



Parliamentary Research Unit

State Capture Bulletin (1)

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Key recommendations: Judicial Commission of Inquiry into State Capture Report: Part 1 and Part 2: Police and Justice

Former President Zuma established the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector, including organs of state (the Commission) in response to the remedial action taken by the then Public Protector, Adv T Madonsela, in her “State of Capture” Report in October 2016.

The first hearing of the Commission took place on **20 August 2018** and, after six extensions, evidence was completed on **12 August 2021**.

The Commission’s Report will be delivered in three parts:

- Part I of the Report was submitted to the President on **4 January 2022**. Part I of the Report consists of three volumes, relating to (i) South African Airways (SAA), South African Airways Technical (SAAT) and SA Express; (ii) unjustified public spending that took place between the state owned entities of Eskom, Transnet and SAA, and the Gupta- owned media enterprise, TNA Media (Pty) Ltd (TNA); and (iii) the South African Revenue Service (SARS) and Public Procurement in South Africa with recommendations on necessary reforms.
- Part 2 of the Report was submitted to the Presidency on **1 February 2022**. This part of the Report deals with the following state owned enterprises; (i) Transnet; and (ii) Denel.

The third part of the Report will be handed over at the **end of February 2022**. As required by the ruling of the Gauteng High Court on 28 December 2021 President Ramaphosa will **submit the full Commission report to Parliament by 30 June 2022 with an implementation plan**.²

However, the President has stated that *this process, does not prevent other institutions from acting within their statutory mandate on any of the findings and recommendations of the Report*.³



A reading of Part I and Part 2 of the Report indicates that the Commission has concluded that state capture has been established.⁴ It will be in Part 3 of the Report that the Commission will give reasons for this conclusion.

Notably, Part 1 and 2 of the Report:

- Paints a picture of how key institutions were compromised and undermined.
- Reveals how key role players enabled the project of state capture to take hold in key entities and thrive for a number of years, despite the existence of certain institutions designed to protect democracy, including Parliament.
- Identifies pervasive corruption in both the public and private sectors and implicates, either directly or indirectly, a range of individuals in both the public and private spheres, as well as private sector institutions.
- Highlights the readiness with which the implicated private sector entities initiated or participated in corrupt arrangements and the absence of any internal safeguards in their corporate structures.⁵
- Reveals the considerable costs of state capture. Those costs do not just lie in the millions of Rands lost to the tax payer. They also lie in the broken careers of people who tried to resist its stranglehold.⁶
- Highlights that the facts before the Commission have shown the inadequacy of punitive measures which currently form part of South African law. Egregious violations of the Constitution have been demonstrated.⁷

Key recommendations: Judicial Commission of Inquiry into State Capture Report: Part 1 and Part 2: Police and Justice cont.

Critically for the Peace and Security function, the Report noted the following key areas of impact:

- Fundamental failure by the NPA to prosecute cases of corruption, and specifically cases of corruption in the procurement process.⁸
- Compromised law enforcement as a result of the potential capture of the Directorate of Priority Investigations (DPCI)/Hawks). According to the Report the evidence suggests very strongly that the DPCI was probably captured.⁹ However, the Commission did not make a definitive finding on the DPCI as it noted that it may have to be the subject of other process.¹⁰
- Failure to apply the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA). Section 34(2) of PRECCA makes it an offence for anyone who holds a position of authority within an entity and who knows or ought reasonably to have known that an act of corruption has been perpetrated, to fail to report the conduct.
- Absence of civil litigation aimed at the recovery of damages or monies misappropriated.
- Significant failure to ensure adequate support and protection for whistle-blowers.
- Lack of tools to pursue corporate prosecutions and hold public sector companies accountable, in particular, the combatting of corrupt activities and money-laundering is being hampered by the onerous burden of proof upon prosecutors (whose tasks are frustrated by inadequate resources).¹¹
- Absence of a truly independent anti-corruption body free from political oversight and able to combat corruption, particularly in the area of procurement, with fresh and concentrated energy.

To enable Parliamentary oversight, this Bulletin provides an overview of key recommendations made in Part 1 and Part 2 of the Report of relevance to policing and justice.

Please click on the links below to access the full research papers -

Police and Justice: Key findings and recommendations contained in [Part 1](#): Judicial Commission of Inquiry into State Capture Report

[Click here](#)

Police and Justice: Key findings and recommendations contained in [Part 2](#): Judicial Commission of Inquiry into State Capture Report

[Click here](#)

Part 1 and 2 of the Report of the Judicial Commission of Inquiry into allegation of State Capture: Implications for Justice and Police.

[Click here](#)

Footnotes:

This is also in line with the remedial action contained in the Public Protector's report dated October 2016.

²President Cyril Ramaphosa: Handover of first part of State Capture Commission report (Accessed at <https://www.gov.za/speeches/president-cyril-ramaphos-handover-first-part-state-capture-commission-report-4-jan-2022>)

³ Ibid

⁴ Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector pXII

⁵ Ibid p812. Any reform of the present system must also deal aggressively with criminal acts committed by private sector actors

⁶ Ibid p26

⁷ Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Vol 2 p135

⁸ Ibid p820

⁹ Ibid p841

¹⁰ Ibid p841

¹¹ Ibid p815



STATE OF THE NATION (SONA) 2022

President Ramaphosa made the following pronouncements regarding the work of the Judicial Commission of Inquiry into State Capture in his State of the Nation Address on 10 February 2022:

- The first two parts of the Report of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector make it clear that there was indeed 'state capture'.
- Public institutions and state-owned enterprises were infiltrated by a criminal network intent on looting public money for private gain.
- State capture had a direct and very concrete negative impact on the lives of all South Africans, but especially the poorest and most vulnerable members of our society.
- State capture has weakened the ability of the state to deliver services and to meet the expectations and constitutional rights of the people.
- The Commission Report must be acted upon and the many individuals and companies that the Commission has found were responsible for state capture must be held to account.
- By no later than 30 June 2022 the President will present a plan of action to Parliament in response to the Commission's recommendations.

What we do:

The Research Unit offers research support to individual Members of Parliament, to Committees and to the Houses. Researchers proactively provide:

- ✓ Summaries and analysis of Bills
- ✓ Analysis of the State of the Nation Address (SONA), Budget Votes, Annual Performance Plans, Quarterly Performance and Expenditure Reports, and Annual Reports
- ✓ Briefing papers in support of Committee meetings on topical oversight issues
- ✓ Comparative studies and international best practices
- ✓ Briefing papers to prepare for oversight visits and on-site oversight visit support
- ✓ Papers in support of House debates

On request, researchers will provide briefings and presentations to Committees, as well as research support to individual Members of Parliament.

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Useful links:

Reports of the Judicial Commission of Inquiry into State Capture

Part 1 (SAA, New Age, SARS and Public Procurement), [click here](#)

Part 2, Volume 1: Transnet, [click here](#)

Part 2, Volume 2: Denel, [click here](#)

Our Values

Non-partisan impartiality
Objectivity
Confidentiality
Quality: Methodological
soundness and timeliness

Feedback



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