

Cabinet responds to State Capture Report recommendations

The submission of Cabinet's response to the recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector is a firm and clear indication of the primacy of the rule of law and a demonstration of the democratic system at work.

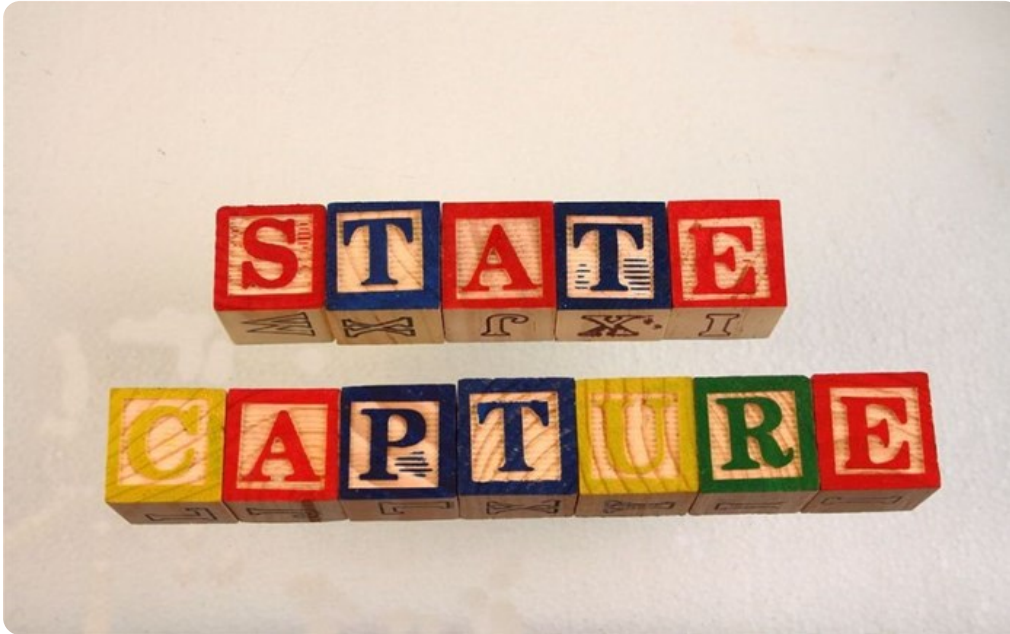


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President Cyril Ramaphosa said the response constitutes an ethical, moral and institutional departure from the abuses revealed by the State Capture Commission.

“The actions we are taking and the implementation of the Commission’s recommendations are designed to provide redress in respect of the events of the past and to advance the renewal of our society.

“Through the implementation of the actions contained in this response, we can start a new chapter in our struggle against corruption,” the President said in his address to the nation in response to the State Capture Commission Report at the Union Buildings on Sunday.

On Saturday, the President submitted to Parliament Cabinet’s response to the recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector.

He highlighted that the response to the recommendations of the State Capture Commission may therefore include the implementation of a recommendation as set out in the report, the implementation of part of a recommendation or, where there is good reason, a decision not to implement a recommendation.

The Commission made over 350 recommendations.

The Commission, which was led by Chief Justice Raymond Zondo, was established as part of the remedial action contained in the report of the Public Protector released on 2 November 2016.

Action against perpetrators

The President highlighted that the Commission’s report notes that state capture was facilitated by “a deliberate effort to subvert and weaken law enforcement and intelligence agencies so as to shield and sustain illicit activities

avoid accountability and to disempower opponents”.

Since 2018, decisive steps have been taken to strengthen the South African Police Service (SAPS), the Hawks, the National Prosecuting Authority (NPA), the South African Revenue Service (Sars), the Special Investigating Unit (SIU) and other important agencies.

New leadership was appointed at the Hawks, an institution that was targeted for weakening, which has, since then, secured 4,500 convictions for corruption and other priority crimes.

A new National Director of Public Prosecutions was also appointed on the recommendations of an independent panel following a transparent public process.

“That is why even as the State Capture Commission was being appointed in 2018, this government was taking decisive steps to end state capture and rebuild our institutions.

“As a result of these efforts, several major state capture and other serious corruption cases have been brought to court,” the President said.

Since the start of the work of the Commission, significant resources have been made available to build and rebuild the capacity and capability of law enforcement agencies to respond effectively to the findings and recommendations of the Commission.

“As a result of this work, the Investigating Directorate that we established within the National Prosecuting Authority has to date enrolled 26 cases, declared 89 investigations and 165 accused persons have appeared in court for alleged state capture-related offences.

Law enforcement agencies have, to date, been granted freezing or preservation orders to the value of R12.9bn. A total of R2.9bn has also been recovered and returned to the affected entities and Sars has collected R4.8bn in unpaid taxes arising from the work of the Commission.

In addition to recommending actions against the perpetrators of state capture, the Commission made 95 recommendations that would require constitutional, legislative, regulatory or operational changes.

Strengthening law enforcement

To address some of the abuses by private companies, the President said that amendments will be made to laws currently under review to, among other things, criminalise donations to political parties in expectation of state contracts, to bar suppliers who have engaged in dishonest or corrupt behaviour, and to make failure to prevent bribery an offence.

The Commission investigated various allegations of illegal activities and abuse of state resources at the State Security Agency (SSA).

“The Commission found that weaknesses in our intelligence services’ regulatory framework made them particularly vulnerable to abuse for political and personal gain.

“We will implement all of the Commission’s extensive recommendations on the intelligence services, together with the recommendations of the High-Level Review Panel on the SSA chaired by Dr Sydney Mufamadi.”

A new General Intelligence Laws Amendment Bill will establish separate domestic and foreign intelligence services, improving oversight of intelligence agencies and giving practical effect to the principle that no member

the Executive responsible for intelligence may be involved in the operational matters of the SSA.

To strengthen the independence of the NPA, legislation will be amended to introduce greater transparency and consultation in the appointment of the national Director of Prosecutions.

To further strengthen anti-corruption capabilities, the Investigating Directorate will be established as a permanent entity within the NPA.

Addressing corruption in procurement

President Ramaphosa announced that the Public Procurement Bill will be submitted to parliament by March 2022 and will address many of the Commission's recommendations.

The Commission made detailed recommendations about the establishment of an independent Public Procurement Anti-Corruption Agency.

It also recommended the establishment of a Permanent Anti-Corruption Commission that would have oversight over both Parliament and the Executive.

"The Commission's recommendations underline the need for a coherent and integrated approach to combating corruption, fraud and maladministration. It is therefore appropriate that these recommendations form part of a fundamental redesign and review of the country's anti-corruption architecture."

Reforming state owned entities

The President announced that State-owned entities (SOEs) board candidates will be recommended by the independent panels with appropriate technical expertise. No SOE board member will be allowed to be operationally involved in procurement processes beyond an oversight role.

This after the Commission found that the appointment and removal of board members and senior executives in state-owned enterprises was one of the key causes of state capture.

"The lack of compliance, transparency and accountability in the appointment of board members not only enabled the capture of these companies, but also contributed to a decline in their operational and financial performance.

"That is why government accepts the Commission's recommendations on the need for a process for the appointment of boards of state-owned enterprises that is not open to manipulation.

"This would include the involvement of independent panels with appropriate technical expertise to recommend suitable candidates to the relevant Minister," the President said.

He added that Ministers will be prohibited from playing any role in procurement within state-owned enterprises or departments.

The report of the Commission, consisting of six parts, was handed to the President over a period of six months: the first part of the report was submitted on 4 January 2022 and the final part of the report on 22 June 2022.

The 77-page response to the recommendations can be accessed on:

<https://www.stateofthenation.gov.za/assets/downloads/State%20Capture%20Commission%20Response.pdf>.

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