

State capture

An entirely new type of corruption

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This report explores the phenomenon of state capture – the harnessing of the state apparatus of South Africa to serve private interests. It looks specifically at the role of the Gupta family and their relationship with prominent politicians, including the country’s former president Jacob Zuma. It is an account of a toxic mix of politically infused business, abuse of state resources and intimidation – all of which damaged state institutions and underlined the need for transparency in government.

Key findings

- ▶ The media has done a sterling job over the past decade in doggedly uncovering instances of state capture.
- ▶ The country's state-owned enterprises (SOEs) are in a parlous state, and it is not apparent how they might be turned around. Politicians linked to state capture remain in office.
- ▶ State capture extends beyond the state into a compromised private sector.
- ▶ The uncovering of corruption at the Zondo Commission has been good for democracy.
- ▶ That this happens in the open and allegations are tested and broadcast live is crucial.
- ▶ The Zondo Commission has shown that no-one is above the law. Even Zuma was called to testify.
- ▶ Transparency matters and the rot is now in the open.
- ▶ South Africans remain shocked at the depth of corruption during the Zuma years.
- ▶ Future prosecutions will be key if South Africans are going to regain trust in democratic institutions which have been hollowed out for the purpose of state capture.

Recommendations

- ▶ Further links need to be found and research carried out on the connections between the private sector and corruption.
- ▶ Prosecutions arising out of the Zondo Commission are essential to restore the public's faith in the justice system.
- ▶ Those democratic institutions which were captured by vested interests need to be repurposed for their original constitutional intent.
- ▶ This will require a speedy conclusion to the Zondo Commission process.
- ▶ The president will need to act quickly on the findings/recommendations of the Zondo Commission so that its credibility is not damaged.
- ▶ Parliament may also be called to act and it should similarly do so speedily. This has not always been the case in the past when there have been ethical breaches.
- ▶ Civil society organisations will also need to follow up on the recommendations made by Deputy Chief Justice Ray Zondo.
- ▶ The media too will be required to continue to shine a light on corruption in the state and private sector to ensure that both are held to account.

Introduction

South Africa is awash with investigations and public information relating to corruption and a general failure of accountability. The ‘new dawn’ which President Cyril Ramaphosa has indicated he wishes to usher in has seen him move swiftly to deal with a number of things. He has, for example, attempted to tackle the alleged corruption within the South African Revenue Service (SARS) and to put the country’s state-owned enterprises (SOEs) such as Eskom and South African Airways (SAA) on a more sound footing. Yet these problems form part of an enduring pathology in South Africa – something that has been termed state capture. It will not be easy for Ramaphosa to stem the rot which has set in after the ‘nine wasted years’ under President Jacob Zuma. Repurposing institutions which have been captured requires careful work and commitment across society, not only within the state, though that is where the clean-up has to start.

Daniel Kaufmann and Joel Hellman, writing for the International Monetary Fund, describe state capture as, ‘the efforts of firms to shape the laws, policies and regulations of the state to their own advantage by providing illicit private gains to public officials’. They go on to say that, ‘because such firms use their influence to block any policy reforms that might eliminate these advantages, state capture has become not merely a symptom but also a fundamental cause of poor governance. In this view, the captured economy is trapped in a vicious circle in which the policy and institutional reforms necessary to improve governance are undermined by collusion between powerful firms and state officials who reap substantial private gains from the continuation of weak governance.’¹

Anne Lugon-Moulin further says that, ‘state capture can be further refined by distinguishing between types of institutions subject to capture (legislative, executive, judiciary, regulatory agencies and public works ministries) and the types of actors actively seeking to capture (large private firms, political leaders, high ranking officials, interest groups).’ This all sounds very familiar.

But how has state capture manifested itself in South Africa and where did this story start? It is always helpful to look back before looking forward, though state capture takes many forms and South Africa is no exception.

One story that has come to define the idea of undue influence in South African politics concerns the Gupta family. A trio of brothers – Ajay, Atul and Rajesh – immigrated to South Africa from India in the 1990s, seeking business opportunities as the transition to democracy unfolded.² Their first venture was evidently in information technology, establishing Sahara Computers in 1994 – it exists today and bills itself as ‘one of the largest independent information technology distributors in Southern Africa’.³ They subsequently branched out into various other industries – mining, media, leisure and engineering – their stakes were vested in the holding company Oakbay Investments.⁴

It will not be easy for Ramaphosa to stem the rot which has set in after Zuma

The Gupta story is a complex one, involving several distinct but inter-related strands of activity. This corresponds to the multifaceted nature of the state capture phenomenon. As such, it is best related thematically, rather than chronologically; it is important to bear in mind that the accounts of political and economic chicanery were taking place in tandem with each other.

Making political connections

It appears that the Guptas met Zuma, then deputy president, in 2002, although the relationship took on a more overtly corrupt tone once he became president. One point of connection was in the career of Zuma’s son, Duduzane. In 2008, shortly after Zuma assumed the presidency of the ANC, Duduzane was appointed a director of Mabengela Investments, a Gupta-owned company. Over the following years, he was appointed director of a number of others.⁵ The relationship between the president’s son and the Guptas would feature prominently in concerns about the influence that the family might be exerting on Zuma as well as various aspects of governance.

In 2010, the Gupta brothers were part of the business delegation accompanying Zuma on a state visit to India. Other delegates complained that they appeared to exercise an inordinate amount of influence over Zuma’s itinerary. One businessman was quoted in the media as

saying: 'It was clear that the family wanted to use Zuma to establish connections for themselves. We expected to meet potential investors, but it soon became clear all the deals were done already; we could just pick up the crumbs that fell from the main table.'⁶

It was around this time that the Guptas began to make headlines and in short order established a reputation as businesspeople who were prospering as much from their political connections as from their business acumen. In early 2011, Cosatu raised concerns about the influence that the Guptas appeared to have on government. Its president, Sdumo Dlamini, remarked: "We are worried about the Guptas. We are not accusing anyone of corruption, but the perception that is being created is not good for our country."⁷

Indeed, speculation about their activities became a prominent subject of media speculation. Reports that cabinet ministers had been visiting the Guptas' home – in the suburb of Saxonwold, Johannesburg – moved government spokesman Mzwanele Manyi to protest against questions on the matter, saying that it was any person's constitutional right to associate with whomsoever he or she chose to.⁸ ANC Secretary-General, Gwede Matashe, accused the Guptas' detractors of racism, saying that the concerns were due to their Indian origins.⁹

Nevertheless, these concerns about the links between the Guptas and the government abounded. The apparent links took on a particularly brazen quality in April 2013, when a party of guests arriving for a Gupta family wedding were permitted to land at Waterkloof Airforce Base.¹⁰ Although attempts were made to explain this by arguing that one of the guests was an Indian government official invited by the MEC for agriculture in the Free State, Mosebenzi Zwane,¹¹ this did little to calm the public outcry.

An official report into the matter held a number of officials responsible, among them Bruce Koloane, then chief of state protocol. (He was, however, subsequently named South Africa's ambassador to the Netherlands, an odd choice – and certainly no chastisement – for someone who had been responsible for such a breach.)¹² The report further commented: 'The activities of some of the persons involved were driven by the undesirable practice of the exercise of undue influence, and abuse of higher office.'¹³

It should also be noted that Gupta-linked largesse was also passed on to parties other than the ANC. In 2009, then DA leader Helen Zille received a cheque for some R200 000 at the Gupta residence. She maintained that this was a personal cheque (from a personal bank account), and that the donor in question was not a Gupta. The donor – not named in the media – said to a reporter: 'From the beginning there was no confusion. I was representing the Gupta group of companies. Surely, she could not have been under the impression that I took her to the Gupta house for cake, tea and good food.'¹⁴

Concerns about the links between the Guptas and the government abounded

While the Guptas had been surrounded by controversy, events at the end of 2015 would take this to a new level of brazenness. On the evening of Wednesday, 9 December 2015, Zuma announced that he was removing Minister of Finance Nhlanhla Nene from his position 'ahead of his deployment to another strategic position'.¹⁵ He was to be replaced with a little-known backbencher, Des van Rooyen. Zuma offered as grounds for this move Nene's pending nomination to head the African Regional Centre of the New Development Bank (an institution established by the Brazil-Russia-India-China-South Africa group: BRICS).¹⁶ However, such a nomination has never been forthcoming.

Zuma offered no more than hints at his motivation. In a speech to a business audience a few days after the announcement, he implied vaguely that he had acted out of political and ideological necessity.¹⁷ He returned – again, nonspecifically – to this theme, telling an audience of the ANC Youth League that if South Africa understood what was happening in the country, they would appreciate his 'correct' decision.¹⁸

Concern about the fallout from this move – not least the prospect of South Africa suffering a ratings downgrade – mobilised people within the ANC and without to appeal to Zuma to reverse it. On the evening of 13 December, former finance minister Pravin Gordhan was re-appointed to the post.

In the absence of any firm explanation for his actions, speculation grew as to what Zuma was trying to achieve by removing Nene. Theories quickly centred on what such a change might mean for the posture that the National Treasury had long adopted in demanding fiscal prudence, an ever more important demand after South Africa's economic growth trajectory had fallen, along with global economic turbulence, over the preceding decade. One of the key suspicions was that removing Nene and replacing him with a 'lightweight' in the person of Van Rooyen would enable Zuma and his cronies to 'capture' the Treasury. Critics pointed to two key pieces of evidence.

One part of this narrative was a dispute between the National Treasury and South Africa's national carrier, SAA (whose chairperson, Dudu Myeni, was believed to be close to Zuma). Treasury had days before refused to allow a change to a leasing agreement for aircraft that would possibly have entailed a greater financial burden for the already stressed airline than the original. Treasury commented: 'In fact, the information indicated that the proposed transaction structure would actually leave SAA in a materially worse off financial position where it is unable to meet its commitments as they fall due.'¹⁹

Another was the proposed construction of a fleet of nuclear reactors to provide South Africa with energy, a project supported by Zuma. Treasury was reportedly extremely concerned about the affordability. Its estimates put the cost at between R700 billion and R1.4 trillion, an enormous investment relative to the size of the economy, and substantially above the estimates put forward by the Department of Energy (in the region of R600 billion). The scale of expenditure would dwarf the arms deal. Amid low growth and the threat of a ratings downgrade, controlling spending was vitally important. The nuclear build would likely be massively destabilising. It was resistance to it, asserted some commentators, that caused Zuma to turn on Nene.²⁰

Thus, the suspicion arose from the first that Nene's removal was designed to benefit particular interests (former finance and planning minister Trevor Manuel alluded in an open letter to an 'outside hand' privy to information that the cabinet was evidently not).²¹ Whether this included the Guptas was not immediately clear.

But suspicions arose when, shortly after Van Rooyen was sworn in as finance minister, two of his advisers

with links to the Guptas' businesses – named in the media as Mohamed Bobat and Ian Whitley – were assigned to work at the Treasury. In fact, they had reportedly visited the Treasury before Van Rooyen was formally appointed and informed the management that they would be able to sign authorisations on behalf of the minister, but would otherwise not be making any changes.²² (When Van Rooyen was removed as finance minister and shifted to the cooperative governance and traditional affairs portfolio, they departed with him.)

A related controversy broke out a few months later, in March 2016, when former ANC MP Vytjie Mentor said that she had been offered the public enterprises portfolio in cabinet in 2010 (following the removal of Barbara Hogan) by members of the Gupta family at a meeting at their Saxonwold residence. In return, she was expected to drop the SAA flight route to India and allow the Guptas to operate it.²³

The scale of proposed expenditure on nuclear would dwarf the arms deal

A more explosive claim was made shortly thereafter. In what appeared to be a smoking gun pointing towards the Gupta link in the removal of Nene, Deputy Finance Minister Mcebisi Jonas released a statement claiming that the Guptas had offered him the position of minister of finance:²⁴

'Members of the Gupta family offered me the position of Minister of Finance to replace then Minister Nene. I rejected this out of hand. The basis of my rejection of their offer is that it makes a mockery of our hard earned democracy, the trust of our people and no one apart from the President of the Republic appoints ministers.'

Jonas' account was that he had been invited to a meeting in October 2015 by Duduzane Zuma. Although he had misgivings about doing so, he agreed, and they met at the Hyatt Regency hotel in Rosebank, Johannesburg. Duduzane Zuma said that the hotel was too crowded and that he wished to conduct the discussion in a more private place and with another party.

The destination proved to be the Guptas' residence in Saxonwold. There he met Ajay Gupta (whom he had never met before), who proceeded to say that the Guptas had made a number of politically connected persons very wealthy, and that their businesses had 'made a lot of money from the state'. He continued that the National Treasury was a hurdle to their ambitions. Thus, they would ensure that Jonas become the finance minister, in exchange for which he would remove a number of senior officials at Treasury. Ajay Gupta also allegedly offered him R600 000 in cash, plus R600 million to be deposited into an account of his choice. Jonas turned this offer down and asked to be taken to the airport. He informed Nene of these events, and later also Gordhan and Zweli Mkhize of the ANC.²⁵ (Ajay Gupta denied under oath that he had ever met Jonas.)²⁶

Concern and condemnation grew rapidly. In April 2016, South Africa's major banking groups and some other financial service providers announced decisions to cut ties with the Guptas' companies in the wake of the allegations against them. The government took the extraordinary step of appointing an interministerial committee – chaired by Zwane – to look at the matter.²⁷ Ultimately, it recommended that a judicial commission of inquiry into the matter be appointed.²⁸

The results of the local government election in August 2016 could only underline the damage the links with the Guptas may have done to the ANC

Notably, Gordhan obtained legal advice that it would be unlawful of him, as finance minister, to intervene in the matter. He subsequently sought a declaratory order from the Pretoria High Court to this effect.²⁹ In his court documents, Gordhan included a report on 72 'suspicious' transactions involving the Gupta family and their businesses.³⁰

Stung by the allegations, the ANC launched a probe into state capture, encouraging people with information to come forward and pass it on to the party. However, only one submission was made. This was from the former head of the Government Communication and Information System (GCIS), Themba Maseko. He alleged (this was recorded in detail in the public protector's report) that he was approached by members of the Gupta family who demanded that he channel government advertising into their newspaper, *The New Age*. He also noted a call from Zuma in which he was asked to 'help' them. He said that his termination as head of GCIS was a consequence of having failed to do so.³¹

By all accounts, the ANC found itself deeply divided over the revelations and over the implications for the public's perceptions of Zuma's suitability as president. The results of the local government election in August 2016 – which saw the ANC lose control of Johannesburg, Tshwane and Nelson Mandela Bay – could only underline the damage the links with the Guptas may have done to the party.



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A new way of doing business

Allegations of the Guptas' influence on politics were intimately linked to suspicions that they were using their political influence to draw extensive advantages in their business dealings. A rather limited earner was the sponsorships received from SOEs for breakfast briefings organised by *The New Age*.³² There was also some evidence of disproportionate government advertising spend being directed to the Gupta-owned publication.³³

On a far larger scale were concerns about the Guptas' interests in mining and the implications for the public finances and potentially also the integrity of public policy.

Perhaps the most well known instance involved Tegeta Exploration and Resources, a mining firm under Oakbay Investments. In mid-2016, details came to light about a deal concluded with state power utility Eskom which by all outward appearances defied commercial sense. Tegeta had recently purchased Optimum Coal Holdings (OCH), a loss-making coal-producing entity in business rescue. In March 2016, it was projected to lose around R100 million a month going forward. The purchase itself had become shrouded in controversy, as it was alleged Zwane (who had earlier attempted to provide cover for the Waterkloof wedding debacle and had then been appointed minister of mineral resources), had travelled to Switzerland in December 2015? to assist the Guptas in buying Optimum from its former owner, Glencore.

Optimum's fortunes were, however, rapidly turned around with a contract to the value of some R564 million (or just shy of R700 million with transport costs added) to supply coal to Eskom's Arnot power station over a period of six months. This was an exceptionally generous arrangement. A report in *City Press* pointed out that at R470 a ton (R580 with transport costs), the purchase from Tegeta for the Arnot station would be one of the most expensive that Eskom had. According to figures provided in Parliament, the average price Eskom paid for coal was some R230.90. Two other suppliers were contracted for smaller amounts, but a spokesperson for one of them indicated that they were being paid significantly less than Tegeta.

Furthermore, part of Optimum's woes was an unprofitable agreement to supply coal to Hendrina power station.

Since Optimum did not produce enough to meet both contracts, it appeared that Eskom was allowing it to divert part of the coal meant for Hendrina (at a vastly lower price) to Arnot. (Although on this point, Eskom countered that Hendrina had reduced its burn rate and therefore needed less coal.)³⁴

It subsequently emerged that Eskom had prepaid Tegeta over R659 million for the coal it ordered, and that Eskom had itself had concerns that the coal from Optimum did not meet its standards.³⁵ The public protector's report on the matter (described below) also argued that this prepayment actually appears to have been made to enable Tegeta to purchase all shares in OCH, for which it was some R600 million short.³⁶

On a far larger scale were concerns about the Guptas' interests in mining

The Guptas' other mining interests also evoked concern. Some commentators had suggested that the Guptas' business interests – specifically, their ownership of the Shiva uranium mine – could play a role in driving a decision to go ahead with the highly controversial nuclear power build, which could cost in excess of R1 trillion.³⁷

Decline sets in

The controversies generated by the Guptas' conduct became increasingly unpalatable to the country and the business community. Their sense of impunity and arrogance had made them the target of much media comment, very little of it favourable. They came to be closely identified with the pathologies of the Zuma administration.

A critical blow was struck by a number of banks and auditing firms in early 2016 when they would no longer deal with the Guptas' businesses.³⁸ Astoundingly, a group of cabinet ministers attempted to intercede on the Guptas' behalf. In response to this, the Guptas and Duduzane Zuma announced their resignation from directors' positions at Oakbay.³⁹ In August, they announced an intention to sell their South African assets.⁴⁰

The Guptas' reputation was further damaged by revelations that they had engaged the British public

relations firm Bell Pottinger to defend their image. This the firm had done by recklessly stirring racial tensions, dabbling in 'fake news' and portraying the family as suffering abuse at the hands of 'white monopoly capital'. Their work, incidently, aligned well with the agenda of then incumbent president Zuma.⁴¹ In one instance, Bell Pottinger employees noted that their material had been used by ANC Youth League leader Collen Maine. Wrote one: 'Am about 10 minutes in and see he has used one of our statistics ... and defended the family ... which is good.'⁴²

As the tide turned against Zuma – notably in 2016 and 2017 – he and his allies invoked the spectre of 'white monopoly capital' and promoted its supposed remedy, 'radical economic transformation', with growing stridency.

Enter the Public Protector

Against this background came the intervention of Public Protector Thuli Madonsela. In March 2016, she announced that after having received a number of complaints, she would be undertaking an investigation into state capture.

Three complaints were made to the public protector – the first by one Father S Mayebe, on behalf of the Dominican Order, the second by Mmusi Maimane, leader of the Democratic Alliance (DA), and the third by a member of the public (whose name was withheld in the report).

The investigation revolved around two key allegations. These were the claims made – and detailed above – by Mcebisi Jonas and Vytjie Mentor.

The complainants asked the public protector to investigate whether the Guptas had indeed influenced cabinet appointments; whether the Guptas had known of Van Rooyen's appointment to the Finance Ministry before it was announced; whether advisers linked to the Gupta family had been irregularly appointed to the National Treasury; whether the Guptas had received any undue business benefits in their dealing with the state or state-owned enterprises; what role Zuma had played in these events; and whether it was appropriate that government should intervene in the relationships between banks and their clients.

From these, the public protector formulated a set of themes for investigation.

The first was whether the president had allowed the Guptas or his son Duduzane to influence the removal of Nene as finance minister, and the appointment of Van Rooyen as his replacement. The report noted Jonas' claims that he had been offered the position some six weeks before Nene was relieved of his position. It also recorded evidence of contact between Van Rooyen and the Guptas in the period prior to his appointment. It further pointed to contact between an adviser appointed to the National Treasury in December 2016 and someone in Saxonwold, Johannesburg, the home suburb of the Guptas – this 'coincidence is a source of great concern'.⁴³

In March 2016, Madonsela announced she would be undertaking an investigation into state capture

The second was whether Zuma allowed the Guptas or his son to be involved in the removal and appointment of members of the cabinet. The report noted that nothing appeared to have been done to verify Mentor's allegation that she had been offered a cabinet position by the Guptas. If this was correct, it would have violated the Constitution and the Executive Ethics Code, the latter stipulating in Section 2.3(c) that no member of the executive may act in a manner inconsistent with their position. She added that a failure to verify Jonas' allegations could amount to a breach of Section 34 of the Prevention and Combatting of Corrupt Activities Act, No 12 of 2004, which demands that those in positions of authority who come to know or reasonably suspect corrupt activities report them to the police.

The third was whether Zuma allowed the Guptas or his son to be involved in appointing people to serve on boards of directors of SOEs. Here the report said that it appeared that violations similar to those noted above may have occurred in relation to the removal of Maseko from the GCIS. It also expressed concern about the 'cozy' relationship between former Eskom CEO Brian Molefe and the Guptas.

The fourth was whether Zuma had 'turned a blind eye' to alleged instances of corruption involving the Guptas and his son – these having purportedly sought to grant

appointments in exchange for reciprocal benefits. The report said that it did not appear that Jonas' allegations – of being offered an enormous sum of money in exchange for his support for the Guptas' businesses – were investigated.

The fifth was whether Zuma and some members of the cabinet improperly interfered in the relationships between banks and the Guptas' businesses, and in so doing, gave preferential treatment to these firms. The report termed this step 'unprecedented' and said that it needed to be seen in the context of a possible conflict of interest, since Zuma was a friend of the Guptas, and the father of their business partner.

The sixth was whether Zuma made himself vulnerable to conflicts between his official role and his private interests, as well as whether he used this position to enrich himself or businesses owned by the Guptas or his son. The report briefly remarked that the allegations made by Jonas and Maseko were 'relevant' here, as was 'action taken and/or not taken in relation thereto'.⁴⁴

The seventh was whether anyone had been adversely affected by Zuma's conduct. The report remarked that Jonas could suffer severe reputational damage unless his claims were proven true – this having been denied by the president. The report continues: 'Consequently the people of South Africa, who Deputy Minister Jonas took into his confidence in revealing this, would lose faith in open, democratic and accountable government if President Zuma's denials are proven to be false.'⁴⁵

The eighth was whether any state official had acted unlawfully, improperly or corruptly in the appointment and removal of ministers or members of boards of SOEs. The report was critical of the manner in which the board of Eskom had been constituted, arguing that it was contrary to the spirit of the King IV Code on Corporate Governance. Issues that arose were not dealt with adequately, and the minister of public enterprises (as the government stakeholder) failed to take action to deal with them.

The ninth was whether anyone, or any organ of state, had acted unlawfully, improperly or corruptly in relation to the award of state contracts to any Gupta-linked companies. The report highlighted Zwane's trip to

Switzerland, as well as the Tegeta contract. It stated: 'It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of OCH and is thus in severe violation of the PFMA [Public Finance Management Act].'⁴⁶

The tenth was whether anyone, or any organ of state, had acted unlawfully, improperly or corruptly providing financing facilities to companies or people linked to the Gupta family. The report referred to the prepayment of R659 558 079 from Eskom. It said, among other things, that this payment may not have been in line with the PFMA, that Eskom's board had failed to exercise a proper duty of care, and that the manner in which Tegeta had represented the prepayment to the public could amount to fraud.⁴⁷

The eleventh was whether anyone or any organ of state acted unlawfully, improperly or corruptly in relation to the exchange of gifts with companies owned by the Guptas. The report simply stated that this would be dealt with 'in the next phase of the investigation'.⁴⁸

The public protector's report was met with resistance

Finally, the twelfth was whether anyone or any entity had been prejudiced by the conduct of an SOE. It argued that Eskom had caused damage to Glencore, since its conduct seemed calculated to benefit Tegeta. For example, it refused to conclude a new agreement with Glencore to supply coal to the Hendrina power station. The report commented that 'this was not in line with previous discussions held by Glencore with Eskom; furthermore, it is unclear as to why approval was needed from the Acting Chief Executive before the agreement was signed, as the necessary approvals appear to already have been obtained. It appears that the conduct of Eskom was solely for the purposes of forcing OCM [Optimum Coal Mine]/OCH into business rescue and financial distress.'⁴⁹

While the report caused a major stir, its impact was arguably less a function of the evidence it presented, much of which was known or at least suspected, than that it bore the imprimatur of the Office of

the Public Protector. The evidence had, in some sense, been validated, even if not legally so. Its seminal recommendation was that a commission be established, headed by a judge appointed 'solely' by the chief justice.⁵⁰

The report was met with resistance – Zuma condemned it as 'funny' and 'unfair' and attempted to have it set aside.⁵¹ He said that no one could force him to appoint a commission,⁵².. The appointment of Molefe (who featured prominently in the public protector's report) as an ANC MP in February 2017 fuelled speculation that he was destined for a cabinet post – possibly finance – which would further the state capture project.⁵³ On the other hand, voices in the ANC spoke up for the need to establish the truth about the state capture phenomenon.⁵⁴ Less than two months later, Molefe left Parliament and returned to Eskom as CEO.⁵⁵

And so it carried on ...

While controversy swirled around the public protector's report, another Gupta-linked scandal was getting ready to explode in the Free State. The case was actually a rather old one, about which the Treasury had already expressed concern in 2013. It involved the operation of an agricultural development project contracted to Estina, a company with links to the Gupta family, but with no expertise in agriculture. It appeared that the contract regulating the scheme had been drawn up by the legal adviser to controversial Free State Premier Ace Magashule and favoured the interests of Estina.⁵⁶

The funds paid – amounting to over R220 million – were for the most part promptly paid over to the accounts of other Gupta firms, many of them offshore. Some of the money was used to fund a lavish wedding in Sun City in 2013.⁵⁷ Very little found its way to the emerging farmers that the programme was meant to benefit. That the prominent audit firm KPMG had allowed the wedding to be written off as a business expense demonstrated the extent of the fraud as well as the spread of the dishonesty associated with state capture.⁵⁸

In January 2018, the Asset Forfeiture Unit (AFU) of the National Prosecuting Authority (NPA) seized control of the farm. Knorx Molelle, head of operations at the AFU, wrote: 'I submit that the entire project was a

mere facade right from the outset that was aimed at providing a veil of legitimacy to what was evidently a scheme designed to defraud and steal monies from the department ... The entire project, including the land it was located on, were instrumentalities of the evident theft, fraud and money laundering.'⁵⁹

The Directorate for Priority Crime Investigation – known colloquially as the Hawks, a corruption-busting unit within the police – also raided the offices of the provincial premier.⁶⁰ (Magashule had, incidentally, been elected secretary-general of the ANC.)

While controversy swirled around the report, another Gupta-linked scandal was getting ready to explode

Shortly thereafter, a number of people associated with the project were arrested on a list of charges including theft and fraud.⁶¹ A warrant of arrest was also issued against Ajay Gupta, although not in relation to Estina, but rather for other instances of corruption, including the alleged attempt to bribe Jonas (Duduzane Zuma was charged with the same offence). Ajay was described in the media as a 'fugitive from the law'.⁶² Shortly thereafter, it was announced that warrants (these apparently related to Estina) had been issued for Atul and Rajesh Gupta.⁶³

The Guptas had, however, evidently decamped to Dubai. It is unclear exactly when this occurred, but it is known that they held assets and property there.

Over to the Commission

With the public protector having made some very damaging findings (along with the other controversies), with fallout from the scandals already evident, with public opinion having turned strongly against the Guptas and what they were perceived to represent, and with Zuma on the back foot after his loss in the ANC presidential elections to Ramaphosa, in January 2018 the formation of a commission of enquiry to probe allegations of state capture was announced. This body – the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State – headed by Deputy Chief Justice Ray Zondo, began its work in August of that year.⁶⁴

Its request for an extension of 24 months to complete its work was an indication of the scale of the task before it. The work of the commission was also unfortunately side-tracked by news of a dodgy tender being awarded for the security of the commission's own staff and potential witnesses – perhaps emblematic of the issues it would need to examine. The Zondo Commission would serve as a valuable fact-finding mission to uncover the depth of the rot in our institutions and in identifying the individuals that were responsible.

In its initial months, the focus was on the malign influence wielded by the Guptas, and Zuma's conduct. For the most part, the testimony before the commission can hardly be described as surprising, even if hearing details articulated helped to bring home the full implications of what had been afoot. For example, former director-general of the Treasury, Lungisa Fuzile, said that confidential documents on the 'strategic thinking of cabinet' were passed on to the Guptas' business associates by Van Rooyen's advisers within minutes of having received them.⁶⁵

One surprise – and notable casualty – was former finance minister Nene. He told the commission that he had in fact visited the Gupta residence on a number of occasions. He denied having done anything untoward, and no suggestion was made that he had done so. He tendered his resignation on the basis that his admission would detract from the important work that needed to be done to re-establish trust in government.⁶⁶ Given the intrusion of the Guptas' influence on his career, there was a sad irony here.

The report's seminal recommendation was that a commission be established, headed by a judge appointed 'solely' by the chief justice

As the commission's hearings continue to wear on, it has become apparent that state capture was not limited to the Guptas. In early 2019, the testimony of Angelo Agrizzi, former COO of facilities management company Bosasa, shook the country with its account of bribery and influence peddling among civil servants, NPA officials and politicians. This included payments of R50 000 monthly to former minister of environmental affairs Nomvula Mokonyane.⁶⁷ Agrizzi's testimony was made all the more salacious by his use of racial invective in recordings in which he discussed his misdeeds.⁶⁸

For much of the public, arguably the centrepiece of the hearings was whether Zuma's role in state capture would be exposed. He was certainly identified as having received illicit payments and having intervened improperly in various matters to advance the state capture agenda. His legal representatives have accused the commission of bias, and appeared to be attempting to delay his appearance. He eventually committed to appearing before the commission in mid-July.⁶⁹



FOR MUCH OF THE PUBLIC, THE CENTREPIECE OF THE HEARINGS WAS WHETHER ZUMA'S ROLE IN STATE CAPTURE WOULD BE EXPOSED

As for the Guptas, Ajay indicated that he was willing to testify, but only via video-link from Dubai. This was unacceptable to the commission, not least because he was regarded by the Hawks as a fugitive.⁷⁰ He did, however, submit an affidavit in which he denied the accusations.⁷¹

The commission remains in operation. In March, a book was published by journalist Pieter-Louis Myburgh. Entitled *Gangster State: Unravelling Ace Magashule's Web of Capture*, it detailed a large, complicated (and sometimes violent) system of corruption and patronage operated largely in the Free State, with Magashule at its centre. And while the Guptas have figured in some of Magashule's alleged misdeeds – as discussed above – state capture was evidently not something limited to them.

Looking ahead

The media has done a sterling job over the past decade in doggedly uncovering instances of state capture. The information regarding criminality and malfeasance are well known and in the public domain. Yet, the question that ordinary South Africans are now asking is, 'where to now?'

At this writing, the Guptas remain abroad. They have yet to be held accountable, although a recent agreement between South Africa and the United Arab Emirates on mutual legal cooperation may in principle pave the way for some action, possibly for extradition. However, the warrants against those implicated in the Estina case have been withdrawn.⁷²

As always in South Africa, things are complicated.

A whistleblower in the Estina matter was found murdered, perhaps an indication of the deadly stakes in these matters.⁷³

Charges against Ajay Gupta and Duduzane Zuma have been withdrawn.

Jacob Zuma, although out of office, has yet to account for his conduct. The country's SOEs are in a parlous state, and it is not apparent how they might be turned around. Politicians linked to state capture remain in office.

Gordhan has rightly noted that state capture extends beyond the state into a compromised private sector:

'We must ask some tough questions about the corporate sector and society in general. This goes for accountability and transparency in both the public and private sector or the lack thereof. Is a CEO sufficiently accountable to the board and the board to the shareholders? ... We often talk about state capture in SA, but there are also captured boards.'⁷⁴

Ramaphosa has declared an intention to root out corruption and has said that he wishes to see prosecutions and imprisonment arising from the Zondo Commission.⁷⁵ However, his political enemies have been conspiring against him and given the slim majority with which he ascended to power, he needs to be careful of the political implications of his actions. In some ways he is 'boxed in' by his political rivals and will have to show mettle to secure his position and rid the country of some of the most egregious forms of corruption, as he promised. People implicated in state capture continue to occupy high-profile positions in his party and maintaining its unity may prove an important priority for him. It will be like walking a proverbial tightrope.

Ramaphosa wishes to see prosecutions and imprisonment arising from the Zondo Commission

Ideally, the inevitable next step would also be for prosecutions to take place where there has been criminality. The NPA came to be known more for its reluctance to prosecute politically connected people than as a bulwark for the rule of law. The departure of the widely-criticised Shaun Abrahams from the leadership of the NPA and his later replacement, the well-regarded Shamila Batohi, at least opened the way for a more aggressive move on those implicated in state capture. In April 2019, Batohi appointed senior prosecutors to work on these matters.⁷⁶ The NPA inherited by Batohi has its work cut out for it. It will need appropriate resources and expertise to deal with the several instances of corruption in both the public and private sectors. In order to do this successfully the institution itself will need to be repurposed and drawn out of its dysfunction. This will take time despite the impatience of a public which

wants to see prosecutions and imprisonment for those who have captured the state and been involved in acts of corruption.

How we respond to the challenges posed by state capture is crucial to restoring integrity to our public institutions. The public protector's report and the public information we have, as garnered by a free and active media, will stand as evidence of the abuse of power,

maladministration and blatant theft that characterised Zuma's presidency. What happens thereafter will be a matter for the prosecuting authority. One can only hope that the NPA's actions will gather momentum so that actual prosecutions regarding state capture can proceed without fear or favour – reaching into the heart of politics and business, if necessary – as are required by the Constitution and the law.

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