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Patronage, state capture and oligopolistic monopoly in South Africa: The slide from a weak to a dysfunctional state?

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The aim of the article is to investigate the phenomenon of state capture from a political perspective. In the literature, discussions around state capture are principally done from an economic context, not from a political perspective. The viewpoint in the article is that a more multi-faceted political approach is necessary, because the eroding of the role of the state is essentially a political problem. The phenomenon of state capture should therefore receive more scholarly attention within the political sciences, so the focus of this article is on addressing the problem of state capture within a political context. Here, the link between corruption and state capture is outlined and the difference between the two concepts is shown to be only a matter of degree. In the case of corruption the outcome is uncertain, while in the event of state capture the outcome is more definite as a result of the control an external agent exerts over a political functionary. The article also addresses the important tipping point, when a weak

state – with high levels of corruption – lapses into a dysfunctional state. The finding is that the degradation from a weak to a dysfunctional state occurs during state capture when resource allocation – a core function of government – is controlled by outside agents. In the concluding section reference is made to the Public Protector's report and its alignment with the theoretical features of state capture.

Keywords: state capture, corruption, function of government, political sciences

The process of state construction in South Africa is hallmarked by drastic fluctuations and the transformation from white political domination (1910–1994) to a modern, democratic, constitutional state. More specifically, the state transformed from a centralised, all-powerful leviathan state structured to protect the socioeconomic rights of a white minority to an all-inclusive, democratic, constitutional state (1994–) with a strong developmental and transformative agenda. The legacy of apartheid, including high levels of economic disparity, made it imperative that the socioeconomic ills and income inequalities that existed under the previous regime be addressed.

The alarming trends of corruption and disturbing evidence of state capture exposed in 2016/7, however, have the potential to blur the South African government's developmental focus, creating tangible fears and justifiable concerns that our leaders have lost their moral compass along with the political will to address socioeconomic inequalities in this country.

The South African Public Protector's State Capture Report, 6 of 2016/7 (hereafter *Public Protector's report*), released on 14 October 2016, provides ample evidence of state capture in the form of overt influence having been exerted by external agents on the primary political functionaries in this country. The report unearthed the presence of a strong, influential oligarchy that exists outside the formal structures of government, but parallel to primary functionaries in government. This illicit and clandestine relationship between public functionaries and oligarchical external agents appears to have been a drain on the state's monetary resources. The covert relationship further led to the redirection of resources, which could have been utilised for socioeconomic development, from the poor and destitute into the pockets of the affluent. The control exerted by this influential oligarchy, and its unhealthy and illicit relationship with government are hallmarks of strong oligopolistic tendencies in the domestic economy.[1]

1 'Monopolistic' refers to the dominance of resources by a single authority, while 'oligopolistic' refers to the control of resources by an oligarchy by non-competitive means.

The *Public Protector's report* exposed the external, overt influence that the powerful and influential Gupta family wields over functionaries in the highest office in the land. According to the report, the Gupta family have developed into a powerful oligarchy which oligopolistically manipulates politicians, has control over the appointment of ministers, shapes government institutions and controls parastatals (such as Eskom, the electricity supply commission) to advance and protect their own empire at the expense of social welfare and social interests in this country (see Hellman, Jones and Kaufman, 2005). The draining of the state's resources by a powerful oligarchy has raised real concerns that the misappropriation of national resources and funds will impact on the fiscal ability of the state to address socioeconomic needs and imbalances in society.

In light of the revelations in the *Public Protector's report*, and the subsequent political publicity and furore that it sparked in the media and on social media, it came as no surprise that the concept of 'state capture' was unofficially regarded as the phrase of the year in South Africa. The report identified a number of serious instances of corruption that point to irregularities in government in relation to tender procedures and the awarding of contracts. The concept of state capture does, however, entail a more extreme form of corruption, which includes political manipulation. There are indications in the report of evidence of state capture, with the acknowledgement of strong, external political influence being exerted from outside the state and government structures to manipulate primary government officials. Such an overt and powerful influence invariably determines the outcome of critical decisions regarding the allocation of resources (World Bank Report 2000)[2].

On a formal political level, the concept of state capture is strictly speaking a misnomer, because it is not state sovereignty that has been compromised. The correct reference thus should be government/governance capture, because the primary function of a government official has been 'captured'. To avoid confusion, however, references in this article will be to the more prevalent and widely held term "state capture".

The broad contextual ambit of the article is to outline a theoretical perspective on the phenomenon, its salient features and the principles of state capture within a political context. The aim here is to place the discussion, previously principally held from an economic perspective, firmly within a political context. The rationale for such an approach is based on the argument that the 'monopoly to allocate resources' is fundamentally a political process, located at the core of politics as a social activity.

2 http://www.worldbank.org

The discussion of state capture in the article also deals with the important progression (or rather, regression) from high levels of corruption in a state to eventual state capture. In the discussion the important cross-over point during state capture, from a weak state with high levels of corruption to a dysfunctional state, will be explained.

The article is subdivided into a number of logically constructed and interconnected subsections. The investigation concludes with a reference to state capture in South Africa, which references a number of key findings outlined in the *Public Protector's report*.

The discussion pivots around the following subthemes:

i. Background to the research question and overview of the literature.

ii. The basic function of politics and political functionaries in relation to the allocation of resources in society.

iii. State capture as it has manifested in South Africa.

In delimiting the study for the purposes of this article, it is important to note that state capture is based on the notion of illicit transactions being made as a result of an external agent's influence over, and manipulation of, primary political functionaries in government. The various permutations of this concept include regulatory state capture, where regulations are devised and manipulated to benefit individuals at the expense of social welfare – see the studies of Stigler (1971), Peltzman (1976), and Laffont and Tirole (1991; 1993) which deal with this alternative form. Regulatory state capture, according to the *Public Protector's report*, is not the main issue in South Africa. The discussion consequently focuses on the more general nature of this phenomenon, namely the illicit, corrupt manipulation and control of primary government officials for personal financial gain, through the use of both overt and clandestine channels.

2. Background to the research question

In the subject disciplines of politics and political sciences, the overview of the concept 'state capture' occupies a minor or subservient position in the literature. An analysis of the foundational literature in the political sciences (compulsory prescribed material for first-level students at South African universities) shows that the concept receives little to no scholarly attention. In a selection of prescribed books the topic is largely absent from the discussion of the salient features of the state and government. For example, Rod Hague and Martin Harrop, in *Comparative government and politics* (2007); Michael Roskin *et al*, in *Political science* (2013), Robert and Doreen Jackson in *An introduction to political science*

(2004) and Andrew Heywood in *Politics* (2004) make no reference in their respective works to the phenomenon of state capture. It is an intriguing omission, given the fact that globally this scourge has become an inherent challenge for the majority of transitional and newly democratised states.

The fact that state capture is historically primarily regarded as an economic rather than a political phenomenon, may explain the omission. The authors Oane Visser and Don Kalb, in their leading article on state capture *Financialised capitalism Soviet style? Varieties of state capture and crisis* principally approach the concept within an economic perspective. The article was predictably published within the field of the economic sciences, in the *European Journal of Sociology*, not in the political sciences. This reveals the strong trend in the available literature to continue to regard state capture as an economic phenomenon, and not specifically a political problem. Visser and Kalb (2010: 172), for example, regard the presence of state capture predominantly as a failing of the neoliberal economy.

Visser and Kalb (2010: 171–194) argue that financialised capitalism on the eve of the 2008 global financial crisis showed striking analogies with the characteristic combination of oligopoly and the informality of the Soviet economy. State capture in the Soviet Union by oligopolists, a large virtual economy, the inability of agencies to obtain insight into economic and financial operations, the short-term orientations of managers not coinciding with enterprise viability and the 'mystification of risk' by high science are some of the analogies discussed. The solution the authors offer is a more ethical approach, more controlling agencies and the establishment of more rules within the financial sector. They also point the finger at the lack of transparency and democratic control, coupled with the capture of civil society and public institutions as leading to a state's degradation from a weak to a dysfunctional entity (Visser and Kalb 2010: 171–194).

The dominance of an economic slant in the literature when it comes to articles on state capture is evident in other publications on the topic. Hellman, Jones and Kaufmann (2005) also principally interrogated state capture from an economic perspective: their article entitled *Seize the state, seize the day: state capture and influence in transition economies* works with data obtained from the 1999 Business Environment Performance Survey, which they utilise to examine state capture and the influence thereof on transitioning economies. Hellman *et al.* (2005) pay special attention to how firms exert an influence on the state, in direct opposition to the traditional controlling role of the state in the economy. In their discussion the authors relegate the state to a secondary position and cast firms in a primary role (Hellman, Jones and Kaufmann 2005: 753).

The argument made here is not that investigating state capture from an economic perspective has no validity, but rather that the state should be regarded

as a central role player in the process. The state will continue to maintain a prominent position, despite its weakened status and notwithstanding being downgraded from a weak to a dysfunctional state. In recent related publications – especially within an African political perspective – there has been a marked tendency to deprivilege the state. This negative perspective follows on (and is encouraged by) the belief that the state in Africa is no longer the principal organising actor in politics. This perception is partially fuelled by the poor track record of Africa's failed states in general. Yes, the state remains a powerful actor, but the deepening political crisis in many nations on this continent, and dissatisfaction with a narrow analytical focus of African state centrism, have much to do with the tendency to deprivilege African states in academic debates (Thomson 2000: 113). (In many African states, parallel civic groups have mushroomed alongside the state to take over essential duties that the latter has failed to address. This interesting phenomenon is 'state capture of a special kind', but falls outside the ambit of this discussion.)

During the pre-democratic era (1910–1994), the centralised South African state displayed similar narrow centrism, but the adoption of a democratic constitution signalled the start of a new, inclusive era in this country's history. The constitutional state, which has asserted a central position, makes provision for 'a culture and morality of constitutionality' and

> the norms, values and basic right inherent and underpinning the constitution. The new thinking of the role of the state as the provider of a new order should therefore became the foundation of a new way of thinking for all citizens in South Africa. (Devenish 2002: 22)

One of the underlying values of the constitution is to address and correct the imbalances of the past, to create a moral, just and equitable dispensation. In the new democratic order, the state is regarded as the custodian of resources and income, and must ensure (on a moral level) that these resources are channelled in such a way as to address socioeconomic needs and social inequalities.

As Esterhuysen (2011: ii) observes, however, of late there has been a subtle shift in observations and commentary on the 'health' of the constitutional state. The commentary has become less flattering and, in some circles the phrase 'vulture state' has been used to denote government's misuse of the available resources. The Council for the Advancement of the South African Constitution (Casac), which consists of prominent constitutional experts, refers more or less diplomatically to South Africa as a 'dysfunctional state'. The reasons for the downgrading of the state are multi-faceted and complex, but basically have to do with corruption, state capture and control over the distribution of resources

having shifted to external agents. This shift in the agenda of the state and the fact that it may be verging on degrading from a weak to a dysfunctional state, controlled by external agents, is therefore of special interest in this discussion.

3. State capture and control over political functionaries: a philosophical perspective

A government's system of rule is a mechanism through which ordered rule is maintained, with the state acting as the medium and providing the machinery that makes and enforces collective decisions in society (Heywood 2004: 421). The regulatory role of government as the principal agent in a developmental state is of critical importance. One of its primary functions in a developmental context is to address social inequalities, and ensure the fair and equitable distribution of resources to all members of society.

However, the crucial role of government as provider and custodian of the country's resources could be seriously compromised in the event of state capture, where moral responsibility is eroded through an illicit relationship controlled by external agents. State capture amounts to, in an ascending order, one of the final phases of a weak state wilting and finally collapsing into a dysfunctional state. Elected officials in a weak state with high levels of corruption are still in control of the allocation of resources and still have a monopoly on power. Constitutionally-based corrective counter-mechanisms (such as the office of the Public Protector and the Auditor General) are still reasonably successful at counterbalancing instances of corruption. However, the cross-over point, where a weak state descends into a dysfunctional state, is when exclusive control over, and a monopoly on decisions about, the allocation of resources changes hands. The phenomenon of state capture occurs when the plundering of resources in a corrupt relationship of patronage between political functionaries and beneficiaries in a weak state is controlled by an external relationship that is detrimental to the state. In such an instance, control over the allocation and channelling of resources passes from a political functionary to a principal agent who 'controls' the former. The monopoly of the allocation of resources, in Harald Laswell's (1934: 11) celebrated definition of 'who gets what, when and how', has thus shifted from an elected political functionary to an unelected oligarchy located outside formal government structures. (The concept 'allocation of resources' is used in a broad context and includes the appointment of ministers, the allocation of state contracts and other extreme forms of corruption.)

A World Bank report (2000) refers to the presence of state capture as an extreme form of political corruption, in which private external interest influences a state's political functionaries (government) for their own (economic) advantages

through *unobvious* channels (emphasis added – PL). The monopolistic or oligopolistic (non-competitive) influence of an oligarchy could have a bearing on all three organs of the state, namely the legislature, the executive and the judiciary. However, illicit influence is primarily exerted over the executive as the central power in government.

Within the domain of *real* politics, the concept of influence is another misnomer and a euphemism, because within the continuum of power (ranging from influence to coercion) control over political functionaries is much more assertive than merely a variation in terms of influence (Heywood 2004: 115). The difference between exerting influence on a decision maker when resources are allocated and capturing the state's functions is one of degree. Where corruption is involved, the outcome and success of corrupting the process is not assured, because of its covert nature. In the case of state capture, however, the outcome is more guaranteed as a result of the stronger grip that external agents have on a government's primary political functionaries.

The phenomenon of corruption (and eventually the more extreme form of state capture) has its roots in the fundamental core of politics. Influence or control over the allocation of resources places state capture firmly within the discipline of politics or the political sciences. The nature of state capture relates strongly to regulatory control over the distribution and allocation of resources in society, which is the primary function of politics. Thomas Hobbes (1588–1679), one of the first modern materialists in philosophy, captured the most fundamental and dynamic force inherent to the concept of politics in his teachings. In his seminal work, *Leviathan*, Hobbes imagines a state of nature before the formation of society in which individuals pursue their own interests, which brings them in constant conflict. Hobbes argues that because humans have similar material desires they are bound to engage in conflict with one another in a world of limited resources (Law 2007: 275).

Hobbes chose *Leviathan* as a title – a name originating from the Old Testament book of Job (Chapter 14). The leviathan is an enormous and terrifying sea monster of immense power which Hobbes equates with the power of the state. He introduces the state as a solution to the competition that exists in terms of accessing limited resources – the state is thus in a position to make a decision, on behalf of its citizens, about who gets what, when and how. However, when citizens hand over power as part of a social contract with the state, the latter could become immensely powerful. The problem is that the state could potentially neglect its duty in respect of safety, security and resource allocation. The leviathan could then turn on itself for material and power gains, and to serve its own interests (Law 2007: 275).

The essence of politics as an activity to decide 'who gets what, when and how' is fundamentally a social act which is inextricably linked to the phenomena of conflict and cooperation. Hannah Arendt's (in Heywood 2004: 4) definition sees politics and power as 'acting in concert', in which the heart of politics is portrayed as a process of conflict resolution in which rival views or competing interests are reconciled.

The establishment of a government is a solution to the problem of the scramble for resources, in the form of an institutional system in which cooperation can be fostered, but also where control can be exerted over any possible conflict which arises. Thus, two basic characteristics of politics are identifiable, namely that some individuals in a group exercise power over the larger group to decide on their behalf how scarce resources should be allocated. This basic characteristic is reflected in a combination of definitions by two early exponents of the concept of politics, namely Laswell's (1934: 11) 'who gets what, when and how' and Easton's (1965: 2) 'authoritative allocation of scarce values in society'. On this basis a new definition of politics could be formulated as follows: 'Politics embraces all activity that impinges on making decisions on who gets what, when and how' (Jackson and Jackson 2004: 9).

The basic underpinning duty of politics as the allocation of resources means it should therefore be controlled and performed within a democratic system which represents the needs and interests of the broader society. In a system of representative democracy the people do not rule directly, but governance occurs through elected and accountable representatives who act on their behalf. In this context representation is a relationship through which an individual or a group stands for or acts on behalf of a larger body of people. The concept of representative democracy thus constitutes a partial form of direct democratic rule; based on the proviso that the representation links government and the governed in such a manner that the people's views are articulated or their interest is secured. The essence of this relationship is that officials can be held accountable when they fail to act according to this moral obligation (Roskin et al. 2013: 97).

The notion of a Hobbesian leviathan state could rear its ugly head when the dominant elite use their monopoly over authority to accumulate resources for their own self-interest, rather than legitimising the process by addressing the needs of society as a whole. The election of representatives to decide on behalf of the electorate, who gets what and how, is based on the sacred and moral premise that those officials act as custodians of such resources. These representative custodians have the moral obligation to distribute resources fairly and equitably across all communities – especially to those in need.

However, one of the problems of political elites is that they create a system of patronage control within the political system, because they dispense rewards in order to ensure loyalty. In the case of a dominant one-party state where officials are elected through a parliamentary system and where the opposition is not powerful enough to hold leaders accountable, the system of patronage will continue to escalate. In the patrimonial system, the beneficiaries know that being loyal to the leader and the elites will bring rewards, and this ensures their compliance. The patrimonial elite thus continue to distribute rewards, access to wealth and other resources in the form of patronage to relatives, friends, clients and close supporters, thereby strengthening this illicit relationship (Thomson 2000: 108).

In the next phase of the downward spiral, corruption and patronage escalate when control over resources shifts from primary functionaries to external agents. If primary functionaries act on the 'instructions' of external agents and are no longer central to the allocation process, then the state has been captured. That, in turn, sets in motion a process of tenuous legitimacy and instability in a predatory state. In the process of using the state as a means of accumulating private wealth by allowing external agents to 'control' the allocation of resources, a dynamic shift occurs which propels government into the depths of dysfunctional statehood.

The disconcerting aspect is that the presence of an adverse relationship controlling primary functionaries in government then supersedes the needs of the poor and needy in society. In this development, the fear of a leviathan state is replaced by a new concern in the form of powerful oligarchs whose self-serving nature manipulates and shapes institutions to their own advantage, allowing them to expand and protect their empires at the expense of the country's citizenry (Hellman, Jones and Kaufman 2005: 752).

The system of patrimony is already firmly rooted within the South African landscape, manifesting itself in high levels of corruption. Notably, this scenario relates to a weak but not dysfunctional state, because the monopoly over resources is still located in the hands of political functionaries. The appointment of senior political functionaries as ministers is still located in the hands of the primary political functionary as the leader of the government.

4. From a weak to a dysfunctional state – deeper into the abyss?

The cross-over point from a weak to a dysfunctional state is where control of and decisions around the allocation of resources (and other primary rulings) shift from an elected official (political functionary) to an outside agent. In a weak state corruption is rife, but control over scarce resources is still in the hands of elected

officials as primary functionaries. In a dysfunctional state the decision-making power has shifted from the political functionary/functionaries to an outside/external agent(s).

Esterhuyse (2011: ii) outlines the steps from a weak to a dysfunctional state. In a weak state it is still conceivable to maintain a reasonable standard of law and order, and to achieve an acceptable level of economic growth despite corruption being prevalent. The ruling elite allow democracy and basic freedoms to exist and do not infringe too much on the individual's basic rights. However, the government's latitude to improve the lives of the majority of citizens is compromised and limited as a result of the misappropriation of funds and the presence of widespread corruption. The failure of a state and its status as a weak state are thus located in the inability to provide a better life for the majority of citizens. The presence of high levels of corruption does not necessarily endanger the status of the state *per se*, although its role degrades to that of a weak state.

In a fully functional state, with low levels of corruption, regulatory measures located in the public sector (such as the Public Protector and the Auditor General) are able to provide a corrective counterbalance. It is advantageous if there is support from a vibrant civil society consisting of political parties, pressure groups and the media. If these regulatory measures are fully functional and the perpetrators (including public officials) are held accountable, the state has the ability to correct itself and restore equilibrium.

The degradation from a weak to a dysfunctional state occurs when those self-correcting mechanisms located in the constitution and the functioning of civil society lose their effectiveness and ability to counteract the escalation of a corrupt relationship. If the Public Protector points out corruption and nepotism in its reports on the police or state departments and/or the presence of state capture, then the system should correct itself by acting on those reports. However, if the perpetrators are not held to account for their transgressions, then a functional yet weak state loses its self-regulating ability and slides downward to become a dysfunctional state in which primary functions are compromised and the allocation of scare resources is under the control of external forces.

In a dysfunctional state, core allocative functions are partially controlled by an all-powerful oligarchy of unelected external agents. The oligarchy thus captures the essential, fundamental responsibility of a government which is supposed to act as custodian of the resources of its people. The transfer of this function to an oligarchy thus hollows out the function of the state. As indicated below in Figure 1 the state during state capture is under 'threat' from two directions. From the left (no 1) regulatory state capture and (no 2) external agents (the topic under discussion in the article) undermine the monopoly and control of the state as

sole authority on the allocation of resources. On the right (no 3) civil society is supplementing the areas where the state has failed such as the unwillingness to prosecute to protect its allies and the inability to protect its citizens and on the municipal level the inability to provide services.

1. REGULATORIAL CONTROL	2. EXTERNAL AGENTS	THE STATE	3. CIVIL SOCIETY
			
Control of regulatory measures for financial gain	State capture by way of appointing ministers and manipulating primary political functionaries	Central level	Private prosecution agency by civil society taken over responsibilities of the state – the providing of security with private security companies where state fail to provide security
	Awarding and the acquisition of contracts	Provincial level	
		Municipal level	Civil society taking over the functions where municipalities fail e.g. the repair of potholes

5. South Africa, the *Public Protector's report* and external agents

Devenish (2002: 147) explains that the cataclysmic history of apartheid has led not only to an abuse of power, but also to the squandering of resources which ought to be distributed to where they are desperately required for social development. In the democratic era, South Africa's political and social challenge is therefore not restricted to the consolidation of democracy, but primarily to the establishment of a more just and equitable society. The gap between the affluent and the poor in this country is one of the remnants of the apartheid era, and should be addressed as a priority by the new, democratically elected government.

In a ground-breaking case in the Constitutional Court, *The Republic of South Africa v Grootboom 2000 (11) BCLR 1169 (CC)* the finding was that the extension of basic socioeconomic rights to its citizens are of critical importance and a constitutional right. The Court emphasised that the realisation of socio-economic rights is key to the advancement of race and income equality in this country. In *Grootboom*, the Court outlined the extent of the positive duty

placed on the state (sec 26(2)) to correct imbalances in society: the state has to 'take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right to adequate housing'. In *Soobramoney v Minister of Health (KwaZulu-Natal) 1998 91) SA 765 (CC)* the Court again emphasised the importance of making available resources: access to housing, health care, food, water and social security are dependent on the resources available (De Waal et al. 2003: 441).

The reference to *Grootboom* and *Soobramoney* is not made with a view to entering into a constitutional and/or legal argument. The rationale for referring to the 'available resources' in society was primarily to emphasise that a positive moral duty has been placed on government to extend goods and services to the poor and destitute among its citizenry. The Constitutional Court did not instruct government on how to achieve this, but merely placed a positive responsibility on political leaders to make the necessary resources available and, on a normative level, to refrain from plundering resources to benefit the affluent elite or create an oligarchy. Government's priority should not be the rich but the poor, the disadvantaged, given its normative duty as custodian of the country's resources and its duty to prioritise the redressing of inequalities in society.

As Devenish (2002: 73) points out, the inclusion of socioeconomic rights in the Bill of Rights does not mean that problems associated with poverty will be eliminated overnight. However, the prominence attached to socioeconomic rights in the Bill of Rights places a positive duty on government to target those rights and ensure that imbalances are addressed (Devenish 2002: 73). It is self-evident that state capture and the creation of an oligopolistic milieu will undermine the positive and moral duty of government to protect this country's available resources and ensure that impoverished communities access what is theirs by right.

The *Public Protector's report* (2016) clearly indicates the presence of external agents controlling the primary decision-making powers of the highest political functionary in government, President Jacob Zuma, for their own monetary gain. The report implies that the president improperly and in violation of his constitutional duties and the Executive Ethics Code allowed members of the Gupta family, and his son, Duduzane Zuma, to be involved in the process of removing the Minister of Finance, Nhlanhla Nene. The reason for Nene's removal was that he had formed 'an obstruction' to the external agent (the Guptas) in their efforts to drain treasury resources. The report also points out – and was subsequently confirmed by the then Deputy Minister of Finance, Mcebisi Jonas – that an offer was made to him by the Gupta family to be appointed in the position of minister,

and to receive a large sum and other benefits in exchange for future reciprocal favours (htttp://sowetan.life.co.za./2016/11).

The Gupta family's actions amount to a classic definition of state capture, with the presence of a strong, manipulating external agent controlling the principal functionary/functionaries in government. Such control obviously determines the outcome of critical decisions on resource allocation or, in this case, the appointment of the individual who controls those resources (World Bank 2000).

The report includes many similar instances of state capture of high-placed officials, where the appointments had been controlled and influenced by external agents such as the Guptas. One example was the CEO of Eskom, Brian Molefe, who in 2014 called the Gupta family on 44 occasions while they called him 14 times – clear proof of a link. Eskom subsequently awarded a lucrative coal contract to the Gupta-controlled Tegeta company, without following the correct tender procedure.

The Pubic Protector in her report recommend that President Zuma should appoint a commission of inquiry into state capture in South Africa. The report also indicated that the presiding judge of the commission should be appointed by the Chief Justice Mogoeng Mogoeng. President Zuma challenged the report, approaching the High Court in Pretoria to set the report aside. He disputed the remedial action in the report regarding the appointment of the presiding chair of the commission of inquiry. President Zuma asked the Pretoria High Court on 24 October 2017 to set the report aside on the basis of the fact that it is his prerogative to appoint the person to head the commission. His legal team argued that the appointment of a chair of the commission by the chief justice would transgresses the fundamental constitutional principle of the separation of powers. (https:/www.timeslive.co.za.politics/2017-10-24-zuma-challenges-public-protectors-recommendation-on-state-capture-report/)

In a parallel process, state capture has also been the focus of the parliamentary oversight committee which specifically put Eskom, its chief executive officers and board members and the minister of public enterprises in the spotlight. The members of the parliamentary oversight committee have cited a large number of transgressions and examples of corruption. These include the irregular payout of R600 million to the Tegeta company and the R30 million pension payout to Eskom's controversial former chair, Brian Molefe. Former board member Zola Tsotsi implicated the hand of President Zuma in many of these transactions.

The controversial link between the Gupta family and senior politicians (as suggested in the *Public Protector's report*) has against surfaced strongly during the inquiry of the oversight committee. The parliamentary oversight committee

engaged strongly with the Minister of Public Enterprises, Lynne Brown, on the link between the Guptas and state officials. Brown strongly denied any such involvement (https://www.news24.com/SouthAfrica/news/threats-pile-up-from-eskom-enquiry-20171126-2)

6. Concluding remarks

The degradation of South Africa from a weak to a dysfunctional state occurred when high levels of corruption accelerated with the advent of state capture in this country. As indicated, the phenomenon entails internal control over resources shifting to external agents who plunder state resources by proxy through an elected official.

The presence of state capture in South Africa was initially unearthed by media reports over months and subsequently officially confirmed by the *Public Protector's report*, which indicates how the Gupta family exerted overt influence on the highest office in the land. According to the report, the Gupta family developed into a powerful oligarchy that oligopolistically manipulates politicians and shapes institutions to advance and protect their own wealth, at the expense of social interest and the socioeconomic development of nations. This blatant draining of the state's resources by a powerful oligarchy has raised real concerns. The misappropriation of assets and funds has had a fundamental impact on the ability and the constitutionally confirmed duties of the state in a society in desperate need of assistance. The probe conducted by the parliamentary oversight committee in November 2017 to a great extent strengthens and validates the *Public Protector's report*.

In the final analysis, state capture is a political problem which can only be corrected and solved politically and in a democratic manner. Government should be held accountable and the mechanisms in the constitution (the office of the Public Protector, the Auditor General and civil society) must be allowed to function properly. Self-correcting mechanisms in the constitution and in civil society should constitutionally restore the balance and roll back the high levels of corruption and state capture currently impeding government from performing its duty to uplift South African communities.

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