

State Capture in South Africa

Going Back to Basics

P Pillay, K Chitunhu and L Chivandire

School of Public Leadership
Stellenbosch University, South Africa

ABSTRACT

State capture has become institutionalised and entrenched in South Africa. The proliferation of discourse, debate, and interactions concerning state capture has compelled, inter alia, lawmakers, policymakers, scholars, and stakeholders to investigate the phenomenon. Consequently, the country can either continue its descent into spoils politics or revert to a stronger constitutional democracy.

This article explores the infiltration of state capture into the South African economic, political and social environment; consequences thereof; and provide recommendations to mitigate its negative effects on the government, society and the economy at large. In cognisance hereof, the purpose of the study is to advance state capture research by providing a comprehensive theoretical explanation of the phenomena and issues associated therewith. Furthermore, the ultimate objective is to identify effective policies and procedures which the country could consider to inhibit the phenomena.

The article adopted the qualitative research methodology and draws from an extensive review of the existing literature, for example, journals, media articles and books and explore ways in which state capture and ethical issues have manifested in South Africa. In conclusion, the resuscitation and recapitalisation of the anti-corruption mechanisms and the timely retribution of all parties implicated in state capture is recommended.

Keywords: *Corruption, State capture, Ethics, South Africa, State Capture Commission*

INTRODUCTION

In democratic settings, the state protects and advances the general welfare of its citizens.



It assumes a vital role in society and determines “who gets what, when, and how” (Lasswell 2018). This essential role necessitates the establishment of various institutions with the specific objective of fair and equitable distribution of resources amongst the populace. Nonetheless, there has been discernible apprehension of institutionalisation and diversion of state resources because various interests always aim to exert influence over state to accomplish the desired results.

The reviewed literature revealed that this institutionalisation and diversion of state resources has evolved and developed into state capture. The term state capture emerged during the transition from communist to liberal market democracies in the former states of the Soviet Union (Meirotti & Masterson 2018a). During this transition period, states adopted various approaches and strategies that resulted in distinct political and economic development. However, the collaborative project survey conducted between the European Bank for Reconstruction and Development and the World Bank including Hellman, Jones and Kaufmann (2003), revealed patterns of corruption in the transitioning state which was termed as state capture.

In many ways, the fundamental burden of a state and its institutions as envisaged by the former states in the Soviet Union is reminiscent of the post-colonial era in Africa (Meirotti & Masterson 2018b). The transition period in South Africa was marked by transfer of power structures from the apartheid system to a constitutional democracy. More specifically, the country transitioned from being a monolithic and centralised state designed to an all-encompassing constitutional democracy. In comparison, the apartheid era was marked by social inequities and economic disparities, whereas the transition period was marked by significant deindustrialisation and severe unemployment. This enhanced and underscored development which helped to propel the African National Congress (ANC) to the political forefront by providing jobs and advance economic conditions (De Klerk & Solomon 2019).

However, since March 2016, state capture has been widely discussed in South African politics and extensively disseminated by individuals via mainstream and social media networks (Labuschagne 2017). Thus, the proliferation and surge of discourses and discussions around state capture necessitates a detailed exploration of the effects it has on the government, society, and the economy.

The article examines the permeation of state capture into the South African socio-economic and political spheres; consequences thereof; and provides recommendations to mitigate the scourge to limit its adverse effects on sovereignty, democracy and the economy. In cognisance hereof, the study aims to advance the field of



state capture research by providing a comprehensive theoretical explanation of the phenomena and issues associated with state capture. The ultimate objective is to identify effective policies and procedures which countries in transition may utilise to inhibit the phenomena.

The article adopts the qualitative research methodology and draws from an extensive review of literature, for example, journals, media articles and books to explore ways in which state capture and ethical issues has manifested itself in the country.

LITERATURE REVIEW

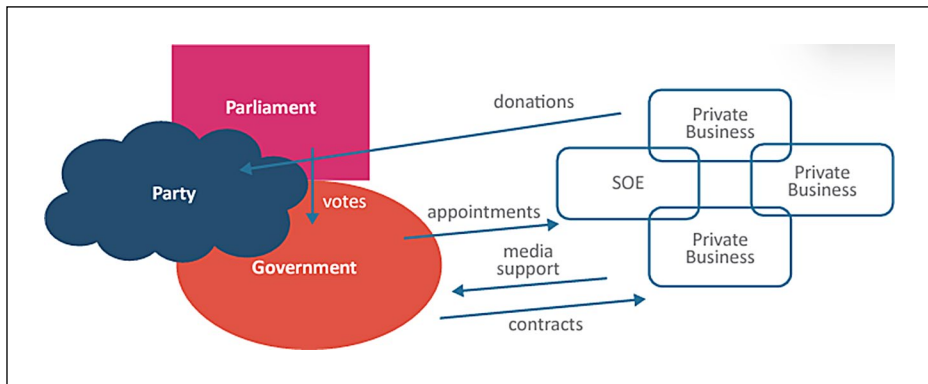
State capture conceptualisation

The concept of regulatory capture serves as the theoretical foundation for state capture. Stigler (1971) argued that regulatory capture is premised on the complex relationship between the regulator and the regulated, wherein the former can be captured by the latter entities. The theory posits that government bodies entrusted with regulating certain sectors of the economy are susceptible to influence from that sector, which can control and manipulate the regulatory process and act contrary to the public interest.

The innovative and seminal work conducted by Hellman *et al.* (2003), pioneered a new approach to examining state capture and transitioned from Stigler's focus on specific regulations. Hellman *et al.* (2003), conceptualised state capture as the manipulation of the legislative process to benefit private interests. This manipulation is possible because of the complex dynamics between businesses and the government, that is, the latter ceases to act as a guarantor of the public interest while the former becomes increasingly entrenched within the economic and political system, to the point where both influence the legislative process. Hellman *et al.* (2003), accentuated the significance of efforts by business to gain competitive advantage by influencing government policies. This is accomplished by the imposition of anticompetitive measures, which culminate in highly concentrated benefits for selected powerful businesses to the detriment of the wider populace.

Despite providing useful insight into the state capture phenomenon, Hellman *et al.* (2003), focus was a narrow on business entities and failed to address other potential capture agents, for example, private individuals or public officials. Secondly, the use of financial support for political activities as a capture strategy was disregarded. Capitalists have the power to finance and even dominate political parties, and once in power, these parties will be in their direct control. Following this introduction by

Figure 1: State Capture Process



Source: David-Barrett (2021)

Hellman *et al.* (2003), various meanings and classifications of state capture have developed in the academic literature.

Edwards (2017) defined state capture as the possession of disproportionate power over a state or national government decision-making processes by private corporations, political parties, or other interest groups. This implies that the government cedes its autonomy to enact regulations and legislation to limited individuals which signifies the failure to fulfil its social responsibility.

Furthermore, Transparency International (2014:1), defines state capture as “one of the most pervasive forms of corruption, where companies, institutions or powerful individuals use corruption such as the buying of laws, amendments, decrees or sentences, as well as illegal contributions to political parties and candidates, to influence and shape a country’s policy, legal environment and economy to their own interests.” In such a setting, government institutions cease to serve the common good. The interests of specific individuals or groups is advanced.

The borders between government and business are frequently and occasionally intentionally obliterated, as illustrated in Figure 1.

The above illustration of capture reveals how the political and business classes are intertwined in a matrix of mutual interdependence. State institutions can be captured not only by private sector persons or businesses, but also by public officials themselves. Political leaders and policymakers abuse their influence in government and parliament by shaping legislation which provides business allies with preferential treatment in return for their support to the government or the governing party. Such a relationship between the



government and the corrupt captors is illegal, which implies that legislation, rules, and policies are rendered on corrupt transactions. Furthermore, as underscored by Hellman and Kaufmann (2003), 'connections over competence and influence over innovation' will be prioritised. Consequently, 'legality becomes a function of illegality' (Dassah 2018:2).

All in all, state capture occurs independently of both the level of administration and the extent of economic development (Meirotti & Masterson 2018b). It is most common in government, but it can occur in any institution where private interest is permitted to influence policy decisions. The circumstances under which state capture occurs will determine its specific manifestation. This can either be at local, national or the global level. The ultimate goal of state capture is to amend the legislation and regulatory structure such that it benefits private pursuits at the expense of the general benefit.

Theories on state capture

State capture is a contested concept with various meanings of theories of political economy. Ideologies anchored on the concepts of state, politics and economy are significant to conceptualise what state capture entails. The neoliberals, neo institutionalists, and Marxists are three prominent ideologies, and each has differing views and perspectives of the causes of state capture (Dassah 2018). There is widespread consensus in policy circles and international financial institutions of the applicability of the neoliberal perspective of state capture. Nevertheless, certain theories provide an understanding of the politics behind macroeconomic policies, and the distributive effects of these.

Neoliberal theory

Neoliberalism is a political and economic policy theory that advocates free market competition and is widely promulgated by global financial organisations such as the World Bank and International Monetary Fund (Wilson 2017). It advocates that a free competitive market environment is conducive to allocate savings to investment projects since interest and currency rates are determined by forces of supply and demand. However, neoliberalism considers policymakers as a detriment to efficient economic performance and argues that politicians are naturally corrupt and abuse their power for personal gain through rent seeking and patronage (Adetayo 2020). Consequently, when politicians, rather than market forces determine economic policy distortions, it will result in ineffectual allocation of savings and investment resources. In sum, this theory argues that to avoid state capture, important economic variables, interest and exchange rate determination, and monetary policy should all be left to the self-regulating mechanisms of the economy.



New Institutional Economics Theory

The New Institutional Economics (NIE), in contrast to the neo-liberals, advocates government intervention to address market failure. According to Klein (1998), the NIE is an integrative theory which incorporates law, public administration, psychology, economics, institutional theory and anthropology subjects to better understand the mechanism of institutions. In general, Altin (2022) accentuated that government institutions play a crucial role to ensure efficiency and lower transaction costs within markets. One of the strengths of this theory is that it provides a detailed consideration of the types and characteristics of institutions which promote economic performance. The ideal institutions, as highlighted in the reviewed literature receives minimal government intervention, professional administration, and autonomy from influential private sector groups (Srouji 2005; Bardhan 2010; Altin 2022). Accordingly, state capture occurs when institutions are weak and lack authority to enact and uphold the rules and adhere to legislation. Policymakers or private groups can influence legislation and policies to their advantage by manipulating such government institutions.

However, the NIE perspective is limited in its ability to describe the linkages between state institutions and dominant private groups that do not result in capture but collaboration. This can be evidenced in the connection between government institutions and private groups in East Asia, or the reciprocal effects policies have on both dominant players and the economy Srouji (2005). The theory fails to explain state collaboration which would result in policies to help economies, albeit benefitting certain private groups disproportionately.

Furthermore, it is essential to acknowledge that private sector stakeholders such as entrepreneurs, corporations, and industries were excluded in the neoliberal and neo-institutionalist concepts of state capture. These are essential to appreciate and comprehend the concept of state capture.

The Marxist Theory

The fundamental concept central to the Marxist theory is the perspective that the state and its institutions serve to uphold or preserve a system of power relations which emerged because of historical circumstances (Dassah 2018). Therefore, according to this theory, capture is inevitable because capitalists command and control governments. State capture emanates from competition amongst capitalists to influence economic, political and social policies. This results in multiple consequences, for example, lawmakers pass legislation or amend policy such that it is designed to favour dominant groups at the expense of the populace.



Accordingly, the political and social discourse on South Africa's state capture comprises of two schools of thought (Chipkin 2016). The first perspective relates to dominant players who yield undue influence in policymaking. For example, the Gupta brothers allegedly influenced the appointment of cabinet members, key government officials and awarded large state tenders. This is demonstrative of the power they yielded in government (Dassah 2018; Meyer and Luiz (2018); Madonsela (2019). In contrast, Shivambu (2016) and Basson (2019) use the term to refer to the influence white monopoly capitalists has on government, for example, the Ruperts and Kebbles. The Marxist theory is congruent with this view of state capture.

State capture and corruption distinction

Broadly, corruption is denoted as, "the abuse of entrusted power for private gain" (Johnson, Kaufmann & Zoido-Lobaton 1999; Transparency International 2018). There are various forms of corruption, notably extortion, fraud and embezzlement. Invariably, state capture is referred to as a form of systematic corruption that transcends the petty scrouge (Stoyanov, Gerganov & Yalamov 2019). Hence, in cognisant herewith, state capture is a subset of corruption and inevitably involves corrupt activities whereas the scrouge is not an element of state capture. Although corruption is a characteristic of state capture, it is plausible that significant levels thereof within an institution is not necessarily indicative of capture.

The primary distinction between corruption and state capture stems from the motivation behind each practice. Corruption aims to undermine the enforcement of legislation and regulations. On the contrary, state capture encompasses individuals or organisations who sway legislative processes to influence the establishment of rules and legislation within a country. In sum, state capture entails the legalisation of corruption.

Another important difference is that in state capture, the captors further their own interests by amending legislation to their favour miscreant deeds. Conversely, corruption allows participants to acquire private benefits and personalised exceptions by abusing the office negatively. Corruption is typified by individual opportunistic actions for personal benefit. Alternatively, state capture is a strategic development of networks to modify and repurpose government institutions to benefit the captors. Fazekas and Toth (2016) underscored that corrupt actors create a unique network structure that enables the capture of specific government agencies.

An illustration of corruption is when a company lowers its tax obligation to the government by bribing the officials at the South African Revenue Service. Alternatively, state

capture occurs when an organisation bribes public officials to enact legislative changes which would provide them with monopolistic control of importation of goods and services. Consequently, Webster (2019) highlights that in instances of corruption, policy consequences are uncertain, whereas in cases of state capture, the outcomes are guaranteed to favour the captors. Thus, the degree to which a corrupt transaction permeates state processes and activities is, in the end, what differentiates the two concepts.

Forms and types of state capture

A broad range of state capture forms can be conducted, namely: levels at which these can function; types of government at which these are executed; and the category of private actors involved. Consequently, it is imperative to establish the various defining features and distinguish the characteristics of state capture.

Firstly, state capture can be identified by the targeted institution for capture. These institutions include the executive and legislative arms of government, regulatory bodies, judiciary and public works organisations. Adetayo (2020) asserted that both the legislative and executive branches are highly susceptible to capture because these control the policy and strategic decisions of a country and its institutions. The second differentiating characteristic of state capture is the nature of the persons or institutions that conduct it, that is, individuals, social groups, private businesses, politicians and high-level government officials.

Thirdly, a distinction of state capture can be established by the extent of the capture. According to Fazekas and Toth (2016), a state can be captured in two ways, namely: either by a single private or public organisation (local capture), or through a coalition of such entities (global capture). Fazekas and Toth (2016) further highlight that global capture is a countrywide phenomenon in which captured institutions are interconnected and managed on a national scale, whereas local capture occurs when a public or private organisation joins a capture network and remains autonomous.

Fourthly, the form and impact exerted by state capture can be another distinguishing feature. Mtimka (2016) notes that state capture can either be systematic or predatory. When a state is captured systematically, institutions subvert the state's sovereignty both at local and international level and redirect policymaking which is beneficial to the influential groups (Mtimka 2016). For example, the capitalist system weakens internal sovereignty due to a few who dominate the market, whereas the neoliberal system affects external sovereignty because it encourages free market competition, which can influence foreign policies and multinationals monopolistic power. Systemic capture is distinct because it



is often anonymous, and is difficult to identify selected individuals as perpetrators of state capture. Thus, systemic change can be achieved through radical decisions which should target institutions and not necessarily specific individuals. On the other hand, Mtimka (2016) highlights that predatory state capture occurs when selected individuals or organisations exert undue influence on specific policymakers for their own interests; and utilise power to enhance public officials to comply.

The fifth distinguishing feature can be derived by distinguishing party state capture from corporate state capture (Innes 2014). State capture of a party denotes the process whereby political parties gain control of the state to acquire monopolistic political powers. In contrast, corporate state capture occurs when private individuals influence government for personal benefit (Innes 2014).

Finally, the frequency of state capture is another defining feature. According to the ANC Today (2016), this can be occasional, partial or full state capture. The ANC Today (2016) article revealed that random irregularities that serve the corporate interests and those in power typifies occasional capture, whereas partial capture arises when irregularities are widespread but not systemic, and the state prioritises to accomplish its developmental goals. Full capture occurs when corruption is widespread and rampant, and the development objective is subservient to corrupt trades.

Constitutional and executive framework: South Africa

Understanding state capture in South Africa requires a fundamental appreciation of the country's constitutional and executive framework. The country has a transformative vision as prescribed in the Constitution. The *Constitution of the Republic of South Africa* (1996) compels every citizen and government institutions to recognise the atrocities of the colonial and apartheid eras, pay tribute to the sacrifices of those who fought for freedom and equality, and value the contributions of those who have helped to create and advance the country.

The Constitution bestows all executive powers in the office of the President. Upon being elected, the president publicly signs a contract and takes the oath of office. The President has the right to nominate the Cabinet, who are responsible for the implementation of national legislation unless otherwise specified by the Constitution or a law passed by parliament. In addition to constitutional and statutory mandates, the president and cabinet are responsible for the formulation and execution of public policy, oversee activities and administration of ministries and departments, formulate and present legislation, and conduct other executive responsibilities.



The President, either on his/her own or in consultation with Parliament, is responsible for the nomination of key appointments in various state organisations, and the judiciary (Mkhabela 2018). Furthermore, as stipulated in the Constitution, the President is entrusted with the power to appoint the head of the police, defence force, intelligence service, ministers and ambassadors. Furthermore, heads of state institutions, appointees to Commissions and the National Director of Public Prosecutions are executed by Presidential appointment (*Constitution of the Republic of South Africa, 1996*).

Similarly, the Commissioner of the South African Revenue Service, the South African Reserve Bank Governor and Deputy Governor; and members of the Independent Communications Authority of South Africa are appointed by the President. (Moseneke 2014). Overall, certain appointment powers are complemented with removal powers which are also subject to regulated processes.

STATE CAPTURE IN SOUTH AFRICA

The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, popularly known as the State Capture Commission, was established in response to the findings of the Public Protector's report (Zondo 2018). This commission investigated and determined how state capture had transpired in the country.

Bester and Dobovšek (2021) alluded that the term state capture in South Africa refers to the integration of corporate and governmental interests characterised by the misuse of state resources and the utilisation of coercion practices. This was disclosed by the Gupta brothers capture of the state. They were involved in a wide range of businesses notably media, entertainment, mining and engineering. The majority of their shares was in Oakbay Investments, the holding firm (Bhorat *et al.* 2017).

Martin and Solomon (2016) highlighted that the Gupta family was able to advance state capture by contravening the constitution through the President and the Cabinet. The Guptas began infiltrating Zuma's administration in 2005 and became institutionalised in 2009. The capture of the state, by the former South African President Jacob Zuma and other high-ranking officials as the point of access, motivated ideals and the obligations contrary to the Constitution (Van Niekerk *et al.* 2022). The motivation entailed a shift in focus of governmental institutions from the constitutional mandate of transforming society to prioritise private benefit for a few than the collective interest of all South Africans.



The lack of ethical conduct and accountability fostered ideal conditions for state capture in South Africa. According to Farazmand (2002), ethics and accountability permeate every facet of interpersonal relationships and organisational actions on a local, national and global scale. The nexus of state capture included connections between the Gupta family, Jacob Zuma and selected government officials (Bester & Dobovšek 2021). The Public Protector (2016) report noted that former President Jacob Zuma committed ethical violations through conflict of interest. In the first instance, the report highlights that the former President violated the Executive Code of Conduct by disclosing information related to cabinet minister appointments to the Gupta family. Furthermore, the execution of the report was delayed by Zuma's reluctance and unwillingness to acknowledge the significance of ethics in leadership (Mkhabela 2018).

Furthermore, the commission conceptualised that state capture comprised of not only public sector corruption and Zuma's family connections to the Guptas, but also the infiltration of the African National Congress members in various government ministries and institutions (Zondo 2018). The politicians assigned loyalists to crucial posts in the justice system, revenue service, and intelligence agencies and utilised their influence to establish corrupt relationships with the commercial sector on a local and global scale. These loyalists would protect the politicians from investigations and acts of corruption was utilised to capture the state on the political scene.

The mechanism for state capture in South Africa was through patronage-punishment (Mkhabela 2018). As highlighted in the State Commission report, patronage-punishment was enhanced through the key appointment of individuals in positions of authority through the misapplication of the appointment and dismissal procedures (Zondo 2018). The President's wide powers to appoint enabled this scrouge because political loyalists were appointed while competency was compromised. Public officials, including members of the Cabinet were appointed and dismissed to advance the captors' agendas. This resulted in officials either complying with the instruction to perform as instructed or risk being demoted, denied promotions, or intimidated. Therefore, these appointments were made to limit individual agency and protect the agents monopoly of capture on legitimate political discourse.

For example, Menzi Simelani, a Zuma loyalist was appointed as the National Director of Persecution (Martin & Solomon 2016). According to Makhetha (2022), the Guptas were able to influence Mosebenzi Zwane's appointment strategically and remove Ngaoko Ramatlhodi as Minister of Mineral Resources due to his alleged connection with the Gupta family, which has substantial mining sector interests. Heretofore, Zwane facilitated the Guptas with the Estina farm, a dairy project that cost the Free State provincial government millions of dollars but never came to fruition (Koko 2022).

The former Finance Minister Nhlanhla Nene was dismissed in December 2015. This was partially due to his failure to cooperate with the Gupta family and resisted signing a nuclear contract and other transactions for the financially troubled South African Airways (Martin & Solomon 2016). According to Brock and Cropley (2015), the appointment of Des van Rooyen to succeed Nhlanhla Nene was a calculated move to enhance the syndicate and the decision was influenced, as it emerged, by Zuma's connections with the Gupta family. However, in defending his decision to appoint Van Rooyen as the new finance minister, the President argued that incumbent was a committed and competent candidate for this position (Karodia & Soni 2016).

Similarly, the Public Protector (2016) report highlighted that the Eskom board members were appointed unlawfully because the procedure did not adhere to basic corporate governance, and the board was in violation of the Public Finance Management Act, 1999. This was established through investigations into the dealings between Eskom and Tegeta. The latter business supplied the Arnot Power Station, and Oakbay, the investment firm owned by the Gupta family. The findings highlighted that these were the most expensive contracts granted by Eskom and Tegeta was the only company that benefited from the transaction (Public Protector 2016).

Nevertheless, the constitutional democratic structure was difficult to subvert given the decentralisation of power authority outside the executive branch. Although the president retained the power to make appointments, there was no assurance that his appointees would execute his objectives. The separation of powers guaranteed by the Constitution enabled selected institutions independence. This was made apparent by Thuli Madonsela's actions as Public Protector who after being appointed, conducted investigations into the President's conduct (Martin & Solomon 2016). Moreover, the media and the active civil society played a key role in providing insight into state capture in the country.

Consequences of state capture

Based on the subtle nature of state capture, the degree to which a state or regulatory body remains autonomous is possibly debatable even after the incidence. State capture has a multidimensional impact on the country's political, economic, and social institutions. The first outcome which state capture realises is the emergence of political decay. Fukuyama (2011) posits that political decay occurs when norms or structures are established in response to distinct circumstances but become obsolete under varying circumstances, and yet cannot be substituted because of the substantial investment in them.



According to Mkhabela (2018), the drafting of the Constitution considered Nelson Mandela's ethical standing which granted broad powers to the presidency. Nonetheless, the inability to amend the standards when it became clear that the Mandela scenario was no longer relevant facilitated political decay. Notwithstanding being accused of rape and counts of fraud, former President Jacob Zuma still won the election to his first term in office (Bracking 2018). Political decay became evident when Zuma and the government officials lack of ethical conduct contributed towards the erosion of state institutions and the subsequent opportunity for state capture.

Secondly, state capture resulted in the advent of a shadow government which conflicted with the constitutional government. Constitutional governments, according to Bhorat *et al.* (2017), is defined by a legislative, and jurisdictional structure that outlines the boundaries between the government and state-owned enterprises. In contrast, the shadow state refers to the network of individuals who must coordinate covertly to conceal or deny facts that oppose their official positions in a constitutional state. The shadow state entails nepotism and clientelist networks which allows the enrichment and corruption by a privileged few. Although the contracting linkages of a shadow state are complex, those primarily involved during the Zuma era included his family allies, Gupta family members, and close acquaintances (Mkhabela 2018).

The shadow state is a threat because it depends on the constitutional state to survive. The former President acted in contrary to the description of being 'quintessential constitutional being' as stipulated in the *Constitution of the Republic of South Africa* (1996). However, although the shadow state was generally successful, civil society and opposition parties resisted capture by employing the checks and balances of a constitutional state. Consequently, this prevented full capture of the government and its institutions.

Another outcome that emanated from state capture in South Africa was institutional decay. This was evidenced by the systematic infiltration and exploitation of State-Owned Enterprises (SOEs) through nepotism employment opportunities and awarding government contracts. As a result of corruption and institutional capture, oversight institutions, for example, the Auditor-General and the National Prosecuting Authority was weakened (Felton & Nkomo 2018).

Weakened institutions are compromised and lack the capacity to provide services and conduct policy initiatives, initiatives, and projects. Moreover, well-intended projects and plans are susceptible to unethical practices. Furthermore, weak SOEs perpetuated decay through the loss of experienced human capital; deterioration of services including

passenger and freight rail-transport; unreliable electricity and water service; irregular revenue collection; and the deterioration of local governments.

According to the State Capture Commission findings, a significant factor in state capture was intervention by members of the executive in the governments procurement function, especially in state-owned entities. The latter has the highest acquisition, capital, and operational budgets (Zondo 2018). This was evidenced through incidences of capture in various SOEs, for example, Transnet, South African Airways and its subsidiaries, Eskom, the South African Broadcasting Company and the Passenger Rail Agency of South Africa (Madonsela 2019).

Klaaren *et al.* (2022), noted that since the current public procurement regulations are overly complex and incoherent, the process compromised compliance. Apart from regulations, the procurement system also reflects serious challenges regarding its professional capability, fragmentation, and operational flexibility. These factors contributed towards state capture and facilitated the subversion of procurement rules that led to awarding contracts to companies which provided mediocre services (Zondo 2018).

KEY RECOMMENDATIONS

Undoubtedly, President Ramaphosa has taken measures to expel individuals responsible for state capture, but whether this is adequate and what else may be done to reverse the scrouge remains uncertain. State capture resulted in various government institutions compromising their functions and duties, and consequently undermined accountability, enforcement agencies and institutional checks and balances. Accordingly, much more needs to be done to inhibit a future occurrence of state capture. Moreover, it is imperative that the State Commission report does not get overshadowed by other events, as similar findings in the past, for example, the Farlam commission on the Marikana massacre.

Furthermore, the recovery process from state capture is complex. Once an institution or procedure has been disrupted, it must be reestablished from scratch. Those who engaged in state capture often retain their positions of power and work against reforms which would either dilute or strengthen that control. On the contrary, citizens are more interested in the revolutionary excitement of reversing capture than in the mundane and arduous process of establishing ethical institutions.

In consideration of the preceding sections of the article, it is evident that state capture has devastating consequences. A comprehensive set of institutional reforms and



advancements, including a detailed review of the relationship between the government and private sector, are significant to fight state capture. Several recommendations of how to possibly inhibit state capture is discussed below.

Political will

Political will is the most important step towards inhibiting state capture. The response of the government relating to the State Commission's findings and recommendations must assure a considerable deployment of resources and effort to deal with the perpetrators, accomplices, and recipients of state capture. President Ramaphosa is under pressure to alleviate South Africa's systemic problems of poverty and unemployment, which boosts political support yet attracts a counterattack from the accomplices of state capture. David-Barrett (2021) asserts that it is challenging for the President to effect the required extensive changes because of his precarious standing within the ANC and the country at large.

Also, it is crucial to acknowledge that capture in the ANC has existed since the 1997 Mafikeng Conference, when cadre deployment was first established (Madonsela 2019). The party deployed its most loyal members in key positions, although several were not elected posts but institutions of state. As a result of cadre deployment, party allegiance has become more prominent than citizen loyalty (*Daily Maverick*, 2017). The state has been burdened with resolving the effects of state capture, but till recently, this issue has received limited attention. As a matter of fact, it is essential for this practice to end because it typically results in the appointment of incompetent personnel. Although it was prudent to remove Jacob Zuma as president, it is crucial to acknowledge that the patronage system is deeply embedded in the ANC party.

Impunity

State capture not only compels governments to cease performing their constitutional duties, but also drastically increases the impunity of officials who commit crimes. Impunity in South Africa is a major concern, particularly in relation to corruption (Jones 2019). The report revealed how high-ranking officials such as government officials, political leaders, and private sector actors were involved in state capture and made recommendations for criminal investigations and prosecutions.

The country has a history of corruption, which has been exacerbated by state capture and the abuse of power by selected individuals and businesses. Furthermore, as noted by Mbaku (2019), the prosecution and justice system has been criticized for being slow and ineffective in prosecuting cases of corruption, while selected high-profile cases



have been marred by political interference and legal challenges. The resultant effect of impunity is the increase in corruption and erosion of public trust in government and institutions.

Thus, it is of utmost importance that those who committed criminal acts and violated fiduciary responsibilities be brought to justice. Moreover, there is a need for policymakers to understand the patterns and systems of corruption to inhibit the perpetuation of the cycle of the scrouge and impunity. The country's drive for democracy and social justice can be achieved if criminal activity is held to account.

Political party appointments and funding

The political parties in South Africa need to prioritise the fight against state capture. There is a need for political parties to ensure that all prospective candidates for national office are subjected to a comprehensive background check because this would encourage the public officials integrity. For example, the case of former President Zuma. He could have been precluded from being President because he faced charges of rape and counts of fraud, corruption, and extortion (Bracking 2018). Researchers such as... accentuate the positive impact of integrity on legislators, policymakers, and decision-makers corruptive influence. Therefore, it is imperative to focus on ethics-driven networks to ensure that ideals of public integrity are upheld among officials.

Furthermore, both anonymous contributions to political parties and the utilisation of public funds for electoral campaigns should be prohibited because it enhances party patronage. According to Kopecký (2011), party patronage encourages rent seeking by political parties because it is characterised by the abuse of public resources for party organisational building and survival. This creates opportunities for loyalists to acquire preferential treatment in exchange for incentives. Furthermore, patronage aids parties to create clientelist networks to retain electoral support.

Overall, accountability in appointments and funding in political parties is fundamental in the fight against state capture. It helps to ensure transparency in governmental decision-making, foster a culture of honesty and ethical behaviour among officials and ultimately increase public trust in government institutions.

Public procurement reform

The public procurement system, notably in relation to SOEs, was the primary channel through which funds were misappropriated. State-owned enterprises are especially



susceptible to state capture because of the substantial capital, operational and procurement expenditures. Against this background, it is imperative that South Africa formulates a comprehensive public procurement policy to guarantee adequate monitoring and review. Also, this would ensure that the tender process is merit-based rather than association-based. Hence, strengthening the transparency of the public procurement system is a key component in the fight against state capture.

It is pertinent that a professional association and code of ethics be established for public procurement officials. This would outline the principles which need to be adhered to when purchasing goods and services, as well as the standards for transparency, commitment to transition mandates, and standardisation of public procurement legislation.

Ethical conduct

State capture in South Africa emanated from politically compromised business, misuse of government resources, and coercion (Bester and Dobovšek 2021). This undermined governmental institutions and highlighted the need for government transparency and accountability. The recommendations of the State Capture Commission focus on institutional and legislative means to inhibit corruption, but it is essential that we accord equal weight to the ethical conduct of individuals. Guasti and Dobovsek (2011) accentuated ethics as significant in the fight against state capture because it is the core factor that inhibits corrupt actors from influencing legislators and other decision-makers. It is important that the Executive, public and private service officials are staffed with honest persons who will execute their responsibilities in the best interests of South Africa following the guidelines established by the Constitution.

Protection and incentives for whistle-blowers

Whistle-blowers played a significant role in exposing instances of capture within South African institutions. The significance of their witness to the commission's efforts to investigate and expose corruption cannot be underscored. According to Transparency International (2013), whistleblowing entails the disclosure of malfeasance such as fraud, danger, or other unlawful or unethical behavior in the public or commercial sector. Admittedly, whistle-blowers face significant risks after making a disclosure due to the potential ramifications of their statements. According to the Mateus (2021), whistle-blowers have encountered challenges and have not always received the adequate protection. Some have experienced immense pressure which has affected them physically, emotionally, and professionally.



In December 2020, prominent whistle blower Angelo Agrizzi revealed that at least two assassination attempts had been made against him (Mateus 2021). Furthermore, Mateus (2021) also noted how a Transnet witness faced attempted murder related to his testimony. Likewise, Mkhwebane, a whistle-blower in the Estina dairy project was murdered after disclosing gross incompetence and maladministration associated with the controversial project (News 24 2018).

Whistle-blowers are afforded protection according to South African law, most notably through the Protected Disclosures Act (PDA). Nonetheless, the definitions of whistle-blowing in the PDA are overly narrow and limits its ability to protect a wide range of individuals and entities. The definition of whistle-blower relates exclusively to the relationship between employer and employees and offers no protection to third parties which is a deterrence to making disclosures.

Therefore, it is crucial for the government to review and broaden the criteria to protect a whistle-blower as well as establish dedicated courts for such cases. The use of safe houses as per the UN Convention Against Corruption guidelines can also ensure the safety of whistle-blowers, although access should be restricted. Also, the potential payment of a percentage of recovered funds to the whistle-blowers, because the disclosed information was material to recover funds. This could encourage whistle-blowers to come forward with information.

Role of media as a watch dog

The media in South Africa played a critical role and served as a watchdog of the corrupt system that had seized the government and its institutions. The media exposed and reported on the state capture and provided a platform for public discourse and debate on the issue. Three media houses, *News 24*, *Daily Maverick* and *AmaBhungane* were conferred the 2017 Taco Kuiper Honor for Investigative Journalism, and this was in recognition of their work to expose state capture (Kok 2021). The media heightened the public's awareness of state capture and compelled the government to take corrective measures.

In cognisant of the significant role of the media, good governance and accountability mechanisms must be prioritised. Journalists and whistle-blowers must be protected at all cost so that freedom of expression can be encouraged. Moreover, investigative journalism that highlights the significance of the media and providing in-depth stories by drawing parallels between state capture and a failed state is critical. There is a need for the media to report the repercussions of state capture and persistent monitoring of the implementation of the recommendations made by the State Commission.



CONCLUSION

The network structures which contribute towards the occurrence of state capture are complex. Therefore, cohesive coordination and efficient implementation is essential to eradicate state capture in the country. The failure to sustain the ideals of independent state institutions, the moral fortitude of legislative members, and effective oversight of the procedures contributed towards the capture of the country. Indeed, the government contributes towards further deterioration of its ethical and legal mechanisms when lessons of state capture are not learnt. State capture remains a threat to South African institutions from the past and the present, and it will continue as such unless there is a heightened vigilance in the pursuit of legal and ethical policies and practices.

State capture denotes the adverse element of a relationship between the public, business sector, and the public at large. The public is overlooked, yet it has a veto power over the quality of this relationship. To reiterate, the issue concerns the balance between individual freedom, collective responsibility, and the roles various actors in society play to maintain that balance. The fight against state capture is not only a legal and political one, but also one which is moral and ethical. Consequently, a critical collective effort is required by all stakeholders to counteract state capture, public education and engagement effectively.

Moreover, the public must be duty-bound to hold their leaders accountable for any wrongdoings. Brkic (2021) holds that, “most of the people who vote for the ANC do not vote for any particular party officials personally; they are voting for the ideal of the party that led SA out of apartheid”. However, reform requires a shift away from supporting corrupt leaders at the polls. This exerts pressure on the incumbents to reform and enhance ethical conduct. The voice of the citizenry is the source of all transformative change. Hence, the citizens must confront state capture as separate efforts from broader state-level reform.

In conclusion, state capture is a systemic threat to the justice system and democracy. It undermines the foundations of a fair and just society and erodes public trust in the government. As alluded to by Mandela (1990), “*To deny people their human rights, is to challenge their very humanity.*” Hence, addressing state capture is crucial to safeguard the freedom and well-being of the citizenry.

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