
FINANCIAL AND FISCAL COMMISSION'S READING OF THE ZONDO COMMISSION OF INQUIRY INTO STATE CAPTURE REPORT - PART VI

July 2022

Summary

The final part of the Judicial Commission of Inquiry into State Capture (also known as the Zondo Commission) Report, Part 6, is summarised below. The purpose of the Commission is to investigate allegations of state capture, corruption and fraud in the public sector. The report is split into four volumes, with the first 3 focussing on the Vrede Dairy Project, the role of the ANC and Parliamentary Oversight in state capture, and state capture derived funds, among others. The fourth volume summarises the recommendations.

Volume 1: Vrede Dairy Project/Estina and Closure of Gupta Bank Accounts

1. This part of the report relates to a dairy project which the Department of Agriculture and Rural Development (DARD) in the Free State provincial government embarked upon in 2012 in which over five years, this provincial department was going to spend about R300 million and its partner in the project would need to spend about R200 million over the same period.
2. The partner, Estina Pty (LTD), had only R16.00 in its bank account the day before the DARD paid the first amount of R30 million. Estina was a company that was not involved in agriculture and had no experience or expertise in the agricultural sector.
3. One of the key figures in the project was Mr Peter Thabethe, whose duty was to make sure all applicable legal obligations were complied with in respect of the project. Mr Thabethe was found to be incompetent in this regard.
4. The principal witnesses included the Chief Procurement Officer at National Treasury, Mr NW Mathebula, the initial complainant who lodged a complaint with the public protector; Mr Jankielsohn, whose evidence was supported by Mr Dawie Maree; Mr JCH Theron; Mr E Dhlamini; and Mr MM Ncongwane.

5. On 3 August 2009, Mr Thabethe, who was to later become the head of the department (HOD) responsible for the Vrede Dairy project, was appointed as special advisor to the Minister of the Department of Agriculture, Forestry and Fisheries (DAFF).
6. Between the 28th-30th September 2011, the Department of Agriculture presented the Mohoma Mobung Strategic concept to the executive council of the provincial government.
7. On 24 February 2012, the MEC of the Department of Agriculture, Mr M Zwane, sent a memorandum to the premier, Mr Magashule, requesting approval of a visit to India by HOD Mr Thabethe. This approval was given on 28 February 2012 with the addition that Mr Ashok Narayana travels with Mr Thabethe. The department funded the travel and accommodation of both Mr Thabethe and Mr Narayana despite Mr Narayana not being part of the government.
8. On 5 May 2012, Estina made a formal offer to the department by way of a draft agreement. According to reports on 5 May 2012, Mr Thabethe met Tony Gupta at the Gupta's Saxonwold address.
9. On June 2012, Estina and the department entered into the first agreement. The HOD signed this agreement on 7 June 2012. This agreement committed the department to spending R570 million on this project, with a proposal that Estina would provide R228 million of this globular amount. These funds from the department were to be paid in tranches of R144 million per financial year for a period of 3 years.
10. On 15 June 2012 and on the request of Mr Zwane, the CEO of the department requested a R30 million payment for Estina from the provincial treasury. This agreement was referred to the state law advisors on 18 June 2012 by the provincial treasury. The state law advisors advised that the agreement was irregular because the normal procurement process had not been complied with. The first payment of R30 million was disbursed to Estina on 9 July 2012.
11. Ms Rockman, then MEC for Finance, met Tony Gupta on 6 April 2013. During that meeting, Mr Gupta requested the outstanding payment to Estina in respect of the dairy project. The second payment of R34 950 000 was made to Estina on 18 April 2013. On 26 April a further R30 million was paid to Estina.
12. From 26 April to 4 May 2013 the Gupta family hosted a family wedding at Sun City. On 3 May 2013 a further R19 050 000 was paid to Estina.
13. According to an affidavit by Mr Dumisani Cele (Director: specialized audit services within the National Treasury), a complaint was made regarding the irregular appointment and payments to Estina Pty LTD with registration 2008/15033/07. The complaint came through

a Mail & Guardian media inquiry dated 10 June 2013. It appeared that the funds used to pay Estina were from a grant administered by the national DAFF. As a result, Mr Cele was assigned to conduct an investigation.

14. On 22 August 2013, Mr Cele made an appointment with the HOD of the Free State DARD, Mr Thabethe, to deliver a letter the subject of which was “request for information pertaining to allegations of irregular engagement of Estina/Para for establishment of integrated dairy in Vrede.”
15. On arrival at the office of Mr Thabethe, Mr Cele was greeted by the CFO of DARD, who then spoke to him in the Sesotho language and said “Dumisani Basotho ba tlo u bolaea” meaning “Dumasini, the Sotho people are going to kill you.”
16. When he served the letter to the HOD, Mr Thabethe told him that he (Mr Cele) had no powers to investigate his department. Mr Cele eventually went back without any documents.
17. After investigation, Mr Cele found that: 1) supply chain procedures were not followed; 2) an un-authorized payment of R114 million; and 3) there were no beneficiaries in terms of AgriBEE.
18. **The Gupta influence;** the influence of the Guptas was based on their strong relationship with the MECs of the Free State province which enabled them the influence of the Guptas over the operations of the Vrede Dairy project.
19. The office address of Estina’s sole director had been established to be at the offices of a Gupta entity in Gauteng (Sahara computers).
20. The Estina agreement was cancelled by DARD on 13 August 2014. However, Estina continued to receive payments from DARD until June 2016 based on an unsubstantiated claim by the HOD of DARD, Mr Thabethe, that Estina had met key deliverables under the contract. No evidence to this effect could be provided, hence all payments to Estina were classified as irregular.
21. Overall the total amount of R280 million was paid to Estina.
22. Mr Zwane was asked if he was aware of the involvement of Estina Pty Ltd in the project, to which he replied he was not aware and that he knew only about the involvement of Paras Dairy.
23. It was found that Gateway and the beneficiaries intended to benefit from this project have not seen what this project was meant to do for them. The R30 million advanced payment, therefore, was meant to benefit Gupta-related entities and the Guptas themselves.

24. Mr Zwane stated that in his view, had the project been well managed, it would have been regarded as one of the best projects in agriculture to have happened for the people of the Free State.
25. **Allegations of overpricing of assets acquired and inexperience in Dairy farming;** Mr Albert Doctor Radebe, a farmer and municipal councilor on the Geluk farm in Vrede testified that, after the start of the project, he heard of dead cows dumped next to a stream that supplies water to the town of Vrede and went to the farm and confirmed the facts for himself. Mr Radebe then contacted the press and also reported the matter to environmental authorities, which ordered the removal of the carcasses and the burial on an appropriate site on the farm, which was done.
26. Mr Radebe also testified that after the publication, the entrance to the farm was barricaded to deny access and he personally became a target victim.
27. Mr Willie Basson, a business man and farmer in Vrede, also testified that he has on several occasions had to bury cows whilst working on the farm rendering excavation services and supplying cattle feed to the farm.
28. **Expert opinion (Mr David Andreas Maree):** As to project costs, dairy cattle were costed at R25 000 per cow in milk in the Estina proposal. Mr Maree said this, in his opinion, was very high since costs for a milk or dairy cow are approximately R15 000 per cow.
29. An amount of R5 million was budgeted for milking a parlour, and another R15 million was budgeted for what was called “other dairy equipment”. Mr Maree’s view was that this was unnecessarily high and that, for an amount of R15 million, a state-of-the-art, high-precision parlour could be erected.
30. In conclusion, it was Mr Maree’s view that the project cost was unreasonably high. In his view an in-depth cost-benefit analysis of the impact of the proposed project was clearly called for, given the money the government was lured into spending.
31. **Deaths/threats and culture of fear, intolerance and lack of accountability:**
32. Mr Ephraim Makhosini Dhlamini and Mr Meshack Mpaleni Ncongwane were both farmers in their own rights before they were invited to become beneficiaries of the VDP. They became outspoken when they and other beneficiaries were ignored and sidestepped in the project which was promoted as being for their benefit.
33. The two beneficiary witnesses talk of threats to their lives, particularly that of Mr Dhlamini, and of the killing without perceptible criminal justice consequences of those beneficiaries who spoke out about the concerns of the beneficiaries, including investigators such as Mr Philemon Ngwenya (Killed) and Mr Moses Chauke (Killed).

34. When exploring the amounts that were paid to Estina, Mr Thabethe agreed that the first R30 million was paid on July 9 2012. On 18 April 2013, Estina received R34 950 000. On 26 April 2013, it received R30 million. On 3 May 2013, Estina received R19 050 000, and on 20 December 2013, it received R29 950 000. The contract was cancelled on 25 July 2014. After the contract had been cancelled, Estina was paid R60 million on 8 May 2015. On 5v May 2016, it received R46 252 652. The total disbursed was R250 202 652.
35. The Commission heard evidence about the closure of bank accounts of Gupta companies. This included the evidence of various witnesses who represented the banks or at least some banks involved as well as the evidence of Mr Mosebenzi Zwane and Mr Gwede Mantashe.
36. Mr His Sinton (head of compliance at Standard Bank) testified to the manner in which Standard Bank terminated its banking relationship with companies (Gupta companies) in which various members of the Gupta family and Mr Duduzane Zuma had a direct or indirect interest. He also submitted a witness statement signed on 13 August 2018.
37. Standard Bank gave notice on 6 April 2016 to the Gupta companies of its intention to terminate the banker-client relationship with them as from 6 June 2016, a notice period of two months. Then on 6 June 2016 Standard Bank officially terminated that relationship.
38. Mr Sinton provided a list of the Gupta companies, 27 in all including Oakbay investments (PTY) Ltd, Westdawn Investments (Pty) Ltd, Sahara computers (Pty) Ltd, TNA Media 9Pty) Ltd, VR Laser Services (Pty) Ltd, Optimum Coal Mine (Pty) Ltd, and Estina (Pty) Ltd. Certain of the Gupta companies operate multiple accounts.

Volume 2: State Capture Established, President Ramaphosa's Evidence, and the Role of the ANC and Parliamentary Oversight

Introduction

39. The Commission is tasked with considering whether ad hoc instances of corruption amount to a coordinated and deliberate project of state capture. The inquiry into state capture stemmed from the former Public Protector's report, which directed the President to establish a Commission of Inquiry as remedial action, since such a body would be better capacitated to investigate the allegations of state capture. The High Court confirmed that the Public Protector had the power to do so in terms of section 182(1)(c) of the Constitution, despite former President Zuma's attempt to have the Public Protector's remedial action set aside.
40. In accordance with the Commission's terms of reference, the investigation into state capture is concentrated on the following: irregular public appointments, improper conduct by

national executive and SOEs, the concerted efforts and corrupt activities of the Gupta enterprise in gaining control of governance and procurement in SOEs, and corruption within all levels of government more broadly, which includes fraud, money laundering and racketeering.

Meaning of 'State Capture'

41. Generally speaking, state capture is described as an increasing degree of corrupt private influence over state power and entails the unlawful exercise of influence over political and administrative decisions, in particular the unlawful appropriation of public funds. However, state capture is more than mere corruption as it involves a network of relationships – both within and outside the public sector – whose objective is to ensure the exercise of undue influence over organs of state for private and unlawful gain.
42. In order to make a determination on whether state capture did indeed occur in South Africa, the Commission weighs up the evidence from the reports against the following elements that would amount to state capture:
 - 42.1. **i)** the allocation/distribution of state power and resources for private and corrupt advantage; **ii)** a network of persons inside and outside of government acting illegally and unethically to further state capture; **iii)** improper influence over appointments and removals from office; **iv)** the manipulation of the rules and procedures of decision-making in government to facilitate corruption; **v)** deliberate effort to undermine or render ineffectual oversight bodies and exploit regulatory weaknesses to avoid accountability; **vi)** deliberate effort to subvert and weaken law enforcement and intelligence agencies to sustain illicit activities; **vii)** support by powerful actors in the political sphere; **viii)** assistance of professional service providers from private sector; **ix)** use of propaganda to manipulate public discourse and divert attention away from wrongdoing and discredit opponents
43. The Commission finds that, on the evidence, all these elements are present. The extensive scheme of corruption and wrongdoing that afflicted public entities, government departments and other state agencies during the period under review amounted to state capture. For example:
 - 43.1. In Eskom, the Guptas used former president Zuma to remove certain executives and have their own associates appointed who could carry out their scheme.
 - 43.2. In Transnet, the Guptas used Zuma to remove a minister who wouldn't support the scheme and thus had Zuma appoint their friend, Minister Gigaba, who could then appoint another friend, Brian Molefe, and later the involvement of Mr Gama.

- 43.3. At Denel, the Guptas influenced the appointment of Mr Ntshepe as CEO who was prepared to carry out their corrupt plans.
- 43.4. In SARS, Bain & Co captured former president Zuma and Mr Tom Moyana, the Commissioner of SARS at the time.
- 43.5. Bosasa captured Zuma and the Commissioner of the Correctional Services, Mr Mti, amongst other officials.
44. Based on the evidence presented for each of these instances, the Commission expresses no doubt that state capture did occur in South Africa. State capture Transnet, Bosasa and SARS are summarised briefly below.

State Capture at Transnet

45. In financial terms Transnet was the primary site of state capture. Contracts to the value of approximately **R41.2 billion** were awarded irregularly for the benefit of entities linked to either the Gupta enterprise or Mr Essa. This amount represents 72.21% of total state payments in respect of contracts tainted by state capture. The huge financial losses incurred at Transnet resulted from excesses, fraud and corruption.
46. Much of the looting that took place at Transnet by the Gupta enterprise took place between November 2010 and May 2014, while **Mr Gigaba** was the Minister of Public Enterprises. Both Mr Gigaba and former president Zuma had strong ties to the Guptas, and this underpins the conclusion that Transnet was a site of state capture.

State Capture at Bosasa

47. From the evidence, the Commission concludes that Bosasa and its associates were involved in the systematic attainment of substantial unlawful and corrupt influence over the decision-making of certain organs of state for their own private purpose and gain, in conflict with the constitutional duty of the state and its organs to operate exclusively in the best socio-economic interests of its citizens, consistent with the Bill of Rights and its underlying values.
48. The state “captors” at Bosasa included **Mr Gavin Watson, Mr Angelo Agrizzi** and a number of employees and directors of Bosasa and the companies associated with Bosasa. The **Watson family** were the main beneficiaries from state capture at Bosasa.
49. The targeted individuals who were in a position to prevent corrupt activities at Bosasa but did not do so include:
- 49.1. **Mr Jacob Zuma, Mr Thabang Makwetla and Ms Nomvulo Mokonyane** (who are members of the National Executive and Provincial Executives). These persons accepted gratification from Bosasa in pursuant of contracts with the government.

- 49.2. Senior board members and executives in SOEs, such as **Ms Dudu Myeni** (who had a relationship with Mr Gavin Watson). Ms Myeni, along with other senior persons at SAPO and ACSA, were successfully targeted and who benefited in their personal capacity.
- 49.3. **Members of Parliament**, who received cash payments from Bosasa in return for adopting a favourable attitude towards Bosasa in the portfolio committee on correctional services.
- 49.4. The **ANC** and some its leadership who received benefits from Bosasa, aimed at ensuring ANC would remain the majority party and be in a position to appoint positions to public office.
- 49.5. Investigating and prosecuting authorities within the **NPA** and **SIU**, who allowed Bosasa to use its corrupt activities to intervene with their investigations.
50. In terms of **internal features** that allowed state capture at Bosasa to take hold, the Commission mentions the following:
- 50.1. Mr Watson and his family's "struggle credentials" which gained them admiration from political leaders public officials within the ANC.
- 50.2. Absence of a culture of ethical dealings with the private business sector.
- 50.3. Problematic social trends within South African society that tend to place a higher value on the individual and wealth accumulation, over the values of communities, development and egalitarianism.
- 50.4. The failure of the state to effectively implement section 195 of the Constitution, which sets out the basic values and principles governing public administration.

State Capture at SARS

51. In order to establish whether state capture occurred within SARS, the Commission conducted various lines of inquiry, such as connections with the Gupta or Zuma families; irregular suspensions and patterns of collusion; and the deliberate changing governance structures within SOEs.
52. In its analysis the Commission paid particular attention to the role of **external consultants** in facilitating state capture, as well as the impact of private sector consultancy arrangements on the effectiveness of internal controls in SOEs. The Commission is of the view that increasing reliance on consultancy and advisory services was accompanied with the weakening of internal controls – either by diluting the their role in key transactions and operations, or by entirely outsourcing their functions to third parties

53. The Commission highlights particular themes that cumulatively demonstrate that state capture did occur within SARS. Amongst these are:
- 53.1. The role played by **Bain**: Bain was contracted to provide consultancy services and recommended and implemented the complete organisational restructuring of SARS, despite there being no objective need for such invasive interventions. The evidence makes it apparent that Bain, Mr Moyane and former president Zuma planned to seize SARS for illegitimate and unlawful purposes, and that the appointment of Bain was merely a convenient pretext to facilitate the repurposing of SARS.
 - 53.2. The appointment of **Mr Tom Moyane** as SARS Commissioner: It is apparent that Mr Zuma directly and personally involved himself in the plans to take over SARS and had earmarked Mr Moyane for position as Commissioner, long before his actual appointment.
 - 53.3. The axing of key, long serving individuals; the appointment of individuals compliant with the repurposing objective; and the disassembling of SARSs' compliance units, which involved the dismantling of PEMTS and other projects with the net effect of impeding or halting investigations in an attempt to protect certain wrongdoers.

President Ramaphosa's evidence

54. As the deputy president and a member of cabinet between 2014 and 2018, president Ramaphosa was privy to various events that the Commission has investigated in its report. The Commission's inquiry into the part, if any, that president Ramaphosa had played in the project of state capture focused on three overarching questions: What did he know, when did he know it, and what did he do about it?
55. According to the president, nothing during his tenure as deputy president raised alarm bells of state capture, apart from the removal of Mr Nene, the removal of Mr Gordhan and the attempt by some Ministers to intervene in the 'bank accounts' matter.
56. The president said that it was only after various media statements and the Gupta leaks that he realised that there was state capture. However, he does state that prior to that there were some indications, or 'sign posts', that raised the possibility of state capture.
57. Overall, the president's testimony provided some answers to these questions but there are significant gaps that have remained unanswered in the Commission's report. Although the president readily acknowledged state capture and has made much of his drive to right the wrongs of state capture, the question of what exactly he knew is still vague. **Justice Raymond Zondo** remarks: "He mentioned very little in the way of personal, first-hand

evidence, and stressed that those involved in State Capture conducted their business in secret”.

58. The Commission notes that serious and credible allegations of corruption against the Gupta family, former president Zuma as well as other powerful individuals were consistently raised by journalists and civil society as early as 2010.
59. It is not clear from the president’s testimony when it became clear to him that these concerns were valid enough to be acted upon and for a long stretch of time these allegations of state capture went unanswered.
60. Although president Ramaphosa recognised corruption within the ANC and the need for imminent change, the credibility of this statement is undermined by the fact that previous attempts at overcoming corruption within the party have failed, and the president did not elaborate on what would be different this time around.
61. For instance, the Commission notes that the deployment of **Mr Koloane** as an ambassador, after undue influence and serious dereliction of duty on his part in respect of the **2013 Waterkloof landing**, should have caused outrage within the ANC. Despite being deputy president of the party at the time, the president offered no comment on whether the ANC’s response to the incident was appropriate.
62. On the issue of **party discipline**, president Ramaphosa made it clear that MPs are bound by the party’s collective decisions, and that internal checks and balances are there to ensure proper mechanisms of accountability. However, the Commission is of the view that the president failed to grapple with the core issue, namely that the ANC’s internal checks and balances did fail and that the party prevented accountability by forcing members to vote according to the party line.
63. In respect of the issue of **party funding**, specifically the unlawful activities of **Bosasa**, the Commission finds that it is difficult to conclude that the party was not aware of the illegalities of accepting donations from Bosasa – when it was the recipient of large government contracts under very dubious circumstances and when unlawful activities of Bosasa had been the subject of media reports since 2009.
64. The president agreed that the donations that the ANC received from the Guptas and Bosasa should have been investigated by the party.
65. The president claims that he chose to remain in government to resist state capture from within, because he believed that his ability to act was curtailed by the political reality and the “‘balance of forces’ in the rule party and in the National Executive” at the time.

66. However, the Commission's report notes that on the three occasions when the president did resist state capture from within, he was not dismissed nor did he face any consequences for his actions, and therefore raises doubts as to the validity of the reasons given by the president for not speaking out openly against state capture during his tenure as deputy president and for not taking urgent actions against it.
67. The Commission dealt with the removal of Mr Nene, the removal of Mr Gordhan and the attempt to set up a commission of inquiry into the banks. In capacity as deputy president – between 2014 and 2018 – president Ramaphosa had worked with many individuals who have now been directly implicated in state capture, yet, he could only elaborate on two further occasions which were indicative of state capture: an admission made by Mr Mbalula in 2011 (who said he heard about his appointment to cabinet from the Guptas) and the Waterkloof landing.
68. Overall, the Commission is of the view that president Ramaphosa should have spoken out explicitly about state capture during his tenure as deputy president, and during Jacob Zuma's tenure as president, rather than "resisting from within" as Ramaphosa said he did.
69. Ample evidence shows that significant corrupt activities took place during former president Zuma's tenure. In the Commission's view, president Ramaphosa's testimony, on numerous points that were raised, was inadequate.

The role of the ANC

70. Understanding the role of the ANC is vital to understanding state capture in South Africa. The ANC, having been the ruling party not only during the years under investigation but also since the dawn of our democracy, has been responsible for deploying persons to the highest positions in the state.
71. The ANC also has a significant majority in parliament, which effectively allows the party to control oversight of the executive branch of the state.
72. Various ANC leaders have been implicated in the evidence brought before the Commission. There is also substantial evidence that the party itself was a beneficiary of state capture, having received payments from parties who are alleged to have acquired government contracts through corrupt means.
73. The Commission's report focuses on the **role of the party** in: **1)** actively engaging in corrupt activities for its own gain; **2)** allowing corrupt activities to continue under its watch; and **3)** creating a framework within which state capture could flourish.
74. The Commission notes the following uncontested points, namely, that:

- 74.1. Corruption within the ranks of the ANC have been recognised for over two decades and include the lotting of public resources, abuse of state power, patronage, bribery, vote-buying, nepotism and state capture.
- 74.2. Corruption has worsened over the years.
- 74.3. The ANC as a leader and controller of different levels of power has been unable to slow down corruption.
75. Neither the **President** nor **Mr Mantashe** offered any explanation as to why the party's attempts to deal with corrupt activities have failed. The Commission's report highlights that, notwithstanding several early warning signs, the ANC failed to act on claims of corruption and state capture in any way over a span of at least five years.
76. In 2013, following the Waterkloof incident, the Integrity Commission of the ANC recommended that Zuma step down yet nothing came from this.
77. Despite repeated calls to act from the media, as well as the ANC's own members and political allies, the party waited a long period before it did anything.
78. President Ramaphosa summarised some of the ANC's shortcomings, which included a "decline of organisational integrity"; factionalism which compromised the party's ability to tackle corruption as there were vested interests; and internal problems which led to the weakening of state institutions.
79. The Commission notes that it is problematic that the party's seven years of inaction be characterised as a "delay", since the evidence is clear that the party made a series of decisions over a number of years *not* to act against former president Zuma and complicit parties. The Commission is of the view that the fact that the party only much later took action does not absolve it of accountability for those early decisions.
80. In terms of the Commission's investigations into cadre deployment, it notes that **section 197 of the Constitution** requires public service to "loyalty execute the lawful policies of the government of the day" and stipulates that "no employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause".
81. In this regard the ANC is guided by the Cadre Deployment and Development Policy and other party documents, with the committee headed by the ANC Deputy President which was president Ramaphosa at the time.
82. The aim of the **deployment policy** is to ensure that the most fit for purpose person is appointed to critical positions within state institutions, and that these institutions reflect the demographics of the country.

83. When the Commission asked for minutes of the meetings of the Deployment Committee between the period 2012 to 2017, none could be availed. This was attributed to poor basic record keeping, which is arguably a necessity for ensuring transparency and good governance. According to the Commission, it is difficult to conceive that an oversight committee could not have any records. It also meant that there would be no way to hold the committee accountable for its decisions and recommendations without any comprehensive written records.
84. The evidence before the Commission demonstrates that state capture was facilitated by the appointment of pliant individuals to powerful positions within state entities.
85. In terms of the legality of the deployment committee, the Commission found that, “since the Deployment Committee makes its recommendations in favour of a particular candidate without having compared the credentials of that candidate with the credentials of other candidates, its recommendations cannot sensibly and legitimately be taken into account...that is unfair and is in breach of, amongst others, the injunctions in section 195 of the Constitution and section 11 of the Public Service Act...”
86. In respect of **party funding**, the Commission heard ample evidence of the ANC receiving donations from persons and entities which benefitted from corrupt government contract, amongst these the Guptas (who sponsored various ANC events), Bosasa (who bribed government officials with around **R66 million per annum**) and Blackhead Consulting (who received payments in excess of **R1 billion** between 2008 and 2019, and payments to the ANC in excess of **R10 million** over the same period).
87. The evidence is clear on the fact that the ANC accepted donations from companies who were heavily reliant on government contracts, such as Bosasa, without investigating them despite media reports since 2009 that alleged unlawful activities of Bosasa.
88. The Commission finds it difficult to believe that the issue only became clear in hindsight, as president Ramaphosa’s testimony suggests.
89. In respect of the Commission’s investigations into **internal disciplinary proceedings** of the ANC, it noted that the party knew that the criminal justice system could not be relied upon to act against corrupt individuals, yet continually abdicated its responsibility to its members and voters to enforce its own rules.
90. It is against the party’s own interests to allow leadership positions to be occupied by persons credibly accused of corruption as there is a high risk that such persons in powerful positions will continue to abuse their offices. By failing to discipline those accused of corruption, the Commission is of the view that such risk was deemed acceptable by the ANC.

91. The ANC's 2020 'Through the Eye of a Needle review' attributes the failures of the party to lack of accountability and failure of consequence management for dereliction of duty.
92. It is the ANC's position that it will not take disciplinary action against its members accused of corruption until they have been convicted by a court of law. Given this stance, it is difficult to see how the ANC's renewed attempts at fighting corruption would be taken seriously.
93. Overall, in respect of the ANC's contribution to state capture, the Commission notes that the party opposed proposals by opposition parties for parliament to establish public inquiries to investigate allegations of state capture, including the Guptas corrupt involvement, and yet did not itself attempt to investigate such allegations. This allowed for the Guptas to continue their unlawful activities relating to state capture, to the detriment of the South African people. If such inquiries were not opposed, the Guptas; agenda of state capture could have been stopped and billions of Rands could have been saved.
94. The ANC's deployment policy ensured institutions of state capture were weakened, since it allowed for unqualified persons to be appointed to positions without the necessary work experience, laying the ground work for corruption and state capture to flourish.
95. Finally, the ANC protected former president Zuma and ensured that he remained in office, allowing the Guptas more time to pursue state capture and continue to loot taxpayers' money. For this, the Commission comments, the ANC must take responsibility.

Parliamentary oversight

96. The Commission notes that parliament has obligations under the Constitution to scrutinize and oversee executive action and ensure that all executive organs of state are accountable to it.
97. The Commission finds it difficult under the circumstances to accept that members of parliament did not have sufficient cause to investigate the veracity of the allegations of improper Gupta influence by 2013 at the latest.
98. Section 102 of the Constitution empowers the national assembly to adopt a motion of no confidence against the president by majority vote. During former president Zuma's term of office, eight motions of no confidence in him were proposed by opposition parties and none succeeded.
99. After the dismissal of former finance minister Nene in 2015 and the appointment of Mr Des Van Rooyen – which caused turmoil on financial markets, major public controversy and ultimately the appointment of Mr Gordhan in his place – parliament still did not inquire into allegations of state capture.

100. It seems that the ANC was unwilling to initiate or support parliamentary inquiries into allegations of state capture before mid 2017 – after the “Gupta leaks” and the “Frolick letters”. However, even after this there was continued resistance from within the ANC to the inquiries into alleged state capture and so very little progress was made. Other examples into the failure of parliamentary oversight included the various allegations of bribes and corruptly procured contracts with Bosasa and the Department of Correctional Services, as well as the Nkandla affair.
101. Overall, the Commission reached the conclusion that parliamentary oversight – in the form of Portfolio Committees, Standing Committees, including the Joint Standing Committee on Intelligence (JSCI) – was inadequate and failed to conduct effective oversight as envisaged by the Constitution. There is ample evidence of political and financial abuse of the JCSI, which led the Commission to conclude that the JCSI was both ineffective and dysfunctional.

Volume 3: Public Funds Diverted to the Gupta Enterprise, the Dissipation of State Capture Derived Funds, the proceeds from the Acquisition of the Optimum Coal Mine, and Various Individuals and Topics

102. In the earliest phase of State Capture, the **Gupta Enterprise** operated according to a crude modus operandi, namely, to work with officials to generate projects from which the Gupta Enterprise would directly steal funds that were directed to the Gupta’s offshore network.
103. On 31 October 2011, the Free State Department of Agriculture and Rural Development entered into a contract with **Nulane Management Services**.
104. Nulane was paid R24,984,240 by the Free State Department of Agriculture
105. Deloitte received an amount of R1 538 547 from Nulane in relation to the Free State project. Nulane thus earned R23 445 693 on the contract.
106. Mr Holden, director of Shadow World Investigations, shows that after being received by Nulane, R21 300 000 of the R23 445 693 profit was laundered through several companies controlled by the Gupta family before being expatriated to the Dubai Gupta family company.
107. A separate chapter of this report addresses the irregularities relating to the **Estina/Vrede Dairy Project** and the payment of hundreds of millions of the Free State government funds to the Gupta Enterprise under cover of that project.

108. For the present purpose, it noted that a total amount of R287 220 534.88 in payment was made from the Free State government to Estina.
109. The contract concluded by the Free State government with **Sunbay Trading** was another contract irregularly concluded with a Gupta Enterprise.
110. Dinovert (Pty)Ltd was a Gupta Enterprise company that was incorporated on 31 March 2015, and changed its name to Cureva in September 2015 before changing it again to Mediosa late in 2017.
111. With the assistance of Mr Ashok Narayan and Mr Tony Gupta, **Diovert/Cureva/Mediosa** appears to have been irregularly awarded contracts to provide medical service to the Free State and North West Provincial government at inflated prices.
112. Following a recommendation made by the Free State Department of Agriculture and Rural Development Bid Evaluation Committee at its meeting on 8 June 2012, the department awarded a contract to **Tsebo Business Intelligence Services (Tsebo)** to provide engineering services to the department.
113. The award of contract to Tsebo was manifestly because the Bid Evaluation Committee scored Sebogo Maloka and Viljoen Civil Engineer (Pty) Ltd considerably higher than Tsebo, but decided to nevertheless to award the contract to Tsebo “as that is what the Department required”.
114. In 2014, the Free State Department of Economic Development, Tourism and Environmental affairs awarded **Innova** a contract with the value of R6 972 395.04.
115. Of the total R6 972 395.04 paid to Innova under this contract, an aggregate amount of R6 384 000 was immediately paid by Innova to Homix, a primary Gupta Enterprise laundering vehicle.
116. The **Gupta Enterprise received kickbacks** that were paid offshore in respect of at least six major contracts: The ZPMC cranes contract in respect of which kickbacks were paid to JJ Trading; the Liebher cranes contract in respect of which kickbacks were paid to Accurate Investments; and the four Chinese locomotive contracts in respect of which kickbacks were paid to JJ Tradings Century General Trading, Regiments Asia and Tequesta: the China South Rail 95 locomotive contract, the China South 100 locomotive contract, the China South Rail 359 locomotive contract and the China North Rail 232 locomotive contract.
117. In 2012, the **Regiments** group of companies concluded an arrangement with Issar Capital, the then company of Mr Iqbal Sharma and Mr Essa in terms of which Regiments would

pay substantial kickbacks to Issar in return for Messrs Sharma and Essa's assistance in securing Regiments' appointments to contract with organs of state.

118. On 19 December 2009, **T-Systems** and Transnet concluded a contract for the provision by T-Systems of IT equipment and data services to Transnet for a period of 5 years. The contract provided for Transnet to have a two year right of renewal. T-Systems appears to have used Gupta Enterprise connections to secure its position and to more than double the term and value of its MSA contract.
119. Transnet rewarded T-Systems for its new relationship with the Gupta Enterprise, not only for extending the term of the T-Systems MSA, but also for dramatically increasing the value of the payment made under MSA.
120. At Eskom, T-Systems exploited its relationship with the Gupta Enterprise to even greater effect. Events at Eskom followed patterns strictly similar to those of Transnet.
121. Transnet and Eskom awarded Systems Application Products (SAP) for contracts for which SAP paid kickbacks in the form of sales commission fees to Gupta Enterprise companies, Global Softech Solutions and Cad House. The total contract value of these four contracts was R790 616 247.45.
122. In 2016, **Trillian** acquired the auditing firm **Nkonki**. In the same period, Nkonki was appointed as supplier development partner to a series of contracts at Eskom in which the primary partner was Deloitte, KPMG or PWS. All of these contracts were irregular.
123. **Neotel** received two contracts from Transnet, from which payments aggregating R75 573 519.88 were made to the Gupta Enterprise laundry vehicle, Homix.
124. **Combined Private Investigations (CPI)** is a security services provider that received a large number of contracts from organs of the state. Between January 2013 and January 2016, CPI paid aggregate amount of R47 475 362.22 to the Gupta Enterprise laundry vehicles Homix, Forsure Consulting, Medjoul and Fortime Consultants.
125. On its own version, CPI states that it was approached in late 2012 by Salim Essa on behalf of Chivita Salim indicating that he could assist CPI secure further business as he was 'well connected', a 'deal broker' and 'rain maker'.
126. In 2017, the Special Investigating Unit successfully procured a high court judgment to set aside a contract entered into between **Lornavision** and the SABC. Lornavision was ultimately paid R62 733 557.24 by the SABC between September 2015 and February 2017.
127. Out of these funds, Lornavision diverted an aggregate amount of R8 799 544.62 to Shacob Commerce and Birsaa Projects, two Gupta Enterprise laundry vehicles.

128. The first amount of R57 269 900 004.43 is the aggregate amount of total payments made to contractors in contracts with in which the Gupta Enterprises was involved in State Capture activities.
129. The second amount of R15 543 960 171.22 is the aggregate amount of total payments to the Gupta Enterprise made by the state itself or by contractors in contracts with the state in which the Gupta Enterprise was involved in State Capture activities.
130. The payments by organs of state amount far above the contract values awarded to entities linked to Gupta Enterprise. The most obvious example of this is the 745% increase in the payments made to Regiments Capital for its services relating to funding for the 1064 locomotive procurement.
131. The Gupta enterprise used various **money laundering networks** to dissipate the funds it generated from State Capture. These money laundering networks became more sophisticated over time. The Gupta enterprise externalised its State Capture profits with extremely simple money laundering devices.
132. From around 2013, the Gupta Enterprise started using sophisticated domestic and international money laundering networks to move its proceeds of crimes against the South African state.
133. These domestic and international money laundering networks used by the Gupta Enterprise to move proceeds of crime for around 2013, are independent of the Gupta Enterprise. They seem to have pre-existed by the Gupta Enterprise and to have serviced a wide range of clients other than the Gupta Enterprise.
134. The first stage of the laundering of the State Capture-derived funds within South Africa involved payments to “first-level” laundry entities. The first-level laundry entities received kickbacks payment from third-party companies in return for contracts that those companies had been awarded by the state-owned enterprises and government enterprises, apparently under the influence of the Gupta Enterprise.
135. In total, R1 232 286 003.48 was paid by contractors to the first-level laundry entities.
136. The act of tracing State Capture funds has led to the identification and examination of twelve companies that performed a function of onshore-offshore bridges for established money laundering networks within South Africa. The volume of funds leaving South Africa through these routes is extremely alarming.
137. Mr Holden calculates that R388,630,198.41 emanated from State Capture funds that were paid to onshore-offshore bridges, the vast majority of which was paid into the Hong Kong/China laundry.

138. In most cases, the State Capture funds laundered through the domestic money laundering networks were transferred through the onshore-offshore bridges into companies that appeared to form part of offshore money laundering networks. Once funds cross over the border, it is impossible to follow their flow from within South Africa.
139. Tracing the flows of State Capture proceeds of crime has revealed the existence of widespread sophisticated money laundering networks operating within South Africa. The money laundering networks used by the Gupta Enterprise were complex, well established, and embedded in a pre-existing milieu of criminality and wrongdoing.
140. It appears thus far, enforcement action against these networks has been confined primarily to forfeiture orders issued by the South African Reserve Bank.
141. However, one of the hallmarks of the money laundering networks that laundered proceeds of State Capture crimes within South Africa was their flexibility. As soon as particular companies were exposed as laundry vehicles, the networks were able to bypass those companies and to reroute State Capture funds through different entities built into different networks.
142. The acquisition of **Optimum Coal Holdings Ltd** (“OCH”) by Tegeta Exploration and Resources (Pty) Ltd (“Tegeta”) is part of what triggered the establishment of this Commission. That acquisition was the central focus of the Public Protector’s investigation that culminated in her October 2016 “State of Capture” Report.
143. The investigations of the Commission have borne out the findings of the Public Protector concerning the acquisition of OCH and have shown that this acquisition was a State Capture project pursued through unlawful means and funded almost entirely by proceeds of crime.
144. **Ms Mentor** joined the ANC in 1980. She was also associated with the United Democratic Front (UDF), a formation of women within the ANC, and the UDF affiliated members including called SA Federation of Transvaal Women, the SA Youth Congress and the National Education Coordinating Committee.
145. On 26 May 2016, Ms Mentor laid charges against President Zuma, certain members of Cabinet and certain board members of SOEs with the SAPS.
146. Ms Mentor gave oral testimony to the Commission on 27-29 August 2018 and 11-12 February 2019. It is therefore fair to say that from 2016 Ms Mentor made strenuous efforts to make her allegations publicly known and investigated by the appropriate authorities.

147. In her first statement to the Commission, Ms Mentor claimed that in about October 2010, about a week before a Cabinet reshuffle took place, Mr Ajay Gupta made an offer to Ms Mentor that she should accept the position of Minister of Public Enterprises, provided she agreed to use that position to cancel the flight which SA Airways conducted between South Africa and India. She went on in the same statement to set out how she said she disclosed the fact of the alleged offer.
148. Ms Mentor gave a great deal of detail in which she described the context in which the alleged offer was made. Mr Ajay Gupta denied the allegation in a series of affidavits but did not himself give oral testimony to the Commission. As is well known, the entire Gupta family, including Mr Ajay Gupta, left South Africa and have one and all refused to give evidence before the Commission, on spurious grounds. President Zuma himself, in whose power it was to make ministerial appointments to the National Cabinet, at a stage declined, on similarly spurious grounds, to give further testimony to the Commission.
149. Rajesh ‘Tony’ Gupta would bring **Mr Duduzane Zuma** along to meetings that he had with government officials attached to state owned entities and he would do all the talking and Mr Duduzane Zuma would simply be there but not really take part in the discussion. Mr Tony Gupta’s idea was that the government officials and SOE officials would have realized that through Mr Duduzane Zuma he had easy access to Mr Duduzane Zuma's father, President Zuma.
150. The evidence further shows how Mr D Zuma may have been central to the capture of several SOEs that he stood to gain personally from state capture and he played a role in manipulating the public narrative regarding state capture.
151. Mr D Zuma testified about his business and close partnership with the Guptas, calling Mr Rajesh “Tony” Gupta a very dear and close friend and “more than particularly, that is my guy”. They spent a lot of time together daily.
152. Mr JG Zuma testified that the Gupta family helped his son, Mr D Zuma, with a job when he battled to find work partly because he (Mr JG Zuma) had been (in his opinion, maliciously and wrongly) discredited in the media and the public domain. It was natural to ask them for help because they were good comrades of the ANC.
153. Mr Mcebisi Jonas testified that he was brought to a meeting at the Guptas’ Saxonwold residence by Mr D Zuma. At this meeting, he was offered a substantial bribe as well as a position of finance minister in exchange for his compliance with their agenda.

154. Mr Mxolisi Dukwana, a former MEC of the Free State, testified that he was taken to a meeting at the Gupta residence in Saxonwold with Mr Rajesh Gupta under false pretence by Mr Magashule, where Mr D Zuma was present. In this meeting, Mr Dukwana was offered a bribe in return for ensuring that a particular company, Nulane Management Services, was appointed to a Free State project.
155. Mr Mxolisi Dukwana further testified that Mr Rajesh Gupta told him about a “Jagersfontein mine deal” where R3 million was distributed between Mr Gupta, Mr Magashule and Mr D Zuma every month.
156. Mr Vuyisile Kona, the CEO of SAA testified that was brought to a meeting at the Gupta residence on 29 October 2012 where he was allegedly offered R100 000 then R500 000, in return of a contract for a turnaround strategy for SAA, which Mr Kano refused.
157. The outline of evidence shows that Mr D Zuma was a shareholder in several Gupta-related companies and thereby stood to gain financially from contracts awarded to those companies.
158. Mr D Zuma seems to have been involved in the appointments of key individuals in SOEs, who in turn facilitated the capture of those SOEs.
159. The Commission heard evidence on a **Water Purification Project** where a company that was awarded a tender by a department of the **Kwazulu-Natal Provincial Government** paid more than a million Rand into the trust account of a law firm for services allegedly rendered by that firm to that company. But, the law firm later paid that amount in various amounts to various creditors of entities belonging to the wife of the Head of the Department of Finance in the Kwazulu-Natal Provincial Government, and sometime later, the Head of the Department of Finance gave the Provincial Treasurer of the African National Congress (ANC) a donation of an amount exactly equal to the amount that the company to which the Water Purification Tender had been paid to the law firm. This, in turn, is exactly the same amount as the amount that the law firm paid in various amounts to the creditors of entities belonging to the wife of the Head of the Department of Finance.
160. Interestingly, the ANC Provincial Treasurer, who admitted having received more than R1m from the Head of the Department of Finance as a donation to the ANC, never deposited the money in an ANC’s bank account, nor did he have it registered in any books of the ANC.
161. With all that has happened to these SOEs, going forward, it cannot be business as usual. Something drastic must happen if the situation is to be turned around, and the executives must acknowledge that the period when the ministers had the power to appoint people to

fill these important positions has produced a very bad record of the people they have appointed.

Volume 4: Recommendations

162. In the summary that follows, some of the Commission's key recommendations are mentioned. However, the recommendations below only pertain to Part 5 and 6 of the report and therefore do not make reference to earlier recommendations, which found in previous summaries.

Parliamentary oversight

163. The Commission recommends that parliament should consider, *inter alia*:

163.1. Whether, in respect of oversight, it would be desirable to establish another committee whose function is to oversee certain acts/omissions made by the president and presidency;

163.2. Whether a constituency-based electoral system, still proportionally representative, would improve parliament's capacity to hold the executive accountable and, if so, whether this would justify reform of the electoral system;

163.3. The possible amendment of its own rules to specifically address the problem of ministers who fail to report back to parliament when their performance has been found to be defective;

163.4. Whether more representatives of opposition parties should be appointed as chairs of portfolio committees.

164. Furthermore, the Commission recommends that parliament implement a system to "track and monitor" corrective action that has been proposed by parliament onto the executive, and that an Oversight and Advisory Section is established to provide technical support and other monitoring mechanisms to assist with this function.

The offshore laundering of state captured proceeds

165. To recover any of the billions of rands paid to the Gupta Enterprise in the form of kickbacks, the Commission recommends, *inter alia*, that domestic authorities urgently engage with HSBC to assist in the tracing of funds out of certain entities into China/Hong King that were using HSBC accounts, and that FIC and the NPA engage their counterparts in this region for further assistance in tracing funds in Dubai.

166. If such whereabouts were located, the Commission recommends the Asset Forfeiture Unit of the NPA to approach those jurisdictions with the aim of freezing those proceeds and forfeiting them back to South Africa.

The South African laundering of state captured proceeds

167. It is essential that those partaking in the domestic money laundering networks are prosecuted and also subject to asset forfeiture proceedings. To this end, the Commission recommends, *inter alia*, that the NPA consider the reports of Mr Holden with the aim to institute criminal proceedings under sections 4,5 and 6 of POCA against the relevant persons involved in money laundering.

The acquisition of optimum coal mine

168. As there are reasonable grounds to believe that Mr Duduzane Zuma, Mr Salim Essa, Ms Ronica Ragacan, Mr Ashu Chawla, members of the Gupta family, and others, may be guilty of contravening section 2 of POCA, the Commission recommends law enforcement agencies to investigate whether these persons should be prosecuted by the NPA.

Governance of SOEs

169. As there are no effective mechanisms to prevent cadre deployment and cronyism from continuing, the Commission insists that processes of appointment made by a minister be the result of an independent and transparent, merit-based selection process.

Appointments to boards and executive office of SOEs

170. The Commission recommends establishing a Standing Appointment and Oversight Committee to ensure that persons who are nominated to be board or executive members (such as the CEO, CFO or CPO) meet eligibility requirements, and that will investigate any complaints made in respect of misconduct. To this end the Commission makes a number of recommendations in paragraphs 247.1-251.8 of Part 6 of the state capture report (pages 181-185).

Anti-State Capture and Corruption Commission

171. It is recommended that a permanent Commission be established to investigate and publicly expose acts of state capture and, and make findings and recommendations to the president. It should be possible for this Commission to call upon the president to answer questions related to certain matters and to act without fear or prejudice. More detailed recommendations on the establishment and running of such a Commission may be found on pages 187-188.

South Africa's electoral system

172. On the question of how South Africa ended up with a president who was able to act the way that former president Zuma acted, the Commission notes that in South Africa voters

vote for a particular political party and not directly for the president. It is the ANC which elected Mr Zuma to be the president of the ANC, and by virtue of the ANC winning the majority vote, he became president of the country.

173. Although no single measure would be sufficient to wholly prevent state capture in the future, the Commission recommends that consideration is to reform of the electoral system to allow voters to vote directly for the president but still representative party. In doing so, it must be established whether the benefits of such constitutional amendments would outweigh any potential drawbacks.

Analysis and Recommendations

- i. The recommendations made in the report are fully supported. The six reports have described the devastating effect of state capture on the government and its service delivery, public sector institutions, and the welfare of South African citizens. In order to combat corruption and state capture, action must be taken to prosecute individuals found to be proponents of wrongdoing and remedy the damage caused as a result of state capture.

Compiled by: Khusto Makua and Gianni Delle Donne



Mr C Tseng
Acting Chief Executive Officer

Date: 26 July 2022

FINANCIAL
AND FISCAL
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