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**Zondo final report – Reform of SOE procurement, boards should exclude ministers, says Zondo**

From criminal investigations into its large contracts, to disciplinary action against former role players in state capture and the introduction of a lifestyle audit policy across the board, Transnet is on the mend and trying to eradicate the effects of capture. But a lot still has to be done to shield it and other state owned entities (SOEs) from the possibilities of corruption in the future. It is on these sentiments that the state capture commission closes its second report, with recommendations for how SOEs can ensure protection from political interference.

Commission chairperson and Acting Chief Justice Raymond Zondo writes that his last report, expected at the end of February, will detail further recommendations for the SOE sector. He reiterated that the journey to reform starts at how boards of SOEs and the executive levels under them, are constituted.

“The recent history of state capture is replete with instances where the boards, CEOs and CFOs of SOEs were appointed for ulterior purposes and not in the best interests of the SOE. This, according to [current chairperson of Transnet] Mr Popo Molefe, raised the question whether government should allow boards of SOEs to make appointments without political interference. He contends that it will be sensible for the board to appoint the GCEO and GCFO as it interviews the candidates and is thus best placed to determine the most suitable candidate,” Zondo writes.

He adds that the state capture investigation has also revealed that the role played by politicians with ulterior motives – as he has found in the likes of former public enterprises ministers Malusi Gigaba and Lynne Brown – do not act in the best interests of the entity and can play a part in its crippling.

“Politicians will invariably seek to influence the appointment of their allies so that they can make decisions that would materially benefit them. Mr Popo Molefe proposed that good governance at board level across all SOEs begins with the appointment of individuals who possess the necessary competency, skills and expertise to provide leadership and guidance in attainment of the SOE’s objectives. Directors appointed to boards must always remember that they are appointed to serve the company and thus owe their loyalty to it as opposed to the politicians that appointed them.”

Former Transnet executives, such as Brian Molefe, Siyabonga Gama, Anoj Singh, Garry Pita and Phetolo Ramosebudi, were strategically placed in the positions they occupied for the purpose of furthering the capture agenda, at the expense of the parastatal. But in a turn of the tide, disciplinary action has been taken and claims for damages instituted against them and several others including Transnet Engineering CEO Thami Jiyane, Lindiwe Mdletshe of Transnet Freight Rail (TFR), and Edward Thomas, who was in the group’s procurement office.

“Transnet has instituted multiple actions against persons who have been found to have either been paid without just cause or colluded in the payment of those persons. Two actions were instituted against Regiments for the amount of R189.24-million and R79.23-million respectively relating to unjustified overpayments.

“Transnet instituted four claims against Trillian for varying amounts totalling the sum of R145.92-million for monies paid without just cause for work purportedly executed by it as lead arranger of the ZAR club loan and other supposed financial structuring advisory services. Transnet has recovered R618-million from [Chinese locomotive manufacturer] CSR unjustifiably paid under the maintenance agreement.”

Regiments and Trillian are characterised in the state capture investigation as the two Gupta-linked companies used as vehicles by close associate Salim Essa to enter legitimate procurement processes for the acquisition of locomotives. Three such transactions occurred, for 95, 100 and a more ambitious 1 064 locomotives between the period 2009 and 2015. The multiple transactions that came with the procurements, from securing original equipment manufacturers, advisory services for negotiations with them, and the sourcing and securing of funding for the projects, have undergone investigation by the current board.

Zondo notes: “The procurement function within Transnet was manipulated, particularly at TFR during the acquisition of the locomotives. Transnet has committed to restructuring and reorganising the procurement function across the organisation in accordance with the following principles:

- Transparency in the procurement process;
- Standardisation of the procurement process across Transnet;
- Ensuring that procurement staff are competent and accordingly skilled;
- Ensuring that doing business with Transnet is not complicated.”

Much of the irregular expenditure at Transnet during the state capture period is directly attributable to decisions made by executives and board members. All the transactions that lie at the heart of the state capture allegations at Transnet were decided by Exco and/or board members. Decisions were made at that level with less regard to applicable procurement rules.

This could have been avoided if, as proposed by Popo Molefe and Transnet head of governance Peter Volmink, procurement decisions were kept outside of the shareholder role, in this case the incumbent minister of public enterprises.

“The sole shareholder of Transnet is the government, duly represented by the minister of public enterprises. The Department of Public Enterprises remains responsible in terms of oversight in the discharge of its mandate to the parliament of the republic of South Africa. A greater oversight role must be played particularly by the parliamentary portfolio committee on public enterprises in ensuring that SOES are not vessels of corruption, fraud and state capture.

“The minister is vested with wide powers to make appointments of not only the non-executive directors but also the executive directors, the GCEO and GCFO. The power to appoint the GCEO is not in the hands of the board and is placed solely in the hands of the minister. This could be abused and result in the deployment of a candidate whose loyalties are to the minister rather than the organisation.”

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