Consulting firms, corruption, and state capture: A case study from South Africa

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Executive Summary

This paper examines the role of consulting firms in South Africa's state capture project during the presidency of Jacob Zuma. While much of the focus of the Zondo Commission of Inquiry was on the failures of public institutions, this study highlights how private sector actors — particularly consulting firms — also enabled and profited from corruption.

The analysis focuses on three firms: McKinsey, a global consultancy, and two local firms, Regiments and Trillian, which worked on major contracts at Transnet and Eskom, state-owned enterprises that accounted for the majority of public expenditure linked to state capture.

Key Findings

1. Consulting firms facilitated corruption: Beyond receiving inflated fees, consultants produced advice and analysis that justified corrupt decisions, concealed misrepresentations, and enabled senior officials to push through unlawful contracts.
2. Exploitation of procurement rules: McKinsey and its partners were repeatedly awarded multi-billion-rand contracts without competitive bidding. Local firms were brought in as "supplier development partners" after contracts had already been awarded, evading scrutiny and procurement safeguards.
3. Biased fee models: Success fee arrangements were manipulated to generate excessive payments—sometimes 10–15 times market rates—despite delivering little value and, in some cases, causing substantial financial loss to the state.
4. Legitimacy through global partnerships: The presence of a multinational consultancy lent credibility to irregular processes and shielded local partners from oversight, enabling them to become embedded within state institutions. The local partners, meanwhile, used their access to powerful political networks to arrange these deals and secure the support of senior executives and decision-makers.
5. Impact on state capacity: Internal treasury teams at Transnet and Eskom were sidelined, hollowing out institutional expertise and entrenching reliance on external consultants, even for tasks that could have (and should have) been managed internally.
6. Severe consequences: Corrupt consulting arrangements contributed to escalating costs, poor financial decisions, and weakened governance at Transnet and Eskom. The fallout included liquidity crises, damaged infrastructure programmes, and long-term institutional dysfunction.

Lessons

The case demonstrates how professional service firms can act not only as passive beneficiaries but as active enablers of state capture. Their involvement shows that:

1. Weak state capacity creates openings for consultants, but corruption also deliberately undermines state capacity to justify outsourcing.
2. Multinational reputations can be weaponised to bypass oversight and normal accountability, while local actors can secure profitable deals through their political allies. These partnerships worked very effectively to secure lucrative contracts.

3. Consulting and financial advisory work present unique corruption risks to public entities, including the obfuscation or legitimation of corrupt projects, the abuse of complex financial services, and the exploitation of “success” or “at-risk” fee models.

These dynamics underscore the importance of strengthening internal capacity, tightening procurement rules, and holding consulting firms accountable when they contribute to governance failures.

Introduction

Jacob Zuma's tenure as president of South Africa – a country already struggling with corruption – was marked by a project of state capture. A network centred around Zuma, comprising members of his family, members of the wealthy Gupta family, their business associates, and senior state officials, worked to "capture" state institutions in order to secure lucrative state contracts for their business, and to earn kickbacks from other companies doing business with the state by operating as middle-men and gate-keepers. These events unfolded in a wide range of key state entities between 2008 and 2017.

Thanks to intensive investigative journalism, a trove of leaked emails, and a years-long public commission of inquiry into these events (the Commission of Inquiry into State Capture, known as the "Zondo Commission" for its chairperson), there is a wealth of information about how the Zuma/Gupta project operated, both generally and within individual state institutions. This archive of evidence allows us to analyse cases at a high level of detail, to break down the nebulous problem of "state capture" into the specific mechanisms that enabled corruption within these organisations.

While the Commission did investigate the role of the private sector in state capture, it focused primarily on the failures of government institutions and officials. The ensuing discussion, analysis, and reform agenda have also tended to neglect the role of private companies outside of the direct Gupta network. Nevertheless, there have been persistent calls from civil society groups to hold these companies accountable, as well as public outrage directed at a few of the implicated companies. Some of this attention has focused on professional services providers, like banks, accountants, and lawyers, and sometimes includes consulting firms (specifically McKinsey, Bain, and the consulting arms of KPMG, Deloitte, and PwC) although they don't operate the same way as "traditional" professions and tend to play a slightly different role.[1]

In this paper, I look at three consulting firms implicated in state capture during this period: McKinsey, one of the most preeminent global consulting firms, as well as Regiments and Trillian, two local firms. They were hired to do financial advisory work for Transnet (the national freight transport company, and primarily its major subsidiary, Transnet Freight Rail) and Eskom (the state electricity utility company). These two companies are wholly owned by the South African state and manage enormous budgets, including significant capital expenditure. They were especially vulnerable to corruption; 97% of the public expenditure linked to state capture by the Zondo Commission originated from Transnet and Eskom.

I use these cases to examine the role of consultants in both engaging in corruption transactions (by way of benefitting from bribery and corruption) and facilitating other corrupt schemes to benefit other actors (by using advisory services to justify and support wrongdoing) in these organisations.

[1] See Thakur C, Pillay D. How Professionals Enabled State Capture. In: Buthelezi M, Vale P, eds. State Capture in South Africa: How and Why It Happened. Wits University Press; 2023: 109-129.

Sources

The primary source for this paper is the final report of the Commission of Inquiry into State Capture, specifically Volume II Part 1 (Transnet), Volume IV Parts 3 and 4 (Eskom), and Volume VI Part 3 (Flow of Funds). Additional detail is drawn from witness testimony and additional evidence presented at the Commission. The full list of sources is provided below. Specific page references have not been included as they can amount to multiple citations per sentence but can be provided for any claim in this paper upon request.

Transnet: Setting the scene

One month after taking office in May 2009, President Zuma attempted to interfere with the appointment process for the CEO of Transnet. When his attempts were resisted by the Minister of Public Enterprises at the time, he obstructed the process for several months, before replacing her in October 2010. The new Minister, Malusi Gigaba, who was more friendly to the Gupta family, immediately replaced the Transnet board. Some of the new members were friendly with the Guptas and, in particular, their associate, Salim Essa. The new board appointed senior executives who were all connected to – or would become connected to – the Gupta family. Most notable were the Chief Executive Officer (CEO), Brian Molefe, and the Chief Financial Officer (CFO), Anoj Singh, both of whom were frequently in contact with Essa and the Guptas, received gifts from the family, and used their positions at Transnet to favour the family and their associates.

In April 2011, soon after the new board and executive were appointed, Transnet launched a R300 billion infrastructure investment programme. At the same time, the Board instituted structural changes to centralise procurement powers under the control of senior leadership. Whilst historically the Board did not have direct power over procurement-related activities, this changed in 2011 with the creation of the Board Acquisitions and Disposals Committee (BADC), chaired by an associate of Essa, that could approve large procurements up to a certain value without the approval of the full Board. The CEO and CFO were also vested with powers to approve large procurements, as well as chairing high-level decision-making committees such as the Locomotive Steering Committee. These changes removed decision-making power for high-value transactions from Transnet's five operating divisions and concentrated it instead at the level of the board and senior executive.

Between 2011 and 2017, the Gupta network was involved in multiple corrupt contracts at Transnet. As part of the infrastructure investment programme, Transnet purchased four sets of locomotives and two sets of cranes from suppliers who paid kickbacks to the Gupta enterprise, sometimes up to 20% of the total contract value. IT companies were also awarded lucrative contracts for which they paid 'commission fees' to Gupta companies. High-value contracts were awarded directly to the Guptas' *The New Age* newspaper for advertising and marketing.

Later investigations found multiple, serious irregularities in the procurement and contract management processes that were followed: sole sourcing was used to evade competitive bidding rules, suppliers received confidential information and favourable treatment, and contracts were inflated at significant cost to Transnet. The senior executives – Molefe and

Singh, and their successors after they left the organisation – were instrumental in pushing the contracts; the BADC approved them; and Essa negotiated the kickbacks from suppliers to various money-laundering vehicles. These are all laid out in detail in various forensic reports and in the final report of the State Capture Commission. This paper focuses on a different category of corrupt contracts: consulting and advisory services procured in relation to Transnet's infrastructure investment programme.

The McKinsey and Regiments partnership

Between 2012 and 2016, Transnet contracted with McKinsey to provide various advisory services across a number of infrastructure projects. The first and most significant contract was for financial advisory services related to Transnet's acquisition of 1064 locomotives. The acquisition, which ultimately cost R55 billion, was the largest locomotive supply contract – at the time, one of the largest single corporate infrastructure investments – in South Africa's history. It was not surprising that Transnet decided to hire advisors for the transaction, and this contract, initially worth R35 million, was awarded to a consortium led by McKinsey in late 2012.

McKinsey was required to work with a supplier development partner (SDP). This is a common feature of South African public procurement, as part of the government's economic transformation policies. Following the award of the 1064 contract, Transnet instructed McKinsey to replace the SDP it had originally included in the bid due to a supposed (and questionable) conflict of interest. Anoj Singh, the Transnet CFO, put forward Regiments, a local, Black-owned firm, for the role; McKinsey agreed.

Regiments was a small firm with limited capacity and little-to-no track record. It was also a critical part of the Gupta enterprise, and their associate Salim Essa had considerable influence over the firm. Essa was instrumental in negotiating contracts between SOEs, Gupta entities, and other suppliers. The Commission demonstrated his involvement through a network of companies, with the laundering of the monetary proceeds from these schemes. Singh was very familiar with Essa and met with him and another Regiments executive around the time the contract was awarded.

The relationship between Regiments, Essa, and the Guptas was not yet public knowledge in 2012 but was certainly known to the McKinsey senior partner responsible for the partnership, Vikas Sagar. Sagar, Essa, and another Gupta associate, Kuben Moodley, had met in October 2012 – before the contract was awarded – and agreed that McKinsey and Regiments would work together for Transnet; Regiments would send 30% of its share to a company controlled by Essa, and 5% to a company controlled by Moodley. Essa's share was later increased to 50%. Neither Essa nor Moodley did any work on the project beyond introducing Regiments to McKinsey and Transnet.

The partnership between Regiments and McKinsey was extremely lucrative for both parties. Over the next four years, Transnet awarded McKinsey seven more contracts amounting to R2.2 billion in total. The eight contracts were replete with procurement irregularities and policy violations, including:

- McKinsey failed to submit its financial statements and therefore did not meet the bid criteria and hence should not have been eligible to receive the contract.
- Transnet awarded all eight contracts via confinement and sole sourcing – i.e. no competitive bidding took place. The confinements were found to be unjustifiable, and McKinsey and Regiments had prior knowledge of the confinement memoranda prior to making their bids.
- All eight contract awards were approved by Molefe and Singh, and Singh's successor, Garry Pita, who also worked with the Guptas.
- Four contracts were for similar services and were awarded at the same time; the work had been split in four so that each contract fell within the delegation of authority given to the CEO and further approval did not need to be obtained.
- These four contracts appointed two Gupta-linked companies as supplier development partners; neither company was involved in providing services in these projects.
- The four procurement processes were conducted on a confidential basis, bypassing a number of procurement safeguards, ostensibly in order to protect McKinsey's "proprietary models".
- In the post-award stage, McKinsey and Regiments were given preferential treatment – for example, supply chain management was instructed to make fee payments before any contracts had been finalised.

McKinsey played a critical role in bringing Regiments into a business relationship with Transnet. Because Regiments was brought on as a supplier development partner after the first contract had been awarded, it never went through the verification, evaluation and adjudication of the procurement system. Once Regiments was appointed through this partnership, it was able to take on more and more work for Transnet without going through any procurement processes and eventually became embedded within the organisation. At least half of Regiments' earnings from these contracts was diverted into the Gupta money laundering scheme – and Regiments had emailed spreadsheets detailing these arrangements directly to Singh and Pita.

Regiments was eventually itself replaced by another consulting firm, Trillian, which had been purchased by Essa, and which similarly evaded the rigours of the procurement process. Transnet repeatedly amended the contracts post-award to increase their scope and value to a dramatic extent, and awarded Regiments and Trillian substantial fee increases, as detailed in the following section.

The 1064 advisory contract

In this section I look at the details of the work done by Regiments and Trillian. The initial agreement with McKinsey and Regiments was for R35 million for transaction advisory services related to the procurement of the 1064 locomotives. Over time, the scope of the contract – specifically the work allocated to Regiments – was widened and the value increased. This continued until McKinsey ceded the entire contract to them in 2014.

The contract value increased to R41.2 million in February 2014, then to R78.4 million two months later in April, and eventually to R265.5 million by July 2015, and overall increase of 754%. As the role of Regiments expanded, so too did the fees.

In January 2014, Transnet appointed four original equipment manufacturers (OEMs) as preferred bidders for the 1064 locomotive acquisition. In February, Regiments took over the role of financial advisor for the acquisition. The ensuing post-tender negotiations between Transnet and the OEMs were led by the CFO, Anoj Singh, and the CEO of Regiments – assuming a role usually reserved for the Group Treasurer. The Group Treasurer at the time was being side-lined and excluded from the process ("probably because she was too rigorous in her oversight" per the Zondo report); though she challenged the relegation of the Transnet treasury team, she was ultimately unable to prevent it.

The negotiation team agreed to escalations against the best interests of Transnet, including an overall increase of R15.9 billion for "forex and escalation costs" that had actually been included in the original price, as well as inappropriate "batch pricing", both specifically supported by the work of Regiments. They also made concessions to the OEMs for no apparent reason, against standard practices, including agreeing to significantly higher advance payments than usual to the suppliers, especially China South Rail (CSR) and China North Rail (CNR), which forced Transnet to significantly increase its borrowing that year.

Overall, the total price of the locomotive acquisition increased from an initial estimated cost of R38.6 billion to R54.5 million, escalations largely underpinned by Regiments' calculations and advice ("using their intellectual property methodology and techniques") which were judged by the Zondo Commission to be unjustifiable. Various misrepresentations were made to the board to facilitate these changes, and Transnet failed to obtain the necessary approval for the increases.

These changes benefitted the OEMs – most significantly CSR and CNR – to the detriment of Transnet. At the same time CSR and CNR were paying kickbacks (at least R5.9 billion) to companies in the Gupta/Essa network.

The financing

By August that year, Transnet began work on sourcing financing for the acquisition. A number of funding facilities were concluded for different portions of the contracts. For the contracts with CSR and CNR, Transnet sought to arrange a USD$1.5 billion loan facility with the China Development Bank (CDB), and to raise a further R12billion locally through a "club loan" with a consortium of banks.

Regiments again assumed a lead role in the negotiations with the CDB, to the exclusion of the Group Treasurer and her team, who consistently warned that the terms being arranged were not in the interests of Transnet and would violate public finance management regulations. Ultimately the CFO, supported by Regiments, presented misleading information to the board, which approved his proposal and committed Transnet to a very expensive loan on unfavourable terms. The advice and analysis provided by Regiments was factually incorrect and included significant misrepresentations.

Shortly after the loan was agreed, the Group Treasurer resigned due to fears for her safety and wellbeing. Her replacement, Phetolo Ramosebudi, was linked to the Gupta network. Ramosebudi made a proposal to the Board Acquisitions and Disposals Committee – supported by the CFO, SCO, and acting CEO, all part of the Gupta network – to (1) appoint JP Morgan to hedge the financial risks emanating from the CDB loan, and (2) extend Regiments' contract for further support on the locomotive transaction at an additional success fee of R166 million. The BADC approved it the next day.

There were three major problems with this set-up:

- The success fee was ostensibly for arranging the CDB loan on an "at risk" basis. But this work was part of the scope of Regiments' initial R15 million fixed-fee contract, for which they had already been paid.
- A success fee model is based on a principle of risk-sharing – the consultant stands to benefit greatly only if Transnet also benefits. But the additional payment of fixed fees removes the risk faced by the supplier. The risk was further reduced as Regiments had already completed most of the work.
- The method used to calculate the success fee – supposedly based on the amount of money saved for Transnet – resulted in Regiments being paid 10-15 times more than the market price.

Moreover, Regiments need not have been hired to do this work in the first place, given that Transnet had sufficient capacity to perform these functions.

At the same time, Regiments also advised and arranged for Transnet to conclude a R12 billion club loan with a consortium of local banks. JP Morgan was initially appointed as lead arranger (again via improper confinement) for an agreed fee of R24 million, but was replaced by Regiments, who would be appointed on the basis of its existing contract and would be paid a success fee of R50.2 million.

During this period, Essa acquired Trillian Capital and the CEO of Regiments, as well as many of their staff, moved to the new firm. Soon afterwards, Transnet appointed Trillian in the place of Regiments and approved a success fee of R82 million, another unexplained increase. These services were covered by the agreement with Regiments, had already been rendered by Regiments, and had already been paid for. Trillian did not have the capacity to do this work in the first place, and as the Zondo Commission found, did no work on this matter at all. This was a matter that could easily have been managed by Transnet's treasury.

The interest rate swaps

Days after the R12 billion club loan was concluded, Transnet appointed Regiments (working with local bank Nedbank as the counterparty) to hedge the interest rate on the loan by conducting swaps from a floating to a fixed basis. These swaps were executed to the significant prejudice of Transnet, against the advice of its Treasury. As a result, Transnet paid R850 million more in interest than it would have if the swaps had not been done. It also paid R229 million to Regiments in fees.

There were three major issues. First, if Transnet was concerned about the risk arising from a floating rate, it should have agreed a fixed rate to start with, as was Transnet's standard practice and policy. Second, the fixed rate was set at a high level over a long period, and it was likely that rates would decline – a floating rate was actually more beneficial to Transnet. This proved true and Transnet would have paid significantly less in interest if it had not executed the swaps. Third, these were straightforward swaps that Transnet could have executed itself and there was no need to appoint Regiments.

Regiments also executed interest rate swaps on R11.3 billion of Transnet debt unrelated to the 1064 locomotive acquisition. The counterparty was the Transnet Second Defined Benefit Fund (TSDBF). In an interest rate swap, one party bets on a rise in rates and the other on a decline. In this case, Transnet was betting against its own pension fund.

At the time, a Regiments subsidiary, Regiments Fund Managers, had been appointed to manage the TSDBF portfolio. The chairperson of the TSDBF was a board member of Transnet and an associate of Essa. Regiments was appointed by Transnet to advise on and execute the swap while its subsidiary was in control of the counterparty's investments – a clear conflict of interest.

Ultimately the TSDBF benefitted at Transnet's expense to the amount of R720 million, while Regiments was paid R112 million by Transnet and R228 million by the TSDBF (twice what was contracted and about 40 times market norms).

Eskom

In 2014, Regiments pursued more advisory work with Eskom. Much like Transnet, the Minister of Public Enterprises – now Lynne Brown – appointed a Gupta-friendly board at Eskom. For a while, Regiments' attempts were unsuccessful. The then-CFO resisted pressure from the CEO, board, and Minister's office to hire them, but she was ultimately pushed out the organisation in early 2015. McKinsey had also sent Eskom unsolicited proposals for consulting projects during this period but was unsuccessful.

Over the course of 2015, Brian Molefe and Anoj Singh were seconded by the Minister to Eskom to act as CEO and CFO respectively and were subsequently permanently appointed. McKinsey and Regiments held a series of confidential (and sometimes off-site) consultations with Molefe and Singh in early 2015, soon after Molefe was seconded, but several months before Singh left Transnet. They discussed a potential "turnaround programme", for which McKinsey and Regiments were given extensive direction – including internal documentation – for developing and submitting a proposal.

In July, Molefe, Singh, and other senior executives (including Matshela Koko, who was in frequent contact with Essa) worked to appoint McKinsey and Regiments on an at-risk basis for the turnaround programme. The justification for sole sourcing and for an at-risk remuneration model were not permitted by Treasury regulations, which the senior executives were warned about, and were heavily disputed by other senior officials within Eskom. Moreover, other officials within Eskom questioned the need for the project in the first place, since many of these services were being done in-house. These challenges were unsuccessful.

During this period a second, shorter term project was awarded to McKinsey for a "corporate plan". After Eskom executives added, at the last minute, a requirement to sub-contract 30% of the work to a SDP, Regiments was brought on board. They were allocated a portion of the contract worth R30.6 million. This money was eventually paid by Eskom not to Regiments but to Trillian, which had replaced Regiments during 2015, despite having no formal relationship to Eskom, Regiments, or McKinsey, and not having done the work.

McKinsey and Regiments began work on the turnaround program in January 2016 with no contract in place. When Regiments' key staff moved to Trillian, Trillian took over the role, although there was still no formal SDP relationship. In early 2016, a series of revelations in the media about Regiments' and Trillian's relationship to the Guptas finally prompted McKinsey to perform a due diligence check for the first time. This identified Essa's ownership and the allegations concerning the Gupta family. McKinsey decided to terminate the relationship.

When Eskom was notified that McKinsey would not proceed with Trillian, the contract – which executives had previously claimed was urgent and necessary – was cancelled within a few days. Bizarrely, for there was still no contract in place, Eskom decided to compensate McKinsey and Trillian for the cancelled project. Trillian was paid R595 million; McKinsey R1.1 billion. These amounts – invoiced by McKinsey and Trillian – were ostensibly calculated based on savings of R18.6 billion realised for Eskom as well as "costs incurred". These payments were made in the face of both internal and external advice to Eskom that they would be unlawful.

According to witness accounts Trillian did very little work and added little to no value; the costs it invoiced for were grossly inflated. Trillian also brought in two subcontractors, other entities that were part of the Gupta money laundering network.

Other SOEs and state entities

In February 2014, McKinsey and Regiments were awarded a contract by South African Airways, the state-owned airline. This was the result of a corrupt tender process in which the then-SAA Treasurer was bribed to ensure the success of the bid (he later moved to Transnet, replacing the Treasurer who had objected to the involvement of Regiments and McKinsey). Of the R6.2 million received by Regiments, 45% was paid forward into the Gupta laundry. This case was not probed in detail by the Commission and was significantly smaller than the others.

During this period, Regiments was able to secure work at a number of other SOEs, including SA Express (another state-owned airline), Denel (the state arms manufacturer), and the South African Forestry Company. These contracts were much smaller and not much information is available.

Fallout and aftermath

The majority of Regiments and Trillian's proceeds – alongside the proceeds of many other corrupt contracts – were paid onwards to shell companies within the Gupta money laundering network, first within South Africa and then on to laundering vehicles in China and Hong Kong. The State Capture Commission could not trace the funds to their final destinations, although the Gupta family and their associates – including the Zumas – are likely the ultimate beneficiaries.

Some of the money was used to fund other corrupt schemes. For example, Trillian's earnings from the ZAR club loan and Regiments' earnings from the interest rate swaps were laundered on to fund the purchase of Optimum Coal Mine by Tegeta Exploration and Resources, another Gupta company. The purchase was part of an extensive corrupt scheme involving Eskom (helmed at the time by Molefe) and the Department of Mineral Resources.

Whistle-blower testimony from former Trillian employees has since revealed that Regiments and Trillian's involvement in state capture went beyond corrupt consulting work. In December 2015, President Zuma dismissed the Minister of Finance, Nhlanhla Nene, replacing him with Des van Rooyen. This sparked outrage and intensive backlash, forcing Zuma to replace van Rooyen only four days later with Pravin Gordhan. Nene had been blocking various corrupt deals, and van Rooyen was friendly with the Guptas. He showed up to the finance ministry with a special advisor from Trillian, and whistle-blowers revealed that Trillian CEO Eric Wood had known months in advance that Nene would be replaced.

The Eskom payments were exposed by investigative journalists in 2016. The corporate governance failures that were uncovered triggered, amongst other things, a qualified audit report, a backlash from Eskom's creditors, severe liquidity problems that threatened Eskom's ability to generate electricity to South Africa, and downgrades of Eskom's credit rating. In 2018 the courts found the payments to McKinsey and Trillian to be unlawful. McKinsey had already decided to repay its portion following public backlash. After appearing at the Zondo Commission, McKinsey agreed to repay in full the money it had received from Transnet and SAA.

McKinsey maintained for a long time that it had done nothing wrong except, perhaps, fail in its due diligence with regards to Regiments and Transnet. It was charged by the National Prosecuting Authority (NPA) for its role in corruption at Transnet. McKinsey and Vikas Sagar in 2022 plead guilty to violating anti-bribery provisions of the US Foreign Corrupt Practices Act (FCPA). McKinsey paid a fine of $122 million and entered into a deferred prosecution agreement with the NPA. The charges against McKinsey were withdrawn, although Regiments, Trillian, and the executives they worked with are still being prosecuted.

Regiments and Trillian are in liquidation, which has frustrated asset recovery procedures in South Africa. Essa and the Guptas left the country and attempts by the NPA to extradite them from the UAE have been unsuccessful.

Immense damage was done to both Eskom and Trillian, although the consulting contracts were only a part of what was unfolding in these institutions. Internal controls designed to prevent corruption were weakened across various internal systems and bodies. Individuals affiliated with the Zuma/Gupta network were appointed to powerful positions, and – over at least four years – continued to act against the best interests of the company in order to secure lucrative contracts for their partners. This devastated the operations of both companies, leading to the failure to acquire and maintain necessary infrastructure, attract and retain skilled staff, and fulfil their developmental mandates. Both companies are still embroiled in lengthy and expensive legal processes.

These events have hindered Transnet's ability to fulfil its basic mandate. In December 2019, Transnet approached the courts to set aside the 1064 contracts, due to the unlawful escalation of costs (supported by Regiments). The locomotives were meant to have been delivered by 2018/2019, but by 2019 CNR had delivered only 20 out of 232 locomotives, and CSR had delivered 251 out of 359. By 2023, 99 locomotives were still outstanding.[2] Despite reaching an in-principle settlement with the China Railway Rolling Stock Corporation (CRRC, which CSR and CNR have since merged to form) in 2022, Transnet and CRRC are still at a stand-off, with CRRC refusing to deliver locomotives and spare parts.[3] The lack of spare parts has meant that the Chinese locomotives are unusable once they have broken down, forcing Transnet to withdraw more than 300 locomotives from service.[4]

[2] https://www.engineeringnews.co.za/article/transnet-to-issue-locomotive-rehabilitation-tender-as-it-reaches-impasse-with-crrc-2023-01-12
[3] https://www.parliament.gov.za/news/resolution-needed-locomotives-impasse-curb-transnets-rising-debt
[4] https://www.dailymaverick.co.za/article/2023-06-02-south-africas-locomotive-shortage-unresolved-after-china-visit/

What can we learn from this case study?

The Gupta enterprise used similar tactics to "capture" a number of state institutions. Senior officials friendly to them were appointed by Zuma and his allies within the state. They used their power to ensure that certain suppliers were awarded highly lucrative contracts, and that these contracts were inflated in value. These suppliers paid kickbacks to the Gupta enterprise, who in turn distributed benefits to those officials' political principals, and occasionally to the officials themselves.

This is what happened at Transnet and Eskom, where officials violated numerous rules, policies, and norms in order to award contracts to McKinsey, Regiments and Trillian.

Regiments and Trillian, in turn and with the knowledge of McKinsey, paid the majority of their earnings on to the Gupta network laundry. But we can learn more from this case study: the specific ways in which "consulting and advisory work" can be used to advance corruption within an institution.

The push to outsource and its impact on state capacity

- The procurement of most of these advisory services was not based on need and was motivated instead by the objective of enriching the Gupta enterprise. Transnet and Eskom both had requisite – and very well regarded – internal capacity and expertise, particularly concerning financial advisory services, such as estimating costs, negotiating contracts, arranging loans, and executing swaps. Many of the tasks were nevertheless outsourced to McKinsey and Regiments at significant cost.
- Transnet's Treasury department was deliberately sidelined from its oversight role and excluded from work that it should have been responsible for, and its advice and protests were ignored by the senior executives of the institution. Officials testified that they had been pressured by their superiors into using consultants despite their objections. In some cases, transaction advisory services were procured for activities which had already been competently executed; in others, advisory services were procured for certain projects without the knowledge or approval of the business owners of those projects.
- In the end, the high-capacity Treasury department was "hollowed out", entrenching the need to outsource this expertise. Similarly, the warnings and reservations of Eskom professionals that McKinsey and Trillian's work was not needed or substandard were ignored.

The legitimacy afforded by partnerships with multinationals

- The case is relevant for the study of how professional services firms enable corruption partly by lending legitimacy in ways that subvert normal scrutiny and oversight. Transnet and Eskom were able to award McKinsey and Regiments many contracts via non-competitive procedures partly because of McKinsey's reputation and credibility as one of the preeminent management consulting firms worldwide.
- Because Regiments (and then Trillian) were supplier development partners of McKinsey, and were substituted after the bid was awarded, they never went through the rigours of the procurement process. Neither of those firms could have been appointed by themselves – they would not have met the criteria. Indeed, at Eskom they were never even appointed, although they were paid.
- McKinsey profited greatly from its relationship to Essa and the Gupta network. At both Transnet and Eskom, McKinsey was given preferential treatment and was awarded multiple contracts on a non-competitive basis. Its payout from Eskom was more than 10 times what it had earned in previous years.
- McKinsey and Regiments formed close relationships with certain senior officials who moved between state institutions and brought the consulting firms new opportunities where they went.
- Though McKinsey claimed ignorance of the activities of Regiments, Trillian, and its own partner Vikas Sagar, it is nonetheless problematic that it permitted several ethically questionable practices to occur unchecked – for example, its staff maintaining close personal relationships and access to senior executives, extensive private consultations and the receipt of confidential information to develop proposals for projects, and the practice of conducting and invoicing for work in the absence of a contract.

The nature of the work and lack of oversight

- The financial advisory work done by McKinsey, Regiments, and Trillian is highly specialised and relatively opaque for non-experts, inhibiting accountability.
- There is a trove of evidence showing that Regiments and Trillian's advice was frequently based on incorrect claims, poor analysis, and significant misrepresentations – advice which caused significant economic detriment to Transnet. Yet Transnet never evaluated the quality of the work and took their claims at face value.
- The highly specialised nature of the work also means that particular expertise is required to assess the quality and accuracy of the consultants' outputs. This would not be true of most other types of goods or services being procured or outsourced.
- In the Transnet case, Regiments was providing advice specifically formulated to support Transnet officials in executing other corrupt deals or simply to further benefit themselves.
- Regiments were the formulators of the funding plan, the executors of the funding plan, and the executors of further (highly profitable, for them) interest rate swaps. As they became intimately involved in the operations of state entities, the conflicts of interest multiplied.

The payment models and biased distribution of risk

- The highest corrupt payments were "success fees" ostensibly justified by savings these firms had secured for Transnet and Eskom. This model is based on a principle of risk-sharing – the consultant stands to benefit greatly only if the client also benefits. This model of remuneration is rarely seen outside of financial services, and the National Treasury advises public institutions against entering into these kinds of arrangements.
- The Transnet case shows how these fee models are easily exploited. Regiments was paid both a fixed and success fee for the same work – the additional payment of fixed fees removes the risk faced by the supplier, negating the principle of risk sharing. The risk was further reduced as Regiments had already completed a portion of the work when the success fee was initially proposed. This allowed Regiments to obtain high fees, ostensibly because they took the work on at significant risk, when in fact they did so at little-to-no risk.
- At Eskom and Transnet, the success fees were calculated based on the consultants' own determination of how much money had been saved, often at a rate much higher than market norms. These calculations were accepted at face value by Transnet when, not only did Regiments not secure any savings for Transnet, but it in fact also caused Transnet to suffer substantial financial loss. At Eskom, a review found that savings had been exaggerated, and the commission percentages were much higher than market rate.

These observations are not unique to McKinsey, Regiments and Trillian. In fact, this "modus operandi" was used multiple times to extract money from SOEs. Between 2016 and 2017, when many of the corrupt officials were still in place, Eskom and Transnet entered into new consulting arrangements with Deloitte, PwC and KPMG that were later found to be unlawful for very similar reasons – no competitive bidding, use of at-risk arrangements, procurement policy and public finance management violations. All three firms appointed Nkonki as their supplier development partner, a local firm that had been acquired by Trillian and controlled by Salim Essa.

Conclusion

The use of consultants in the public sector and the way in which it may transform the structures and practices of government has long been debated in public administration scholarship. Consulting firms have become embroiled in an increasing number of corruption scandals, prompting concern from anti-corruption scholars and activists. At the intersection of these debates, this case study highlights the relationship between state capacity, outsourcing, and corruption.

One of the threads of the public administration scholarship concerns "hollowing out," a number of processes (new public management reforms, public expenditure cuts, and so on) that lead to the loss of capacity and authority of the state and increased privatisation and outsourcing of public services. This has been linked to greater dependency on consultants and other professional service providers.[5] These processes can certainly be identified in South Africa.

One of the most prevalent features of the post-apartheid South African state has been the contracting-out of government services to third-party providers, as argued by PARI.[6] Driven by neoliberal state reforms and characterised by outsourcing, delegation, contracting, and concessions, "state capacity has become the ability of the state to tap into and manage, through contractual relations, private sector capacities". Corruption and clientelism have developed around the weaknesses of this "contract state." This is especially true in major state-owned enterprises, which spend billions in capital expenditure and are responsible for the state's developmental ambitions – and have been in deep crisis, often necessitating the need for external intervention.

At the same time, policies meant to promote inclusion in the economy have created opportunities for corruption in the arrangement of local partnerships. This, combined with high levels of political corruption and patronage politics, has led to the growth of a strong cadre of intermediaries and middlemen who broker deals between politicians, officials, and businesspeople.

It is in this context that McKinsey was able to secure lucrative work with state companies with the help of politically connected middlemen. At the same time, Regiments and then Trillian were able to use McKinsey's status and credibility to escape scrutiny, embed themselves within these institutions, and generate further, more profitable work.

It is true that the lack of state capacity and capability has increased the need to hire consultants to perform work that should be done internally, creating a host of opportunities for these firms to profit. At the same time, these weaknesses and the underlying logics of the public administration (that the state is weak and needs to outsource important functions) can be exploited by corrupt actors even when capacity does exist. This is what happened at Transnet and Eskom. Both organisations have struggled with capacity limitations and hollowing out,

[5] For example: Saint-Martin, D. (2012). "Governments and Management Consultants: Supply, Demand and Effectiveness." In The Oxford Handbook of Management Consulting, edited by T. Clark and M. Kipping. Oxford: Oxford University Press. Galwa, J, and Vogel, R. (2023). "In Search of Legitimacy: Conflicting Logics and Identities of Management Consultants in Public Administration." Public Management Review 25(2): 404–428. Ylönen, M, and Kuusela, H. 2019. "Consultocracy and its Discontents: A Critical Typology and a Call for a Research Agenda." Governance 32(2): 241–58.
[6] Brunette, R., Chipkin, I., Tshimomola, G., & Meny-Gibert, S. (2014). The contract state: Outsourcing and decentralisation in contemporary South Africa. Johannesburg: Public Affairs Research Institute.

but in both cases, the need to hire consultants for the work discussed above was exaggerated and invented in order to enrich the Gupta enterprise.

State capture and corruption are able to take root where there is insufficient capacity or capability; at the same time, they damage state capacity, creating a vicious cycle. Many skilled workers have left the public sector – whether because they were pushed out for refusing to comply with corruption, or simply because they did not want to remain in an institution that had been rendered almost completely dysfunctional. Many governance systems and structures were weakened or entirely broken in the process of capture, and vital operations have been set back many years. Despite the dismantling of the Gupta enterprise, many patronage networks are still deeply entrenched in the state.

Many public institutions are facing a crisis of capacity, not caused by but certainly exacerbated by corruption, and are having to outsource more functions, despite the scandals of the state capture era. The cycle perpetuates; stripped of capacity, the state has to hire more consultants.

References

Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (2018), Volume II Part 1: Transnet. https://www.statecapture.org.za/site/information/reports

Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (2018), Volume IV Part 3: Eskom. https://www.statecapture.org.za/site/information/reports

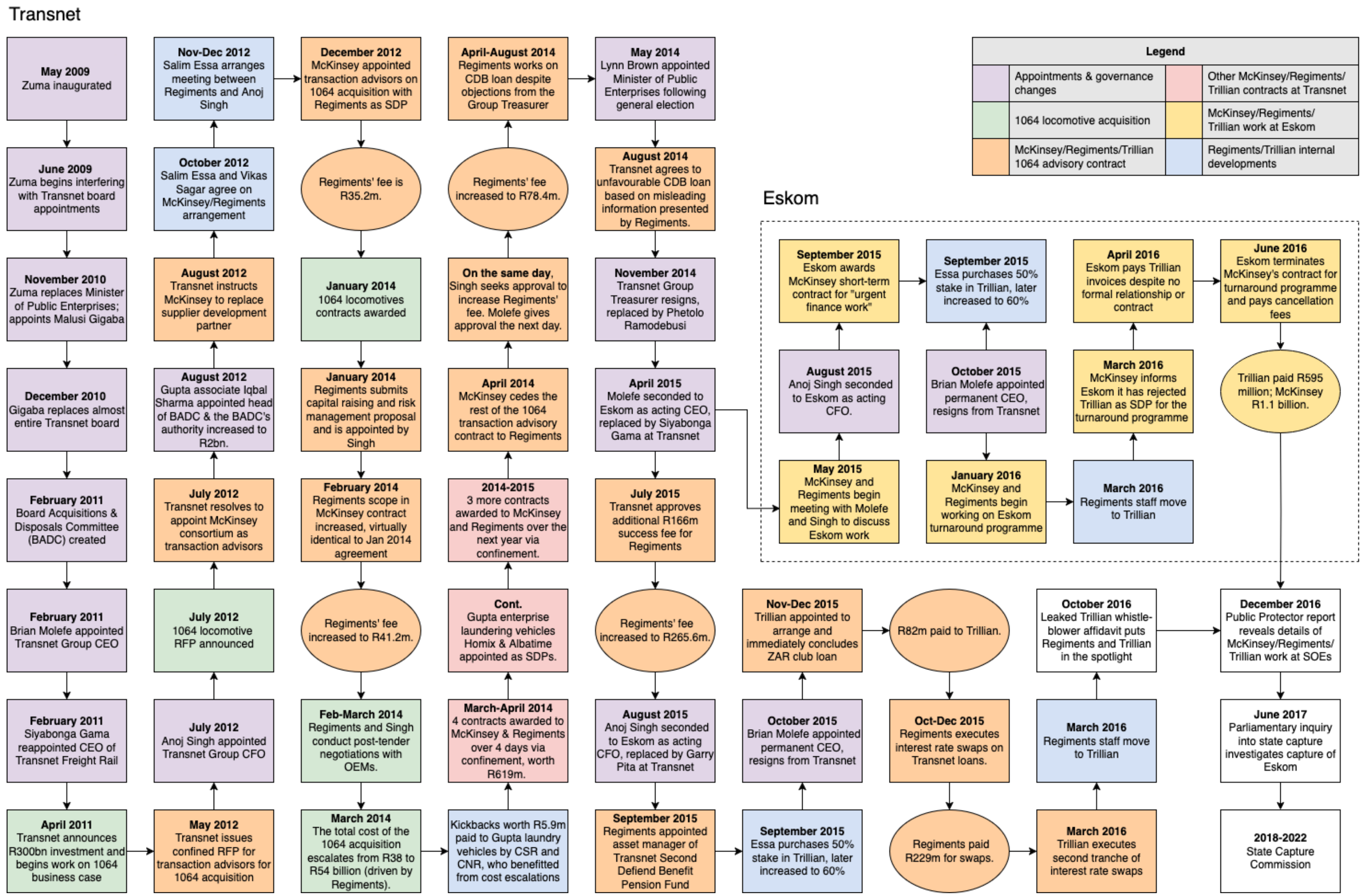
Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (2018), Volume IV Part 4: Eskom. https://www.statecapture.org.za/site/information/reports

Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (2018), Volume IV Part 2: Flow of Funds. https://www.statecapture.org.za/site/information/reports

Commission of Inquiry documents:

- *Transnet Reference Bundle 06:* MNS Attorneys, Report into the Alleged Irregularities relating to the Appointment of the Transaction Advisors in respect of the Acquisition of the 1064 Locomotive Tender and the Financial Transactions pursuant thereto, Volume 2(A) and 2(B) (March 2019)
- *Transnet Reference Bundle 11*: National Treasury, Forensic Investigation into Various Allegations at Transnet and Eskom: Tender Number NT 022-2016 RFQ 026-2017 Chapter II: McKinsey, Trillian and Regiments (November 2018)
- *Transnet Reference Bundle 12*: Geoff Budlender SC, Report for Trillian Capital Partners on Allegations with regard to the Trillian Group of Companies, and related matters (June 2017)
- Exhibits BB8a, 8b, 8d (MNS evidence and testimony on forensic investigations)
- Exhibits VV6, VV7, VV8 and VV9 (McKinsey witnesses and evidence bundle)
- Exhibit VV10 (Flow of Funds analysis)

Timelime



Transnet
May 2009 Zuma inaugurated
June 2009 Zuma begins interfering with Transnet board appointments
November 2010 Zuma replaces Minister of Public Enterprises; appoints Malusi Gigaba
December 2010 Gigaba replaces almost entire Transnet board
February 2011 Board Acquisitions & Disposals Committee (BADC) created
February 2011 Brian Molefe appointed Transnet Group CEO
February 2011 Siyabonga Gama reappointed CEO of Transnet Freight Rail
April 2011 Transnet announces R300bn investment and begins work on 1064 business case
May 2012 Transnet issues confined RFP for transaction advisors for 1064 acquisition
July 2012 Anoj Singh appointed Transnet Group CFO
July 2012 1064 locomotive RFP announced
July 2012 Transnet resolves to appoint McKinsey consortium as transaction advisors
August 2012 Gupta associate Iqbal Sharma appointed head of BADC & the BADC's authority increased to R2bn.
August 2012 Transnet instructs McKinsey to replace supplier development partner
October 2012 Salim Essa and Vikas Sagar agree on McKinsey/Regiments arrangement
Nov-Dec 2012 Salim Essa arranges meeting between Regiments and Anoj Singh
December 2012 McKinsey appointed transaction advisors on 1064 acquisition with Regiments as SDP
Regiments' fee is R35.2m.
January 2014 1064 locomotives contracts awarded
January 2014 Regiments submits capital raising and risk management proposal and is appointed by Singh
February 2014 Regiments scope in McKinsey contract increased, virtually identical to Jan 2014 agreement
Regiments' fee increased to R41.2m.
Feb-March 2014 Regiments and Singh conduct post-tender negotiations with OEMs.
March 2014 The total cost of the 1064 acquisition escalates from R38 to R54 billion (driven by Regiments).
Kickbacks worth R5.9m paid to Gupta laundry vehicles by CSR and CNR, who benefitted from cost escalations
March-April 2014 4 contracts awarded to McKinsey & Regiments over 4 days via confinement, worth R619m.
Cont. Gupta enterprise laundering vehicles Homix & Albatime appointed as SDPs.
2014-2015 3 more contracts awarded to McKinsey and Regiments over the next year via confinement.
April 2014 McKinsey cedes the rest of the 1064 transaction advisory contract to Regiments
On the same day, Singh seeks approval to increase Regiments' fee. Molefe gives approval the next day.
Regiments' fee increased to R78.4m.
April-August 2014 Regiments works on CDB loan despite objections from the Group Treasurer
May 2014 Lynn Brown appointed Minister of Public Enterprises following general election
August 2014 Transnet agrees to unfavourable CDB loan based on misleading information presented by Regiments.
November 2014 Transnet Group Treasurer resigns, replaced by Phetolo Ramodebusi
April 2015 Molefe seconded to Eskom as acting CEO, replaced by Siyabonga Gama at Transnet
July 2015 Transnet approves additional R166m success fee for Regiments
Regiments' fee increased to R265.6m.
August 2015 Anoj Singh seconded to Eskom as acting CFO, replaced by Garry Pita at Transnet
September 2015 Regiments appointed asset manager of Transnet Second Defiend Benefit Pension Fund
September 2015 Essa purchases 50% stake in Trillian, later increased to 60%
October 2015 Brian Molefe appointed permanent CEO, resigns from Transnet
Nov-Dec 2015 Trillian appointed to arrange and immediately concludes ZAR club loan
R82m paid to Trillian.
Oct-Dec 2015 Regiments executes interest rate swaps on Transnet loans.
Regiments paid R229m for swaps.
March 2016 Trillian executes second tranche of interest rate swaps
March 2016 Regiments staff move to Trillian
October 2016 Leaked Trillian whistle-blower affidavit puts Regiments and Trillian in the spotlight
December 2016 Public Protector report reveals details of McKinsey/Regiments/Trillian work at SOEs
June 2017 Parliamentary inquiry into state capture investigates capture of Eskom
2018-2022 State Capture Commission
Legend
Appointments & governance changes
Other McKinsey/Regiments/Trillian contracts at Transnet
1064 locomotive acquisition
McKinsey/Regiments/Trillian work at Eskom
McKinsey/Regiments/Trillian 1064 advisory contract
Regiments/Trillian internal developments
Eskom
May 2015 McKinsey and Regiments begin meeting with Molefe and Singh to discuss Eskom work
August 2015 Anoj Singh seconded to Eskom as acting CFO.
September 2015 Eskom awards McKinsey short-term contract for "urgent finance work"
September 2015 Essa purchases 50% stake in Trillian, later increased to 60%
October 2015 Brian Molefe appointed permanent CEO, resigns from Transnet
January 2016 McKinsey and Regiments begin working on Eskom turnaround programme
March 2016 Regiments staff move to Trillian
March 2016 McKinsey informs Eskom it has rejected Trillian as SDP for the turnaround programme
April 2016 Eskom pays Trillian invoices despite no formal relationship or contract
June 2016 Eskom terminates McKinsey's contract for turnaround programme and pays cancellation fees
Trillian paid R595 million; McKinsey R1.1 billion.