

# State of Capture Commission Report Part 1: Notes

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## Table of contents

BACKGROUND .....	1
READING THE REPORT .....	1
NOTES .....	2
SOUTH AFRICAN AIRWAYS .....	2
CONCLUSION .....	3

## BACKGROUND

On 14 October 2016, the previous Public Protector, Adv Thuli Mandonsela, published the State of Capture Report. The famed public sector watchdog had a reputation for holding public officials accountable. The State of Capture report was no different.

It documented the pervasiveness of State Capture in the Jacob Zuma administrations. The report provided prima facie evidence of State Capture, including many public officials burning desire to visit the home of the notorious Gupta Brothers.

The report also lent credence to the assertion of several whistleblowers that Guptas were surreptitiously influencing key public-sector decisions. Most importantly, the report led to the Commission of Inquiry into State Capture.

In the years since, a flurry of litigation in the peripheral of State Capture, some directly related to the topic, ensued; Jacob Zuma resigned, the Adv Thuli Mandonsela completed her term as the Public Protector and moved on to Stellenbosch University, and the Commission commenced its work.

On 04 January 2022, the Commission published Volume 1 of 3 of its report. The 04 January 2022 report is a continuation of the initial report from the previous Public Protector. The Commission's report provides comprehensive detail on the allegations of State Capture, investigating claims and issuing several findings against several parties.

## READING THE REPORT

The 04 January 2022 report is the culmination of 430 hearings, 778 videos and 170 666 Affidavits and Statements, 3 171 summons issued to witness and 1 380 Requests For

Information (State Capture.org.za 2022). Reading the report's contents is important to understand the depth and breadth of the State Capture project. Beyond this, it is also important to read through the information to defend against disinformation and misinformation campaigns that may arise on social media especially considering the Bell Pottinger scandal.

## **NOTES**

This post attempts to summarise the report's contents into layman's language. It is also an attempt to find salient points throughout the report and ultimately to gain an in-depth understanding of the report.

The report opens with background information on the establishment of the Commission. It provides descriptive statistics on the work of the Commission and recounts the Commission's mandate. The Commission heard evidence related to the following State-Owned Enterprises and Private Enterprises:

1. South African Airways (SAA) and Subsidiaries
2. BOSASA
3. Denel
4. Eskom
5. Estina Dairy Farm
6. PRASA
7. SABC
8. SARS
9. SSA
10. Transnet.

Chapter 1 of the report focuses on SAA and its subsidiaries. Chapters 2, 3, and 4 focus on The New Age and its dealings with government departments and State-Owned Entities, South African Revenue Service and Public Procurement in South Africa, respectively. This post will focus on the first 140 pages of the report, with the remaining pages covered in subsequent posts.

## **SOUTH AFRICAN AIRWAYS**

The report is unambiguous about the entity's state while Ms Dudu Myeni and Ms Kwinana served as board members. In short, the report asserts that SAA experienced a steady decline in quality and effectiveness. This decline is largely attributed to the tenures of Ms Myeni and Ms Kwinana. Throughout their terms, corruption and fraud were rampant at the institution. Those that opposed illegal conduct were victimised and eventually removed from their positions. The Commission also highlights failures by SAA auditors to detect fraud and corruption. The collapse also extends to SAA's internal audit function. There was also a wholesale failure in governance within the SAA and its subsidiaries (see paragraphs 11 – 20 of the report).

The Commission is particularly scathing on the conduct of Ms Myeni, arguing that she created the hostile environment described above through “a mixture of negligence, incompetence and deliberate corrupt intent” to further the project of dismantling governance at the entity (see Paragraph 13 of the report).

The Commission also implicates several other stakeholders as enablers of Myeni’s conduct. These stakeholders include former President Jacob Zuma (see paragraph 14), former Ministers Gigaba and Brown (see paragraph 18). Finally, the Cabinet, the Executive of South Africa, is also implicated for yielding to the preferences of the President rather than the interests of State-Owned Enterprises. Ms Carolous (previous SAA Board Chair) detailed several instances where then Minister of Public Enterprises, Mr Malusi Gigaba, took steps to undermine the authority of the Board and affect the strategic outcomes of the entity. These actions include:

1. Excluding the Board Chair from Communication
2. Publicly denouncing the Board, calling them unpatriotic and incompetent
3. Delaying submission of the Request for a Guarantee to Treasury
4. Misleading the Board Chair about the timeline of the proposal to Treasury Pressuring SAA to close the commercially viable Mumbai route.
5. Appointing Ms Dudu Myeni as Board Chair despite her poor attendance record at SAA Board Meetings. (see Paragraphs 39 – 68)

The report also reveals that Mr Siyabonga Mahlangu, then adviser to the Minister of Public Enterprises, had an unquenchable thirst to visit the Gupta household. Mr Mahlangu’s affections for the Saxonwold compound also included inviting others to the address.

One such invitee was then Acting Chief Executive Officer, Mr Kona. Mr Kona alleges that Mr Tony Gupta offered him a large amount of money, which he refused. At the same meeting, Mr Kona informed Mr Tony Gupta about allocating a tender to Lufthansa Consultancy. In addition, Mr Kona alleged that Mr Tony Gupta was livid about the tender allocation.

After the visit, Mr Kona received a call from the Director-General of Public Enterprises, Mr Tshediso Matona. The Director-General expressed his displeasure on the tender allocation to Lufthansa Consultancy. The grievances of the Director-General were to the extent that the Department of Public Enterprises deemed it necessary to investigate the tender. The investigation found no irregularities associated with the tender. Despite the findings of the investigation, the Department of Public Enterprises refused the continuance of the tender.

## **CONCLUSION**

This is the tip of the iceberg. There several specific allegation against Ms Dudu Myeni and Ms Kwinana. These will be discussed in subsequent summaries (trying to keep the word

count below 1000). For now, it clear that State Capture was (or is) present at South African Airways. The following post will detail specific incidents of how State Capture took hold of the entity with specific reference to the conduct of Ms Dudu Myeni.