

The Institutionalisation of endemic corruption: State capture in South Africa

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Abstract

Systemic corruption has become the norm in South Africa. This is evident in the recent Transparency International's Corruption Index. During the Zuma Administration, the scale and magnitude of corruption intensified and the term "state capture" was used to describe this phenomenon. Given the dramatic developments of February 2018 which witnessed the stepping down of President Jacob Zuma and his replacement by President Cyril Ramaphosa, there was hope that the new president's promised "New Dawn" would result in reversing state capture, and more broadly, the politics of patronage. Whilst the Ramaphosa Administration has undertaken several measures to undo state capture including a cabinet reshuffle and the appointment of new boards at South Africa's trouble State-Owned Enterprises (SOEs), much more needs to be done. Drawing on international best practice from Bulgaria to Tunisia and Hong Kong, this article proposes concrete recommendations to undo state capture.

Keywords: South Africa; State capture; Jacob Zuma; Cyril Ramaphosa; Corruption; State-Owned Enterprises (SOEs).

Introduction

South Africans are well acquainted with corruption. With a corruption score of 43 out of 100 by Transparency International, it is an undeniable societal issue, since a score of 0 indicates a highly corrupt society, whereas 100 indicate a virtually corruption-free country.¹ A simple internet search of "corruption in South Africa" returns thousands of reports by anti-corruption organisations and research institutes as well as articles published in newspapers and journals about corruption that involves high-level politicians. This has been emphasised in recent years as large-scale corruption or "state capture" shocked South Africa (SA). It has been opined that the breakdown of various state-owned enterprises (SOEs) is the result of corruption, but events that occurred during Jacob Zuma's presidency revealed that the situation regressed

1 Transparency International, "Corruption Perceptions Index: South Africa 2017" (available at <https://www.transparency.org/country/ZAF>, as accessed on 15 August 2018).

into a greater systemic threat namely state capture.² State capture in SA is likened to a silent coup; a political project granted legitimacy under the radical economic transformation project enforced by the African National Congress (ANC).³

The 2016 State of Capture report by former Public Protector Thuli Madonsela revealed some state capture events, and along with the 2017 “Gupta leaks”, where over 100,000 emails were leaked to news agencies in SA, the undeniable, convoluted extent of state capture was exposed.⁴ Jacob Zuma’s resignation as president in February 2018 and Cyril Ramaphosa’s appointment as president caused “Ramaphoria”: the hope that a state capture-free government would be realised.⁵ This essay will analyse whether Ramaphoria and the president’s promises to root out state capture has been acted upon, and whether concrete measures have been carried out to stop state capture, along with an analysis of lessons and policy recommendations with examples from other countries that experienced a similar capture of the state.

The essay will, in the first section, conceptualise what state capture really is. The second section will be a brief summary of the manifestation of state capture under Jacob Zuma. The third section will analyse the anti-state capture measures taken by President Cyril Ramaphosa, followed by practical policy recommendations and examples of what other countries have done to eradicate corruption. The final section will consist of an analysis and conclusion.

Conceptual clarification

Over the past few years, especially since the 2016 State of Capture report, state capture has become part of the colloquial language, perpetuated by citizens via social media and the general media.⁶ It is a concept that encompasses aspects of corruption, yet differs from corruption due to corruption being

2 State Capacity Research Project. “Betrayal of the promise: how South Africa is being stolen”, 2017, p. 4.

3 State Capacity Research Project, “Betrayal of the promise...” 2017, p. 4.

4 P du Toit, “State capture: What Cyril Ramaphosa knew and when he knew it”, *HuffPost*, May 2018 (available at https://www.huffingtonpost.co.za/2018/05/28/state-capture-what-cyril-ramaphosa-knew-and-when-he-knew-it_a_23445148/, as accessed on 17 August 2018); R Davis, “#GuptaLeaks whistle-blowers speak out for the first time”, *Daily Maverick*, August 2018a (available at <https://www.dailymaverick.co.za/article/2018-08-15-guptaleaks-whistle-blowers-speak-out-for-the-first-time>, as accessed on 17 August 2018).

5 R Brand and C Goko, “‘Ramaphoria’ evaporates as reality sets in for South Africa”, *Bloomberg*, August 2018 (available at <https://www.bloomberg.com/news/articles/2018-08-15/ramaphoria-evaporates-as-reality-sets-in-for-south-africa>, as accessed on 17 August 2018).

6 P Labuschagne, “Patronage, state capture and oligopolistic monopoly in South Africa: The slide from a weak to a dysfunctional state?”, *Acta Academia*, 49(2), 2017, p. 53.

mostly informal, opportunistic and fragmented and state capture not, as it will be clarified in this section.⁷

State capture is a condition where corruption is used by powerful external or internal actors within a country to influence policies, laws and the economy to benefit their private interests.⁸ The term ‘state capture’ was conceptualised during the transition of former Soviet bloc countries from communist regimes to liberal market democracies and the subsequent extreme corruption that occurred in these transition states.⁹ Transition states are particularly vulnerable to state capture in terms of its political and economic systems, and while SA’s transition was not identical to the Soviet bloc states, SA underwent both political and economic transitions at the end of apartheid.¹⁰ The transition was the transfer of political power from the apartheid regime to the post-apartheid “black liberation elite” along with the economic transition from a closed, protectionist one to an open economy. This transition process is likely to have put SA more at risk of state capture, especially considering that the economic transition in SA included significant levels of deindustrialisation and high unemployment levels which placed the ANC in a leading position politically, as it provided employment opportunities within the state and provided various political opportunities.¹¹ Evidence of the fact that politics became an opportunity of gaining employment and provided the possibility of upward mobility is noticed, according to Reddy,¹² in post-apartheid SA. Membership figures of the ANC grew significantly in the post-apartheid years amongst individuals who were unemployed, as it provided individuals who did not have much formal education and possessed limited qualifications with the opportunity to gain employment and positions within politics.¹³ This generally required that a certain factional or political leader be supported in order to gain a position in office that would affect the material rewards gained by the leaders’ supporters.

7 State Capacity Research Project, “Betrayal of the promise...” 2017, p. 5.

8 Transparency International, “Anti-corruption glossary” (available at <https://www.transparency.org/glossary>, as accessed on 15 August 2018).

9 M Meirotti, “Introduction”, M Meirotti and G Masterson (eds.), *State capture in Africa: Old threats, new packaging* (Johannesburg, EISA, 2018), p. 1.

10 R Southall, “What’s new about ‘state capture?’”, M Meirotti and G Masterson (eds.), *State capture in Africa...*, p. 42.

11 R Southall, “What’s new about ‘state capture?’”, M Meirotti and G Masterson, (eds.), *State capture in Africa...*, p. 43.

12 T Reddy, “ANC decline, social mobilization and political society: Understanding South Africa’s evolving political culture”, *Politikon*, 37(2-3), 2010, p. 200.

13 T Reddy, “ANC decline, social mobilization and political society...”, *Politikon*, 37(2-3), 2010, p. 200.

It is important to note that state capture is not an isolated political power concept, but is merged with economic power.¹⁴ Building on the fact that political and economic power cannot be separated, there is a notion in SA that political power is a mere mechanism to be manipulated in order to gain financially from the state without concern for ordinary citizens, putting SA more at risk for state capture.¹⁵ Hellman, Jones and Kaufmann define state capture as “the capacity to influence the formation of the basic rules of the game” by influencing laws, decrees and regulations through unofficial payments by private actors to state officials.¹⁶ State capture exceeds petty corruption and encompasses more extreme corruption, including political manipulation.¹⁷ State capture, as defined by Transparency International, is a pervasive form of corruption where powerful individual actors, companies or institutions use corrupt means to buy laws, decrees or amendments while illegally supporting specific political parties or candidates in order to favourably shape policies, the legal environment and the economy.¹⁸

State capture also involves the subversion of public interest, as it entails amending or making new laws, rules and regulations for captors to increase their influence.¹⁹ State capture is thus more than extensive corruption, but a network structure where corrupt actors target certain parts of the state in order to pursue their private goals at the expense of the public good.²⁰ This network structure is systemic; ordered and perpetrated by actors with well-established, high-level connections who engage in repeated deals on an increasing scale.²¹ State capture aims to gain access and direct resources to the captors, which requires political protection. State capture has negative effects on democratic consolidation because it systematically erodes democratic processes.²² This is especially alarming in a young democracy like SA. State capture also has detrimental effects on economic development and growth and the provision and quality of services

14 ME Martin and H Solomon, “Understanding the phenomenon of ‘state capture’ in South Africa”, *Southern African Peace and Security Studies*, 5(1), 2016, p. 22.

15 ME Martin and H Solomon, “Understanding the phenomenon...”, *Southern African Peace and Security Studies*, 5(1), 2016, p. 21-22.

16 JS Hellman, G Jones, and D Kaufmann, “Seize the state, seize the day: An empirical analysis of state capture and corruption in transition”, *World Bank*, 2000, pp. 4, 8.

17 P Labuschagne, “Patronage, state capture and oligopolistic monopoly in South Africa...”, *Acta Academia*, 49(2), 2017, p. 2.

18 M Martini, “State capture: An overview”, *Transparency International*, March 2014, p. 1.

19 MO Dassah, “Theoretical analysis of state capture and its manifestation as a governance problem in South Africa”, *The Journal for Transdisciplinary Research in Southern Africa*, 14(1), 2017, p. 167.

20 M Fazekas, and IJ Tóth, “From corruption to state capture: A new analytical framework with empirical applications from Hungary”, *Political Research Quarterly*, 69(2), 2016, pp. 320.

21 State Capacity Research Project, “Betrayal of the promise...”, 2017, p. 5.

22 M Meirotti, “Introduction”, M Meirotti and G Masterson (eds.), *State capture in Africa: ...*, p. 3.

provided to citizens, relating to the fact that state capture undermines public interests.²³ In SA, the deeply rooted political patrimonial system contributed to state capture, since patrimonialism is based on the distribution of rewards, access to wealth and resources by the leader to beneficiaries in exchange for their loyalty and compliance.²⁴ The oligopolistic structure created in state capture undermines the moral duty of government to protect the country's resources and citizens.²⁵ The oligopolistic, patrimonial systems are accompanied by the creation of a shadow state and economy, which is the space where extra-legal activities are executed by criminal networks and actors engage in activities that are contradictory to their constitutional state positions.²⁶

State capture can thus be understood as a situation where there is disproportionate, unregulated influence of decision-making processes by interest groups, where these interest groups change laws, policies and regulatory measures through illegal means, including illicit contributions to political parties or actors within political parties, vote buying in parliament, and buying presidential and court decisions.²⁷ In the South African context, state capture is posited to occur in two different manners.²⁸ The first manner in which state capture is stated to have occurred refers to the influence projected onto the South African government through former President Zuma and his supporters by the Gupta family. The second view of state capture in SA focuses on the influence that "white monopoly capital" by wealthy white families are said to exert on the government. The platform for state capture in SA however, is the conjunction of politics and business through nepotistic relationships and friendships between politicians and business elites. According to Croucamp and Malan, state capture literature in South Africa defines the phenomenon as a type of political and economic corruption which is theoretically defined as a regime type, or a "means of social order and control".²⁹

Since the patrimonial culture in SA is stated to have perpetuated state capture, it is furthermore necessary to differentiate between state capture and patrimonialism, specifically systemic patronage. Systemic patronage is

23 M Martini, "State capture...", *Transparency International*, March 2014, p. 2.

24 P Labuschagne, "Patronage, state capture and oligopolistic monopoly...", *Acta Academia*, 49(2), 2017, p. 60.

25 P Labuschagne, "Patronage, state capture and oligopolistic monopoly...", *Acta Academia*, 49(2), 2017, p. 63.

26 State Capacity Research Project, "Betrayal of the promise...", 2017, p. 6.

27 M Martini, "State capture...", *Transparency International*, March 2014, p. 1.

28 MO Dassah, "Theoretical analysis of state capture...", *The Journal for Transdisciplinary Research in Southern Africa*, 14(1), 2017, p. 5.

29 PA Croucamp and L Malan, "The theory of systemic patronage and state capture: The liberal democratic project and its regime contenders", *African Journal of Public Affairs*, 10(4), 2018, p. 88.

representative of a range of mutually beneficial and dependent relationships between clients and patrons and falls outside of the realm of corruption because corruption is the result of uneven authoritative relationships not included in redress.³⁰ Another key distinction between patronage and state capture is legitimacy. While state capture is illegal, challenges constitutional rule and erodes legitimacy and trust, patrimonialism is often seen as legitimate, harbours social trust, is tolerated within society and is often not illegal.³¹ A regime that is captured illustrates a system of patrimonialism, or systemic patronage, which has been subverted by parties in the private economy.³² As previously mentioned SA has a culture of political patrimonialism and can thus be seen to be more vulnerable to state capture while necessitating distinguishing between the concepts of patronage and state capture. State capture in SA can thus be seen to have developed its own character through the view that it occurs through “white monopoly capital”, but essentially still fits the general view that it is an undue level of influence exerted by a specific interest group in order to gain personal good from politics.

Manifestation of State capture in South Africa

The extent of state capture has become increasingly evident since the first suspicions were raised, which has been exposed even more with the start of the Commission of Inquiry into state capture. It is impossible to describe the details of every aspect of SA's state capture in this essay, therefore only some incidents will be mentioned in order to give some context for the current situation under President Ramaphosa.

Although state capture only became institutionalised when Zuma took office in 2009, the Guptas' infiltration began in 2005 when Zuma was deputy president.³³ In 2005, Zuma's family was placed on the Guptas' payroll, including Zuma's son Duduzane who was hired as an IT specialist, and his

30 PA Croucamp and L Malan, “The theory of systemic patronage and state capture...”, *African Journal of Public Affairs*, 10(4), 2018, p. 90-91.

31 PA Croucamp and L Malan, “The theory of systemic patronage and state capture...”, *African Journal of Public Affairs*, 10(4), 2018, p. 94.

32 PA Croucamp and L Malan, “The theory of systemic patronage and state capture...”, *African Journal of Public Affairs*, 10(4), 2018, p. 98.

33 ME Martin and H Solomon, “Understanding the phenomenon...”, *Southern African Peace and Security Studies*, 5(1), 2016, p. 24; M Campbell and F Wild, “The brothers who bought South Africa”, *Bloomberg Businessweek*, November 2017 (available at <https://www.bloomberg.com/news/features/2017-11-09/the-brothers-who-bought-south-africa>, as accessed on 19 August 2018).

daughter Duduzile who was appointed as a company director.³⁴ This followed after Ajay, Atul and Rajesh Gupta became involved with the government following an invitation by ANC official, Essop Pahad, for Atul Gupta to join state visits abroad. By 2007, when Zuma was elected ANC chief and President in 2009, the Gupta-Zuma ties were firmly established.³⁵ With Zuma as president, the Guptas started to wield their influence over the state.

In 2009, ANC parliamentarian Vytjie Mentor was invited to the Guptas' residence, with Zuma present, where she was offered the position of Public Enterprises Minister, the head of all SOEs, if she complied with the Guptas' requests.³⁶ She declined the offer, which was granted to Malusi Gigaba who became instrumental in the Guptas' capture of SOEs.³⁷ Gigaba subsequently restructured SOE boards, which enabled the Gupta and Zuma families to repurpose billions of rands through SOEs.³⁸ Gigaba appointed Gupta-associates Iqbal Sharma as the Board Chairperson of Transnet, Brian Molefe as Transnet CEO in 2011, and Anoj Singh as Transnet CFO in 2012.³⁹ By 2014, Transnet was looking to acquire new locomotives and awarded the contract to two Chinese companies, China South Rail and China North Rail, resulting in an expenditure of billions of rands more than at its previous supplier.⁴⁰ After securing the locomotive contract, Molefe was moved to another high-profile position as Eskom's CEO, with Singh joining him as CFO.⁴¹ Molefe's role in perpetuating the Guptas' capture of SOEs is exemplified in the dispute

34 M Campbell and F Wild, "The brothers who bought...", *Bloomberg Businessweek*, November 2017 (available at <https://www.bloomberg.com/news/features/2017-11-09/the-brothers-who-bought-south-africa>, as accessed on 19 August 2018).

35 State Capacity Research Project, "Betrayal of the promise..." 2017, p 23.

36 L Chutel and L Kuo, "What the 'state capture' report tells us about Zuma, the Guptas, and corruption in South Africa", *Quartz Africa*, November 2016 (available at <https://qz.com/africa/825789/>, as accessed on 19 August 2018); State Capacity Research Project, "Betrayal of the promise..." 2017, p. 38.

37 L Chutel and L Kuo, "What the 'state capture' report tells us...", *Quartz Africa*, November 2016 (available at <https://qz.com/africa/825789/>, as accessed on 19 August 2018); L Omarjee, "Gigaba the biggest enabler of state capture – Bonang Mohale", *Fin24*, February 2018a (available at <https://www.fin24.com/Budget/gigaba-the-biggest-enabler-of-state-capture-bonang-mohale-20180223>, as accessed on 16 August 2018).

38 State Capacity Research Project, "Betrayal of the promise..." 2017, p 13; L Omarjee, "Gigaba the biggest enabler...", *Fin24*, February 2018a (available at <https://www.fin24.com/Budget/gigaba-the-biggest-enabler-of-state-capture-bonang-mohale-20180223>, as accessed on 16 August 2018).

39 State Capacity Research Project, "Betrayal of the promise..." 2017, p 15.

40 M Campbell and F Wild, "The brothers who bought...", *Bloomberg Businessweek*, November 2017 (available at <https://www.bloomberg.com/news/features/2017-11-09/the-brothers-who-bought-south-africa>, as accessed on 19 August 2018); J Bowker and S Mkokeli, "Transnet overpaid \$38 Million for locomotives, report says", *Bloomberg*, August 2018 (available at <https://www.bloomberg.com/news/articles/2018-08-01/transnet-overpaid-by-38-million-for-locomotives-report-says>, as accessed on 20 August 2018); N Ncana, "Transnet of South Africa moves to suspend CEO after probes", *Bloomberg*, August 2018 (available at <https://www.bloomberg.com/news/articles/2018-08-15/south-africa-s-transnet-plans-to-suspend-ceo-2-others-on-probe>, as accessed on 20 August 2018).

41 T Madonsela, "State of capture", *Public Protector South Africa*, October 2016, p. 296.

between Eskom and Optimum Mine, one of Eskom's primary coal suppliers owned by an international mining company, Glencore.⁴² The dispute resulted in Eskom awarding Tegeta Exploration and Resources, a Gupta-owned company, the contract to supply Eskom with coal for the Arnot power station - one of Eskom's biggest contracts.⁴³ Under Molefe, Eskom gave Tegeta a R556 million pre-payment for the Arnot-deal, which was really a loan to secure the Optimum coal mine purchase from Glencore, an obvious act of fraud, with the only party benefiting being the Guptas.

Themba Maseko, a former government communications agency CEO, revealed that in 2010 the Guptas demanded the entire advertising budget of the agency to be granted to Gupta-owned media outlets, including the New Age newspaper.⁴⁴ According to Maseko, Ajay Gupta stated that he would instruct every government department to advertise with the New Age, and in the case of non-compliance the minister of the specific department would be summoned. Maseko's meeting with Ajay was preceded by a conversation with Zuma, who told Maseko to help the Guptas, causing Maseko to be wary about Zuma's concern on the matter.⁴⁵ When Maseko refused to comply with the Guptas' demands and Zuma's orders, he was fired.⁴⁶

The orchestration of a Russian nuclear power deal started in 2010 when Duduzane Zuma and the Guptas purchased Shiva Uranium mine.⁴⁷ With Zuma-aligned Energy Minister David Mahlobo in support of the nuclear deal, the only obstacle that remained was Minister of Finance, Nhlanhla Nene.⁴⁸ Nene's refusal to sign the deal, which would have cost R1.2 trillion, with yearly repayments of R100 billion, triggered a move that helped to

42 M Campbell and F Wild, "The brothers who bought...", *Bloomberg Businessweek*, November 2017 (available at <https://www.bloomberg.com/news/features/2017-11-09/the-brothers-who-bought-south-africa>, as accessed on 19 August 2018).

43 State Capacity Research Project, "Betrayal of the promise..." 2017, p. 39.

44 L Chutel and L Kuo, "What the 'state capture' report tells us...", *Quartz Africa*, November 2016 (available at <https://qz.com/africa/825789/>, as accessed on 19 August 2018).

45 M Campbell and F Wild, "The brothers who bought...", *Bloomberg Businessweek*, November 2017 (available at <https://www.bloomberg.com/news/features/2017-11-09/the-brothers-who-bought-south-africa>, as accessed on 19 August 2018).

46 L Chutel and L Kuo, "What the 'state capture' report tells us...", *Quartz Africa*, November 2016 (available at <https://qz.com/africa/825789/>, as accessed on 19 August 2018).

47 M Swilling, "Zexit, a nuclear deal and Russia's strong-arm persuasion", *Daily Maverick*, February 2018 (available at <https://www.dailymaverick.co.za/opinionista/2018-02-12-zexit-a-nuclear-deal-and-russias-strong-arm-persuasion/>, as accessed on 20 August 2018).

48 M Swilling, "Zexit, a nuclear deal...", *Daily Maverick*, February 2018 (available at <https://www.dailymaverick.co.za/opinionista/2018-02-12-zexit-a-nuclear-deal-and-russias-strong-arm-persuasion/>, as accessed on 20 August 2018).

expose state capture.⁴⁹ The Gupta-Zuma (Zupta) devised state capture was revealed in March 2016 by then-deputy Minister of Finance Mcebisi Jonas, who was the first of many subsequent people to expose the Zuptas' shadow state.⁵⁰ In October 2015, Jonas was offered the Finance Minister position by the Guptas for R600 million, an offer he declined.⁵¹ He requested an emergency meeting with Nene to inform him of the Guptas' offer, which was shocking since the Guptas had no official government role, and ministers serve only at the president's judgement.⁵² Shortly after Jonas' meeting with the Guptas, Zuma shocked the country when he fired Nene and appointed a little known ANC member Des van Rooyen as Finance Minister, which saw the rand plummeting, forcing Zuma to instate former Finance Minister Pravin Gordhan three days after van Rooyen's appointment.⁵³ When Jonas stepped forward in early 2016, many others, like Mentor and Maseko, revealed their encounters with the Zuptas.

Organisations rendered inept or captured include the South African Revenue Service (SARS) under Tom Moyane, who facilitated possible fraud and money laundering.⁵⁴ Moyane allowed R384.2 million in VAT refunds claimed by Gupta-companies to be paid to a third party and a shelf company, knowing that this broke many regulations.⁵⁵ SARS' debt under Moyane increased from R85 billion to R135 billion while veteran SARS officials were fired due to a "new operating model".⁵⁶ Furthermore, the capture of intelligence and law enforcement agencies under Zuma is detailed in Jacques Pauw's 'The President's

49 M Campbell and F Wild, "The brothers who bought...", *Bloomberg Businessweek*, November 2017 (available at <https://www.bloomberg.com/news/features/2017-11-09/the-brothers-who-bought-south-africa>, as accessed on 19 August 2018); M Swilling, "Zexit, a nuclear deal...", *Daily Maverick*, February 2018 (available at <https://www.dailymaverick.co.za/opinionista/2018-02-12-zexit-a-nuclear-deal-and-russias-strong-arm-persuasion/>, as accessed on 20 August 2018).

50 T Madonsela, "State of capture", *Public Protector South Africa*, October 2016, p. 86-87.

51 State Capacity Research Project, "Betrayal of the promise..." 2017, p. 38.

52 M Campbell and F Wild, "The brothers who bought...", *Bloomberg Businessweek*, November 2017 (available at <https://www.bloomberg.com/news/features/2017-11-09/the-brothers-who-bought-south-africa>, as accessed on 19 August 2018).

53 M Campbell and F Wild, "The brothers who bought...", *Bloomberg Businessweek*, November 2017 (available at <https://www.bloomberg.com/news/features/2017-11-09/the-brothers-who-bought-south-africa>, as accessed on 19 August 2018); State Capacity Research Project, "Betrayal of the promise...", 2017, p 38.

54 P van Wyk, "Mr. Moyane, you failed. Then you lied. Time to tell the truth", *Daily Maverick*, August 2018a (available at <https://www.dailymaverick.co.za/article/2018-08-13-mr-moyane-you-failed-then-you-lied-time-to-tell-the-truth/>, as accessed on 21 August 2018).

55 P van Wyk, "Mr. Moyane, you failed...", *Daily Maverick*, August 2018a (available at <https://www.dailymaverick.co.za/article/2018-08-13-mr-moyane-you-failed-then-you-lied-time-to-tell-the-truth/>, as accessed on 21 August 2018).

56 "Sars' debt book grew by R50bn under Moyane, commission hears", *The Citizen* (available at <https://citizen.co.za/news/south-africa/1998662/sars-debt-book-grew-by-r50bn-under-moyane-commission-hears/>, as accessed on 21 August 2018).

Keepers'.⁵⁷ It includes the appointment of Zuma-cronies Richard Mdluli as the Police Services' Crime Intelligence head and Berning Ntlemeza as head of the Hawks, both questionable characters responsible for appointing unsuitable, unqualified individuals in their organisations.⁵⁸ The National Prosecuting Authority (NPA) government agency, responsible for prosecuting criminals and directed by the Constitution, became part of the state capture network when former NPA head, Mxolisi Nxasana was paid R17 million to resign, allowing Zuma to appoint Shaun Abrahams as NPA head.⁵⁹ Abrahams appointed Zuma associate Nomgcobo Jiba as the national prosecution services' head, the position ranked just under Abrahams' in the NPA, despite Jiba being charged with perjury and fraud which Abrahams had dropped, earning him the nickname Shaun the Sheep due to his actions that indicated he was undoubtedly captured, doing the bidding of the Zuptas and Ntlemeza.⁶⁰

The abovementioned events are a mere scratch at the surface of state capture in SA. There is much more to be said, but the fact that the Zuptas successfully captured SOEs, ministers, and various government departments and agencies are some of the key points of this phenomenon.

President Ramaphosa and State capture

When President Ramaphosa was inaugurated as president in February 2018, he inherited a country on the brink of collapse, with some stating that state capture caused SA to regress from a weak to dysfunctional state.⁶¹ Ramaphosa made it clear that his main goal was to clean up the Zuptas' mess, although he denied knowing the extensive corruption became state capture, and that until the Gupta-emails were leaked he thought only a few "wheel nuts" had gone loose, when the wheels had actually "come off completely".⁶² Ramaphosa's career both in politics and as a businessman, provided experience

57 G Newham, "How to free South Africa's police after state capture", *Institute for Security Studies*, March 2018 (available at <https://issafrica.org/iss-today/how-to-free-south-africas-police-after-state-capture>, as accessed on 20 August 2018).

58 G Newham, "How to free South Africa's police...", *Institute for Security Studies*, March 2018 (available at <https://issafrica.org/iss-today/how-to-free-south-africas-police-after-state-capture>, as accessed on 20 August 2018).

59 National Prosecuting Authority of South Africa, "Vision and mission", 2014 (available at <https://www.npa.gov.za/node/10>, as accessed on 21 August 2018); J Pauw, *The President's Keepers* (Cape Town, Tafelberg, 2017), p. 244.

60 J Pauw, *The President's Keepers*, pp. 244; 311.

61 P Labuschagne, "Patronage, state capture and oligopolistic monopoly in South Africa...", *Acta Academia*, 49(2), 2017, p. 65.

62 A Makinana, "Ramaphosa on state capture: 'we didn't know how bad it was'", *Times Live*, May 2018 (available at <https://www.timeslive.co.za/politics/2018-05-25-ramaphosa-on-state-capture-we-didnt-know-how-bad-it-was/>, as accessed on 20 August 2018).

in positions that might be beneficial to his tenure as president of a country and ANC that is severely divided and factionalised. Ramaphosa, a lawyer and politician, played a key role as negotiator between the ANC and apartheid era National Party to peacefully transition from the apartheid regime in 1991.⁶³ Ramaphosa thus has experience in navigating very uncertain and divided political and social situations. He also filled the role of ANC Secretary-General and MP in 1994.⁶⁴ Before the end of apartheid however, he played a vital role in forming the National Union of Mineworkers (NUM), which eventually became the powerful Congress of South African Trade Unions (COSATU) as well as being a major actor in the United Democratic Front (UDF) anti-apartheid movement.⁶⁵ Aside from his political career, which was largely on hold from 1997 until his election as deputy president in 2012, Ramaphosa also experienced a successful business career in the private sector as he served on various boards of directors, executive chairman and non-executive directorships of large companies and banks.⁶⁶ His return to politics in 2012 indicates that he was indeed not closely involved with the Zuma's or the ANC when the Guptas' infiltration was initiated, as he disappeared into the "political wilderness" in 1997 and only made a return with his election as deputy president in 2012.⁶⁷

Ramaphosa's anti-corruption stance was established when he campaigned for ANC leadership largely on the premise of anti-corruption, creating the expectation of a "new dawn" for the country.⁶⁸ The question is whether Ramaphosa has taken enough action in getting rid of those involved in state capture's systemic corruption. One of the first things Ramaphosa did as president was a Cabinet shuffle, where he removed ten state capture-implicated ministers.⁶⁹ Ramaphosa instated Nene as Finance Minister and Gordan as Public Enterprises Minister, both proven to be honest, competent individuals to fill these critical positions.⁷⁰

63 P Commey, "Can Ramaphosa be the renewal man", *New African*, (541), 2014, p. 17; R Swift, "Introducing... Cyril Ramaphosa", *New Internationalist*, (512), 2018, p. 9.

64 R Swift, "Introducing...", *New Internationalist*, (512), 2018, p. 9.

65 P Commey, "Can Ramaphosa be...", *New African*, (541), 2014, p. 17.

66 P Commey, "Can Ramaphosa be...", *New African*, (541), 2014, p. 17-18.

67 P Commey, "Can Ramaphosa be...", *New African*, (541), 2014, p. 16.

68 S Lediga, "The four pillars of Ramaphosa's new dawn", *Daily Maverick*, May 2018 (available at <https://www.dailymaverick.co.za/opinionista/2018-05-07-the-four-pillars-of-ramaphosas-new-dawn/>, as accessed on 19 August 2018).

69 L Mailovich, "Ramaphosa fires 10 Cabinet ministers. Who's out?", *BusinessDay*, February 2018 (available at <https://www.businesslive.co.za/bd/national/2018-02-26-ramaphosa-fired-10-cabinet-ministers-whos-out/>, as accessed on 22 August 2018).

70 D Mkhize, "South Africa's Ramaphosa appoints Nene as finance minister in cabinet reshuffle", Reuters, February 2018 (available at <https://www.reuters.com/article/us-safrica-politics/south-africas-ramaphosa-appoints-nene-as-finance-minister-in-cabinet-reshuffle-idUSKCN1GA2BD>, accessed 22 August 2018).

Problematic Zupta-associated Cabinet ministers including Lynne Brown (Public Enterprises), Mosebenzi Zwane (Mineral Resources), David Mahlobo (Energy) and Bongani Bongo (State Security) were among the ministers fired by Ramaphosa in an attempt to clean house.⁷¹ The fired ministers had definite involvement with state capture.⁷² A strategic attempt to forge unity within the ANC by Ramaphosa was the appointment of Nkosazana Dlamini-Zuma as Minister of the Presidency, important for Ramaphosa's own political standing.⁷³ The retention of state capture enablers, like Gigaba as Home Affairs Minister, raised concern, especially because Gigaba's previous tenure as Home Affairs Minister saw him pushing through the Guptas' South African citizenship.⁷⁴ Another controversial figure is deputy president David Mabuza, a notorious former ANC premier and recent Zuma-devotee accused of corruption and even political assassinations, which is contradictory to Ramaphosa's mission to eradicate corruption in government.⁷⁵ Having a questionable character like Mabuza as deputy president of SA might also taint Ramaphosa's vociferous rhetoric about undoing deep-rooted state capture.

The appointments of Nene and Gordhan had almost immediate effects in the fight against state capture, with Treasury investigating the looting of billions of rands that occurred under Brian Molefe and Anoj Singh's terms at Transnet and Eskom, and the illegal benefits they and the Guptas gained.⁷⁶ This is concurrent with Gordhan's appointment of new SOE boards, a crucial move since an estimated R100 billion was looted through SOEs by state capture.⁷⁷ Nene and Gordhan have thus been crucial in initiating investigations into their departments, as well as implementing actions to replace individuals who

71 L Mailovich, "Ramaphosa fires 10 Cabinet...", *BusinessDay*, February 2018 (available at <https://www.businesslive.co.za/bd/national/2018-02-26-ramaphosa-fired-10-cabinet-ministers-whos-out/>, as accessed on 22 August 2018).

72 L Mailovich, "Ramaphosa fires 10 Cabinet...", *BusinessDay*, February 2018 (available at <https://www.businesslive.co.za/bd/national/2018-02-26-ramaphosa-fired-10-cabinet-ministers-whos-out/>, as accessed on 22 August 2018).

73 Anon., "The who's who of Cyril Ramaphosa's new Cabinet", *BusinessDay*, February 2018 (available at <https://www.businesslive.co.za/bd/politics/2018-02-27-the-whos-who-of-ramaphosas-new-cabinet/>, as accessed on 22 August 2018).

74 Anon., "The who's who...", *BusinessDay*, February 2018 (available at <https://www.businesslive.co.za/bd/politics/2018-02-27-the-whos-who-of-ramaphosas-new-cabinet/>, as accessed on 22 August 2018).

75 M Mahlase and M Manyowa, "WATCH: Mabuza wants to clear his name of political killing and corruption claims", *News24*, August 2018 (available at <https://www.news24.com/SouthAfrica/News/watch-mabuza-wants-to-clear-his-name-of-political-killing-and-corruption-claims-20180816>, as accessed on 22 August 2018).

76 N Gules, and S Masondo, "Treasury drops looting bomb", *News24*, July 2018 (available at <https://www.news24.com/SouthAfrica/News/treasury-drops-looting-bomb-20180729-4>, as accessed on 23 August 2018).

77 L Omarjee, "Gordhan appoints Phakamani Hadebe Eskom CEO in sweeping SOE board changes", *Fin24*, May 2018b (available at <https://www.fin24.com/Economy/gordhan-appoints-hadebe-eskom-ceo-in-sweeping-soe-board-changes-20180524>, as accessed on 23 August 2018).

were complicit in state capture. While Corruption Watch credits Ramaphosa for his SOE shakeup that occurred during his first 100 days as President, his actual commendable move was appointing Nene and Gordhan.⁷⁸ Ramaphosa also stated that he formed a presidential council, where SOEs, the “sewers of corruption”, will report to with regard to their financial management in order to monitor the SOEs’ financial activities.⁷⁹

One of Ramaphosa’s most important steps against state capture was the suspension of SARS boss Moyane and establishing the SARS Commission of Inquiry, which includes an investigation of the dysfunction of the agency under Moyane, specifically the destruction of SARS’ investigative unit.⁸⁰ Moyane and his partner-in-crime, Jonas Makwakwa are directly implicated in illegal tax refunds to the Guptas and prevented investigations into the Guptas’ tax affairs from occurring due to the dismantling of investigative teams.⁸¹ SARS was appointed an acting commissioner, Mark Kingon, who will likely remain commissioner until Ramaphosa appoints a permanent commissioner.⁸²

A slow rebuilding of the criminal justice system including the State Security Agency (SSA), the Hawks and the NPA has begun, although not all of its restructuring can be credited to Ramaphosa. Arthur Fraser, accused of creating a shadow intelligence structure, the Principal Agent Network, (PAN), was removed from his position as SSA chief by Ramaphosa days after the Inspector-General of Intelligence (IGI) Isaac Dintwe accused Fraser of revoking his security clearance to prevent his investigation into Fraser’s illegal activities.⁸³ Following Ntlemeza’s removal as the Hawks’ head, the highly-respected Godfrey Lebeya was appointed as the new chief of the Priority Crime

78 Anon., Corruption Watch, “SOE Shakeup in Ramaphosa’s first 100 days”, May 2018 (available at <http://www.corruptionwatch.org.za/soe-shakeup-ramaphosas-first-100-days/>, as accessed on 23 August 2018).

79 C Kgosana, “State-owned enterprises are ‘sewers of corruption’: Ramaphosa”, *TimesLive*, May 2018 (available at <https://www.timeslive.co.za/news/south-africa/2018-05-31-state-owned-enterprises-are-sewers-of-corruption-ramaphosa/>, as accessed on 22 August 2018).

80 P van Wyk, “Witnesses testify of Moyane-led decimation of SARS’ investigative capacity”, *Daily Maverick*, August 2018b (available at <https://www.dailymaverick.co.za/article/2018-08-23-witnesses-testify-of-moyane-led-decimation-of-sars-investigative-capacity/>, as accessed on 23 August 2018).

81 P van Wyk, “Witnesses testify of Moyane-led decimation...”, *Daily Maverick*, August 2018b (available at <https://www.dailymaverick.co.za/article/2018-08-23-witnesses-testify-of-moyane-led-decimation-of-sars-investigative-capacity/>, as accessed on 23 August 2018).

82 K Magubane, “Finance minister re-appoints Kingon as SARS commissioner for 90 more days”, *Fin24*, June 2018 (available at <https://www.fin24.com/Economy/finance-minister-re-appoints-kingon-as-sars-commissioner-for-90-more-days-20180617>, as accessed on 22 August 2018).

83 M Thamm, “The slow yet inexorable unravelling of Jacob Zuma’s shadow state”, *Daily Maverick*, April 2018a (available at <https://www.dailymaverick.co.za/article/2018-04-12-analysis-the-slow-yet-inexorable-unravelling-of-jacob-zumas-shadow-state/>, as accessed on 23 August 2018); T Head, “Who is Arthur Fraser? Five things to know about a ‘very powerful man’”, *The South African*, April 2018 (available at <https://www.thesouthafrican.com/who-is-arthur-fraser-five-facts-ssa/>, as accessed on 23 August 2018).

Investigation unit.⁸⁴ Two Zuma-appointments, national police commissioner Khehla Sithole as well as IGI Dintwe, have remained in their positions.⁸⁵ They have not indicated that they have been compromised in state capture, especially due to Dintwe's crucial role in exposing Fraser.⁸⁶

Despite the various commissions of inquiry established to uncover the extent of state capture, the question of whether prosecutions will follow remains, considering the abundance of evidence pointing to illegal activities by actors involved with state capture.⁸⁷ The Constitutional Court did Ramaphosa a favour when it declared that Shaun Abrahams was unlawfully appointed as the NPA chief, which signalled the end of the Zuptas' hold on the criminal justice system and enabled Ramaphosa to appoint Silas Raimate in Abrahams' place.⁸⁸ This is especially important since the Hawks accused the NPA of dragging their feet in drafting charges following the Hawks' completion of certain state capture investigations.⁸⁹ The NPA's delayed action is thought to have allowed the Guptas to escape SA without being prosecuted.⁹⁰ With the removal of Abrahams, there is hope that the evidence uncovered by the various commissions of inquiry will be acted upon, since only the NPA chief and the police can prosecute people and ensure that rightful procedures of justice are followed.⁹¹ Ramaphosa will thus have to ensure that parties who are mentioned to have been complicit in state capture during the commissions of inquiry are held accountable by law enforcement officials, in spite of his

84 M Thamm, "Godfrey Lebeya, Hawks' new boss, is bad news for organised crime", *Daily Maverick*, May 2018b (available at <https://www.dailymaverick.co.za/article/2018-05-25-godfrey-lebeya-hawks-new-boss-is-bad-news-for-organised-crime/>, as accessed on 23 August 2018).

85 D Kotze, "South Africa's criminal justice system is on the mend. But it's just the beginning", *The Conversation*, August 2018 (available at <https://theconversation.com/south-africas-criminal-justice-system-is-on-the-mend-but-its-just-the-beginning-101753>, as accessed on 21 August 2018).

86 D Kotze, "South Africa's criminal justice system...", *The Conversation*, August 2018 (available at <https://theconversation.com/south-africas-criminal-justice-system-is-on-the-mend-but-its-just-the-beginning-101753>, as accessed on 21 August 2018).

87 Anon., "Editorial: Commissions aside, where are the law enforcers?", *Financial Mail*, August 2018 (available at <https://www.businesslive.co.za/fm/opinion/editorial/2018-08-23-editorial-commissions-aside-where-are-the-law-enforcers/>, as accessed on 23 August 2018).

88 D Kotze, "South Africa's criminal justice system...", *The Conversation*, August 2018 (available at <https://theconversation.com/south-africas-criminal-justice-system-is-on-the-mend-but-its-just-the-beginning-101753>, as accessed on 21 August 2018).

89 R Davis, "Report:Hawks say NPA hindering justice in state capture investigation", *Daily Maverick*, February 2018b (available at <https://www.dailymaverick.co.za/article/201802-28-newsflash-hawks-say-npa-hindering-justice-in-state-capture-investigation/>, as accessed on 23 August 2018).

90 R Davis, "Report:Hawks say NPA hindering justice...", *Daily Maverick*, February 2018b (available at <https://www.dailymaverick.co.za/article/201802-28-newsflash-hawks-say-npa-hindering-justice-in-state-capture-investigation/>, as accessed on 23 August 2018).

91 Anon., "Editorial: Commissions aside...?", *Financial Mail*, August 2018 (available at <https://www.businesslive.co.za/fm/opinion/editorial/2018-08-23-editorial-commissions-aside-where-are-the-law-enforcers/>, as accessed on 23 August 2018).

attempts to clean up these organisations.

Another Zupta-devised attempt to tighten their grip on the state which Ramaphosa halted was the Russian nuclear power deal during the July 2018 BRICS summit in Johannesburg.⁹² Ramaphosa stated that nuclear power remains a future endeavour, but will only be pursued once the economy is able to carry the cost.⁹³ This was supported by the ANC Treasurer General, who stated that a Russian nuclear power deal will only be pursued once it is affordable and on a smaller scale than the “Big Bang” approach that was pushed by the Zuptas, which would have had dire economic effects on the country given the continuous budget deficits.⁹⁴

Policies and lessons from other states

While it is clear that Ramaphosa has taken some definite action to remove the perpetrators of state capture, the question that remains is whether enough has been done, and what can be done to continue the reversal of state capture. There are many suggestions on how corruption that leads to state capture can be prevented through practical policy recommendations, with lessons from other countries which SA, and Ramaphosa, can take note of. One of the most important factors that Ramaphosa must consider is the fact that a political environment where specific political parties are factionalised around patronage groups will facilitate state capture, as these patron-led groups will support each other through promises of jobs or favours, or even vote buying.⁹⁵ Relating to this, the distinction between ANC and state interests must be considered by Ramaphosa. In SA where there is single party dominance, there is a risk that the interests and will of citizens and the party can become merged in the eyes of political leaders.⁹⁶ While single party dominance can result in stability and legitimacy, it can also result in a threat to citizen and state interest if the ruling party is divided by political tension, or factions as

92 A Winning, “Russia’s Putin raises nuclear deal at Ramaphosa meeting during BRICS”, *Reuters*, July 2018 (available at <https://www.reuters.com/article/us-safrica-nuclear/russias-putin-raises-nuclear-deal-at-ramaphosa-meeting-during-brics-idUSKBN1KG0S5>, as accessed on 21 August 2018).

93 A Winning, “Russia’s Putin raises nuclear deal...”, *Reuters*, July 2018 (available at <https://www.reuters.com/article/us-safrica-nuclear/russias-putin-raises-nuclear-deal-at-ramaphosa-meeting-during-brics-idUSKBN1KG0S5>, as accessed on 21 August 2018).

94 A Winning, “Russia’s Putin raises nuclear deal...”, *Reuters*, July 2018 (available at <https://www.reuters.com/article/us-safrica-nuclear/russias-putin-raises-nuclear-deal-at-ramaphosa-meeting-during-brics-idUSKBN1KG0S5>, as accessed on 21 August 2018).

95 T Lodge, “State Capture Conceptual Considerations”, M Meirotti and G Masterson, (eds.), *State capture in Africa: Old threats, new packaging* (Johannesburg: EISA. 2018) p. 23.

96 A Matshiqi, “Reflections on the relationship between the party and the state”, *The Journal of Helen Suzman Foundation*, 67, 2012, p. 6.

mentioned before, and internal struggles for power and money.⁹⁷ This also creates an environment where the risk for state capture is higher and where democratic values can be undermined.⁹⁸

Another aspect in moving against state capture is the fact that in cases like SA, where a few oligarchical and patrimonial actors gained control of state power by capturing the lion's share of productive state assets, a multi-year strategy to increase competition and privatise state assets and institutions should be implemented.⁹⁹ The privatisation of SOEs in SA, which became the main target of state capture, is thus a crucial practical step that can be taken by Ramaphosa to curb state capture. This is supplemented by the recommendation that, in cases where monopolistic structures have formed in the economy like in the SOEs, a strategy to break down monopolies must be spearheaded by political leaders through policies that increase competition and entry into these monopolised areas of the economy, while being transparent about the social cost of state capture. Increased transparency within Parliament can also be used to oppose state capture by introducing, amongst other things, mandatory periodic public declarations of sources of income and assets by politicians, public officials and their dependents.¹⁰⁰ This is especially needed in a society like SA, where patrimonialism and nepotism, exemplified by the Zuma family's ties with the Guptas, is part of the political culture.

According to McMann, there are two approaches to eradicate grand corruption like state capture, with one approach centered on policies to reform government, and the other centered on policies that encourage citizens and civil society to demand transparency.¹⁰¹ A practical policy for government reform is downsizing the state to reduce officials' monopoly on state resources.¹⁰² In the case of a captured state, elected officials who are part of the systemic state capture network retain the control of resource allocation and a monopoly on political power.¹⁰³ This approach suggests that if officials have less access to resources it will lead to fewer opportunities to act corruptly.¹⁰⁴ Putting constraints on government officials practically involve imposing laws that condemn corrupt

97 A Matshiqi, "Reflections on the relationship...", *The Journal of Helen Suzman Foundation*, 67, 2012, p. 8.

98 A Matshiqi, "Reflections on the relationship...", *The Journal of Helen Suzman Foundation*, 67, 2012, p. 9.

99 JS Hellman, G Jones, and D Kaufmann, "Seize the state, seize the day...", *World Bank*, 2000, p. 35.

100 JS Hellman, G Jones, and D Kaufmann, "Seize the state, seize the day...", *World Bank*, 2000, p. 36.

101 KM McMann, "Reducing corruption: Policy recommendations", *Corruption as a Last Resort* (Ithaca: Cornell UP, 2014), pp. 160-162.

102 KM McMann, "Reducing corruption...", *Corruption as a Last Resort*, p. 160.

103 P Labuschagne, "Patronage, state capture and oligopolistic monopoly in South Africa...", *Acta Academia*, 49(2), 2017, p. 57.

104 KM McMann, "Reducing corruption...", *Corruption as a Last Resort*, p. 160.

acts combined with effective law enforcement, an anticorruption commission (or in SA, a state capture commission) that reports to government and an independent judiciary.¹⁰⁵ The second approach, with focus on citizens and civil society, includes recommendations to increase transparency through a free press, financial and conflict of interest disclosures by officials, freedom of information and access to information about government services fees. This approach includes the recommendation of informing citizens of their right to report corruption, implementing laws that protect whistle-blowers and ultimately enabling citizens to actively participate in the process of punishing political leaders who commit corruption or are part of state capture.¹⁰⁶ McMann is echoed by Masterson, who states that because state capture is the manifestation of corruption and failure of governance, the ultimate solution to erasing state capture is found in the legal and judicial institutions that actively combat corruption in combination with active civil society and citizens that demand good governance practices.¹⁰⁷

With SA's economy displaying slow growth, or a contraction like in the first two quarters of 2018, post-Zuma Ramaphosa has slowed down. SA's economy is predicted to expand by 1.4 per cent in 2019 by the International Monetary Fund (IMF), while SA's Reserve Bank estimated a growth rate of 1.7 per cent for 2018.¹⁰⁸ This is insufficient to offset the fact that the economy steadily contracted in the near-decade of Zuma's presidency.¹⁰⁹ Despite some restoration of investor confidence with the incumbency of Ramaphosa, uncertain policies and strict regulation on private investment has created an economic environment that does not foster sufficient GDP growth to keep up with population growth, and where income per capita has shrunk. This correlates with the findings in Hellman et al., which indicate that countries subject to state capture experience lower economic growth rates as well as lower investment rates than non-captured countries.¹¹⁰

105 KM McMann, "Reducing corruption..." p. 161.

106 KM McMann, "Reducing corruption..." p. 162.

107 G Masterson, "Conclusion", M Meirotti, and G Masterson (eds.), *State capture in Africa: ...*, p. 188.

108 International Monetary Fund, "Real GDP growth" (available at https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/ADVEC/WEOWORLD/ZAF, as accessed on 21 January 2019); A Monteiro, "IMF sees 'prominent' downside risks to South Africa's outlook", *Bloomberg*, June 2018 (available at <https://www.bloomberg.com/news/articles/2018-06-12/imf-sees-prominent-downside-risks-to-south-africa-s-outlook>, as accessed on 23 August 2018).

109 A Monteiro, "IMF sees 'prominent'...", *Bloomberg*, June 2018 (available at <https://www.bloomberg.com/news/articles/2018-06-12/imf-sees-prominent-downside-risks-to-south-africa-s-outlook>, as accessed on 23 August 2018).

110 JS Hellman, G Jones, and D Kaufmann, "Seize the state, seize the day...", *World Bank*, 2000, pp. 15; 25.

Building on findings of state capture in Central and Eastern Europe (CEE), a factor that increases the risk for state capture and grand corruption is insecurity of property rights and contract rights.¹¹¹ Insecurity of these rights could lead to actors establishing relationships with high-level state officials sustained by unofficial payments in order to secure these rights.¹¹² Notes should be taken by Ramaphosa with regards to this, especially due to the current situation where land expropriation without compensation and a Constitutional amendment to pursue this policy is posing a threat to these rights.¹¹³ As stated by Lodge, many of the practical, remedial actions to combat state capture are “shopping lists” of good governance processes, along with a mobilised civil society that exercise oversight functions.¹¹⁴ Ramaphosa and his government officials not only have practical policy recommendations, briefly discussed in this section, but also examples and lessons from other countries that have experienced state capture to their disposal in order to guide the process of reversing state capture. As previously mentioned, state capture as a concept originated in CEE countries with the transition from communist to free market democracies. There are thus practical lessons to be learned from these states. Two instrumental initiatives to take note of include the Bulgarian Coalition 2000 and SELDI, the Southeast European Leadership for Development and Integrity.¹¹⁵ Coalition 2000 was initiated in 1998 by a coalition of non-governmental organisations (NGOs) with the goal of promoting and implementing anti-corruption (and anti-state capture) measures like trust, transparency and integrity.¹¹⁶ One of the main challenges of this coalition was to impact government policies, which was achieved through the Anti-corruption Action Plan which ultimately helped the government in formulating policies.¹¹⁷ The success of Coalition 2000 in Bulgaria led it to assist several other governments with drafting, implementing and monitoring the effects of anti-corruption policies.¹¹⁸

111 JS Hellman, G Jones, and D Kaufmann, “Seize the state, seize the day...”, *World Bank*, 2000, p. 22-23.

112 JS Hellman, G Jones, and D Kaufmann, “Seize the state, seize the day...”, *World Bank*, 2000, p. 23.

113 A Janse van Rensburg, “Turning and turning, can Cyril hold the centre?”, *News24*, August 2018 (available at <https://www.news24.com/Analysis/turning-and-turning-can-cyril-hold-the-centre-20180813>, as accessed on 23 August 2018).

114 T Lodge, “State Capture...”, M Meirotti and G Masterson, (eds.) *State capture in Africa...*, p. 27.

115 A Stoyanov, “Corruption, state capture and anticorruption initiatives in post-communist countries”, M Meirotti, and G Masterson, (eds.), *State Capture in Africa: ...* (Johannesburg, EISA, 2018), p. 176.

116 A Stoyanov, “Corruption, state capture...”, M Meirotti and G Masterson, (eds.) *State capture in Africa...*, pp. 176, 178.

117 A Stoyanov, “Corruption, state capture...”, M Meirotti and G Masterson, (eds.) *State capture in Africa...*, pp. 176.

118 A Stoyanov, “Corruption, state capture...”, M Meirotti and G Masterson, (eds.) *State capture in Africa...*, pp. 178.

SELDI is a multi-national coalition of NGOs and civil society organisations across 11 countries in Southeast Europe.¹¹⁹ SELDI's objective is to create an active civil society that participates in public debates and ultimately influences government policy on anti-corruption and good governance. SELDI's promotion of anti-corruption policies and good governance comprises of the facilitation of public-private partnerships where governments and NGOs collaborate in the creation of a common reform agenda, joined by initiatives to strengthen the judiciary.¹²⁰ This encompasses working with judges, public prosecutors, and magistrates to ensure the independence of the judiciary and that administration of justice occurs swiftly and efficiently. Through SELDI's promotion of government cooperation, it established unprecedented working relationships with governments to prevent and monitor state capture.¹²¹ Policy recommendations by SELDI that can be applied in SA is that effective prosecution of high-level corruption like state capture is essential in proving that these actions will be punished. SELDI also recommends that sectors with high risk for state capture should be prioritised, and that public procurement, governance of SOEs, transparency and accountability of management should be implemented. A specific CEE country commended for its anti-corruption success is Estonia, where the majority of ruling governments believed that a pro-market governance model with an increasing ability for citizens to participate in the election process and control of the state will have positive impacts, ultimately reducing corruption and the risk of state capture.¹²²

An encouraging African example is Tunisia, where major constitutional reforms were implemented in an attempt to recapture the state from President Ben Ali.¹²³ This included the confiscation of Ben Ali's companies and putting it up for sale (privatisation), as well as a stipulation in the 2014 post-Arab Spring Constitution that requires the parliamentary finance committee to be controlled by an opposition party.

Hong Kong is stated to be a good example with many lessons for SA in how to combat large-scale corruption that results in state capture.¹²⁴ One of the main reasons is that given the two establishment of the common law legal system, with Hong Kong ridding itself of the stigma of being one of the most corrupt

119 SELDI, "About us" (available at <http://seldi.net/about-us/objectives/>, as accessed on 24 August 2018).

120 SELDI, "History – Summary" (available at <http://seldi.net/history/summary/>, as accessed on 24 August 2018).

121 A Stoyanov, "Corruption, state capture...", M Meirotti and G Masterson, (eds.) *State capture in Africa...*, p. 179.

122 A Stoyanov, "Corruption, state capture...", M Meirotti and G Masterson, (eds.) *State capture in Africa...*, p. 180.

123 T Lodge, "State Capture...", M Meirotti and G Masterson, (eds.) *State capture in Africa...*, p. 26.

124 P Sewpersadh and JC Mubangizi, "Using the law to combat public procurement corruption in South Africa: lessons from Hong Kong", *PER / PELJ*, (20), 2017, p. 2.

countries in the world.¹²⁵ A comparative study of Hong Kong and China on corruption found that Hong Kong, plagued with endemic corruption in the 1970s, transformed itself to be virtually corruption-free, thus unlikely to be captured, through a zero-tolerance, bottom-up campaign against all forms of corruption that was spearheaded by government.¹²⁶ The “Hong Kong experience” consisted of a three-tiered government-driven approach which focused on law enforcement, community education and corruption prevention.¹²⁷ The comparison of Hong Kong and China concluded that contextual situations can determine the success of combating state capture and large-scale corruption, since widespread corruption like state capture downplays the role of formal institutions and government enforcers that is meant to prosecute corruption.¹²⁸ A zero-tolerance attitude in society is thus a crucial factor in preventing state capture. Hong Kong is often referred to as one of the countries with the most success in anticorruption policies, which can be translated into policies to undo state capture as well.

According to De Speville, the strategy behind Hong Kong’s efforts was simple and clear.¹²⁹ Allegations of bribery would be inspected with the goal to prosecute, reforms of procedures and systems to prevent any possible opportunities for corruption took place and public education about corruption and its detrimental effects along with getting the public involved in the fight against corruption were the three main pillars behind Hong Kong’s strategy.¹³⁰ Apart from the rules-based approach that involved administrative procedures, measures to monitor civil servants’ behaviour and applying punishments where civil servants are found to act corruptly, there is a second layer to the Hong Kong approach. This second layer is composed of a moral and values approach, which refers to the fact that it was ensured that civil servants acquired a specific ethical and moral framework.¹³¹

125 P Sewpersadh and JC Mubangizi, “Using the law to combat...”, *PER / PELJ*, (20) 2017, p. 2.

126 T Gong and S Wang, “Indicators and implications of zero tolerance of corruption: The case of Hong Kong”, *Social Indicators Research*, (112), 2013, p. 570.

127 T Gong and S Wang, “Indicators and implications of zero tolerance of corruption: ...”, *Social Indicators Research*, (112), 2013, p. 570

128 T Gong and S Wang, “Indicators and implications of zero tolerance of corruption: ...”, *Social Indicators Research*, (112), 2013, p. 571.

129 B De Speville, “Anticorruption commissions: The ‘Hong Kong Model’ Revisited”, *Asia-Pacific Review*, 17(1), 2010, p. 53.

130 B De Speville, “Anticorruption commissions...”, *Asia-Pacific Review*, 17(1), 2010, p. 53.

131 I Scott, “Institutional design and corruption prevention in Hong Kong”, *Journal of Contemporary China*, 22(79), 2013, p. 77.

With the establishment of the Independent Commission Against Corruption (ICAC) in 1974, Hong Kong successfully utilised ICAC as a publicly funded agency to root out corruption.¹³² ICAC, under leadership of an independent Commissioner and Deputy Commissioner, employed personnel who were subject to an open recruitment system on a merit-based system and retained only the best performing officers through the terms of employment.¹³³ The agency's structure also ensured that decisions did not depend solely on an individuals' discretion and ensured that ICAC's administrative procedures remained as transparent as possible.¹³⁴ Two features of ICAC that contributed to its success was its investigative procedures and close community involvement.¹³⁵ The investigative policy essentially focused on the fact that even the smallest reports of possible corrupt acts should be fully investigated with the aim to prosecute any guilty party.¹³⁶ While this could lead to false reports, legal provisions against malicious and false reports were put in place, making it a criminal offence if a complainant reported a falsity with the knowledge that it was false.¹³⁷ To encourage community involvement and to create a zero-tolerance against corruption society, reports to ICAC were confidential, with various measures put in place to protect the complainant.¹³⁸

While the above analysis is not by any means complete, it is evident that a multi-faceted, comprehensive approach against corruption was implemented in Hong Kong. An important lesson for SA is the fact that Hong Kong's commitment to eradicate is a constitutional commitment which clearly indicates the dedication and decisive policy action against corruption.¹³⁹ The establishment of an independent commission or agency to crack down on corruption, regardless of how small, should also be noted by the Ramaphosa administration, as the closest real action to prosecuting those guilty of perpetrating state capture in SA has been the Commission of Inquiry.

Analysis and conclusion

The state capture phenomenon in SA has had major impacts on all aspects of government and society. A ray of hope appeared when President Ramaphosa

132 B De Speville, "Anticorruption commissions...", *Asia-Pacific Review*, 17(1), 2010, p. 53.

133 B De Speville, "Anticorruption commissions...", *Asia-Pacific Review*, 17(1), 2010, p. 54.

134 I Scott, "Institutional design...", *Journal of Contemporary China*, 22(79), 2013, p. 83.

135 B De Speville, "Anticorruption commissions...", *Asia-Pacific Review*, 17(1), 2010, p. 55-56.

136 B De Speville, "Anticorruption commissions...", *Asia-Pacific Review*, 17(1), 2010, p. 55.

137 B De Speville, "Anticorruption commissions...", *Asia-Pacific Review*, 17(1), 2010, p. 57.

138 B De Speville, "Anticorruption commissions...", *Asia-Pacific Review*, 17(1), 2010, p. 57-59.

139 P Sewpersadh and JC Mubangizi, "Using the law to combat...", *PER / PELJ*, (20) 2017, p. 25.

took over from Zuma, with citizens harbouring hopes for him to rescue the country from the control of the Gupta family. While Ramaphosa has not relented on his rhetoric against state capture and the culture of corruption in government, the action he has taken has left many concerned that he is continuing to place the ANC above the country, especially with general elections looming in the near future.¹⁴⁰

Basic, logical steps have been taken by Ramaphosa, including the Cabinet reshuffle and placing trustworthy, incorruptible ministers in charge of critical departments like the Treasury and SOEs. He has also acted on reforming and rebuilding SARS with the suspension of Moyane who was not only responsible for the capture and destruction of SARS but also played a role in the demise of various SOEs. Ramaphosa also took action in an attempt to restore the criminal justice and intelligence systems by replacing actors in these various organisations who were implicated in state capture. He also halted the trillion rand Russian nuclear power project, which would have undoubtedly destroyed the economy even more. He also commended the media and civil society for exposing and investigating the Zuptas' shadow state and economy, which is a positive aspect since free press and an active civil society is crucial in preventing state capture.¹⁴¹ There are questions hovering above Ramaphosa's head however, as his denial in knowing the extent of state capture is difficult to believe, especially since he was deputy president under Zuma for a few years.

Considering the reforms and practical policy recommendations that Ramaphosa can learn from, his attempt at reversing state capture seems half-hearted. His lenience and tolerance of populist tendencies and rhetoric from a small minority party and the populist faction within the ANC, which has fuelled the land expropriation debate and the Constitutional amendment, caused many to accuse Ramaphosa of giving in to the populists to pursue a definite ANC election win in 2019, placing party interests above the country's – the opposite of what policy recommends. A partial Cabinet reshuffle also indicates a Trojan horse, as true reform cannot take place when ministers actively involved in state capture remain in powerful positions.¹⁴² While it

140 R Brand and C Goko, " 'Ramaphoria' evaporates..." *Bloomberg*, August 2018 (available at <https://www.bloomberg.com/news/articles/2018-08-15/-ramaphoria-evaporates-as-reality-sets-in-for-south-africa>, as accessed on 17 August 2018).

141 A Makinana, "Ramaphosa on state capture..." *Times Live*, May 2018 (available at <https://www.timeslive.co.za/politics/2018-05-25-ramaphosa-on-state-capture-we-didnt-know-how-bad-it-was/>, as accessed on 20 August 2018).

142 S Moeng, "Ramaphosa reshuffle speaks of false dawns and Trojan horses", *Fin24*, February 2018 (available at <https://www.fin24.com/Opinion/ramaphosa-reshuffle-speaks-of-false-dawns-and-trojan-horses-20180228>, as accessed on 24 August 2018).

can be posited that Ramaphosa has attempted to mend the fracture within the ruling government by keeping Dlamini-Zuma and other Zuma-aligned ministers in his Cabinet, it also calls his determination to root out corruption and state capture into question. Instead of keeping the individuals who entrench factional division and patrimonial networks which increases the risk of state capture in the state in order to preserve the ANC, he should take decisive action to benefit the country. Instead of bowing to populists that increase division and factions within society and the ANC, he should be getting rid of them, plainly put.

Ramaphosa is in many ways doing the opposite of what policies and lessons from other countries show. Instead of advocating the nationalisation of the entire healthcare sector, privatisation of state organisations and sectors should be pursued. This approach was evident to have had positive anti-corruption effects in CEE transition countries, as state-owned assets were transferred to private ownership.¹⁴³ Given the escalation of debt by the government and its SOEs means that the government does not have the capacity to boost economic growth, which indicates that more private sector investment is needed, which will not happen if Ramaphosa's first priority is winning the elections.¹⁴⁴

Ramaphosa should also do more than simply thank the media for their role in exposing state capture, but should be encouraging individuals and putting measures in place to actually protect those who act as whistle-blowers and speak out against corrupt officials implicated in state capture, which has not been seen in the recent interviews with two Zupta whistle-blowers whose identities have been concealed and had to flee the country for their own safety.¹⁴⁵ Death threats received by amongst others, Madonsela and Jonas who were two of the most significant actors in exposing state capture, should be condemned by Ramaphosa and investigations into these threats should be encouraged by him. He should also use his position to encourage and ensure that the various commissions of inquiry do not just lead to more confessions of those who are guilty without any prosecution, but that those who knowingly and actively participated in the Zuptas' capturing of the country are prosecuted and brought to justice to restore some of the damage inflicted on the country and its citizens.

143 A Stoyanov, "Corruption, state capture...", M Meirotti and G Masterson, (eds.) *State capture in Africa...*, p. 168.

144 C Smith, "Ramaphosa first trying for re-election, then business confidence – economist", *Fin24*, July 2018 (available at <https://www.fin24.com/Economy/ramaphosa-first-trying-for-re-election-then-business-confidence-economist-20180717>, as accessed on 24 August 2018).

145 R Davis, "#GuptaLeaks whistle-blowers speak out for the first time", *Daily Maverick*, August 2018c (available at <https://www.dailymaverick.co.za/article/2018-08-15-guptaleaks-whistle-blowers-speak-out-for-the-first-time/>, as accessed on 17 August 2018).

Ramaphosa is definitely not in an enviable position, yet he has a chance to leave a legacy of a leader that successfully fought and won the struggle of rescuing his country from state capture. Thus far however, he has not proven himself. Patience with his presidency is fading fast as half-hearted and even contradictory statements and actions are made by Ramaphosa.¹⁴⁶ In summation of Ramaphosa's action against state capture, a saying quoted by Muzi Kuzwayo in criticism against President Ramaphosa is fitting to describe the current situation of the President's fight against state capture: "it's hard to soar with eagles when you are chained to turkeys".¹⁴⁷

146 M Mutize, "Patience with Ramaphosa's presidency is waning among South Africans", *The Conversation*, June 2018 (available at <https://theconversation.com/patience-with-ramaphosas-presidency-is-waning-among-south-africans-97467>, as accessed on 20 August 2018).

147 M Kuzwayo, "Cyril must offer hope and dump the corrupt", *Fin24*, June 2018 (available at <https://www.fin24.com/Economy/cyril-must-offer-hope-and-dump-the-corrupt-20180713>, as accessed on 21 August 2018).