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# State Capture and Serious Organised Crime in South Africa

A Case Study of the South African  
Revenue Service (2001-21)

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# Contents

<b>Acronyms and abbreviations</b>	<b>5</b>
<b>Summary</b>	<b>6</b>
<b>1. Introduction</b>	<b>7</b>
1.1. The origins of state capture	8
1.2. State capture in South Africa	9
1.3. The study and methodology	11
1.4. Structure of the paper	14
<b>2. SARS and serious organised crime</b>	<b>15</b>
2.1. Formation and function of SARS	15
2.2. Revenue agencies and SOC	16
2.3. Capacity and effectiveness of SARS 1994-2013	18
2.4. The restructuring of SARS	19
2.5. Impact of restructuring on SARS' capacity to investigate SOC	23
2.6. Unintended consequences: impact on tax collection	27
2.7. Recovery of SARS	32
<b>3. Conclusion</b>	<b>36</b>
<b>4. References</b>	<b>38</b>

# Acronyms and abbreviations

<b>ACTT</b>	Anti-Corruption Task Team
<b>AFU</b>	Asset Forfeiture Unit
<b>AI</b>	Artificial Intelligence
<b>BAIT</b>	Business and Individual Tax
<b>CPU</b>	Centralised Projects Unit
<b>DPCI</b>	Directorate of Priority Crime Investigation
<b>FAFT</b>	Financial Action Task Force
<b>HRIU</b>	High Risk Intervention Unit
<b>ICT</b>	Information Communications Technology
<b>LBC</b>	Large Business Centre
<b>NDPP</b>	National Director Public Prosecutions
<b>NPA</b>	National Prosecuting Authority
<b>NPU</b>	National Project Unit
<b>NRG</b>	National Research Group
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>PEMTS</b>	Projects and Evidence Management and Technical Support
<b>PPLAAF</b>	Platform to Protect Whistleblowers in Africa
<b>SARS</b>	South African Revenue Service
<b>SASS</b>	South African Secret Service
<b>SCU</b>	Special Compliance Unit
<b>SIU</b>	Special Investigating Unit
<b>SOC ACE</b>	Serious and Organised Crime and Anti-Corruption Evidence
<b>TCE</b>	Tax Customs Enforcement Unit
<b>TIU</b>	Tactical Intervention Unit
<b>UNODC</b>	United Nations Office on Drugs and Crime

# Summary

State capture occurs when a small number of elites in the public and private sectors collude to modify rules, policies and legislation for their own benefit at the expense of the public interest. The term emerged in the 1990s to describe relations between the state and the private sector in Eastern European states that were transitioning away from communism. In South Africa, state capture became a prominent topic in the media in 2016 following widespread allegations that several state-owned enterprises and other agencies, including South African Airways, Electricity Supply Commission of South Africa (ESKOM), South African Broadcasting Corporation (SABC), Denel (arms manufacturer), South African Revenue Service (SARS) and the State Security Agency, were “captured” by individuals with close ties to the then president of South Africa, Jacob Zuma.

The literature on state capture tends to focus on the close relations and exchange of favours among key actors in the public and private sectors. It does not provide detailed accounts of how institutions are captured or the consequences of this for the functioning of the institution. In order to deepen the evidence on state capture, this study provides a detailed account of the impact of state capture on the capacity of one state agency, SARS. The research examines the capacity of SARS to detect, investigate and prevent tax and financial crime and how this changed as a result of state capture.

There were three key components of the so-called capture of SARS. (1) Infiltration of the organisation by new employees aligned to politicians associated with state capture. This included Tom Moyane, appointed by Zuma as the new Commissioner of SARS in 2014. (2) Allegations in the media which cast doubt on the integrity of the institution and its leaders. These included aspersions regarding an alleged ‘rogue unit’ in SARS which exceeded its legislative authority to investigate tax and financial crimes. These accusations undermined the integrity of some senior managers at SARS and enabled them to be suspended pending investigation. (3) Organisational change and staff purging that further weakened the institution. Moyane, with the help of the local office of the consulting firm Bain International, introduced a sweeping restructuring of SARS. During the restructuring process, key units that were responsible for detecting and investigating financial crimes pertaining to the illicit economy were disbanded. There were staff purges and an organisational climate of intimidation, which contributed to widespread resignations. Consequently, SARS lost much of its human capacity to detect and investigate tax and financial crimes. Likewise, information technology systems that were used to detect or investigate tax or financial crimes were dismantled or altered under the guise of improvement.

This study contributes to the literature on state capture by providing evidence of the detrimental impact of state capture on institutions and the public interest. It suggests that the lack of similar detailed case studies may lead to an underestimation of the negative impact of state capture for institutions in the public sphere. The study illuminates the unintended consequences of state capture on institutions. The integrity of SARS as the receiver of revenue has been tarnished; this is expected to lead to taxpayer apathy and a decline in direct and indirect tax revenue. This prediction does not bode well for national development which is a critical function of the South African state. The study suggests that state capture will undermine economic development in South Africa.

# 1. Introduction

From 2014 to 2016 the media in South Africa reported extensively about the close relations between the president, Jacob Zuma, and the Gupta brothers, who established themselves as business tycoons. As more evidence of the Gupta family's influence on the state emerged, the term 'state capture' became very prominent in media, policy and academic writing on governance, corruption and kleptocracy in South Africa. The evidence from investigative journalists and whistle blowers suggested that several state-owned enterprises and agencies were 'captured', meaning that these entities were infiltrated by supporters of Zuma and radically altered to serve the interests of particular individuals or firms, including the Gupta family and children of Zuma. An investigation by the Public Protector<sup>1</sup> yielded evidence to support many of these allegations, and further investigations by two judicial commissions of enquiry confirmed that state capture was prevalent in South African Airways, Electricity Supply Commission of South Africa (Eskom), South African Broadcasting Corporation (SABC), Denel (arms manufacturer), South African Revenue Service (SARS) and the State Security Agency.

This study focuses on the alleged state capture at SARS. For many years SARS was regarded as an exemplary government entity that was also praised by the Organisation of Economic Co-operation and Development (OECD). SARS played a critical role in detecting tax crimes, financial crimes and activity in the illicit economy. Although two judicial commissions of enquiry, chaired by justices Nugent and Zondo, found overwhelming evidence to support the state capture allegations and the detrimental impact that they had on the revenue service, they did not specifically focus on the role of SARS in the fight against organised crime. This study investigates the extent to which state capture influenced the capacity of SARS to detect and deter tax and financial crime. It argues that SARS lost much of its human and organisational capacity to investigate tax and financial crime and illicit economic activity because of the organisational restructuring and staff purges that occurred under the new commissioner appointed by Zuma. The study dispels the disinformation that was leaked to media to create doubt about the integrity of SARS and some of its senior managers and thereby justify the radical changes in the organisation that were later determined to be unnecessary and damaging by the Nugent Commission of Inquiry into Tax Administration and Governance by SARS in 2018 (also referred to in this paper as the Nugent Commission of Inquiry), and the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State in 2018 (also referred to in this paper as the Zondo Commission of Inquiry).

This introductory section explores the origins of the term state capture and explains how the term became popularised in South Africa to describe grand corruption and kleptocracy involving the former president, Jacob Zuma. The methodology of the study

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<sup>1</sup> The Public Protector is an ombudsman with a remit to protect public interest, established in Chapter 9 of the South African constitution.

is discussed in detail and two important judicial enquiries on state capture are described as they provide valuable evidence to back up the findings of this study.

## 1.1. The origins of state capture

The term ‘state capture’ emerged to describe close relations between political and new business elites in countries in Eastern Europe and Asia that transitioned from communism to free markets. The simultaneous political and economic reforms in these countries, which entailed new laws and regulations and accelerated privatisation of state-owned enterprises, created opportunities for illicit interactions between businesses and the state (Lodge, 2018). Hellman, Jones and Kaufman (2000) describe ‘state capture’ as: ‘shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and non-transparent private payments to public officials’ (p. 3). State capture includes several corrupt and illicit practices that are associated with other concepts, such as crony capitalism, clientelism, neopatrimonialism, patronage and machine politics<sup>2</sup> (Grzymala-Busse, 2008). However, the key distinct feature of state capture is collusion among a small group of actors in the public and private spheres to formulate or alter laws, rules and regulations to facilitate or legalise their corrupt acts (Innes, 2014; Jong-sung, 2021). Furthermore, state capture differs from influence and lobbying, both of which entail attempts by elites or special interest groups to shape or sway the direction of laws, rules and regulations, as there is an implicit understanding that influence and lobbying are more transparent than state capture (Hellman et al., 2000). More recent literature on state capture emphasises its close association with kleptocracy and the illicit removal of large sums of money from a country, which is anticipated to harm economic development (David-Barrett, unpublished).

State capture has become linked to failures of democratic consolidation in central and eastern Europe (Innes, 2014; Keil, 2018; Richter & Wunsch, 2019) and the resilience of close relations between the state and business elites in South Korea despite the widespread anti-corruption protests of the candlelight revolution in 2016-17 (Jong-sung, 2021). A common feature across this literature on state capture is the tendency to focus on close associations among prominent actors in the private sector with influential members of government departments, the executive, the legislature and the judiciary. These associations form the basis of an argument that a particular institution has been captured. The argument is further strengthened by evidence that the captured institutions delivered favourable outcomes or decisions for the private interest group that they became beholden to. For example, in the South Korean case, the key perpetrator and beneficiary of state capture is Samsung and the Lee family which own it. Members of the Lee family received presidential pardons and light sentences for various corruption-related offences (Jong-sung, 2021). The literature generally does not provide a detailed account of how an institution was captured or the impact thereof on the functioning of the institution. As such, the literature may underestimate the damaging

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<sup>2</sup> Crony capitalism occurs when success in the private sector hinges on connections with politicians; clientelism and neopatrimonialism occur when corrupt politicians misappropriate state resources and distribute them to their clients in return for political support. Machine politics and patronage occur when well-organised political parties create incentives for voters to continue to support them (Grzymala-Busse, 2008; van de Walle, 2007).



effect of state capture on institutions and the consequences of this for the public interest. For example, the extent to which Samsung and the Lee family have detrimentally affected the functioning of the state in South Korea is not known.

## 1.2. State capture in South Africa

State capture became a popular term in South Africa in 2016 when several media outlets used it to describe the close association between then president, Jacob Zuma,<sup>3</sup> and the wealthy Gupta family (Shai, 2017; February, 2019; PPLAAF, 2021). Zuma was previously prosecuted for corruption relating to an arms deal while he was deputy president serving under President Thabo Mbeki. However, his supporters insisted that the charges were politically motivated and pressurised the National Prosecution Authority to withdraw them. His relationship with the Guptas attracted considerable attention and reached a climax in December 2015 when Zuma dismissed the Minister of Finance, Nhlanhla Nene, who was replaced for four days by a little-known backbench member of parliament, Des van Rooyen (February, 2019; BBC, 2015). Widespread public outcry forced Zuma to replace van Rooyen with the well-respected Minister of Public Works, Pravin Gordhan. In addition, there was speculation that Nene was fired because he opposed a nuclear power deal with the Russian energy firm, Rosatom, from which the Guptas<sup>4</sup> were expected to benefit through the supply of uranium (Shai, 2017; Toyana, 2018; Corcoran, 2018). In 2016 the then Deputy Minister of Finance, Mcebisi Jonas, publicly admitted that the Gupta brothers had offered him the ministerial post before Nene was dismissed, with a large sum of cash and a promised payment of ZAR 600 million for his cooperation after he became the Minister (February, 2019; Smit 2019). Jonas declined the offer and in 2017 Zuma dismissed Jonas and Gordhan.<sup>5</sup> Despite these events and other evidence, supporters of Zuma responded to allegations that he was under the influence of the Guptas by using ‘state capture’ to describe an alleged close

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<sup>3</sup> Jacob Zuma was born in 1942 and was the son of a domestic worker and policeman. He joined the ANC at the age of 17 and worked his way up through the organisation’s hierarchy. Shortly after joining the ANC, he was arrested as part of a group of military recruits and spent ten years on Robben Island. He went into exile in 1975 and became the ANC’s chief representative in Mozambique and in 1987 became the organisation’s intelligence chief (The Conversation, 2021).<sup>3</sup> Following the unbanning of the ANC, he returned to South Africa in 1990 and after the country’s first democratic elections he was deployed to KwaZulu Natal and facilitated peace between the ANC and the Inkatha Freedom Party. In return for securing peace in the province, the ANC absorbed some of Inkatha’s most notorious killers into the party. During this period Zuma became Member of the Executive Committee (MEC) for Economic Affairs and Tourism.<sup>3</sup> Zuma’s rise in the ranks of the ANC reached its zenith when in 2007 he defeated then President Thabo Mbeki to become the President of the ANC and then President of South Africa in 2009 for the next nine years (The Conversation, 2021). Zuma established formal connections with the Guptas in 2008 when his son Duduzane was appointed as director of a Gupta-owned company. The connections between Gupta-owned companies, the Zuma family and President Zuma would go on to feature prominently in state capture and concerns about governance and the influence the Gupta family was having on the president (February, 2019).<sup>3</sup> The problematic close relationship between the Gupta family and President Zuma came to the fore in 2013 when it was alleged that Zuma had authorised the illegal landing of a private plane at a South African government military airforce base (Waterkloof) with Gupta family guests attending a lavish wedding at Sun City to which Zuma was invited.<sup>3</sup> This event caused a political scandal which the media covered extensively. This event was later the subject of the Zondo Commission of Inquiry.

<sup>4</sup> Tegeta (a company owned by the Guptas and Duduzane Zuma) purchased Optimum Coal Mine from Glencore and allegedly profited by selling coal to the Electricity Supply Commission of South Africa (ESKOM) at inflated prices.

<sup>5</sup> Between 2015 and 2017 Pravin Gordhan served a second term as Minister of Finance and was seen as an obstacle to President’s Zuma’s project of controlling state procurement to facilitate political patronage channels and rent-seeking activities. In a wide-ranging Cabinet reshuffle in 2017, President Zuma replaced Gordhan and his Deputy Mcebisi Jonas with loyalist Malusi Gigaba and with Deputy Sifiso Buthelezi.

relationship between the current president, Cyril Ramaphosa, and some prominent white businessmen. They maintain that Zuma is innocent and a victim of a political conspiracy (Du Toit, 2022).

Southall (2018) defines the constituent parts of state capture to help contextualise it in South Africa. These constituent parts are, firstly, corruption. Corruption entails actors influencing the actions of public officials to behave in a way that is not in the public interest. The second component of state capture comprises the activities of elites. In South Africa, elites comprise politicians in the governing party (the ANC) and those in the corporate sphere who are predominantly white business owners and senior managers in large companies. Kleptocracy is the third element of state capture 'Kleptocracy is where corruption is organised from the top of government. In the extreme form, a powerful head of government can organise the political system to maximise its rent extraction possibilities ("looting"). However, most kleptocrats are not all powerful.' (Southall, 2018, p. 35). Lodge (2018) believes that state capture entails a transfer of power from officials to non-state actors representing corporate interests. The corollary is also the case, where elected politicians or public officials behave in a manner characteristic of corporate actors and private sector operators who are entrepreneurially motivated.

State capture can be interwoven into broader political or ideological narratives. Bhorat et al. (2017) distinguishes between the constitutional and radical reformers within the governing party, the African National Congress (ANC). The constitutional reformers advocate for strong state capacity to pursue equality and development. In contrast, the radical reformers regard the subversion of constitutionally entrenched rules and institutions for the purposes of rent-seeking as the route to achieving radical economic transformation. Hence, state capture and the corruption it enables are defended under the guise of radical economic transformation.<sup>6</sup>

Proponents of radical economic transformation argue that state capture also existed under apartheid and that the only difference between contemporary state capture and the previous version was the racial identity of the beneficiary group (Lodge, 2018). However, there were some distinct differences according to Lodge (2018). Under apartheid, the state serviced the interests of white-owned corporate capital but also aimed to protect white workers in this process by, for example, investing in the iron and steel industrial sector. Another difference under apartheid was that private corporations influenced government through the political system rather than through direct access or cronyism. 'Monopoly capital did not need to create a shadow state of brokers and controllers. Nor were big business groups dependent on public contracting' (Lodge, 2018, p. 25). Chipkin (2020) argues that the separation of the administrative and political spheres that characterises democratic states was undermined in the Zuma presidency because the autonomy of the state administration was undermined. In his

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<sup>6</sup> The slow progress in transforming the South African economy and redressing the economic imbalances from apartheid between blacks and whites has resulted in louder calls for 'radical economic transformation' to fast-track reforms to the economy and support black businesses and wealth creation. The Broad Based Black Economic Empowerment Act passed in 2003 was passed to support black ownership of companies through for example preferential procurement policies for state contracts (Richards, 2020).

view, state institutions were repurposed not just for private gain, but also with a political motivation or ideology underpinned by 'elite populism' (Chipkin, 2020, p. 9). This term refers to where political elites in the ruling party and government, under the cover of acting in the interests of the less advantaged in society, deliberately undermine the rules and regulations underpinning government and the constitution, to benefit their own particular elite interests. Alence (2019) concurs and emphasises that state capture in South Africa was much more aggressive and corrosive, posing an existential threat to the country's democracy and economy: '[U]nder Zuma, powerful individuals systematically sought to undermine the institutions designed to keep such abuses in check. The assault on these institutions of political and legal accountability posed an existential threat to South Africa's democracy. It also inflicted substantial collateral damage on the country's fragile economy and society.' (Alence, 2019, p. 6). Furthermore, state capture under the Zuma presidency enabled international money laundering, as money was moved out of South Africa by syndicates based in Hong Kong, United Arab Emirates and other countries (Dassha, 2018), and interference with organs of the state that are responsible for deterring criminal activity such as the South African Revenue Service, the National Prosecuting Authority and the Directorate for Priority Crime Investigations (The Hawks). Hence, state capture can lead to fertile ground for criminal activity, including serious organised crime, to flourish.

As a result of the controversy surrounding state capture there were three rigorous investigations of state capture in South Africa. The formal public protector, advocate Thuli Madonsela, investigated the alleged infringement of the Executive Ethics Code by President Zuma with regard to the appointment of ministers. The Nugent Commission (24 May 2018) was established at the behest of the former Minister of Finance, Malusi Gigaba, because of domestic and international concerns that the integrity of SARS had been compromised. The Nugent Commission was primarily concerned with investigating governance failures at SARS. The Zondo Commission (9 January 2018) arose through a judgement from the Pretoria High Court that ordered former president Zuma to set up a judicial commission of enquiry to investigate the allegations of state capture in the Public Protector's report. Its primary aim was to establish if Zuma had violated the Executive Ethics Code and whether he or members of his cabinet had interfered with state-owned enterprises to secure preferential treatment for companies associated with the Gupta family (Judicial Commission of Inquiry into State Capture. Report, 2022). These investigations generated considerable evidence to support the allegations of state capture and highlight wrongdoing on the part of Zuma, individuals that he appointed to lead state entities, international consulting companies and others. However, they do not specifically examine the impact of state capture on the capacity to detect and investigate serious organised crime among state institutions that are mandated to do so.

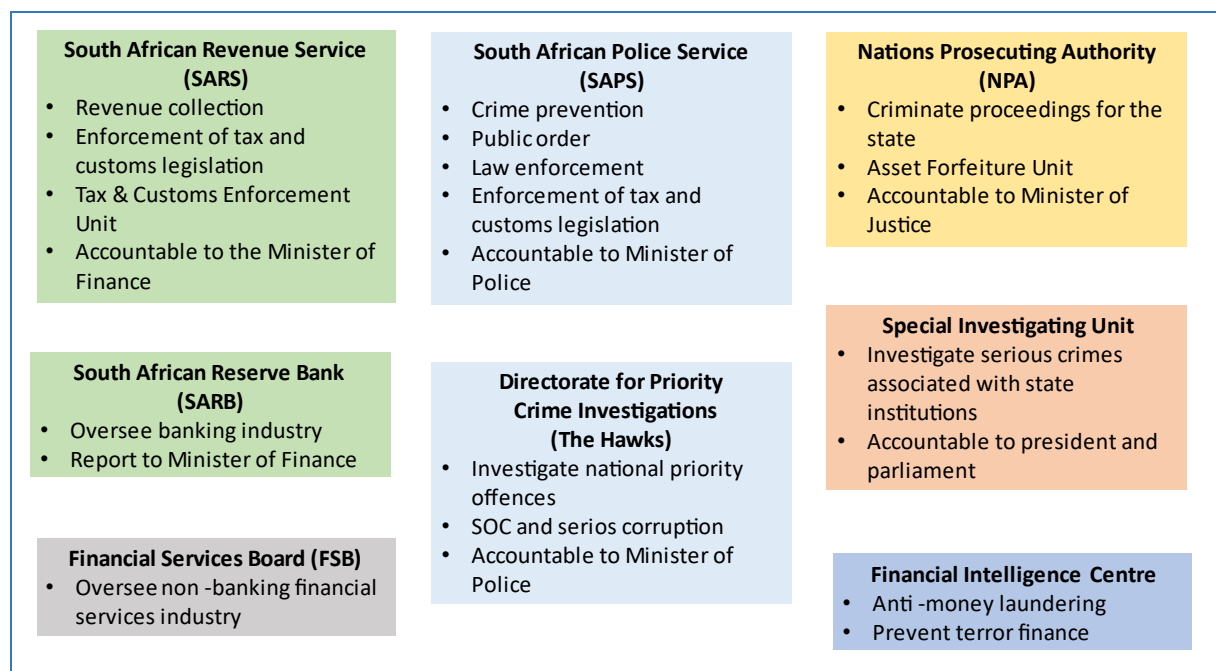
### 1.3. The study and methodology

This study examines the impact of state capture on the capacity to detect, investigate and prevent serious organised crime within one state institution, SARS, from 2009 to the present. By focusing on how one institution was infiltrated by people close to Zuma and radically transformed, this study provides a detailed account of how state capture occurs and its impact on the capacity and functioning of the institution. It provides

evidence of the detrimental impact of state capture on SARS and the interests of the South African public.

SARS and the National Treasury fall under the control of the Finance Ministry in the South African government. These two entities comprise the foundation of the financial cluster within the state administration. Whereas the National Treasury manages economic policy, SARS plays a critical role in ensuring revenues are collected to enable the state to provide services to the whole population and to address the socio-economic imbalances caused by apartheid – a system that made South Africa one of the most unequal societies in the world. The importance of SARS in contributing to the stability of the country cannot be underestimated. SARS must maintain its integrity; its effectiveness as an oversight institution; and trust with the general public; and ensure it has robust tax compliance (including customs and excise compliance) and corruption fighting capacity. In addition to the pivotal role that SARS plays in supporting national development as the receiver of revenue, it plays a significant role in detecting large-scale financial crimes involving organised syndicates. Figure 1 depicts the government departments in South Africa that are involved in investigating tax or financial crimes. Under the Tax Administration Act, SARS was allowed to collaborate with other government departments that investigate financial crimes. Under the legislation, SARS is able to disclose information to other financial regulatory agencies such as the Financial Service Board (FSB), Financial Intelligence Centre (FIC), South African Reserve Bank (SARB) and the National Credit Regulator if the information is not available elsewhere.

**Figure 1: Agencies involved in investigating tax and financial crimes in South Africa**



Adapted from OECD, 2017b

An inductive, bottom-up research approach was initiated through a review of the literature on SARS, state capture and organised crime in South Africa. As well as looking at academic research, the literature review also combined material from grey literature, investigative journalism reporting and evidence from the Nugent and Zondo

Commissions, which were based on the examination of large volumes of documents and emails as well as witness testimony.

This phase of the research enabled key themes and objectives of the study to be understood better. It also facilitated the development of a set of sub-questions under each broad thematic area, which were tailored for the purpose of interviews with key experts in organised crime and corruption and respondents who had first-hand, institutional knowledge of SARS and other crime fighting agencies in South Africa. The literature review was also used to identify an initial list of respondents to interview for the empirical phase of the study. Based on this initial list of respondents, snowballing was utilised to identify other respondents for in-depth interviews. Respondents included former and current employees of SARS and officials within government agencies such as the National Prosecuting Authority, as well as outside experts including political analysts, and experts in crime, corruption and policing. Interviews were conducted with former and current officials in state agencies, such as SARS, the National Prosecuting Authority (NPA), the South African Police Service (SAPS), civil society organisations, academics and the United Nations Office for Drugs and Crime (UNODC).

The interviews took place from January to March 2021 and overlapped with the release of the first chapter of the Zondo Commission report. We had a significantly better response from key informants than had been anticipated. However, some respondents asked for a very high level of anonymity, and we were not given permission to reveal their names or even their current or former employment positions. The names of respondents are mentioned in the paper only in cases where we have consent to do this. In addition, a quantitative analysis of tax revenue data (which is adjusted for inflation) was undertaken to determine if tax revenue declined during or following the organisational changes that occurred during the state capture period at SARS.

The interviews provided rich data relating to the role SARS plays in detecting and investigating organised crime and how this changed under the Zuma presidency. To verify information collected from the literature search and personal interviews, these data sources were triangulated with the findings of two independent public commissions instituted by the South African government at the beginning of the Ramaphosa presidency. These commissions were chaired by retired and serving members of the judiciary, and were:

### **The Nugent Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service (2018)**

The Nugent Commission investigated a number of areas, including: tax administrative processes and whether there were violations of the laws leading to the unfair benefiting of politically connected persons and persons; adherence to customs and excise



provisions, with specific reference to the tobacco industry; and the impact of any change in the operating model of SARS on the effectiveness of SARS functioning.<sup>7</sup>

### **The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (2018)**

The Zondo Commission of Inquiry<sup>8</sup> had a much wider scope than the Nugent Commission of Inquiry. The Zondo Commission investigated state capture across a number of public entities, in contrast to the Nugent Commission of Inquiry which focused on irregularities at SARS. The Zondo Commission included SARS within its purview<sup>9</sup> (2018).

## **1.4. Structure of the paper**

The paper begins by summarising the evolution of SARS from its fragmented past in the apartheid years through to the period when it underwent a modernisation programme from the mid-2000s. This section leads to a contextualisation of revenue collection agencies globally and the role they play in combating SOC through a coordinated and cross-government approach to financial crime.

The paper then provides an account of the way SARS was reformed to improve its effectiveness as a tax collection agency in the 2000s, and following this period, the period when it was 'captured' from 2014 onwards, leading to its weakening and the undermining of its ability to investigate SOC.

The impact on tax collection, during key inflection points in the institution's evolution, is then the focus of the paper. This covers a comparison of SARS' ability to collect revenue in its 'modernisation' phase (2007-14) with its 'state capture' phase (2014-17).

Following this discussion, the paper focuses on the way in which SARS has recovered from state capture. Recommendations are then provided on what can be done to prevent SARS from falling victim to state capture and political interference again. Conclusions are then drawn on the key findings from this research.

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<sup>7</sup> The Presidency. (2018, May 28). *President Ramaphosa establishes commission of inquiry into tax administration and governance of SARS*. [Press release]. <http://www.thepresidency.gov.za/press-statements/president-ramaphosa-establishes-commission-inquiry-tax-administration-and>

<sup>8</sup> Republic of South Africa. (2018, February 9). Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. *Government Gazette*. Vol.632. [https://www.sastatecapture.org.za/uploads/GOVERNMENT\\_GAZETTE\\_Vol\\_632.pdf](https://www.sastatecapture.org.za/uploads/GOVERNMENT_GAZETTE_Vol_632.pdf)

<sup>9</sup> Judicial Commission of Inquiry into State Capture Report (2022). Part 1, Vol. 3: South African Revenue Services and Public Procurement in South Africa.

## 2. SARS and serious organised crime

This section of the paper provides a brief overview of the history and functions of SARS and the role that it plays in detecting and deterring financial crimes, tax crimes and organised crime related to illicit trading. In addition, this section discusses the restructuring that took place at SARS and the detrimental impact that this had on its functioning and capacity.

### 2.1. Formation and function of SARS

The South African Revenue Service (SARS) is South Africa's tax collection authority and is a key state institution established under the South African Revenue Act 34 of 1997. SARS was set up as an autonomous agency responsible for administering the South African income tax and customs regime. The importance of SARS in contributing to the stability of the country cannot be underestimated. SARS plays a critical role in ensuring revenues are collected to enable the state to provide services to the whole population and to address the socio-economic imbalances caused by apartheid – a system that made South Africa one of the most unequal societies in the world. To achieve this, SARS must maintain its integrity and trust with the general public and ensure it has effective tax compliance (including customs and excise compliance) and corruption-fighting capacity.

In the early years following the institution's formation, its challenge was to merge the old inland revenue and customs and excise departments, including within former homelands,<sup>10</sup> into one revenue agency, and ensure tax compliance for the country as a whole. SARS' mandate includes protecting of the country's borders from illicit trade, and at the same time, facilitating ease of trade (SARS, 2013). After 1994, government departments were beset with difficulties emanating from the political transformation in 1994, especially the new ANC government's policies of cadre deployment and affirmative action. Government departments that were previously run almost exclusively by white South African civil servants had to incorporate non-white staff members from historically disadvantaged communities, some of whom had close links to the anti-apartheid struggle. Like many other revenue services in the world, SARS had greater autonomy than other government departments and this appears to have enabled SARS manage the transition better than other state departments. Under the leadership of its Commissioner, Pravin Gordhan, SARS had an ethos of a 'higher purpose' and 'doing the right thing' and was thus able to build commitment to the goal of achieving fair taxation among its diverse workforce (Groenink, 2020).

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<sup>10</sup> The Bantustan or homeland policy was enacted by the National Party as a measure to institutionalise the apartheid system. The homeland system was implemented to remove black people from white areas. Ten homelands were established between the 1950s and the 1990s. Each of these accommodated different ethnic groups within the black population (Kwenda, Ntuli & Mudiriza, 2020).

SARS has evolved since 1999 to become one of the leading revenue authorities around the world, lauded for excellence in service and for improving tax compliance from 2.6 million to 4.1 million tax-payers between 1998 and 2009 (Hausman, 2010). Between 2000 and 2006, the institution focused on becoming a more efficient agency through streamlining its processes and expanding its structure to cope with an expanding tax base (SARS, 2013). In the SARS Modernisation Phase (2007-14), the institution aimed to sustain its momentum from the previous phases and also to build more human resource capacity to improve efficiency and services to taxpayers and introduce new ways of doing things through automation.

The next section highlights the role of revenue agencies around the world in combating financial crimes and the way agencies should link up with other organs of state to provide a comprehensive approach to fighting crime.

## 2.2. Revenue agencies and SOC

The OECD has taken the lead in terms of developing policies for curbing financial crimes such as tax evasion, money laundering, and terrorist financing (OECD, 2012). The Oslo Dialogue held in March 2011 was the first OECD-sponsored event aimed at fostering an international dialogue with regard to financial crime. Since then, the OECD has regularly published a series of papers titled 'Improving Cooperation between Tax Authorities and Anticorruption Authorities in Combating Tax Crime and Corruption'. The OECD states that corruption is often linked<sup>11</sup> to serious financial crimes and therefore it argues for 'a holistic approach that integrates a range of law enforcement efforts to prevent, detect, investigate and prosecute financial and economic crimes associated with corrupt acts' (OECD, 2018). Similarly, South African crime experts concur that tax crimes are linked with illicit trades (Professor de Koker, personal communication, 15 February 2022; Professor Sven, personal communication, 14 February 2022). At the Oslo Dialogue the G20 leaders encouraged all jurisdictions to meet international standards with regard to taxation and anti-money laundering policies and to 'work closely together to enhance transparency and facilitate cooperation between tax and law enforcement agencies in the implementation of the standards' (OECD, 2012, p. 8).

Such envisaged collaboration is part of the 'whole of government' or 'joined up government' approaches to governance, which aim to overcome boundary problems that may exist between different parts of government in order to improve access to services or efficiency and avoid duplication. The sharing of information among different branches of government is a key component of the 'whole of government' approach (OECD, 2017a; Maxwell and Artindtall, 2017). Under the 'whole of government' approach, revenue authorities play a critical role in monitoring tax evasion as well as identifying and reporting suspected serious crimes such as bribery, corruption, money laundering and terrorism financing (OECD, 2015). In the context of serious organised crime, such information sharing helps to reduce fraud by enabling cross-checking across different departments of the government. In addition, international cooperation across

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<sup>11</sup> A World Bank study of 25,000 firms in 57 countries found firms that pay more bribes also evade more tax (OECD, 2018).



tax agencies and other government departments is needed to curb serious organised crime and illicit economic activity. The Multilateral Convention on Mutual Assistance in Tax Matters and the Global Forum on Transparency and Exchange for Information and Tax Purposes are conduits for facilitating such cooperation (OECD, 2017b).

The call for a comprehensive cross-governmental approach for tackling financial crime has grown stronger. The OECD argues that a coordinated response from a range of government agencies including anti-corruption agencies, anti-money laundering authorities, financial intelligence units, tax authorities, customs authorities, financial regulators, police forces and prosecutors is necessary to address financial crimes. The OECD has joined the World Bank to share their experiences of working with governments and agencies across the world with regard to deterring financial crime. Tax authorities are critical in the fight against corruption and associated crimes. The OECD and World Bank would like to see more inter-agency collaboration between tax authorities and law enforcement authorities across jurisdictions.

#### The 'whole of government' approach to financial crime in Brazil

A positive example of such collaboration is the investigation into the mostly state-owned Brazilian oil company Petrobras. Auditors from the tax authority played a critical role in the transnational corruption investigation by analysing tax and customs data which was shared with the police force and the public prosecutor in line with legislation that permitted such cooperation. The joint investigation found evidence of money laundering, tax evasion and hidden assets. Consequently, several high-profile public officials and politicians have been charged or issued with fines and tax penalties (OECD, 2012).

SARS plays a critical but restricted role in detecting and investigating serious organised crime. The South African Police Service (SAPS) is only able to obtain information from SARS that is relevant to non-tax investigations or to prevent serious organised crime. Likewise, SARS should share information with the SAPS if it finds evidence that a non-tax offence may have been committed or if a court orders it to disclose information to the SAPS. SARS is required to disclose certain types of information to the Financial Intelligence Centre (FIC). Law enforcement agencies are required to report suspected tax evasion to SARS, but SARS has the discretion to decide whether or not criminal charges are laid (OECD, 2017b). For cases of tax evasion, SARS favours settlement over prosecution which was a last resort (Groenink, 2020).

Interviews with Johan van Loggerrenburg (a former longstanding senior manager at SARS who has deeply insightful knowledge of the organisation) and Respondent C (an experienced criminal investigator) revealed that due to changes in SAPS after 1994 and the disbanding of the policing unit known as The Scorpions,<sup>12</sup> agencies in the criminal justice sector lost much of their financial crime investigation capacity (Respondent C, crime specialist, personal communication, 17 March 2022). Consequently, SARS had

<sup>12</sup> The Scorpions were disbanded in 2008 by the National Assembly. This was the result of allegations that the unit was being misused to investigate enemies of former President Mbeki and in particular Zuma.

superior skills with respect to investigating crime compared with other law enforcement agencies (van Loggerenburg, personal communication, 17 January 2022). Hence, these agencies occasionally collaborated with SARS staff. In such cases, SARS officials would participate in joint investigations but only utilise their financial skills and not utilise their powers under the tax acts. Moreover, such collaboration occurred mainly when SARS was involved in criminal investigations (Respondent A, former SARS employee, personal communication, 8 February, 2022). To avoid compromising confidential taxpayer information, SARS was more likely to run parallel investigations with other agencies involved in financial crime, rather than participate in joint investigations or task forces (OECD, 2017b).

Interviews with people who were familiar with the operating procedures in SARS revealed that investigations focused mainly on illicit economies where individuals worked together in syndicates such as the illegal cigarette trade, rhino horn poaching, counterfeit goods, the second-hand gold industry and illicit importing of textiles (Respondent C, crime specialist, personal communication, 17 March 2022). The key units in SARS that were involved with investigations relating to the illicit economy were Tax Customs and Enforcement (TCE). If TCE was investigating a serious crime the case was treated as a project and SARS adopted a multidisciplinary approach. This meant that specialists in various business units at SARS would work on the investigation, thereby bringing together a range of expertise and investigative skills (Respondent C, crime specialist, personal communication, 17 March 2022). Moreover, according to Respondent A (a former manager at SARS) SARS also detects and investigates tax and financial crimes associated with public sector procurement tenders (Respondent A, former SARS employee, personal communication, 8 February 2022). These investigations relating to illicit economies and irregular government procurement tenders created enmity between SARS and some prominent individuals.

The capacity and effectiveness of SARS over the past three decades has been influenced by changes in political leadership in South Africa. The next section of the paper highlights the key events that led to the decline of SARS.

## 2.3. Capacity and effectiveness of SARS 1994-2013

When Pravin Gordhan was appointed as Commissioner of SARS in 1999, the institution faced a crisis of credibility, with only 2.6 million out of 43 million citizens paying taxes (Hausman, 2010). Although the country's tax base was already narrow, tax evasion was diminishing the state revenues further and compounding the low tax base problem (Hausman, 2010). SARS' internal operations had to be reformed to convince South Africans that it was a credible state agency, able to collect revenue efficiently and fairly; and to persuade citizens of their obligations to help the state provide the services they benefited from.

Gordhan developed a human resources plan to reform SARS internally with the aim of making the institution a more efficient and credible tax collection agency. This plan entailed racial transformation, the recruitment of new managers and the development of a new service ethic (Hausman, 2010). In addition to internal organisational reforms, a more aggressive tax collection and enforcement programme was implemented. SARS

benefited from strong support from the Minister of Finance, Trevor Manuel. In 2007 Gordhan established the National Research Group (NRG)<sup>13</sup> to ensure taxpayers complied with tax laws, and to combat tax evasion and drug trafficking involving organised crime (Pather, 2016). Gordhan wanted to improve the capacity of SARS to gather intelligence and investigate organised crime relating to tax and customs legislation, including cigarette smuggling. As a result of institutional reforms at SARS, between the period 1998 and 2009, SARS developed a reputation of being a highly efficient revenue service and achieving major successes in tax compliance and in generating additional revenue for growing the welfare state in South Africa (Bhorat et al., 2017).

## 2.4. The restructuring of SARS

When Jacob Zuma became President of the Republic in 2009, he moved Pravin Gordhan to the Minister of Finance position and George Magashule became the new SARS commissioner (PPLAAF, 2021). There was some organisational turbulence experienced in SARS over this period when Magashule resigned and Ivan Pillay was appointed as acting commissioner and then subsequently was suspended in 2015 due to allegations about the development of an internal 'rogue unit' to spy on President Zuma (see section below).

In September 2014 President Zuma appointed Tom Moyane as the new SARS Commissioner. Moyane, in an affidavit to the Zondo Commission, indicated that in the early part of 2013 President Zuma informed him in strict confidence that he was to be appointed as the new SARS Commissioner in the second half of 2013 (Judicial Commission of Inquiry into State Capture Report, 2022, p. 661). Moyane's appointment overrode the regulations specified in the South African Revenue Act (1997) mainly because it bypassed the need for approval by the then Finance Minister Nhlanhla Nene and the Cabinet. Moreover, the Nugent Commission of Inquiry and various other sources ascertained that Moyane had conversations with the president since 2013 to discuss the restructuring of the Commission of Inquiry into Tax Administration and Governance by SARS, 2018; PPLAAF, 2021; Williams, 2021).

Shortly after Moyane became Commissioner of SARS, he appointed an international management company (Bain and Company)<sup>14</sup> to review the SARS operating model. The Nugent Commission found that Bain's involvement with Moyane and SARS was done primarily through its local CEO Vittorio Massone who had several meetings with then President Zuma which were facilitated by Sipho Maseko, and Duma Ndlovu from a company called Ambrorite (Commission of Inquiry into Tax Administration and Governance by SARS, 2018). Furthermore, Athol Williams, who was later employed by Bain to conduct an internal investigation into their relationship with SARS and who subsequently became a whistleblower and fled from South Africa because Bain allegedly tried to suppress his findings, confirmed that Massone met Zuma several times in order

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<sup>13</sup> This later became known as the Special Operations Unit and subsequently the High Risk Intervention Unit (HRIU) (Nugent Commission of Enquiry, 2018, p 76).

<sup>14</sup> Bain and Company Incorporated is a global management consulting company based in the USA (PPLAAF, 2021).

to get access to business in the public sector (Williams, A., personal communication, 9 February 2022).<sup>15</sup>

Bain reportedly had no obvious experience in working with tax agencies for organisational change purposes (PPLAAF, 2021). The Nugent Commission notes that even before Bain was appointed by Moyane, the company had already developed a series of documents, including plans to restructure government agencies and State-Owned Enterprises. This work occurred between 2012 and 2015. These documents were developed after meetings with President Zuma over this two-year period (Judicial Commission of Inquiry into State Capture Report, 2022).

Bain produced a diagnostic evaluation report for the restructuring of SARS. However, Bain's scope was not limited just to SARS and the documents they produced incorporated proposals for the reshaping of the South African economy through making changes to key organisations and sectors (Judicial Commission of Inquiry into State Capture Report, 2022). At the same time as appointing Bain, Moyane, through suspension or natural attrition, eliminated most of the SARS senior management team (the Chief Officers)<sup>16</sup> comprising members of the SARS Executive Committee, who report directly to the Commissioner. By 2017 the Executive Committee was denuded of most of its experience and expertise (Commission of Inquiry into Tax Administration and Governance by SARS, 2018). The Executive Committee was restocked with Moyane loyalists such as Jonas Makwakwa, who was installed as the Chief Operations Officer in 2014. Makwakwa served as Deputy to Moyane and had allegedly been sharing data and confidential records of SARS and its operations with Moyane and Bain before Moyane was appointed as Commissioner (Judicial Commission of Inquiry into State Capture Report, 2022).

According to the Nugent Commission, dissenting voices were marginalised or bullied and a culture of silence soon pervaded the organisation (Commission of Inquiry into Tax Administration and Governance by SARS, 2018). This finding was confirmed by interviews with former staff members from SARS. Initially, SARS staff members struggled to understand what was happening. However, some staff members believed that the organisation had been infiltrated by Zuma loyalists with links to the State Security Agency (Respondent A, former SARS employee, personal communication, 8 February 2022). Other former staff members stated that they only 'joined the dots' after the allegations of state capture appeared in the media around 2016 (Respondent B, former SARS employee, personal communication, 16 February 2022).

Moyane was accountable to the Minister of Finance during his tenure as Commissioner. This ministerial post was held first by Nthanhla Nene and then Pravin Gordhan. The latter attempted to rein in Moyane by reminding him that he was breaking rules. However, Moyane responded by telling Gordhan that he was appointed by the President

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<sup>15</sup> It is further alleged that Massone facilitated meetings between high-ranking officials in the SAPS, Italian police and the arms manufacturer Beretta (Williams, A., personal communication, 9 February 2022).

<sup>16</sup> The following members of the Executive Committee were removed: Chief Officer Operations; Chief Officer, Legal and Policy; Chief Officer, Tax and Customs Investigations; Chief Officer, Human Relations; Chief Officer, Finance; Chief Officer Strategy and Enablement Communications (Nugent Commission of Inquiry, 2018).

and that he would take the matter to Zuma (Commission of Inquiry into Tax Administration and Governance by SARS, 2018).

#### **2.4.1. The 'rogue unit' allegations**

According to the Nugent Commission of Inquiry, Moyane justified his decision to suspend and investigate senior managers on the basis of a news article in the *Sunday Times* that there was a 'rogue unit' inside SARS carrying out illegal surveillance through installation of listening devices in the home of former President Zuma (Nugent Commission of Inquiry, 2018, p. 75). The *Sunday Times* later retracted these stories and apologised. Furthermore, in 2015 the Press Ombudsman instructed the newspaper to retract the 'rogue unit' stories (Groenink, 2020, p. 334).

The 'rogue unit' allegations were critical for undermining the integrity of SARS and the senior managers in the organisation who could have challenged the restructuring. These managers were bogged down in clearing their names via internal investigations, an independent commission of enquiry and criminal investigations, and were therefore not in a position to challenge Moyane and prevent the radical restructuring of SARS. The 'rogue unit' allegations in the press became the reason for the suspension of senior management and the closing down of the NRG. The Nugent Commission of Inquiry was of the view that there was no reason to close the unit down. The Nugent Commission found that the SARS Commissioner had acted irrationally by suspending Executive Committee members at SARS (the executive management team) and denouncing the members who served on it. This senior management team would have been in the best position to guide and advise the Commissioner as he assumed the leadership of SARS. Despite the findings of the Nugent and Zondo Commissions of Inquiry, Jonas Makwakwa, a former senior manager at SARS who was close to Moyane insists that some officials in SARS exceeded their legal mandate in terms of conducting surveillance and intelligence gathering (Makwakwa, personal communication, 18 February 2022). The views of Makwakwa are mentioned because they help to explain why state capture continues to be a contentious issue in South Africa despite the evidence yielded by two judicial commissions of inquiry that entailed detailed testimony from several key witnesses and extensive analysis of documents, reports, emails and text messages.

According to the investigative journalist Evelyn Groenink (2020) there were three key phases in the demise of SARS: (1) infiltration of the organisation by new employees who set out to weaken or manipulate the institution to serve the interests of the captured politicians, (2) allegations in the media which cast doubt on the integrity of the institution and its leaders (especially if they were hostile to the interests of the capturers) and (3) organisational change and staff purges that weaken the institution. Groenink (2020) points out that this pattern of capture was repeated across a number of institutions in the criminal justice cluster such as the National Prosecuting Authority and Directorate of Priority Crime Investigation.<sup>17</sup>

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<sup>17</sup> The head of the Directorate of Priority Crime Investigation, Anwa Dramat, was ousted following allegations similar to those concerning the so-called 'rogue unit' which he denied. See: Thamm, M. (2019, April 13) 'Anwa Dramat will be remembered for being on the right side of history'. <https://www.dailymaverick.co.za/article/2019-04-13-anwa-dramat-will-be-remembered-for-being-on-the-right-side-of-history/>



Groenink's description of the processes of weakening state institutions and state capture is supported by the evidence submitted to the Zondo Commission of Inquiry.<sup>18</sup>

### Purges at other institutions

To speed up high priority investigations, an Anti-Corruption Task Team (ACTT) was established in 2010. This was a multidisciplinary team comprising representatives from the Directorate of Priority Crime Investigation (DPCI),<sup>19</sup> the South African Revenue Service (SARS), the Special Investigations Unit (SIU), the National Prosecuting Authority (NPA), the Asset Forfeiture Unit (AFU) and the Commercial Branch of SAPS. In 2015, after the high-level purges of two of the heads of this unit, Anwar Dramat (Head of the Hawks) and Clifford Collings<sup>20</sup> (Head of the SARS Anti-Corruption Unit), it was claimed that the ACTT was no longer fully functional (BusinessTech, 2015).

#### 2.4.2. *The role of multinational corporations in the demise of SARS*

The Nugent Commission of Inquiry found that multinational companies, such as Bain and KPMG, were complicit and worked with state actors to undermine SARS. They were motivated by profit and received large consulting fees. These organisations have since returned the consulting fees they earned from SARS. Bain has placed the blame on Massone contending that they were largely unaware of his actions and associations with Zuma and Moyane. The Nugent Commission of Inquiry noted that it was not satisfied with this response. Moreover, Athol Williams, who was hired by Bain to conduct an independent investigation of their involvement with SARS, stated that he became a whistleblower because Bain attempted to obstruct his investigation and deliberately withheld evidence of its dealings with SARS and Moyane (Williams, personal communication, 9 February 2022). Furthermore, he claimed that the senior management of Bain in the United States and United Kingdom were aware of Massone's activities but did nothing to stop them (Williams, personal communication, 9 February 2022). Williams, who fled from South Africa, laments the fact that the public sector in South Africa has become dependent on consultants to do basic administrative and management tasks because civil servants lack the skills to do this work. He is critical of recruitment practices in the public sector, such as cadre deployment, which he contends contributes to the influence that multinational consulting firms have in the public sector.

KPMG was asked to independently investigate the 'rogue unit' allegations as well as claims that SARS had leaked taxpayer information. The KPMG report reached the conclusion that there was substance to these allegations and this led to The Hawks filing criminal charges against Gordhan (Hosken, 2017) and other senior SARS officials associated with the so-called 'rogue unit'. KPMG later admitted that they had copied and pasted findings written by lawyers hired by Moyane into their report (Groenink, 2020). KPMG withdrew its report and apologised to Gordhan, but according to a former SARS

<sup>18</sup> See Judicial Commission of Inquiry into State Capture Report, Part I, January 2022 and Part V, June 2022.

<sup>19</sup> The Hawks.

<sup>20</sup> Collins was purged from SARS together with other executives from the agency, including Ivan Pillay, Peter Richer and Johan van Loggerenberg.

staff member it has not taken action to clear the names of other SARS staff members who were implicated in its report (Respondent B, former staff member at SARS, personal communication, 16 February 2022). Like Bain, KPMG blames their failure on an individual staff member, who is now deceased.

Bain repaid ZAR 216 million and KPMG paid back ZAR 23 million (Judicial Commission of Inquiry into State Capture Report, 2022). However, Judge Nugent noted that this was an inadequate response given the scale of the damage that was done to SARS in terms of its operating capacity and reputation (Commission of Inquiry into Tax Administration and Governance by SARS, 2018).

### Underworld connections and problems with SARS

Investigative journalists claimed that several persons connected with the illegal cigarette trade or other illicit trades had a vested interest in undermining SARS. (Groenink, 2020, p. 298). Zuma allegedly had meetings with well-known crime kingpins from Cape Town (Joubert, 2014; Amabugane, 2015). SARS had previously confiscated the assets of some of these individuals in lieu of unpaid taxes. The former Minister of Finance, Pravin Gordhan, stated that breaking up the SARS units investigating cigarette smuggling and illicit economies was a key motive of state capture when he gave evidence to the Zondo Commission (Judicial Commission of Inquiry into State Capture Report, 2022, p. 705).

There were allegations in the media that companies owned by Zuma's associates, the infamous Gupta brothers, received VAT refunds that they were not entitled to from SARS. However, the Nugent Commission of Inquiry stated that it was unable to find evidence to corroborate this allegation. The commission noted, however, that these repayments were made into the bank accounts of the lawyers of the Guptas, which contravened SARS rules and policies.

## 2.5. Impact of restructuring on SARS' capacity to investigate SOC

The previous section investigated the way SARS was weakened through key leadership changes. A description of the way organisational changes at SARS negatively affected its ability to investigate Serious and Organised Crime (SOC) now ensues.

Before Moyane's appointment as SARS Commissioner, the SARS operating model was based on three pillars: service, education and enforcement (PPLAAF, 2021). The connective tissue supporting these principles was a programme for developing the use of information technology and an electronic filing system. With respect to SARS' ability to counter organised crime, Information Communications Technology (ICT) is of increasing importance because organised crime is transnational and ICT is used to commit crimes (Gastrow, 2013). Vaithilingham, Nair and Thiyagarajan (2015) highlight that it is the combination of ICT, a highly skilled workforce and an efficient tax system that are vital to fighting international criminal networks. Before the arrival of Moyane, SARS had almost a decade-long modernisation programme in place (South African Revenue Service Strategic Plan, 2013). This comprised the upgrading of the digitisation of work processes and systems at SARS and improvement in its ability to collect and

analyse data to understand taxpayer behaviour. The creation of a Large Business Centre designed as a 'one-stop-shop' to service corporate taxpayers (corporate taxpayers comprise 30% of SARS revenue) was another component of the modernisation programme. SARS also had measures in place to counter illicit trades that subvert the state's ability to collect billions of Rands in revenue (Nugent Commission of Inquiry, 2018). When Moyane became Commissioner of SARS he immediately began to overhaul this successful operating model. By 2017, SARS was experiencing a revenue shortfall of some ZAR 50 billion (PPLAAF, 2021).

### **2.5.1. Staff losses and capacity problems**

Besides the replacement of the executive management structure at SARS, it also suffered crippling human resource losses at the operational level, after 2014. These included the departure of approximately 100 investigators, 300 specialists in compliance audits, 250 professionals in debt management, 60 employees in trade administration and 113 people from the dismantled Large Business Centre. The future performance of SARS and its ability to meet revenue targets will depend on how well SARS can find and train individuals to replace those who were lost during the restructuring (Troost, 2019). In particular, the skills required for investigating financial crimes are highly specialised and difficult to replace. According to a seasoned financial crime investigator: '[T]hose are scarce skills for investigating financial crime, money laundering and organised crime. These schemes generate money and you need people with lots of experience and skills to detect them. SARS cannot replace the experience that was lost' (Respondent C, crime specialist, personal communication, 17 March 2022).

### **2.5.2. Organisational restructuring**

The Nugent Commission highlighted the devastating impact of implementation of the Bain diagnostic evaluation recommendations (Commission of Inquiry into Tax Administration and Governance by SARS, 2018, p. 51). At the time the recommendations were euphemistically called 'a new operating model', implying that the changes only entailed the implementation of a new operations strategy rather than changes to the organisational structure. The implementation of the new 'operating model' negatively affected the efficiency and governance of SARS.

After the organisation's restructuring, all taxpayer matters were consolidated into one division known as the Business and Individual Tax (BAIT) Unit managed by Jonas Makwakwa. There was reduced customs oversight so that inspection processes were slower, lasting up to 23 days, and this resulted in a large decline in customs revenue collection (Judicial Commission of Inquiry into State Capture. Report, 2022). The Tax Customs Enforcement Unit (TCE) unit, which collaborated with SAPS and The Hawks with respect to financial crimes involving syndicates, was disbanded.

TCE was disbanded because they were effective and they interrupted organised crime. They had good relationships with other agencies. SARS has a limited mandate to investigate crimes but it can pass leads to other agencies and this is done legally. The financial trail can make the connection. However, under the restructuring all communication with the Financial Intelligence Unit was cut off. It became impossible to contact an external law



enforcement agency. (Respondent C, crime specialist, personal communication, 17 March 2022)

The Compliance Division and the compliance research unit were disbanded, resulting in the weakening of enforcement capabilities in the newly-created Businesses and Individual Tax payers (BAIT) division. The Compliance Division had enabled the development of strategies to target non-compliance of BAIT. This is a vital function to ensure that SARS is able to collect tax revenue (Commission of Inquiry into Tax Administration and Governance by SARS, 2018). The restructuring of the Legal Unit (including the High Court Litigation Unit) also reduced SARS' capacity to recover revenues. These units worked closely with the Large Business Centre (LBC) and Enforcement Units. The High Court Litigation Unit functioned centrally and had a presence in the key metropolitan centres, allowing the cutting of red tape and the approval of litigation to take between 24 and 48 hours. With the fragmenting of this unit into discrete regional structures and the failure to establish reporting lines, approvals for litigation could be delayed by months (Commission of Inquiry into Tax Administration and Governance by SARS, 2018).

Another critical division in SARS that was restructured and weakened was its Enforcement Unit (Judicial Commission of Inquiry into State Capture Report 2022). In 2000, as part of the SARS modernisation programme, a SARS Special Compliance Unit (SCU) was established and this unit was able to assist law enforcement agencies in controlling organised crime from a revenue and customs perspective (Judicial Commission of Inquiry into State Capture Report, 2022). This unit worked closely with the National Prosecuting Authority (NPA), the National Intelligence Agency (NIA), the South African Secret Service (SASS), the Marine Coastal Management Asset Forfeiture Unit and Metro Police Departments (Judicial Commission of Inquiry into State Capture Report, 2022). By 2010, there were five sub-units dealing with enforcement and monitoring illicit activities to ensure that revenue was collected and that persons who were not complying with the law were apprehended and prosecuted (Judicial Commission of Inquiry into State Capture Report, 2022).

A division called Projects and Evidence Management and Technical Support (PEMTS) was also dismantled. PEMTS consisted of five units that performed enforcement of customs and excise duties, and national investigations of financial crimes. For example, the Tactical Intervention Unit (TIU): this was a Customs and Excise Enforcement Unit with a presence in the majority of ports of entry into the country and which operated in all provinces. Despite the preceding years it took to develop this capacity, PEMTS was dismantled and its projects were shut down very soon after the new SARS Commissioner had taken over and most of the cases handled by this division were negatively affected. Beneficiaries affected by these cases had connections to politicians or were in politics (Judicial Commission of Inquiry into State Capture Report, 2022).

The overall impact of the restructuring and dissolution of key investigative units was that SARS lost capacity to detect and investigate illicit economies and organised crime syndicates. Moreover, SARS was no longer able to engage in the 'whole of government' approach to curbing financial crime and SOC. Unsurprisingly, the Financial Action Task Force's (FATF's) *Mutual Evaluation Report for South Africa*, published in October 2021, is critical of the country's progress with respect to convictions for money laundering, and

notes that money laundering cases linked to the state capture period have not been sufficiently pursued (FATF, 2021). According to a former SARS official with knowledge of financial crime investigations:

After the restructuring the dockets did not disappear. They were reallocated to the new divisions and as a result the investigations lost continuity and lost traction. Overnight the project team was disbanded. This had the effect of frustrating cases there was insufficient evidence and consequently no prosecutor would touch the case. (Respondent C, crime specialist, personal communication, 17 March 2022)

Likewise, the Zondo Commission of Inquiry Report states:

Measures to counter criminality were rendered ineffective and those who trade illicitly in commodities like cigarettes operate with little constraint. Relations between the Commissioner of SARS and other state institutions – the National Treasury, the Auditor-General, the Davis Tax Advisory Committee, the Financial Intelligence Centre – are icy, if there is any relationship at all, and SARS has lost its former high status amongst international bodies. (Commission of Inquiry into Tax Administration and Governance by SARS, 2022, p. 26)

The continued illicit flows of drugs, including heroin, into South Africa from Mozambique has recently been highlighted by the political commentator, Moeletsi Mbeki, as posing one of a series of threats to South Africa's stability, and a serious problem that underscores the continued weaknesses in the ability of the state to stop crime and illicit trades (eNCA, 2022).

A senior government official who has a close working relationship with SARS states that there is low staff morale at SARS because no action has been taken against the individuals responsible for damaging the organisation; indeed, some were allegedly given golden handshakes (Respondent B, former SARS employee, personal communication, 16 February 2022). No formal action has been taken to restore the reputations of those who were wrongly implicated by the 'rogue unit' allegations. Furthermore, a former employee claimed that there is anxiety about colleagues with suspected links to the State Security Agency. This perception creates mistrust and sustains fears that previous events could be repeated (Respondent B, former SARS employee, personal communication, 16 February 2022). A very worrying trend is that staff members are reluctant to work in units where they are required to investigate high-profile individuals (Respondent B, former SARS employee, personal communication, 16 February 2022). In such circumstances, it is likely that investigators will not raise concerns about suspicious transactions or activities that they detect, if these are linked to individuals who may be associated with senior political actors.

Several of the experts interviewed in this study stated independently that repairing the damage done to SARS to restore its capacity to fight serious and organised crime will not be a simple process. Tax revenue agencies are complex institutions, and it took decades to consolidate SARS and develop its tax collection systems and capacity in the post-

apartheid years. However, notwithstanding the structural damage to SARS reported, the (policy) building blocks underpinning its earlier success have not been lost.

The consequences of organisational changes at SARS that have occurred over the past two decades, especially in relation to its ability to collect revenues, follow in the next section.

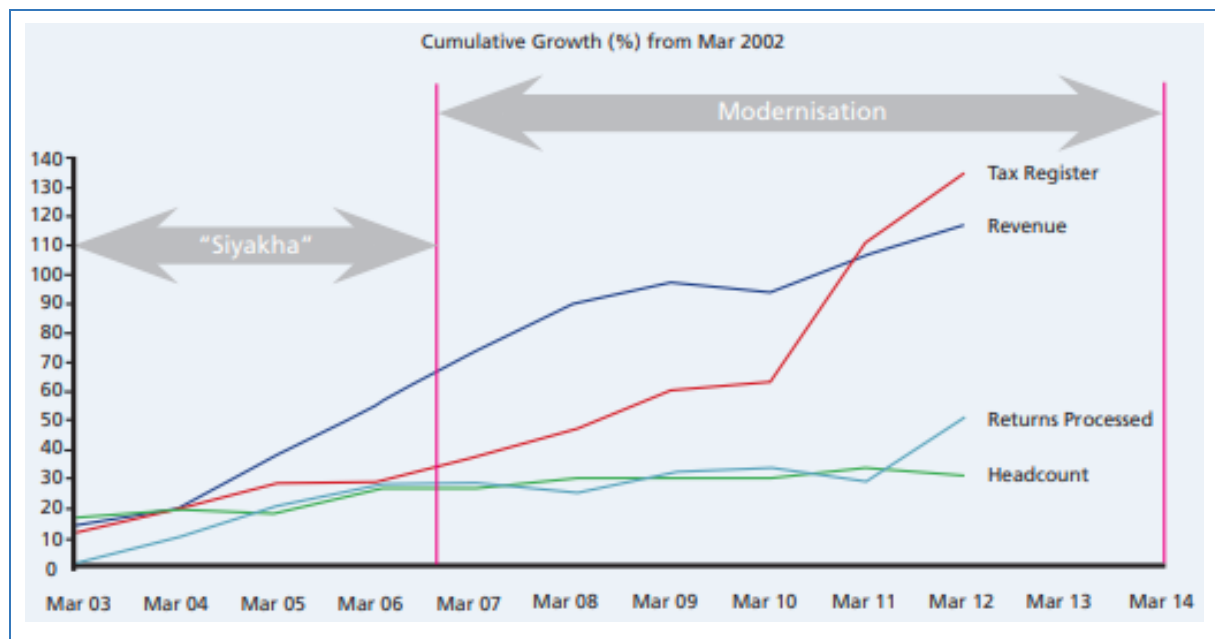
## 2.6. Unintended consequences: impact on tax collection

This section of the paper utilises data on tax collection to highlight some of the unintended consequences of the capture of SARS by state actors. The data analysis reveals that tax collection has experienced a modest decline in real terms.

### 2.6.1. The preceding era

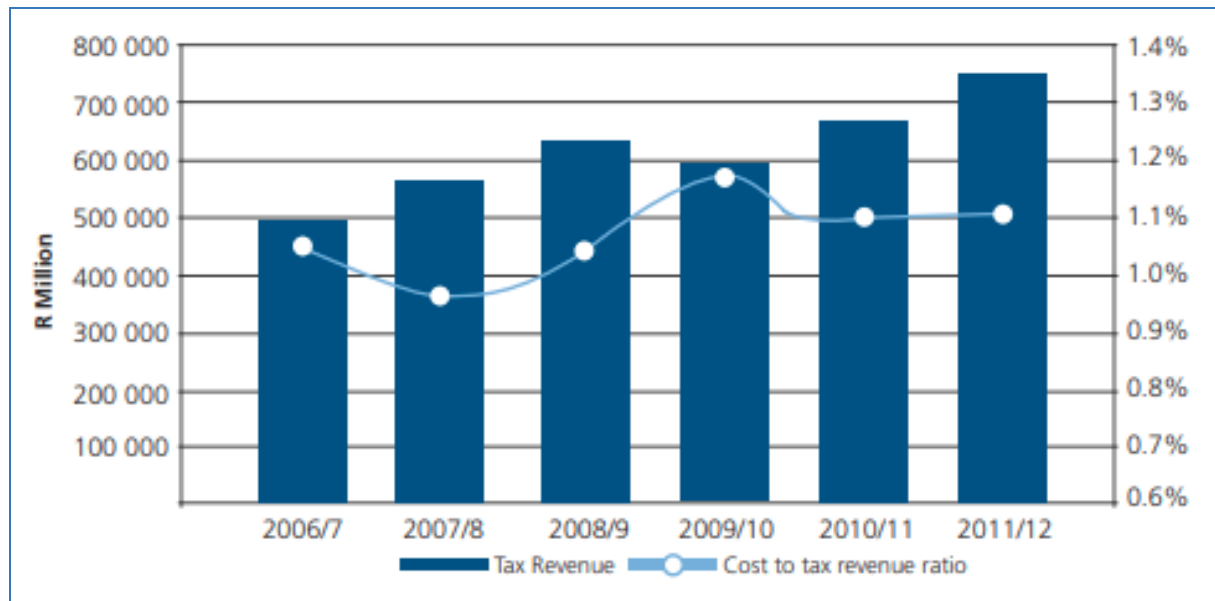
In the SARS modernisation era between 2007 and 2014, the agency experienced significant successes in tax collection (see Figures 3 and 4). Revenue from tax collection increased steadily between 2003 and 2013, and at the same time the relative costs of revenue collection remained constant in the range of 1.1%-1.2% (SARS, 2013).<sup>21</sup>

**Figure 2: Cumulative growth in key indicators 2003-13**



Source: SARS, 2013

<sup>21</sup> South African Revenue Service Strategic Plan. (2013). 2013/14-2017/18. Republic of South Africa

**Figure 3: Cost of revenue collection as a % of total revenue, 2007-12**

Source: SARS, 2013

### 2.6.2. Impact on tax revenue

This section of the paper attempts to determine if the new SARS operating model (from 2014-17) was associated with a deterioration in SARS' ability to collect revenue. However, it is difficult to attribute changes in tax revenue to organisational changes in SARS, because of extraneous effects such as economic growth rates and the effect of COVID-19 on the economy. In addition, a lag effect in terms of the organisational changes having an impact on revenue collection should be anticipated. These challenges were acknowledged by the Nugent Commission. However, the Nugent Commission found evidence from internal documents that SARS had underperformed against its targets for revenue collection from 2014 to 2017 (Commission of Inquiry into Tax Administration and Governance by SARS, 2018, p.120). Table 1 depicts the rising shortfalls in tax revenue reported by the Nugent Commission. The targets for 2016 and 2017 were revised downwards in expectation of further losses. Furthermore, an analysis prepared by The Treasury for the Nugent Commission confirmed that tax buoyancy (the relationship between tax revenue and gross domestic product) had declined significantly. The Nugent Commission concluded that SARS was damaged greatly under the leadership of Moyane (Commission of Inquiry into Tax Administration and Governance by SARS, 2018).

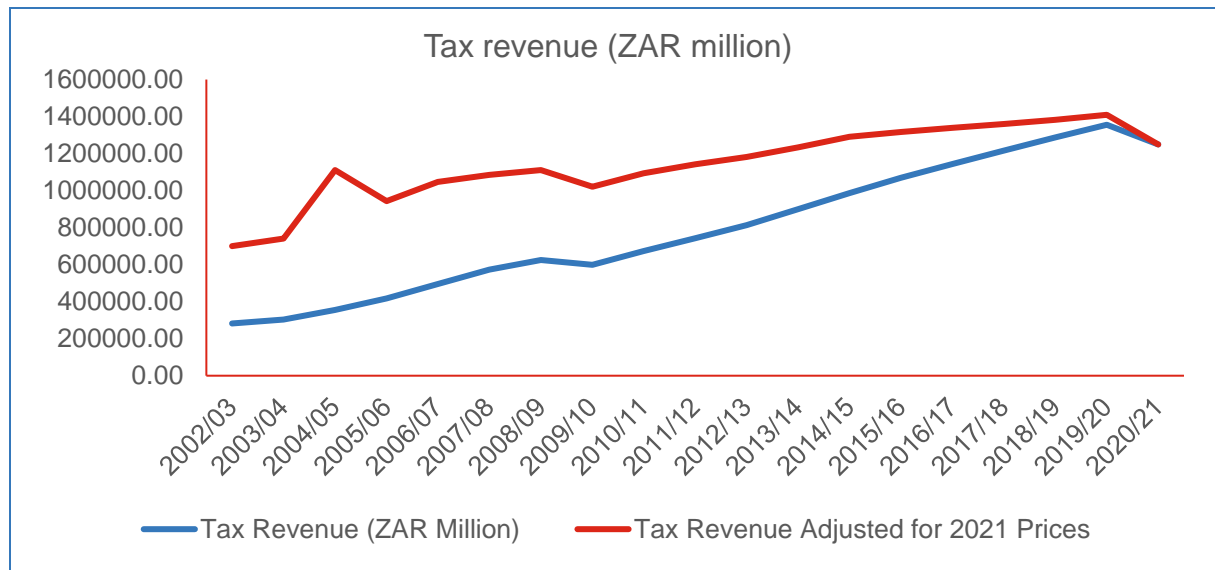
**Table 1: Shortfalls in tax revenue**

Tax year	Shortfall in tax revenue (ZAR)
2014-15	7,335 billion
2015-16	11,292 billion
2016-17	30,709 billion

Source: Commission of Inquiry into Tax Administration and Governance by SARS, 2018, p. 120).

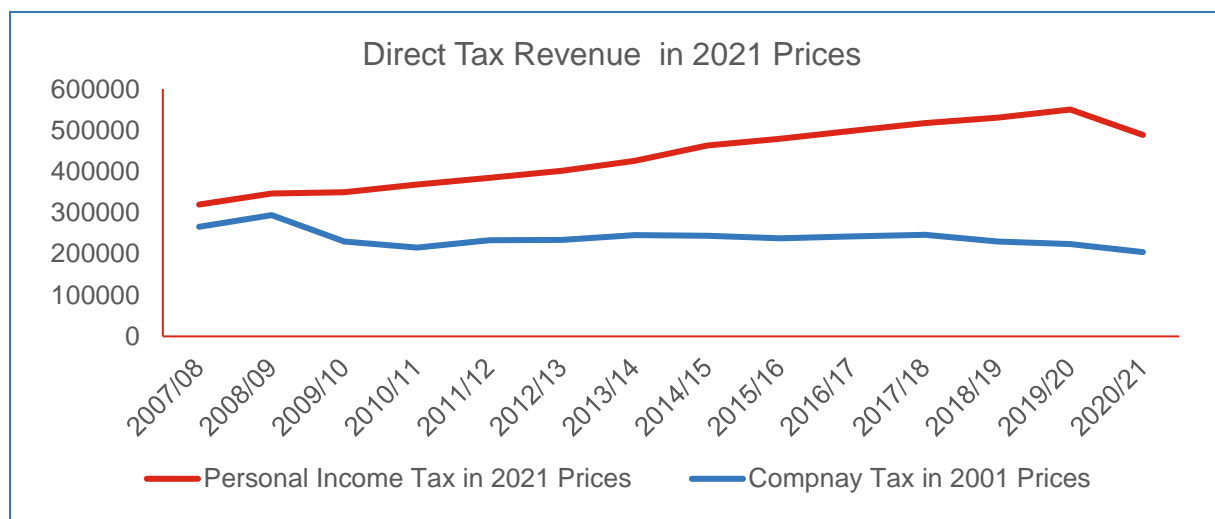
Despite these challenges, a detailed analysis of SARS tax revenue (from the tax years 2002-03 to 2020-21) was undertaken using data on tax revenue which is publicly available from SARS. The analysis shows a steady increase in tax revenue even after adjusting for inflation (see Figure 5). However, when inflation-adjusted direct tax revenue from personal income tax and corporate income tax is examined, there is a slight decline in corporate tax revenue from 2017-18 (ZAR 246,119 million) to 2020-21 (ZAR 204,399 million) (see Figure 6). The sharp drop in tax revenue in the 2020-21 tax year is likely due to the effect of COVID-19 on economic activity.

**Figure 4: Tax revenue in ZAR million (adjusted for inflation with 2021 as the base year)**



Source: 2021 Tax Statistics – Revenue Collection Chapter 1 ([www.sars.gov.za](http://www.sars.gov.za))

**Figure 5: Direct taxation in ZAR million adjusted for inflation with 2021 as the base year)<sup>22</sup>**

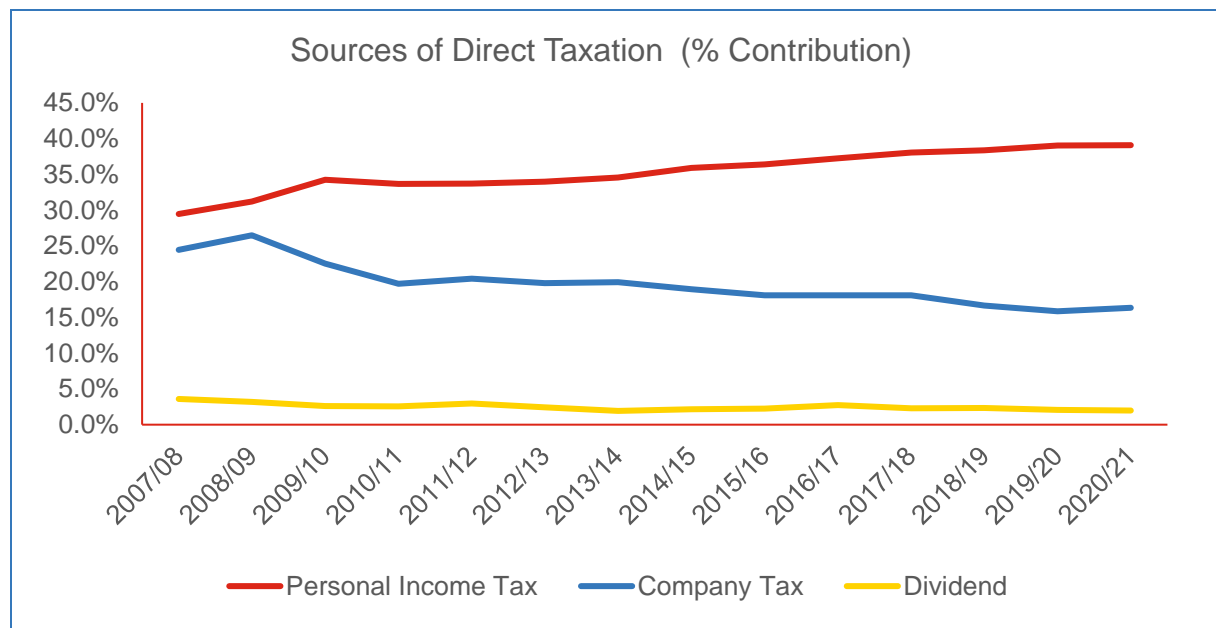


Source: 2021 Tax Statistics – Revenue Collection Chapter 1 ([www.sars.gov.za](http://www.sars.gov.za))

<sup>22</sup> Consumer Price Index information was obtained from Stats SA ([www.statssa.gov.za](http://www.statssa.gov.za))

The Nugent Commission of Inquiry into Tax Administration and Governance by SARS (2018, p. 25) notes that the dismantling of the Large Business Centre was detrimental to governance and revenue collection. An examination of the sources of direct tax revenue over time shows that the contribution of corporate tax revenue has declined steadily (see Figure 7). It is possible that this decline, which emerged in 2017, may be at least partly linked to the closure of the Large Business Centre and the ensuing difficulties that this created for corporate taxpayers which was highlighted by the aforementioned judicial commission of enquiry. In contrast, there is a steady growth in the contribution of personal income taxes to the overall tax revenue.

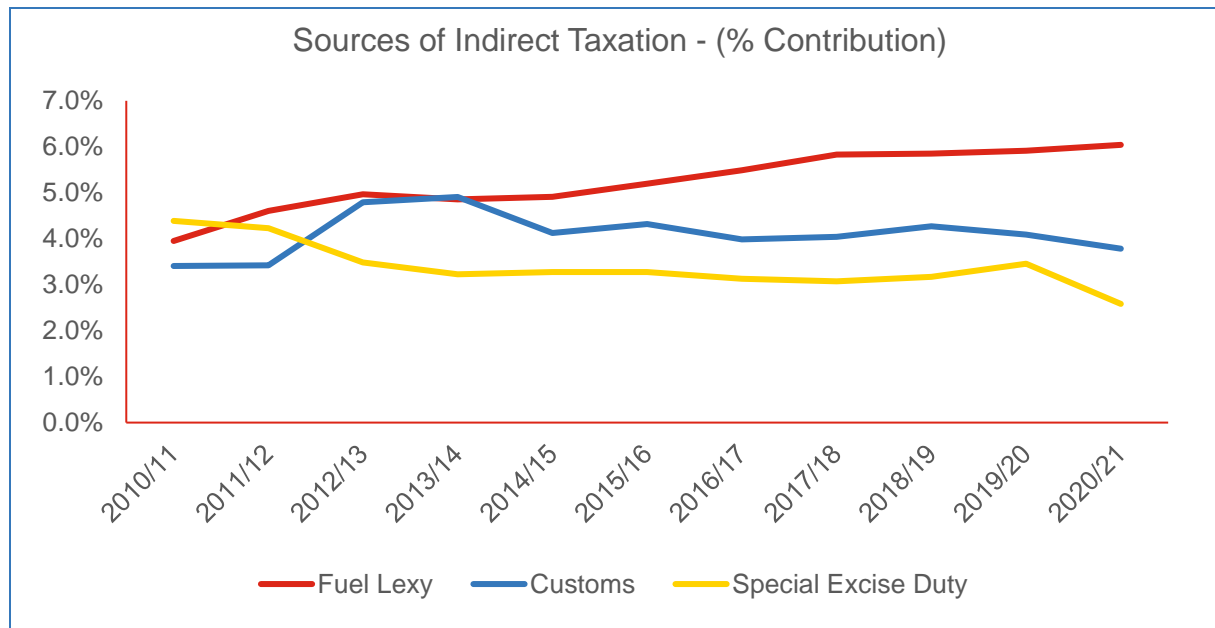
**Figure 6: Sources of direct taxation over time in percentages**



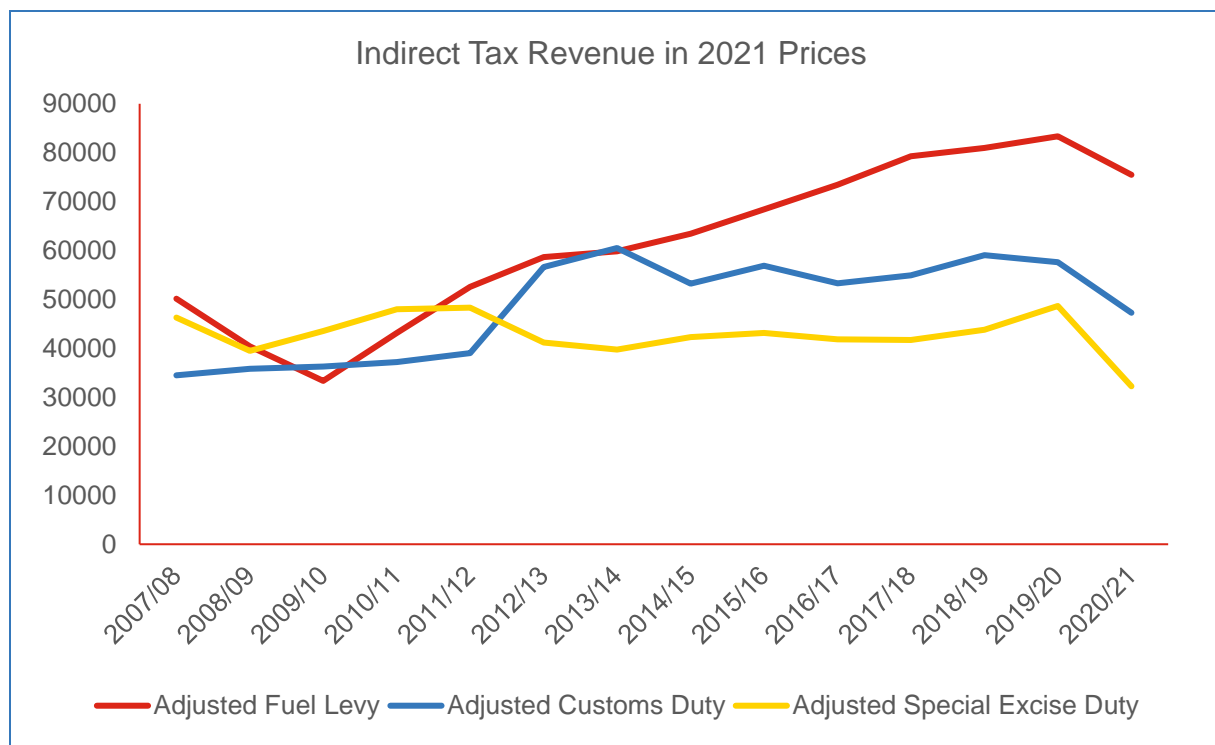
Source: 2021 Tax Statistics – Revenue Collection Chapter 1 ([www.sars.gov.za](http://www.sars.gov.za))

The contribution of indirect tax revenue reveals that there is a slow drop in revenue from customs duties since the 2018-19 tax year (see Figure 8). An analysis of the amount of indirect tax revenue shows a more dramatic decline in revenue emanating from customs and special excise duties (see Figure 9). Evidence obtained by the Nugent Commission of Inquiry found that there was a sharp decline in customs revenue from tobacco products that manifested in 2016 and which was attributed to problems with enforcement and/or a rise in illicit trade (Commission of Inquiry into Tax Administration and Governance by SARS, 2018, p. 122).

The sharp downward spike in the last tax year is more likely to be attributable to the economic impact of COVID-19 rather than internal changes at SARS.

**Figure 7: Sources of indirect revenue in percentages**

Source: 2021 Tax Statistics – Revenue Collection Chapter 1 ([www.sars.gov.za](http://www.sars.gov.za))

**Figure 8: Indirect tax revenue in ZAR million over time (adjusted for inflation with 2021 as the base year)**

Source: 2021 Tax Statistics – Revenue Collection Chapter 1 ([www.sars.gov.za](http://www.sars.gov.za))

In summary, this section provides evidence that corporate tax revenue and revenue from customs duties declined steadily from 2017 to 2021. The data is congruent with the evidence obtained by the Nugent Commission and supports the conclusion of the Nugent Commission which states that the restructuring contributed to a decline in



governance and revenue collection (Commission of Inquiry into Tax Administration and Governance by SARS, 2018, p. 26). The decline in tax revenue may be an unintended consequence of the restructuring. It may have a negative impact on the development policies of the government, especially its social protection programme which is funded from the national budget.

## 2.7. Recovery of SARS

This section of the paper covers the interventions that have been adopted to rebuild SARS and highlights developments that suggest SARS is gradually recovering from state capture.

Johan van Loggerenburg, a former senior manager at SARS, notes that although SARS has been rebuilding some of its capacity, they believe the critical skills lost between 2014 and 2017 will not be replaced quickly because, before this period, SARS comprised experienced senior executives and a stable leadership structure which had been lost. In addition, new capacity brought into the organisation was developed over time:

They wanted people at all levels vertically and horizontally. I remember in those early years around 1999, there were many weekend sessions. Some of us were at these. At these sessions we would test ideas...so the organization became a learning organization. Secondly, they had the benefit of the years that they had so that didn't disrupt the institution. Pravin was the Commissioner from 1999 until 2009 when he became minister. That's quite a period which brings a level of stability. If you want to build an institution over that period it's great to have an Executive for that number of years and in that same time we didn't have a change in the Ministry of Finance. Trevor Manuel was there and that also gave stability. When Oupa Magashule took over and Pravin became the Minister of Finance, he retained that stability. (J. Van Loggerenberg, personal communication, 17 January 2022)

The current Commissioner of SARS, Edward Kieswetter, remarked on the slow and incremental steps that have been taken in rebuilding SARS after state capture:

After years of being deprived of filling critical vacancies because of financial constraints, last year we began to start recruiting people and providing some inward mobility for people into more meaningful roles...we established a listening campaign where staff could call in and talk and report certain things that needed to be addressed. (Kieswetter, 2022)<sup>23</sup>

It will take much longer to restore the confidence of SARS officials to perform their functions without fear or favour, and the organisational morale of officials has also been damaged. Additionally, the need to insulate the organisation from future political

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<sup>23</sup> M. Soko. (2022). *After State Capture: how SARS is rebuilding itself*. University of Witwatersrand, Johannesburg. <https://www.wits.ac.za/news/latest-news/opinion/2022/2022-08/after-state-capture-how-sars-is-rebuilding-itself.html>



interference and damage has not yet been adequately addressed, according to a former senior manager at SARS:

The trauma runs very deep. And SARS has not unequivocally and emphatically taken a stance on how they intend insulating the institution and protecting people from a repeat of what has happened to us. An unintended consequence of what occurred at SARS, is that it has put the fear of living god into people. People would rather do nothing than do something that might lead to a repeat to what occurred to us. And so even amongst some of the most capable and bravest people that I know who are still in that institution, there is a tentativeness and hesitancy to move faster and move boldly and with backbone. The standard refrain is 'yes but what if what happened to you happens to us'. (Van Loggerenberg, personal communication, 17 January 2022)

To address the low morale and trauma experienced by staff who survived the restructuring and purges at SARS resulting from state capture, a public apology by the Commissioner has been made to staff who stayed on in the institution during the state capture years. In addition, SARS has completed an internal reparations process with several of its employees who were most affected by events that occurred at the institution between 2014 and 2018 (van der Merwe, 2022).<sup>24</sup>

Repair of the organisational structure was hampered by the COVID-19 pandemic and it is believed to be only gaining momentum now. The current Commissioner, Edward Kieswetter, is introducing machine learning and other technology to make up for some of the skills gaps in investigation (Mzekandaba, 2021). However, a respondent with knowledge of financial crime investigations claims that technology cannot fully compensate for the loss of skilled personnel. 'A machine cannot go to court or give an affidavit' (Respondent C, crime specialist, personal communication, 17 March 2022).

### 2.7.1. Political will

Institutional protection of key state agencies such as SARS from political interference is dependent on the level of importance leading politicians place on such institutions, as well as their philosophical approach to different aspects of governance and the economy. For example, one political commentator asserts that President Mbeki protected the finance cluster of government departments from political interference:

My view as an observer, who has also been critical about Mbeki is that he did a great job in building that institutional character there. And how what happened then, what happened then is that after Mbeki left, SARS was fed to the dogs, actually SARS was on its own... SARS had to defend itself politically, because the president was not willing to support SARS, nowhere had Zuma on record to defend SARS as the president, but Mbeki, never even had to

<sup>24</sup> Van der Merwe, M. (2022, November 12). *SARS gives apology, reparations to current staff who endured 'devastating' state capture impact*. News24. <https://www.news24.com/fin24/companies/sars-gives-apology-reparations-to-current-staff-who-endured-devastating-state-capture-impact-20221112>

protect it, because he almost made it unheard of that politically, that it could go at SARS, it could go at treasury. (Mathekga, personal communication, 18 January 2022)

The centrepiece of the Ramaphosa administration was to drive economic reforms and implement anti-corruption measures by strengthening key departments in the economics cluster and criminal justice (Mathekga, 2021). Much of Ramaphosa's initial efforts have been focused on dealing with corruption in the state (Ropes & Gray, 2021). Soon after his election as the president of South Africa, he realised that in order to successfully implement economic reforms, he needed to restore SARS' integrity, recognising that SARS is the foundation of the finance cluster of departments in the state (Mathekga, 2021). The business of collecting tax revenues entails SARS obtaining sensitive personal information which can be used by politicians for manipulation purposes. Controlling tax collection also offers possibilities for it to be used for political patronage and as a tool to protect politicians who do not comply with tax laws (Kotze, 2018).

The process for the appointment of Edward Kieswetter as the new SARS Commissioner was more independent and transparent than the previous appointment process for Tom Moyane. The position was advertised publicly, and an independent selection panel was constituted to interview shortlisted candidates in private. Shortlisted candidates' names were made public and following this process the Finance Minister submitted the selection panel's report to the President together with his recommendation for the President's final consideration. In 2019, SARS began restoring the Large Business Centre to full operations and indicated it would close off the capability of the illicit economy, after it had collected ZAR 14.6 billion less in revenue for the 2018-19 period (Khumalo, 2019). In addition, Finance Minister Tito Mboweni allocated ZAR 1.3 billion in the medium-term budget to improve efforts at combating illicit trade and increasing SARS revenues (Omarjee, 2020).

There has been an agreement by the National Director of Public Prosecutions (NDPP) and the SARS Commissioner to improve collaboration and strengthen efforts to combat crime, non-tax compliance, the erosion of the tax revenue base and to restore the integrity of the tax system. The Criminal Investigations division within SARS will allocate dedicated capacity and work closely with the dedicated capacity of the NPA through its Specialised Tax Unit to prepare solid cases for prosecution and this will be undertaken in a coordinated manner (SARS, 2021).<sup>25</sup> On the ground at operational level within the NPA, a respondent with expertise in SARS prosecution matters noted successes in cooperation with other government agencies to deal with serious and organised crime:

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<sup>25</sup> SARS NPA. (2021). *Joint media statement on prioritising tax crime* [Press release]. <https://www.sars.gov.za/media-release/sars-and-npa-joint-media-statement-on-prioritising-tax-crime/>

When we had that first meeting, at the end of last year, the NDPP and the National Commissioner of SARS was there, and that never happened before. So, the commitment was there and they putting on terms and we need to report back to them. So that was definitely a big change. So there is an expectation from our principles and then obviously, we have to work together, but also because of the changes that they have made at SARS. And, you know, the people that I have to work with there is we are getting along very well, and we are working very well. (Respondent D, personal communication, 25 February 2022)

Rebuilding the technical skills capacity of SARS has also been a focus. This has included the attraction of highly skilled people in IT, data management, legal and audit specialists. To date, 140 critical positions were at the finalisation stage of appointment out of 570 that were initially identified. SARS has also been developing its artificial intelligence and machine learning capabilities to modernise its ICT infrastructure (Mzekandaba, 2021).

### 3. Conclusion

State capture occurs when a small number of influential actors in the public and private sectors collude to change rules, regulations, legislation and institutions to further their own narrow interests at the expense of the broader public interest. The literature on state capture focuses on close relations among these actors but does not provide detailed accounts of how institutions are captured or the impact thereof on the capability and functioning of institutions. This study contributes to the field by providing a detailed account of how one institution, SARS, was captured and the detrimental impact of this on the capacity of SARS to detect, investigate and prevent tax and financial crimes.

The study highlights an important distinction between state capture and neopatrimonialism, which is the overarching concept under which most accounts of corruption and kleptocracy involving senior government officials in Africa are situated. Neopatrimonialism tends overwhelmingly to take place in countries where there are weak institutions and where the rules are easily bypassed through informal relations among state and non-state actors. In contrast, South Africa had relatively robust public institutions within its financial and criminal justice clusters. It was therefore necessary to capture and weaken these institutions in order for kleptocracy and grand corruption to occur with impunity.

The SARS case study reveals three components of state capture: (1) infiltration of the organisation by new employees who set out to weaken or manipulate the institution to serve the interests of captured politicians, (2) allegations in the media which cast doubt on the integrity of the institution and its leaders (especially if they are hostile to the interests of the capturers) and (3) organisational change and staff purges that further weaken the institution. The alleged misconduct of senior managers in the institution is effective in undermining their integrity as well as that of the institution, and paves the way for the institution to be transformed, disbanded or placed under new leaders chosen by captured politicians. Moreover, it provides sufficient doubt for captured politicians and their supporters to insist that their actions were legitimate, and that criticism is unwarranted and connected with a political conspiracy against them.

The combination of institutional changes through restructuring or disbanding and the ensuing staff purges leave the institution with weak systems and skills gaps. SARS lost critical investigative and technical skills. Investigations that were under way became stalled and there was little if any cooperation with the Financial Intelligence Centre or the National Prosecution Authority. It will take many years to rebuild SARS so that it can play a significant role in the 'whole of government approach' to preventing tax and financial crime. In the interim it is anticipated that illicit economic activity and financial crime will thrive.

The study draws attention to the unintended consequences of state capture which are expected to undermine economic development. South Africa has a weaker receiver of revenue and it is anticipated that direct tax revenue may decline as a result of capacity constraints in SARS as well as taxpayer apathy. The tax revenue data analysis shows that

there was a decline in customs revenue and corporate tax revenue which may be at least partially due to the impact of disbanding the Customs Enforcement Unit and the Large Business Centre. Lower levels of tax revenue will curtail the national budget and the ability of the government to maintain public services and provide social protection for its most vulnerable citizens.

Policy changes are necessary to shield SARS and other government agencies from political interference. The Nugent Commission of Inquiry, for example, recommended the need for an apolitical and transparent process for appointing the SARS Commissioner (Commission of Inquiry into Tax Administration and Governance by SARS, 2018). However, there are difficulties for shielding independent processes in South Africa as parliament is dominated by the ruling party and even the Judicial Services Commission has struggled with political interference. Therefore, it is critical that the process be transparent so that any interference is detected (Professor Sven, personal communication, 14 February 2022).

The challenges of providing support and protection to whistleblowers in South Africa highlights the important role that international organisations can play, such as international whistleblower protection organisations providing support for the Bain whistleblower, Althol Williams. As noted earlier in the report, Williams was forced to flee South Africa as he feared for his life. The case also shows that international civil society organisations and advocates can play an important role in exposing grand corruption and integrity. For example, British civil society organisations and advocates like Lord (Peter) Hain, a former UK Cabinet minister (2005-10), are drawing attention to state capture in South Africa and urged the Johnson government to stop doing business with the multinational companies that were complicit in state capture.

Ultimately, the prosecution of the individuals implicated by the Nugent and Zondo Commissions of Inquiry is likely to send a strong signal that there is political commitment to restore the credibility of SARS. It is hoped that prosecutions or other efforts to promote accountability and justice may revitalise the staff still working at SARS and boost tax compliance among personal and corporate taxpayers in South Africa.

Further research on the potential impact of state capture on other state-owned enterprises in South Africa could provide greater understanding of the linkages between state capture and the problems that the country is experiencing, such as the rolling power cuts that have a negative impact on the economy.

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