



COMMENTS

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STATE CAPTURE REPORT SENDS 'GROSSLY NEGLIGENT' GIGABA AND BROWN TO ZONDO, WANTS CRIMINAL INVESTIGATIONS : THE POSITION OF THE GEPP AND PIC.

In the newspaper article "State Capture report sends 'grossly negligent' Gigaba and Brown to Zondo, wants criminal investigation" in the Daily Maverick of 28 Nov 18 by Marianne Merten (attached below) about a state capture report you will find the following phrases and words :

"inordinate secrecy ", "grossly negligent", "when they became aware of wrong doings failed to investigate ,act and redress. ..", "transparent", "fobbed off in its requests for relevant documents" (information?), "failed to maintain clear lines of responsibility and accountability".

If you have guessed that the report was about the GEPP or PIC, you are wrong, although it all sound very familiar to us at AMAGP. The similarities are obvious.

As you can see the report is about Eskom and not about the GEPP and PIC. The findings can, however, have serious implications for both organizations.

Our question of course is how on earth our pension money could have been invested in such a badly managed and almost similar SOE? Such investments should rather be described as reckless rather than "grossly negligent". Could we still doubt that political motives play a role ?

The report of the parliamentary standing committee reveals a shocking state of affairs. Did the Board of Trustees and the PIC really want anybody to believe that they did not know or suspect that things went terribly wrong at Eskom ?

Of course they knew, but what did they do about it, if anything? Should their members not be held accountable in their personal capacities for losses incurred by the GEPF? Should Section 34 of the "Prevention and Combating of Corruption Act 12 of 2004" not now be used against those who knew or suspected wrong doings and did nothing about it ?

If they did not know, why did they not know? Do they not have monitor systems in place or are such systems, if they exist, also secret?

This report is about Eskom? Can we hope that things are better at some of the other SOE's? Can our pension fund still afford to be vulturized for the benefit of badly managed and corrupt state entities? We know what the answer is, but what to do about it?

What we do know is that we can no longer afford one asset manager, the PIC. The sooner more and independent asset managers are appointed, the better. But is it wishful thinking to expect from an unsympathetic government to let go of their handy piggy bank?

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Article by Marianne Merten in the Daily Maverick on 28 Nov 18



STATE CAPTURE REPORT SENDS 'GROSSLY NEGLIGENT' GIGABA AND BROWN TO ZONDO, WANTS CRIMINAL INVESTIGATIONS

By Marianne Merten • 28 November 2018

As Eskom released its interim integrated results in Johannesburg on Wednesday, Parliament's public enterprises committee unanimously adopted its hard-hitting State Capture inquiry report. Former public enterprises ministers Malusi Gigaba and Lynne Brown had been "grossly negligent in carrying out (their) responsibility", said the report that showed how those responsible for Eskom's governance and finances had manipulated legislative, regulatory and ethical prescripts. It recommended not only law enforcement investigations, but also for the ex-ministers to report to the Zondo commission – alongside former Eskom board chairpersons, including Ben Ngubane, Zola Tsotsi and Zethembe Khoza, and one-time executives like ex-CEO Brian Molefe and ex-CFO Anoj Singh.

Much of the 142-page report with the 44-word title* of the parliamentary inquiry into State Capture at Eskom is a wrap of testimony presented in a series of public hearings between October 2017 and early 2018. That's just how most, if not all, parliamentary documents are officially structured.

Where MPs come into their own is in the sections on observations, findings and their recommendations. And that's where the parliamentary inquiry into State Capture holds back no blows.

Procurement processes at Eskom were used to further private interests and various Eskom board directors and management executives acted "inconsistent with their responsibilities", and when they became aware of wrong doings, failed to investigate, act and redress.

"The abuse of public resources to benefit these private interest stands indirect contradiction to Eskom's constitutional obligations to ensure its procurement processes are equitable, transparent, fair, competitive and cost-effective... (V)arious Eskom board members were conflicted in their dealings with some of the private businesses and may have acted unlawfully together with senior management to benefit a network that sought to achieve the capture of Eskom..."

Aside from having been fobbed off in its requests for relevant documents throughout the inquiry – parliamentary rules allow MPs to request any – the report notes the “inordinate secrecy” at Eskom that had undermined internal governance and controls, alongside oversight by Parliament and others. “The committee heard evidence of multiple instances that suggest Eskom staff, the Eskom board (executive and non-executive directors) actively obstructed various oversight and investigative processes, or used these processes to cover up malfeasance at Eskom.”

And while former public enterprises minister Lynne Brown maintained throughout she was not to blame for misleading Parliament on Eskom’s deal with the Gupta-owned Trillian as the information had come from Eskom, the report did not look kindly on how she exercised oversight of her political portfolio nor on how Malusi Gigaba, the enterprise minister between November 2010 and May 2014 did his ministerial duties.

“Minister Gigaba’s overhaul of the Eskom board introduced patterns of instability. It is not apparent that the board appointed by Minister Gigaba had been sufficiently vetted in terms of integrity, collective skills and experience to govern Eskom and execute their fiduciary responsibility,” says the report.

It goes on to say: “Minister Brown’s oversight over the actions of the executive and non-executive directors was inadequate, leading to gross breaches in fiduciary duty and potentially illegal acts.”

And Eskom’s board failed to oversee executives and ensure good governance on a host of issues, including the advisory and consultancy contracts of over R1.6-billion with the Gupta-linked Trillian and Regiments, the McKinsey contract the business breakfast sponsorship with the Gupta-owned New Age, and the facilitation of the Optimum coal mine acquisition by the Gupta-linked Tegeta through the pre-payment for future coal supplies.

“Eskom’s board failed to maintain clear lines of responsibility and accountability. Board members were allowed to interfere in the business of management (especially through the seemingly unbounded mandate of the board tender committee), and often usurped the roles of group executives... Key decision-making authorities, such as the Eskom executive procurement sub-committee and Eskom’s internal legal support services were deliberately sidelined to introduce and act on external options to benefit certain private companies.”

And so the parliamentary inquiry into State Capture at Eskom found contracts for certain consultancy services by McKinsey, Regiments and Trillian were “unauthorised, irregular and there is evidence to suggest that it may have involved corruption”. Eskom’s dealings with Tegeta was also “unauthorised, irregular and/or were otherwise unlawful”. As were the New Age business breakfast sponsorships.

“... (T)he corruption of procurement processes at Eskom would not have been possible, if not for the guise of integrity and legitimacy that some erstwhile reputable entities afforded certain Eskom decisions. Such entities benefited greatly from the tainted contract and enjoyed advantageous relationships with the implicated companies,” said the inquiry report. “The committee finds that there was a corrupt relationship between the Gupta family, their associates and key state functionaries, various gratifications were provided and accepted in order to influence Eskom Board members and employees to act unlawfully and to induce Eskom to enter into a number of business contracts.”

It's unequivocal, and for parliamentarians, strong language.

Not quite so direct are the findings of the who's who who's done this. There the report is more legally circumspect, saying evidence before the committee showed those who "may have unduly influenced Eskom decisions" include the Gupta brothers, Tony, Ajay and Atul, former president Jacob Zuma's son Duduzane Zuma, Gupta business associate Salim Essa, and executives working in their companies like Nazim Howa and Ashu Chawla.

Similarly, the report names "as possibly having acted in ways that undermined good governance and the company's financial performance" various ex-Eskom board chairpersons like Ben Ngubane, Zola Tsotsi and Zethembe Khoza, board members like Mark Pamensky and executives like ex-CEO Brian Molefe, ex-chief financial officer Anjosh Singh, ex-acting CEOs Collin Matjila, Matshela Koko and Sean Maritz.

That shows some of the limitations of parliamentary inquiries. MPs are not investigators, but their unanimous cross-party lines support report sets out clear avenues of further investigation by law enforcement agencies.

As the report is to go to the Zondo commission – transcripts, documents and witness statements have already been submitted to the commission in May, it merged during Parliament's budget vote debate – there is the potential for action by the Hawks team liaising with the commission.

In addition, the report recommended that Eskom executives like Molefe, Singh, Koko, Maritz, Eskom HR Manager Anton Minnaar, Tsotsi, Ngubane, Khoza alongside former board directors Viroshini Naidoo and Pat Naidoo should be "requested to present themselves to the Zondo commission..."

There are other concrete recommendations, including the revision of Eskom pension rules in the wake of the Molefe debacle.

And there should be lifestyle audits, with a potential penalty of being reported to professional and regulatory associations and law enforcement given that the inquiry "exposed a set of executives and senior staff that appear to have been part of a network that actively participated in irregular, corrupt and/or otherwise unlawful contracts and processes at Eskom".

In a reminder to government, the report recommends the speedy delivery of the much talked about, but yet to surface Shareholder Bill. It was supposed to have been published in draft form in March 2018, according to government's July 2017 14-point "inclusive growth action plan", but has not.

Parliament must be updated regularly on Eskom's review, forensic and otherwise, of dodgy contracts, steps taken against those implicated, according to the report's recommendation.

And Parliament must consider beefing up its own rules and capacity given the Gupta brothers Tony, Ajay and Atul snubbed the inquiry's invitation to appear before it, as did Duduzane Zuma and former SAA board chairperson and executive of the JG Zuma Foundation, Dudu Myeni. The Zondo commission should consider subpoenaing them.

The report of the parliamentary inquiry into State Capture at Eskom may have come as the Zondo commission is in full swing. But its contributions remain fundamental: the inquiry has confirmed what former public protector Thuli Madonsela outlined

in the October 2016 State of Capture report, and it has confirmed the subsequent details that emerged in #GuptaLeaks.

And while the State Capture inquiry report must still wind its way through the parliamentary procedure, including the formal adoption by the National Assembly, Wednesday's report adoption by unanimous, cross party consensus is one of those rare moments when Parliament works.

"We all proved to be reliable members of Parliament, public representatives, who want the right thing to happen in this country," said inquiry chairperson ANC MP Zukiswa Rantho. DM

*The full title of the report is "Final report of the portfolio committee on public enterprises into the Eskom board's ability to discharge its fiduciary duties, issues raised and persons implicated in the Public Protector's State of Capture report, and allegations of State Capture based on leaked emails and other reports"

<https://www.dailymaverick.co.za/article/2018-11-28-state-capture-report-recommends-criminal-investigation-into-grossly-negligent-gigaba-brown/>