

The Zondo Commission: A bite-sized summary

SUMMARY

SEPTEMBER 2022

ABOUT THIS BRIEF

In June 2022 Chief Justice Raymond Zondo handed the final report of the Zondo Commission to President Cyril Ramaphosa. The report was the culmination of nearly four years of investigation into 'state capture' in South Africa by the Commission, which is officially known as the [Judicial Commission of Inquiry into Allegations of State Capture](#).

The Zondo Commission and its six reports give us a rich resource with which to think and to act against state capture and wider forms of corruption in the country. It provides strong evidence of state capture, and it provides detailed insight into how state capture was organised and facilitated by some leaders in both the public and private sectors. The Commission's reports also provide us with a set of recommendations which should be actively debated, and which should lead to concrete action by those in both public and private sectors.

This brief provides a short, basic summary of the work and findings of the Zondo Commission, and is intended to support informed discussion and debate about how South Africa can better insulate its public institutions from abuse and ensure they work for the benefit of all.

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<https://pari.org.za/zondo>

What did the Zondo Commission focus on?

Former Public Protector Thuli Madonsela published her final report, *State of Capture*, in October 2016. The Public Protector was responding to complaints received by her office 'in connection with the alleged improper and unethical conduct relating to the appointments of Cabinet Ministers, Directors and award of state contracts and other benefits to the Gupta linked companies' (Public Protector, *State of Capture*, 2016). Her key recommendation was that a judicial commission of inquiry be appointed, headed by a judge selected by the Chief Justice. Former President Jacob Zuma attempted to [challenge this recommendation in court](#), but he was unsuccessful.

The [Terms of Reference](#) of the Zondo Commission are broad in scope, with the Commission being appointed 'to investigate matters of public and national interest concerning allegations of state capture, corruption and fraud'. The Terms of Reference are concerned predominantly with the practices of executive members of the state (that is, senior politicians tasked with having authority over the running of the government, such as the president, cabinet and equivalent at provincial level), and the nature of their relationships with private individuals, and including the Gupta enterprise.

Certain Terms of Reference cover issues raised by the Public Protector in her *State of Capture* report: the role of the Guptas and Duduzane Zuma in influencing appointments and dismissals to Cabinet and an array of state entities; the awarding of contracts, mining licenses and other business to Gupta companies; improper intervention to prevent the closure of bank accounts of the Gupta-owned companies; the appointment of

Des van Rooyen's advisors at National Treasury without following proper procedures. Much more broadly, the Commission was mandated to investigate the nature and extent of corruption in the awards of contracts by state entities and government departments. In the end, the Commission was charged with much wider scope of investigation than initially envisioned by the Public Protector. As Chief Justice Zondo wrote in the first volume of the report:

They [the Terms of Reference] required the Commission to investigate allegations of corruption and fraud in every municipality, every provincial government department, every national government department and in every state owned entity or organs of state. Such an investigation would take more than ten years.

The Commission concentrated on irregular public appointments (appointments that did not follow official process), improper conduct by the national executive and public officials, the concerted efforts and activities of the Gupta enterprise in gaining control of governance and procurement in state-owned entities (SOEs) and government agencies and general corruption (including fraud, money laundering, racketeering and various other illegal activities) in public entities and government at all levels.

The Commission investigated a number of SOEs: Eskom, Transnet, South African Airways (SAA) and its subsidiaries, Denel, Alexkor, the South African Broadcasting Company (SABC) and the Passenger Rail Agency of South Africa (PRASA). In the national government, improper conduct impacting on the National Treasury and the Department of Public Enterprises were investigated, as well as the Government Communication Information System (GCIS) and the South African Revenue Services (SARS) (the workings and impact of state capture in SARS, and the role of the private sector, can also be seen in the findings of the [Commission of Inquiry Into Tax Administration and Governance by SARS](#), or 'Nugent Commission').

The Commission took a close look at the Free State, and particularly the case of Estina, in which the provincial government paid the Gupta company millions for a project meant to benefit local farmers, but which never did. The Commission also conducted a broad investigation into a private company, Bosasa, and its dealing with various state entities and officials.

Law enforcement and intelligence agencies were investigated too. Although the Chairperson chose not make findings regarding law enforcement agencies, the State Security Agency

The evidence

The Commission ran for three and a half years – from January 2018 to June 2022 – under the direction of the Chairperson, the now-Chief Justice Raymond Zondo. In that time, it heard the testimony of more than 300 witnesses over 429 days of public hearings. All the hearings were televised and livestreamed for the public to see; transcripts of each hearing were uploaded to the [Commission's website](#) the next day. The Commission's record includes 1.7 million pages of documentary evidence, including statements, affidavits, investigative reports and other evidence. The Commission has also accumulated a petabyte (over 1 million gigabytes) of further information and data, not all of which was used in the hearings (such as telephone records, banking records and vehicle tracking records). This evidence is a valuable public archive for South Africa's young democracy, and it should be appropriately catalogued and stored.

and the South African Police Service (SAPS) Crime Intelligence were included in the final report. The Commission also investigated the infamous 2013 incident in which the Guptas' wedding guests were allowed to land commercial aircraft at the Waterkloof Air Force Base, a national key point usually reserved for high-ranking government officials, as well as the Gupta bank accounts saga (improper intervention to prevent the closure of bank accounts of the Gupta owned companies).

Parliamentary oversight was a key area of focus, and the role of the ruling party was also carefully scrutinised. Last but by no means least, the Commission gathered detailed and comprehensive evidence about the flow of funds from state institutions into the 'Gupta enterprise', it provided evidence on the role of some private sector players in state capture, including international firms, as well providing evidence on the methods used to extract and launder money.

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As the final report pointed out, the Terms of Reference did not define the concept of state capture; neither did the Public Protector and the courts. There is also no formal definition of state capture in the South African legal framework. Ultimately it was left to the Commission to both define the concept and determine whether state capture took place.

The Commission found that:

State capture in the South African context evolved as a project by which a relatively small group of actors, together with their network of collaborators inside and outside of the state, conspired systematically (criminally and in defiance of the Constitution) to redirect resources from the state for their own gain.

This was facilitated by a deliberate effort to exploit or weaken key state institutions and public entities, but also including law enforcement institutions and the intelligence services.

To a large extent this occurred through strategic appointments and dismissals at public entities and a reorganisation of procurement processes.

The process involved the undermining of oversight mechanisms, and the manipulation of the public narrative in favour of those who sought to capture the state.

Moreover, the subversion of the democratic process which the process of state capture entailed was not simply about extracting resources but was further geared towards securing future power and consequently shaping and gaining control of the political order (or significant parts of that order) in a manner that was necessarily opaque and intrinsically unconstitutional.

The Commission also identified a number of key elements present in a project of state capture:

- i) *the allocation and distribution of state power and resources, directed not for the public good but for private and corrupt advantage;*
- ii) *a network of persons outside and inside government acting illegally and unethically in furtherance of state capture;*
- iii) *improper influence over appointments and removals;*
- iv) *the manipulation of the rules and procedures of decision-making in government in order to facilitate corrupt advantage;*
- v) *a deliberate effort to undermine or render ineffectual oversight bodies and to exploit regulatory weaknesses so as to avoid accountability for wrongdoing;*
- vi) *a deliberate effort to subvert and weaken law enforcement and intelligence agencies at the commanding levels so as to shield and sustain illicit activities, avoid accountability and to disempower opponents;*
- vii) *support and acquiescence by powerful actors in the political sphere, including members of the ruling party;*
- viii) *the assistance of professional service providers in the private sphere, such as advisers, auditors, legal and consulting firms, in masking the corrupt nature of the project and protecting and even supporting illicit gains; and*
- ix) *the use of disinformation and propaganda to manipulate the public discourse, in order to divert attention away from their wrongdoing and discredit opponents.*

The Commission concluded that the evidence established that all of these elements were present in South Africa during the period under review.

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A closer look

The Commission's reports on specific state entities reveal distinct patterns. Those that were part of a network organising to improperly benefit from state contracts were placed in strategic positions in the state, while governance rules and structures were changed to centralise power in their hands and bypass checks and balances intended to ensure fair process. State employees who spoke up against improper conduct were disempowered, marginalised, and even victimised.

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The evidence about the Gupta enterprise showed that their network had substantial influence over key appointments. Those people, once in positions of power, ensured that certain companies were

awarded substantial tenders. The Commission showed the various ways these officials undermined procurement processes and circumvented the rules – or, in some case, simply ignored them. These companies then paid kickbacks to the Gupta enterprise in exchange for their assistance in securing the contracts. Some of these companies also brought on Gupta-linked companies as sub-contractors or development partners – allowing them to directly benefit from government work, often without participating in the procurement process at all.

This inevitably ended up drastically inflating the costs of the contracts, as everyone involved tried to get a bigger piece of the pie. Without the functioning of proper, competitive procurement processes, there was no way to rein in these excesses. Even worse, in many of these cases, the state ended up with poor quality services and products – if any part of the contract was delivered at all.

Outside of procurement, complicit state officials abused their powers to benefit the Guptas – and others – in more direct ways, such as the irregular granting of visas, the processing of mining licenses and granting permission for the use of the Waterkloof airbase.

The Commission presented evidence on how all of this money was laundered through various jurisdictions, allowing the Gupta enterprise to hide the sources and ultimate beneficiaries of these funds.

The reports also show significant evidence that oversight bodies were been inhibited or undermined to prevent them from effectively detecting and deterring corruption, and that law enforcement and intelligence agencies had been similarly weakened or ‘captured’.

Actors in the private sector were also scrutinised by the Commission. Many companies, often well-respected and highly successful, were willing to enter into kickback agreements to secure lucrative contracts. Professionals such as auditors, bankers, lawyers and consultants were also implicated. The best of these companies failed to conduct proper due diligence; the worst were actively complicit in capturing the state for their private benefit.

The Commission also investigated the role of the ruling party, the African National Congress (ANC). It found that the ANC enabled state capture by protecting former President Zuma and failing to properly deal with allegations of corruption and state capture until it was too late. It also found that the politicisation of the civil service – largely through the ANC’s cadre deployment policy – provided fertile ground for corruption and state capture to take place.

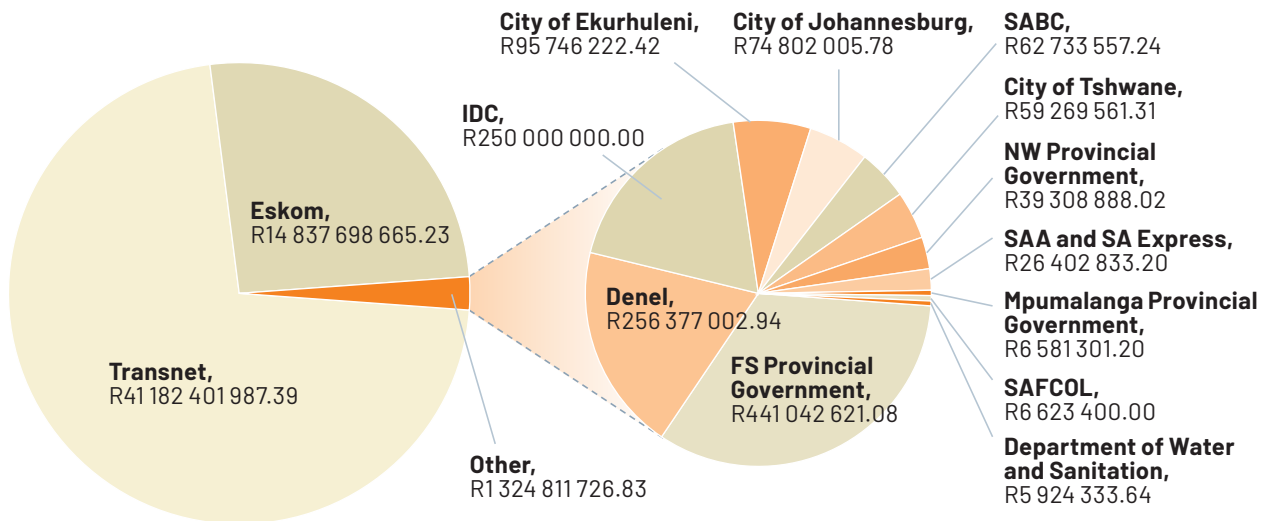
The evidence presented in the Commission’s reports show that state capture involved different networks that cohered around certain individuals – in particular, former President Zuma. The Gupta enterprise was one of those networks. The evidence relating to Bosasa, PRASA, and the Free State has revealed other networks which operated in similar ways. These networks were sometimes autonomous but remained connected through certain individuals or entities (most significantly Mr Zuma). The same structural and institutional conditions which allowed the Gupta enterprise to operate created a framework for others to exploit as well.

Significant damage was done to state institutions in order to allow all of this to take place. The resulting inability of these institutions to fulfil their mandates has had a significant effect on South Africa as a whole, and on the lives of her people. How can we begin to assess the damage caused by, for example, PRASA’s inability to provide reliable transport for those who need it most, Eskom’s inability to keep the lights on, or SARS’ inability to identify and recoup illicit financial flows?

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The Commission estimated the total amount of money spent by the state which was ‘tainted’ by state capture to be around R57 billion. More than 97% of the R57 billion came from Transnet and Eskom. Out of these funds, the Gupta enterprise received at least R15 billion. The total loss to the state is difficult to quantify, but would far exceed that R15 billion.

Figure: *Public funds spent on state capture-related contracts as estimated by the Commission.*



What did the Zondo Commission recommend?

The Commission has made extensive recommendations. Some are specific and focused – that certain individuals be prosecuted or that certain contracts be reviewed. Others are much broader and far-reaching, including overhauling various government processes and institutions.

The Commission recommended that various implicated individuals be investigated further and possibly prosecuted for their involvement in state capture, mostly concerning charges of fraud, corruption, money laundering, contravention of the Public Finance Management Act (PFMA), the Prevention and Combating of Corrupt Activities Act (PRECCA) and Prevention of Organised Crime Act (POCA), and [racketeering \(a concept explained by Corruption Watch here\)](#). Some of the high profile individuals are Dudu Myeni, Brian Molefe, Salim Essa, Eric Wood, Anoj Singh, Siyabonga Gama, Matshela Koko, Lucky Montana, Arthur Fraser, members of the Gupta family, Duduzane Zuma and Jacob Zuma himself.

The Commission recommended that some SOEs and the National Prosecuting Authority’s (NPA) Asset Forfeiture Unit take steps to recover amounts paid to implicated parties as part of irregular and unlawful contracts.

Some of the more ambitious recommendations made by the Chairperson concern public procurement, including the publication of a national charter against corruption in procurement, with a binding code of conduct; the creation of an independent agency against corruption in procurement which includes a council, an inspectorate, a litigation unit, a tribunal and a court; the creation of a

procurement officer professional body; and various other changes to public procurement legislation and regulations. The Commission also recommended enhancing transparency and strengthening protections for whistle-blowers.

In the realm of appointments (and dismissals), the Commission recommended the establishment of a body tasked with the identification, recruitment and selection of SOE board members, Chief Executive Officers and Chief Financial Officers.

Regarding oversight, the Commission proposed various reforms to be considered by Parliament, including the establishment of an oversight committee on the Presidency, the introduction of a constituency-based electoral system, and various interventions to improve the effectiveness of oversight committees.

The Commission asked the government to consider the creation of a statutory offence making it a criminal offence for any person vested with public power to intentionally use that power in any way other than ‘in good faith for a proper purpose’.

The Commission recommended the establishment of a permanent commission to investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, make findings and recommendations to the President.

Lastly, the Commission proposed that consideration be given to changing South Africa’s electoral system to allow for the President to be directly elected by the people.

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The way forward

The Commission’s recommendations are not binding, and so it is up to President Ramaphosa to decide how to respond to the report. He will have to table the report in parliament alongside his implementation plan before the end of October 2022.

Some state institutions may decide to implement certain recommendations of their own volition – or to act on the report’s findings in other ways. The NPA, for example, established a task force to coordinate its response to the report and to expediate the investigation and prosecution of the matters highlighted by the Commission. Eskom has similarly set up a team to deal with the report’s recommendations.

Ultimately, the implementation of the Commission’s recommendations – and, indeed, any response to the Commission’s findings at all – are dependent on the will and capacity of those in power. The report is nevertheless a valuable tool for civil society groups and activist citizens seeking accountability from government. The massive amount of information made available by the Commission is itself a rich resource. The recommendations are numerous, although uneven.

Some of the recommended reforms are incredibly ambitious and require in-depth scrutiny. For example, the creation of an independent agency for procurement related matters would require the establishment of yet another anti-corruption body. Would it be the best way to address the problems identified by the Commission? If it is, how would this body fit into the existing legal and institutional framework and in relation to wider procurement reform? What resources would it require?

Zondo recommended a rigorous appointment process for SOE executives and directors. Should similar reforms be proposed for other government bodies?

The Commission also suggested that Parliament should ‘consider’ an electoral system by which the people directly elect the President. It isn’t clear if this sweeping change would ‘fix’ our political system, and recommendations such as this need to be carefully debated.

We will need to carefully and critically consider the Commission’s recommendations in order to establish an agenda for action. This process can help us identify key reforms for prioritisation and advocacy, as well as critical areas for further research and development. The Commission’s report is an important document that – in addition to the wealth of information and analysis it provides – can lend substantial weight to calls for reform, and can act as a unifying point across civil society. At the same time, it is important to remember that the Commission’s recommendations are limited; they address only a few state institutions and key policy issues, and do not encompass all possible responses to corruption and state capture. The release of the report should not limit us to other potential ways forward. ■

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August 2022.

Further information and analysis relevant to the Zondo Commission
can be found on PARI’s website: www.pari.org.za

<https://pari.org.za/zondo>
