

South Africa: State Capture Report

By Gina Lodolo and Nicola Taljaard

25 February 2022

On the 4 January 2022, Acting Chief Justice Raymond Zondo (“**Zondo**”) handed over Part 1 of the Judicial Commission of Inquiry (“**Commission**”) into State Capture^[1] to President Cyril Ramaphosa, which was the first of three parts and contained the initial glimpse into the long-awaited results of his Inquiry into State Capture. Thereafter, on 1 February 2022, Zondo released Part 2 of the Report in two separate documents (jointly “**Report’s**”). In short, both Reports highlight the extent to which various actors are implicated in using private interests to influence the decision making of various State-Owned Enterprises and expose the mechanisms employed in reaching this end. Since the release of the Reports, much attention has been concentrated toward various attempts to undermine the State, by public and private entities alike. Having the spotlight shone on the culprits has garnered heavy criticism on those implicated, both regionally and internationally, imposing severe backlash on those who have squandered state assets. The exact mechanisms to be implemented, and ensuing successes in relation to such asset repatriation, however, remains uncertain.

The Commission announced in Part 1 of the Report that it intends to establish a ‘*single, multi-functional, properly resourced and independent anti-corruption authority*’^[2] which is assigned to the confrontation of abuses which are integral to the current system. It has proposed to call this unit the ‘*Anti-Corruption Authority or Agency of South Africa*’ (“**ACASA**” or “**Agency**”). The Agency is intended to function by means of specialized departments which serve certain mandates in a collective effort to respond to the challenges associated with state capture.



Gina Lodolo

g.lodolo@primerio.international



Nicola Taljaard

n.taljaard@primerio.international

Contact details

Johannesburg, South Africa

John Oxenham, Michael-James Currie
j.oxenham@primerio.international
m.currie@primerio.international
135 Daisy Street Sandton, Johannesburg, 2031

Nairobi, Kenya

Ruth Mosoti, Fidel Mwaki
r.mosoti@primerio.international
f.mwaki@primerio.international
Kalson Towers, 2nd Floor, The Crescent,
Off Parklands Road, Nairobi

Port Louis, Mauritius

Gilbert Noël
g.noel@primerio.international
Suite 401, St James Court, St Denis Street, Port Louis

Email: info@primerio.international
Tel: +27 (0) 11 083 2411



The objectives of the above body can be categorized into two primary functions, the first being the investigation into allegations of corrupt activities and submitting reports to the Presidency on this basis. Second, the body will be targeted toward the recovery of assets which form the subject of the maladministration and related fraudulent activities.

Although the Agency is undoubtedly envisioned as being independent, concerns remain to as whether this will truly be so, and that the Agency's independence will not be compromised by the Government. Put simply, the fundamental question is whether sufficient independence could be obtained whilst state departments are given the crucial task of supervising the procurement system? The certainty with which the independence of government controls could be guaranteed has without a doubt severely diminished since the long-anticipated wrongdoings of the state have been confirmed in the Reports. However, it remains uncertain whether the government will be completely isolated from participating in any restorative functions which require independence.

While mistrust runs high, the Commission has advocated a refusal to permit anti-corruption agencies such as the National Prosecuting Authority ("**NPA**") and South African Police Service ("**SAPS**") to exist within government department structures or be subject to Ministerial control. This comes as special attention must be paid to ensure the protection of the new entities intended to perform their functions, without risks of interference.

In essence, the establishment of a special investigative unit certainly holds considerable potential to realize the Commission's objective of recovering the considerable sums drained from South Africa. How this may be put to work, however, remains uncertain. While the onus attached to criminal justice administration is high, entities are likely to remain hesitant to institute civil proceedings based on the complex and often unyielding process which derives from international disputes following wrongdoers having fled the country. Nevertheless, the SIU has published various propitious statistics in terms of the work it plans to do in the imminent future.

According to the 2021/2022 Annual Performance Plan of the SIU ("**Plan**"), both the internal and external environment prevailing in South Africa has led to an escalation in corruption. This has rendered the mandate of the SIU more pertinent and burdened the Unit with an even bigger responsibility to ensure its resolve is strengthened in the fight against corruption. With the added public outcry caused by the release of the Reports, an expectation has certainly been created that the State Institutions must hold the wrongdoers accountable. In this sense, the Plan notes the importance of emerging aids to its mandate, such as the increased number of whistleblower reports concerning corruption in the recent years.

In terms of output results relating to legal proceedings and other due processes to conclude and/or refer investigations for the requisite action and the submission of mandatory status reports to the President, the Plan indicates a particularly positive outcome in relation to the new which predicts the number of cases which will likely be issued in the Special Tribunal. In addition to the endeavors aimed at proactively preventing such losses, the Plan recognizes the importance, as part of its collective anti-corruption and maladministration objectives, of asset-recovery initiatives in relation to that which has already been drained.

As of 20 November 2020, the SIU instituted various civil claims in the Special Tribunal. By February 2022, the value of such review matters amounted to R259 624 735, which includes certain state fund recoupments. For example, in the late 2020 case of *The SIU v Ledla Structural Development (Pty) Ltd and 43 Others* (GP07/2020), the Special Tribunal ordered the SIU to execute an order and recover the value of over R10 million held in the bank accounts of approximately 20 companies and entities, to the state, following a finding that there had been an irregularly awarded PPE contract with inflated prices.

To access Part 1 of the Report click [here](#)

To access Part 2 (1st Section) of the Report [here](#)

To access Part 2 (2nd Section) of the Report [here](#)

[1] Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (“Report(s)” or “Commission”).

[2] The Report Part 1 Volume III para 664.

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