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Zondo final report - Zondo calls for public appointment process for future Sars heads

Acting Chief Justice Raymond Zondo, who also chairs the state capture commission, wants future commissioners of the South African Revenue Service (Sars) to be appointed in an open, public process.

The first of three editions of the state capture commission's report – released to the public two weeks ago – has found that Sars was captured with the help of its one-time commissioner Tom Moyane and former president Jacob Zuma. The private company that benefited in this project was Bain and Company South Africa, which by the time of the termination of its consultancy work with Sars had been awarded contracts to the value of over R160-million, on the basis of irregular confinements.

Zondo did not mince his words in the report, stating that much of Moyane's evidence before the commission – in which he was meant to defend his actions as commissioner between 2014 and 2018 – could not be trusted. Zondo writes: "Sars was systemically and deliberately weakened, chiefly through the restructuring of its institutional capacity, strategic appointments and dismissals of key individuals, and a pervasive culture of fear and bullying. It is a clear example of state capture."

Zondo further points out that Sars "offers one of the clearest demonstrations of state capture as observed in other SOEs and state institutions.

"The evidence that was heard by the commission in regard to Sars revealed conclusively that Mr Moyane was involved in advancing the project of state capture when he was commissioner of Sars. In fact, the evidence revealed that he started planning for the capture of Sars long before he was appointed as commissioner of Sars. Mr Moyane simply did not act with the interests of Sars at heart. He sought to advance Mr Zuma's and Bain's interests."

He cites the promise by Zuma to Moyane that he would be appointed, long before this actually happened, while on the other hand holding meetings with management consultancy Bain and Company South Africa, which would later be appointed with the view of carrying out a "restructuring" plan designed to purge members of its executive management who needed to be removed for Moyane's agenda to be fulfilled.

Sars experienced an exodus of senior managers in 2015, months after Moyane took office in October 2014, and they were replaced with more pliant officials, Zondo concluded. In this time, Bain was awarded its first contract with Sars, initially for six weeks and at a value of R2.6-million. This got extended irregularly over time and by the time it was terminated had cost Sars around R164-million over 27 months.

"Email communications between Bain and Sars show that there was collusion between the consultants and Sars to get around the procurement process which was required for a valid extension of the original contract. The commissioner, at this point Mr Moyane, apparently had communications with the people involved in the procurement decision making. Mr Makwaka told Bain 'do not worry' about the extension because they were 'going to make a plan' because the Commissioner had 'gone to see' the people in procurement."

Jonas Makwakwa was appointed chief operations officer at Sars after long-term manager and COO Barry Hore resigned from his post. It was Makwakwa, according to the Nugent commission that Zondo referred to in his report, who was found to have shared confidential Sars documents with Bain prior to Moyane's arrival.

Key witness Athol Williams, a former Bain employee, revealed much of the evidence relating to Sars's capture by Bain. Williams has since fled South Africa, stating publicly that he feared for his safety after testifying before the commission.

According to Zondo, the evidence that supports his conclusion that the tax revenue was indeed captured includes:

- Mr Moyane was promised the position of Sars commissioner by President Zuma well in advance of his formal appointment and despite the process then underway to select the appropriate person from amongst a large number of candidates.
- Bain met President Zuma and Mr Moyane before they had even been appointed as third-party consultants to Sars, and from an early stage it was obvious that they would be given the position, even though no tender process had even begun.
- The purpose of these early "appointments" was to ensure that the necessary pre-planning could be done to redirect the resources of the organisation and assume control of the organisation.
- Precisely such detailed planning was done by Bain and Mr Moyane before they even stepped foot into Sars. In reality there was no need for consultants, let alone a radical overhaul of what was then a world class institution. The "profound strategy refresh" was just a pretext for the assumption of control over Sars for ulterior purposes.
- Exactly as the plan had contemplated, specific individuals at Sars were identified and neutralised once Mr Moyane took up his position. This included very senior people who had served the institution well for years.
- A pretext was devised in order to target people, namely the existence of an allegedly unlawful (rogue) unit. Instead of interrogating the truth of this assertion and protecting Sars and its employees from what is now acknowledged to be an entirely false and misleading story, Mr Moyane treated it as the truth from the outset and dismantled his entire executive committee on the strength thereof. Furthermore, he relied on now discredited reports and ignored contrary views.
- Some of Sars's most important units, which were set up to ensure tax compliance, were disbanded or restructured such that important projects were put on hold or abandoned, thus fundamentally weakening the revenue collection function.
- All these actions and events cannot be coincidental. This is especially so in the light of the planning documents which the Commission has been shown.

This was under circumstances where, on Williams' account, Bain did not have the required expertise to carry out a restructuring of a tax authority, as it had never had such an assignment prior to Sars.

Among other recommendations, Zondo has called for investigations into other contracts that Bain holds with state departments and other entities.

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