 2014 to investigate her claims. The Kanyane Panel found that the allegations made by Walters were unsubstantiated and made no actual findings against Van Loggerenberg, although some negative comments about him were leaked to the media, including some inaccurate observations that were made about a fundraiser Van Loggerenberg was involved in¹¹⁴.

Van Loggerenberg prepared a formal submission to the panel in the form of an affidavit but was never able to submit it¹¹⁵.

The Sikhakhane Panel¹¹⁶

Despite the absence of findings against Van Loggerenberg by the Kanyane Panel, in September 2014, Mr Nhlanhla Nene ("Nene"), then Minister of Finance, instructed Pillay to establish the Sikhakhane Panel, made up of law firm Hogan Lovells and three advocates¹¹⁷. The panel ran from September until November 2014 and was to investigate a complaint made against Van Loggerenberg by Walter. Sikhakhane states in his report¹¹⁸: *"Following a rather acrimonious end to a romantic relationship between Ms. Walter and Mr. Van Loggerenberg on 27 May 2014, Ms. Walter filed a formal complaint against Mr. Van Loggerenberg. The essence of Ms. Walter's complaint is that Mr. Van Loggerenberg ran a covert unit within SARS, unlawfully revealed taxpayer information, was engaged in unlawful interception of conversations and initiated their romantic relationship with the sole purpose of obtaining incriminating information about her clients in the tobacco industry. This complaint has led to widespread media speculation about SARS and the alleged unlawful or unethical conduct of Mr. Van Loggerenberg."*¹¹⁹

¹¹³ Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 79

¹¹⁴ Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 228.

¹¹⁵ Van Loggerenberg, J. and Lackay, A. *Rogue*, Jonathan Ball Publishers, Jeppestown. 2016, Page 148.

¹¹⁶ Herd, F and Kleyn, N. 'KPMG: Rogue reports, dead cows and state capture', Daily Maverick, Available at: <https://www.dailymaverick.co.za/article/2020-09-22-kpmg-rogue-reports-dead-cows-and-state-capture/>

¹¹⁷ Van Loggerenberg, J. *Death and Taxes*, Jonathan Ball Publishers, Jeppestown, 2018, page 233-234.

¹¹⁸ Sikhakhane, M. 'Investigation report: Conduct of Mr Johan Hendrikus van Loggerenberg', Sikhakhane Panel, Available at: <https://www.politicsweb.co.za/news-and-analysis/sars-the-sikhakhane-report>

¹¹⁹ Sikhakhane, M. 'Investigation report: Conduct of Mr Johan Hendrikus van Loggerenberg', Sikhakhane Panel, Available at: <https://www.politicsweb.co.za/news-and-analysis/sars-the-sikhakhane-report>.

It was around the same time that Moyane was appointed as SARS Commissioner, and extended the terms of reference to look into the media reports that had begun to escalate around the so-called 'Rogue Unit'. The Sikhakhane Panel did not find evidence to suggest Van Loggerenberg started a relationship with Walter to obtain information about her clients but did make findings against Van Loggerenberg and the HRIU (dubbed the 'Rogue Unit') in terms of illegal intelligence gathering, interfering with South African elections and using a fundraising club as a front to finance it¹²⁰.

According to Sikhakhane, the panel found that *"In respect of the establishment of the Special projects Unit, NRG and High Risk Investigations Unit, we find as follows:*

- *The establishment of the unit without having the requisite statutory authority was indeed unlawful;*
- *There is prima facie evidence that the unit may have abused its power and resources by engaging in activities that reside in the other agencies of Government, and which it had no lawful authority to perform;*
- *There is prima facie evidence that the recruitment, funding and practices of the unit were in violation of SARS's own Human Resources policy;*

- *There is prima facie evidence that the existence of this unit had the real possibility of undermining the work of those agencies tasked with the investigation of organised crime and the collection of intelligence;*
- *There is prima facie evidence suggesting that the activities of the Special Projects Unit may have included rogue behavior that had the potential to damage the reputation of SARS as an organ of state;*
- *Finally, there appears to be serious concerns about whether settlements concluded with taxpayers who were the subject of investigation, were validly and properly concluded.¹²¹"*

The panel recommended that a judicial commission be established and that a forensic investigation be conducted into all settlements concluded with taxpayers under investigation since 2005. The report by Sikhakhane also stated that it disregarded the findings of the Kanyane panel, to consider all the evidence that was placed before it in a fresh light¹²².

An important aspect of the Sikhakhane Report was that the establishment of the HRIU was unlawful. This matter was addressed by Judge Nugent in his report after

¹²⁰ Sikhakhane, M. 'Investigation report: Conduct of Mr Johan Hendrikus van Loggerenberg', Sikhakhane Panel, Available at: <https://www.politicsweb.co.za/news-and-analysis/sars-the-sikhakhane-report>.

¹²¹ Sikhakhane, M. 'Investigation report: Conduct of Mr Johan Hendrikus van Loggerenberg', Sikhakhane Panel, Available

at: <https://www.politicsweb.co.za/news-and-analysis/sars-the-sikhakhane-report>.

¹²² Sikhakhane, M. 'Investigation report: Conduct of Mr Johan Hendrikus van Loggerenberg', Sikhakhane Panel, para 12, Available at: <https://www.politicsweb.co.za/news-and-analysis/sars-the-sikhakhane-report>.

the Nugent Commission, where he stated the following:

“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. [...].

It was said to be unlawful by a panel chaired by Adv Sikhakhane SC, but I find nothing in its report to persuade me why that was so. Adv Sikhakhane was asked if he could elaborate but his reply took it no further than what was said in the report. The SARS Advisory Board chaired by Judge Kroon, reported to the Minister, and issued a media statement, saying the unit was unlawful, but in evidence he told the Commission that was not a conclusion reached independently by the Board, but had been adopted from the

Sikhakhane panel, and he had come to realise it was wrong. Indeed, he supported the re-establishment of capacity to investigate the illicit trades, which we recommend.”¹²³

A copy of the report was leaked to the media in December 2014¹²⁴ ¹²⁵. The report was also used by Moyane to suspend Pillay and Richer.

Since taking over as Commissioner at SARS in May 2019, Kieswetter has been working on a reparation process for former and current employees at SARS who were negatively affected by the now-discredited ‘Rogue Unit’ story. On 19 November 2020, following the leak of a letter from SARS to Sikhakhane, Kieswetter released a statement confirming that SARS will no longer make use of the panel saying:

“The media has requested confirmation that a SARS letter to Adv. Muzi Sikhakhane SC dated 16 November 2020, which was regrettably posted on social media, is authentic. SARS can confirm that a private letter was written to Adv. Sikhakhane SC as well to the CEO of KPMG, Mr. Ignatius Sehoole.

This communication to them clarified SARS’ position in respect of the Reports that each of them had authored during the period between

¹²³ Nugent, R. ‘Commission of Inquiry into Tax Administration and Governance by SARS: Final Report’. December 2018, page 78.

¹²⁴ Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 229.

¹²⁵The article based on the leak: Wa Afrika, M & Reampedi, P. SARS suspends rogue unit men after expose. 2014. Available at: <https://www.timeslive.co.za/sunday-times/lifestyle/2014-12-06-sars-suspends-rogue-unit-men-after-expos/>.

2014 to 2015, respectively. These Reports negatively mentioned or implicated a number of current and former SARS employees. Following an intensive review after Commissioner Kieswetter's appointment in May 2019, and after taking into account a number of related developments, SARS has made a decision that it will not use these Reports for any purpose as it cannot place reliance on them¹²⁶.

Sikhakhane has stated in an interview with Sunday Times newspaper in 2020, that the report he drafted was just intended as an "internal report" for Pillay to "check" various allegations made by persons and was therefore not definitive¹²⁷.

The Kroon Advisory Board¹²⁸

A third panel, the Kroon Advisory Board, comprising of retired Judge Frank Kroon, as well as advocates and accountants, and Makwakwa¹²⁹ was established in 2015. This panel conducted no new investigations or inquiries. Rather, they endorsed the Sikhakhane Panel findings stating the 'Rogue Unit' had been "unlawfully established" and recommended that some matters about the

formation of such a unit be referred to the police for investigation¹³⁰. This advisory board declared the Sikhakhane findings fit to be published. It produced no report or investigation findings.

One of the major concerns about this panel was team member Rudolph Mastebroek ("Mastebroek"). Mastebroek had held a senior position at SARS but had "fallen out" with Pillay when Pillay appointed Van Loggerenberg above him¹³¹. Mastebroek subsequently resigned from SARS in 2013. He was known to have issues with Gordhan, Van Loggerenberg and Pillay, as outlined by Pearlie Joubert, in an affidavit she submitted to SARS in October 2015 concerning a motion of notice. Joubert disclosed in her affidavit that Mastebroek had approached her in April 2013, implicating Van Loggerenberg and Pillay in improper behaviour at SARS. According to Thamm, Joubert said that Mastebroek *had never used formal channels or platforms to have his allegations against Van Loggerenberg or Pillay investigated or tested "but preferred that these matters be surfaced in the media."*¹³²

¹²⁶ SARS, SARS reparation process to be conducted with dignity and confidentiality, Press Release, Available at: <https://www.sars.gov.za/Media/MediaReleases/Pages/17-November-2020-SARS-reparation-process-to-be-conducted-with-dignity-and-confidentiality.aspx>

¹²⁷ Rabkin, F. Advocate Muzi Sikhakhane on representing Zuma, 'rogue unit' report. 2020. <https://www.timeslive.co.za/sunday-times/news/2020-08-30-advocate-muzi-sikhakhane-on-representing-zuma-rogue-unit-report/>

¹²⁸ Van Loggerenberg, J. *Death and Taxes*, Jonathan Ball Publishers, Jeppestown, 2018, page 234

¹²⁹ Pauw, J. 'So who went rogue, my Kroon ? 2018. Available at: <https://www.dailymaverick.co.za/opinionista/2018-10-02-so-who-went-rogue-my-kroon/>

¹³⁰ News24. 'Ivan Pillay, Peter Richter quit SARS'. 2015. Available at: <https://www.news24.com/Fin24/ivan-pillay-peter-richter-quit-sars-20150507> and Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 232 and

¹³¹ Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 100

¹³² Thamm, M. 'SARS rogue unit controversy: Investigative journalist claims Sunday Times was part of an 'orchestrated effort'. 2015. Available at: <https://www.dailymaverick.co.za/article/2015-12-02-sars-rogue-unit-controversy-investigative-journalist-claims-sunday-times-was-part-of-an-orchestrated-effort/>

Joubert also wrote a letter to Judge Kroon in June 2015, stating¹³³ *“Adv Mastebroek has been actively soliciting the media with information of a particular hue and slant regarding SARS since 2013, after he left the employ of SARS [...] It was his intention to discredit a certain person by way of the media as early as April 2013.”* Joubert also stated that she was concerned when Mastebroek was appointed to the Kroon Advisory Board, stating: *“In my mind Advocate Mastebroek had already demonstrated to me in 2013 that he disliked Mr Johann van Loggerenberg and Mr Ivan Pillay and was then already attempting to advance allegations against them in the media. In my mind he should have excused himself from the board on the basis that he was severely conflicted.”*

Mastebroek was also the ex-husband of Phylcia Oppelt, who was the editor of the Sunday Times when the first publication of the ‘Rogue Unit’ stories came out in the Sunday Times in 2014¹³⁴. Allegations exist that Mastebroek was one of the initiators of the ‘Rogue Unit’ story. Joubert also indicated in her submission that she believed that Mastebroek had played an active role in influencing Oppelt to publish the stories in the Sunday Times. Joubert claims that she raised her concerns with Oppelt shortly after she met with Mastebroek, about the veracity

of the information, but that the paper had gone ahead and published the stories anyway.

Joubert stated *“I was concerned about the veracity and accuracy of these articles and expressed my opinion to this effect with Ms Oppelt and others. My comments were met with me being isolated and effectively ordered not to interfere with the other journalists involved in working on the articles.”*

According to Thamm¹³⁵, *“while Oppelt had refused to take [Joubert’s] phone calls, Joubert says she continued discreet investigations and became aware that the stories published in the Sunday Times contained untruths.”*¹³⁶ These concerns became important as some of the findings that the Sikhakhane Panel and subsequently the Kroon Advisory Board produced were based on a review of the Sunday Times article in October 2014 about Van Loggerenberg and the ‘Rogue Unit’.

The KPMG Investigation

Results from the aforementioned panels were already piling up when KPMG was called to conduct a forensic investigation and audit from 2015 until January 2016.

¹³³ Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 101

¹³⁴ Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 232

¹³⁵ Thamm, M. ‘SARS rogue unit controversy: Investigative journalist claims Sunday Times was part of an ‘orchestrated effort’. 2015. Available at:

<https://www.dailymaverick.co.za/article/2015-12-02-sars-rogue-unit-controversy-investigative-journalist-claims-sunday-times-was-part-of-an-orchestrated-effort/>

¹³⁶ Thamm, M. ‘SARS rogue unit controversy: Investigative journalist claims Sunday Times was part of an ‘orchestrated effort’. 2015. Available at:

<https://www.dailymaverick.co.za/article/2015-12-02-sars-rogue-unit-controversy-investigative-journalist-claims-sunday-times-was-part-of-an-orchestrated-effort/>

None of those implicated in the report were consulted by KPMG. This investigation was focused on the claims in the media of the 'Rogue Unit' and in October 2015, they compiled a summary of findings from the previous panels. The KPMG report, like the previous panel reports, was also leaked to the media¹³⁷.

In 2016, KPMG clarified that the process was not an investigation but rather a "documentary review" with "limitations imposed"¹³⁸. KPMG also admitted that it had not engaged any of those who were implicated in the report in any way. By 2017, KPMG withdrew the report's "findings, conclusions and recommendations" because these were prescribed to them by lawyers acting for Moyane and SARS and not their own. KPMG said that it would repay SARS their full fees of R23 million soon after¹³⁹. In 2018, KPMG testified at various fora, including before Parliament, that the author of their report was "lazy and unprofessional" and had "copied and pasted" parts of the report. KPMG admitted the report was "not perfect" and issued various public apologies over time.

By 2020, KPMG chairperson, Professor Wiseman Nkhulu publicly admitted that the KPMG report had caused harm to individuals and their families and was not to be relied upon¹⁴⁰. He further admitted that the KPMG report sought to force persons to make incorrect and/or false statements against their will. KPMG has undertaken to make "reparations" to those affected.

An echo chamber of panels and media

Major concerns have been raised over the years about the procedural fairness and findings of each of these investigations, and the methodology of using the findings from previous panels reports, as well as the media articles based on the leaked reports, to conclude each new investigation and panel without an independent review of the evidence. This method created the perfect environment for an echo chamber that promoted confirmation bias¹⁴¹ and supported the 'Rogue Unit' narrative to discredit key individuals at SARS¹⁴². As Van Loggerenberg states in his book, *"The panels and their reports and the media smear campaign operated in tandem. A false story would be leaked and published by the media, which in turn would inform one or other aspect*

¹³⁷ Van Loggerenberg, J. and Lackay, A. *Rogue*, Jonathan Ball Publishers, Jeppestown. 2016, Page 207.

¹³⁸ Marrian, N. SARS spends more than R23 million on investigation of 'rogue unit' by KPMG'. 2016. <https://www.sowetanlive.co.za/business/2016-06-07-sars-spends-more-than-r23m-on-investigation-of-rogue-unit-by-kpmg/> and Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 232.

¹³⁹ Hosken, G. 'KPMG cans SARS 'rogue unit' report, apologises to Gordhan. 2017. Available at: <https://www.timeslive.co.za/politics/2017-09-15-kpmg-cans-sars-rogue-unit-report-apologises-to-gordhan/>

¹⁴⁰ Thompson, W. KPMG to pay reparations to former SARS employees affected by rogue unit report. 2020. Available at: <https://www.businesslive.co.za/bd/national/2020-09-20-kpmg-to-pay-reparations-to-former-sars-employees-affected-by-rogue-unit-report/>.

¹⁴¹ A confirmation bias is a type of cognitive bias that involves favouring information that confirms previously existing beliefs or biases.

¹⁴² Harber, A. *So, for the Record: Behind the Headlines in an Era of State Capture*, Jonathan Ball Publishers, Jeppestown, 2020, page 228

of any of the panels' scope, whose findings would then be leaked to the media, with each seemingly confirming the other."

Attempts at a revival

Despite the public retraction and apology by Judge Kroon, KPMG and the Sunday Times for their role in the 'Rogue Unit' story, and the findings of the Nugent Commission, journalists Mzilikazi Wa Afrika and Piet Rampedi refused to let go of their story.

According to Harber in his book¹⁴³: *"Wa Afrika and Rampedi reappeared after some time in Iqbal Surve Sekunjalo Independent Media group and reopened the campaign around the 'Rogue Unit' and against Pravin Gordhan. What was becoming clear was that rogue journalists, subject to little or no editorial scrutiny, could find a platform to disseminate their own personal invective."*

On the back of Wa Afrika and Rampedi's renewed publications in Sekunjalo¹⁴⁴, the Public Protector, Busisiwe Mkhwebane ("Mkhwebane") brought out a highly contentious report confirming claims of a "Rogue Unit" at SARS¹⁴⁵. On 5 July 2019, the Public Protector, Mkhwebane released a report *"On an Investigation into Allegations of Violation of the Executive Ethics Code by Minister of Public Enterprises Pravin Gordhan, as well as allegations of*

Maladministration, Corruption and Improper Conduct by the South African Revenue Services".

Mkhwebane made use of the aforementioned panel reports to reach her findings against Gordhan, Pillay and other SARS officials concerning allegations of wrong-doing and the 'Rogue Unit', even though Judge Kroon¹⁴⁶, KPMG and the Sunday Times had retracted their findings and admitted that the story was unsubstantiated by this time.

The weaknesses of the findings by the Public Protector and the investigative panels working for SARS between 2014 and 2016 were ultimately highlighted by the Gauteng High Court in its ruling against the Public Protector report on the 'Rogue Unit'.

On 7 December 2020, the Gauteng High Court ("High Court") set aside the report, stating that Mkhwebane's findings in her report that Gordhan had established an illegal unit at SARS as being *"without foundation, particularly as this conclusion is based on discredited reports and unsubstantiated facts."*

The Gauteng High Court also made the following comments about the panel reports used by the Public Protector relating to the 'Rogue Unit' investigation.

¹⁴³ Harber, A. So, for the Record: Behind the Headlines in an Era of State Capture, Jonathan Ball Publishers, Jeppestown, 2020, page 278

¹⁴⁶ Hosken, G. 'Sorry, Sars 'rogue unit' ruling was my bad: judge'. 2019. Available at: <https://select.timeslive.co.za/news/2019-06-03-judge-kroon-says-sorry-i-made-mistake-about-rogue-unit/>

Sikhakhane Panel

- The Sikhakhane Panel concluded that the establishment of the HRIU was unlawful, based on section 3 of the NSI Act. The Court was not convinced that the HRIU contravened this act and referred to the finding of the Nugent Commission and the legal opinion furnished by Adv Trengrove and Adv Nxumalo, that the establishment of the HRIU was, in fact, lawful.¹⁴⁷
- The findings of the Sikhakhane report had “dire consequences not only for existing activities at SARS, but also for the officials implicated in the report”.
- The High Court states *“It is clear from a careful reading of the Sikhakhane report that the authors deviated from their terms of reference and made “factual” findings about allegations concerning the so-called “rogue unit” without affording any opportunity to those implicated in the report. The Sikhakhane report also relied upon and entertained the allegations made by the Sunday Times newspaper which the Sunday Times later repudiated, admitting that it had reported fake news.”*¹⁴⁸

- The High Court also stated that it could find *“no factual or legal basis upon which it can be concluded that the establishment of the unit was unlawful.”*¹⁴⁹

KPMG Report

- The High Court reiterated that on 16 September 2017, KPMG disavowed the report and *“particularly its conclusions regarding the lawfulness of the unit.”*
- The report is *“flawed in fact and in law and its conclusions have been formally withdrawn.”* Further use of this report, according to the High Court is irrational.¹⁵⁰

Overall, the High Court found that the Public Protector's report on the unlawful establishment of the so-called ‘Rogue Unit’ failed at every point. The High Court states: *“We are satisfied that the report is the product of a wholly irrational process, bereft of any sound legal or factual basis. It cannot stand and must be set aside.”*

¹⁴⁷ Gauteng High Court. ‘Gordhan vc. Public Protector’. December 2020. Available at: https://www.scribd.com/document/487213021/Gordhan-v-PP-7-December-2020-Final-2020-12-07#from_embed. Para 89-94

¹⁴⁸ Gauteng High Court. ‘Gordhan vc. Public Protector’. December 2020. Available at: https://www.scribd.com/document/487213021/Gordhan-v-PP-7-December-2020-Final-2020-12-07#from_embed. Para 98

¹⁴⁹ Gauteng High Court. ‘Gordhan vc. Public Protector’. December 2020. Available at: https://www.scribd.com/document/487213021/Gordhan-v-PP-7-December-2020-Final-2020-12-07#from_embed. Para 101

¹⁵⁰ Gauteng High Court. ‘Gordhan vc. Public Protector’. December 2020. Available at: https://www.scribd.com/document/487213021/Gordhan-v-PP-7-December-2020-Final-2020-12-07#from_embed. Para 111

In May 2016, Robert McBride, Anwa Dramat and Ivan Pillay released a press statement. They alleged that the manipulation of the media played a critical role in facilitating state capture by destroying the credibility of certain individuals working in anti-corruption institutions:

In our view, attacks on individuals in these institutions are aimed at undermining the fight against corruption. A key part of all of our mandates was to investigate cases of corruption. In reviewing our individual experiences over recent weeks, we have discovered a convergence in the cases that we were working on. A common thread is that cases under investigation involved individuals or entities with questionable relationships to those in public office. Most of these cases involved state tenders of some kind that were awarded due to patronage with influential individuals in public office.

The manner in which officials were removed has followed a similar pattern. Internal documents or “allegations” from within institutions are leaked to select journalists. Working in tandem with “anonymous” sources, facts are distorted in the media.

It is unclear how the leaks happen, but they do not originate from the accused. After the information is leaked, the institution in question then launches an “investigation” into the accused officials, using news reports as pretext. The results of these “investigations” are then leaked to the same journalists again.

During the “investigations” the affected officials are suspended and prevented from defending themselves publicly. They are never called to answer to any allegations by the investigators. Any representation is usually ignored, distorted or rejected by the institution in question. The investigations are open-ended, and the allegations constantly change.

When an “investigation” fails to reach a conclusion, the institutions enter into settlements with the officials. Later, based on the same allegations that preceded the settlement, officials are then criminally charged. It appears from this pattern that the intent is to hound officials out of institutions and destroy their credibility publicly.

(Source: <https://www.dailymaverick.co.za/article/2016-05-17-independent-state-institutions-should-be-supported-in-fighting-corruption/>)

Consequences of repurposing SARS

The actions of Zuma, Moyane, Makwakwa and others involved in the repurposing and restructuring of SARS resulted in the weakening of SARS as an effective tax collection institution.

To successfully weaken SARS, at the very least the existing structures and investigative and enforcement capacity of SARS would need to have been dismantled; control of the organisational functions would need to be centralised and managed by individuals involved in the repurposing strategy, and a culture of fear would need to be created to keep other employees from speaking up against unethical or unlawful actions.

This was all successfully achieved until the #Guptaleaks of 2017 were released. Moyane and Makwakwa had successfully paralysed the enforcement capacity of SARS through the dismantling of the investigation units and capacity of the organisation; they had centralised functions through the restructuring process implemented by Bain's creation of the BAIT unit under Makwakwa; and finally, there is significant evidence given at the Nugent Commission of the fear of culture that was generated during Moyane's tenure. Moyane's attitude, when asked by the media about the #GuptaLeaks, was that

SARS did not respond to "fake news". He showed no interest to pursue the public evidence that followed the exposure of the data leaks.

These actions weakened the revenue collection ability of SARS¹⁵¹. This ultimately has a major impact on the allocation of resources to the government, including social development initiatives. To make up for the shortfall, taxes must be raised, government spending curtailed, and/or additional loans must be taken by the National Treasury to cover all the expenses of the country. All of these actions prejudice the country and have a trickle-down effect on the poor¹⁵².

Thanks to the restructuring of SARS, year on year revenue collection has fallen short of what the South African state requires to meet all of its obligations, creating a vicious cycle of requiring more loans, increasing financial obligations of the state. The shortfall also, as previously stated, was responsible for the increase in VAT. Coupled with high unemployment (even higher now thanks to COVID-19), economic stagnation and a general distrust in SARS that has lowered taxpayer morale, it is unlikely that SARS will be in a position to reverse the damage done any time soon. Besides, there is the risk that tax-evasion will remain high as the previous loss of investigation capacity and power of SARS will take time to redevelop¹⁵³.

¹⁵¹ Tshwane, T. How Moyane led SARS to the brink of ruin. 2018. Available at: <https://mg.co.za/article/2018-06-29-00-how-moyane-led-sars-to-brink-of-ruin/>

¹⁵² Nugent, R. 'Commission of Inquiry into Tax Administration and Governance by SARS: Final Report'. December 2018, page 17.

¹⁵³ Foley, R. 'The Role of Bain and KPMG in capturing SARS', Ahmed Kathrada Foundation Seminar: How Business Enabled State capture, 2019, Available at: <https://www.kathradafoundation.org/2019/10/03/bussiness-enabled-capture-presentation/>

Disclaimer:

This report has been prepared by PPLAAF as a summary of publicly available information on the restructuring of the South African Revenue Service (SARS) over the last decade.

This has been done to provide context to the emerging story of the capture and repurpose of SARS with available information. This report does not necessarily reflect complete and perfect knowledge of all the issues surrounding the capture of SARS. As the story continues to emerge through ongoing investigations and testimony at the various Commissions of Inquiry, this story will become clearer.

Concerning the testimony of Atholl Williams at the Commission of Inquiry into State Capture, Bain has withdrawn their application to make the related documents confidential, with only the documents from the Department of Justice remaining confidential. They have, however, indicated that they still wish to cross-examine Atholl Williams.

