Independent Assessment for the National Anti-Corruption Advisory Council of the 60 Presidential Commitments to implement the State Capture Commission Recommendations

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Contents

Acronyms

AFU	Asset Forfeiture Unit
AG	Auditor-General
AML	Anti-money laundering
APP	Annual Performance Plan
CIPC	Companies and Intellectual Property Commission
CJS	Criminal justice system
CoJ&CD	Department of Justice and Constitutional Development
CSO	Civil Society Organisation
DPA	Deferred Prosecution Agreement
DPCI	Directorate for Priority Crime Investigation
DPME	Department of Planning, Monitoring and Evaluation
DPSA	Department of Public Service and Administration
FATF	Financial Action Task Force
FCPA	Foreign Corrupt Practices Act
FIC	Financial Intelligence Centre
FICA	Financial Intelligence Centre Act
GILAA	General Intelligence Laws Amendment Act (GILAA)
HoD	Head of Department
HOPA	Head of Public Administration
ID	Investigating Directorate
IDAC	Investigating Directorate Against Corruption
IEC	Independent Electoral Commission
IGI	Inspector-General of Intelligence
IPID	Independent Police Investigative Directorate
IRBA	Independent Regulatory Board for Auditors
JSCI	Joint Standing Committee on Intelligence
LPC	Legal Practice Council
MEC	Member of the Executive Council
MFMA	Municipal Finance Management Act
NACAC	National Anti-Corruption Advisory Council
NACS	National Anti-Corruption Strategy
NCOP	National Council of Provinces
NDP	National Development Plan
NDPP	National Director of Public Prosecutions
NEDLAC	National Economic Development and Labour Council
NICOC	National Intelligence Coordinating Committee

NPA	National Prosecuting Authority
NPCOC	National Priority Committee on Organised Crime
NTR	Non-trial resolution
OCPO	Office of the Chief Procurement Officer
OECD	Organisation for Economic Co-operation and Development
PA-EID-TAU	Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit
PAMA	Public Administration Management Act
PARI	Public Affairs Research Institute
PDA	Protected Disclosures Act
PFMA	Public Finance Management Act
POCA	Prevention of Organised Crime Act
PPA	Public Procurement Act
PPFA	Political Party Funding Act
PPSA	Public Protector South Africa
PRASA	Passenger Rail Agency of South Africa
PRECCA	Prevention and Combatting of Corrupt Activities Act
PSC	Public Service Commission
SAICA	South African Institute of Chartered Accountants
SALRC	South African Law Reform Commission
SAPS	South African Police Service
SARB	South African Reserve Bank
SARS	South African Revenue Service
SCC	State Capture Commission
SCCU	Specialised Commercial Crime Unit
SCM	Supply chain management
SIU	Special Investigating Unit
SOE	State-owned enterprise
SONA	State of the Nation Address
SSA	State Security Agency
SSC	State Security Council
ToRs	Terms of Reference
WPA	Witness Protection Act

Executive Summary

Methodology

This assessment has been guided by the National Anti-Corruption Advisory Council's (NACAC) mandate, which includes advising on the effective implementation of the National Anti-Corruption Strategy (NACS 2030) with its six pillars; advising on strengthening South Africa's anti-corruption architecture; and advising on the implementation of the State Capture Commission (SCC) recommendations from a 'strategic and systemic' perspective.

The assessment has also taken guidance from the following priorities set out in NACAC's first advisory note to the President –

1. Whistleblower protection.
2. Principles to guide appointments.
3. Transparent public procurement.
4. Balancing the response to cover both private and public sectors.
5. Resourcing of law enforcement agencies.
6. Culture change towards adherence to constitutional values and ethical leadership.

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Each (thematic) section of the report outlines the primary findings and recommendations of the Commission, which provide a basis against which to make an evaluative judgement about progress in addressing state capture. This approach is mindful of the brief to *assess progress in implementing the President's 60 commitments in response to the SCC.*

Information on the SCC original findings and recommendations is included to remind us of the systemic and structural issues raised by the Commission in responding to state capture, and their relevance for NACAC's mandate. This is followed by a summary of the specific commitments made by the President in his 2022 response, on the basis of which the Presidency has provided detailed reporting in 2023 and 2025. These two reports provide a good deal of information for tracking progress on implementation. The final part of each thematic section provides an analysis of progress against the President's 2022 commitments. Where possible, we independently verified some of the progress reported (especially regarding the extent to which legislative amendments have responded to the big issues). Verification relied on the researchers' own knowledge of the sectors, supplemented by engagement with research reports, government publications, submissions available in the public domain and media reports.

Section 1: Individual accountability

As the Terms of Reference (ToRs) for this assessment require a systemic/strategic analysis, this assessment does not reflect on how individual cases have been managed but focuses on whether systemic weaknesses in these various forms of accountability have been revealed.

Main problems identified by the SCC and its recommendations: The SCC made many recommendations concerning individual instances of wrongdoing: further investigations, potential prosecutions, asset recovery, and other forms of direct consequence management.

Recommendations were also made concerning violations of statutory or professional standards, disciplinary offences, tax offences, delinquency of directors and so forth. The SCC also made adverse findings with respect to five members of the Executive at the time and certain observations about their suitability to hold these positions, and it recommended that law enforcement agencies investigate possible (criminal) violations.

President's response:

Criminal justice: In March 2025, the 'Integrated Task Force', led by the National Prosecuting Authority (NPA) with the collaboration of other law enforcement agencies, reported on 218 recommendations made by the SCC:

- 10 cases were finalised with an outcome of verdict, conviction, acquittal, withdrawal, or terminated investigation.
- 35 cases were enrolled, with trial in progress, or partially finalised.
- 111 cases were under active investigation with regular progress updates.
- Nine (9) cases were delayed but proceeding; investigation continuing despite delays from new enquiries or dependencies.
- 35 cases where progress stalled due to external dependencies such as extradition requests.
- 17 recommendations where no investigation has been initiated or authorised.

The Investigating Directorate Against Corruption (IDAC) is responsible for 125 cases, the Directorate for Priority Crime Investigation (DPCI) for 75, and the Asset Forfeiture Unit (AFU), the Special Investigating Unit (SIU) and the Independent Police Investigative Directorate (IPID) for the remaining 18. Several high-profile cases are reported as currently in progress, with trials scheduled for 2025-2026.

Asset recovery: There has been substantial progress in recovering the proceeds of state capture. As of March 2025, the total amount recovered by the SIU and the AFU was reported to be R10.9 billion, and assets currently under restraint or preservation orders total R10.6 billion. The South African Revenue Service (SARS) had acted against people named in the report and recovered R4.8 billion in unpaid taxes.

Members of the Executive: The President committed to undertaking a review of the positions of those members of his Executive implicated in wrongdoing in the report and to determine, on a case-by-case basis, in line with his discretion and obligation to observe the principle of legality and to act rationally, whether any action ought to be taken. President Ramaphosa reaffirmed in a Parliamentary reply in March 2024 that any action against members of his Executive will be informed by the outcomes of the processes undertaken by law enforcement. No further progress has been reported.

Other referrals: 11 recommendations concerning violations of statutory and professional standards were referred to various professional bodies, 15 recommendations concerning disciplinary offences, tax offences, delinquency of directors and other activities were referred to SARS, the South African Reserve Bank (SARB), the State Security Agency (SSA) and the boards of certain state-owned enterprises (SOEs), and three (3) recommendations concerning abuse or inaction by the South African Police Service (SAPS) were referred to the IPID. In addition, based on evidence

heard by the SCC, the Department of Public Enterprises has referred 71 director delinquency applications to the Companies and Intellectual Property Commission (CIPC) and has referred 54 former SOE directors to professional bodies for possible code of conduct breaches.

Passenger Rail Agency of South Africa (PRASA): The President decided not to act on the SCC's recommendation to establish a commission of inquiry into PRASA, pending the outcomes of ongoing investigations by the DPCI and the SIU.

Corporate accountability: The CIPC was directed to investigate the compliance of companies implicated in the SCC Report and other issues. The CIPC has concluded 10 assessments, while another eight (8) new referrals from the SIU are under assessment. In addition, National Treasury debarred Bain & Co. for 10 years, and similar action is reportedly being considered against other companies. Settlements with firms like SAP, ABB, and McKinsey have recovered significant amounts of money.

Analysis of government's progress: Investigations and prosecutions are ongoing, but the justice system is facing significant challenges related to capacity, independence and institutional architecture. The President has other mechanisms available to hold implicated members of the Executive accountable, such as those set out in provisions of the Constitution and the Executive Members' Ethics Act and Code. It is both inappropriate and unnecessary to await the outcome of protracted investigations and prosecutions. Monitoring and communicating effectively with the public about state capture-related cases are critical for building trust in government and democratic legitimacy.

Section 2: Systemic institutional/policy reforms

2.1. Law enforcement

Main problems identified by the SCC and its recommendations: The Commission found that state capture was facilitated by 'a deliberate effort to subvert and weaken law enforcement and intelligence agencies at the commanding levels so as to shield and sustain illicit activities, avoid accountability and to disempower opponents'. The SCC Report, however, made few recommendations concerning reforms to the criminal justice system (CJS), as the Commission had inadequate time to undertake a thorough investigation of issues that were 'not straightforward'.

Nevertheless, the evidence contained in the report shows clearly that these institutions need substantial reform, such as addressing law enforcement agencies' lack of independence. The evidence showed that the NPA, the DPCI, SAPS Crime Intelligence, and the IPID were politicised and compromised at the highest levels, contributing to the de-professionalisation of these institutions.

The Commission recommended that the President undertake 'a thorough reappraisal [and possibly an 'investigation'] of the structure of the NPA in order to understand the causes and the nature of its institutional weaknesses so that these can be addressed presumably by way of legislative reform'.

President's response: The President acknowledged the need to restore the CJS and committed to strengthening anti-corruption institutions in the following ways:

- Building the capacity of the NPA, *inter alia* by filling vacant posts, increasing the number of prosecutors and investigators in specialised roles, long-term training strategies, (re)building morale, leveraging private sector support, and increasing resourcing.
- Establishing the Investigating Directorate (ID), which investigates and prosecutes corruption and state capture matters, as a permanent entity within the NPA.
- Considering specialised courts and dedicated court rolls.
- Tracking disciplinary cases across government spheres and public enterprises.
- Considering further structural reforms to the NPA: 'a thorough reappraisal' of the NPA's structure would form part of NACAC's work 'to develop a proposal for the establishment of long-term anti-corruption institutional arrangements'.
- Introducing greater transparency and consultation in the process for selection and appointment of the National Director of Public Prosecutions (NDPP) through legislative amendments, drawing on the process adopted for the selection of the current NDPP.
- '[C]larify the Minister's "final responsibility" over the NPA … and [resolve] the NPA's financial and administrative independence'.

Analysis of government's progress:

A permanent IDAC: The establishment of the IDAC as a permanent unit with investigative powers within the NPA was an important step towards properly capacitating the NPA. It is now essential that this key piece of legislation is supported by adequate resources.

NDPP appointment process: There has been an extended delay by the government in effecting an amendment of the NPA Act to clarify the requirements for a 'transparent and open' (presumably competitive) and independent process for the selection of the NDPP. Government's undertaking has apparently changed to now afford the President the discretion to include a relatively informal practice in 'Guidelines' rather than the promised binding legislative amendment. The process for choosing the current NDPP's successor should be clearly communicated to the public as a matter of urgency. The NDPP is set to retire in 2026 when three deputy national public prosecutor posts will also become vacant.

Progress towards NPA independence: The government has not set out a timeframe within which the urgent reform of the NPA will be undertaken. It has long been recognised as deeply problematic that the NPA Act provides that the Minister exercises 'final responsibility' over the NPA and must approve its prosecution policy; that the Department of Justice and Constitutional Development (DoJ&CD) must 'in consultation with' the NDPP 'prepare the necessary estimate of revenue and expenditure of the prosecuting authority'; and that the Director-General of the DoJ&CD is responsible for managing the finances of the NPA.

The NPA's structural relationship with the DoJ&CD has other implications. For example, the Office for Witness Protection is administered by the NPA, but it reports to the DoJ&CD, with the NPA not having the authority needed to fully manage this Office. Ideally, such an office should be located in an institution that is structurally independent.

The NPA's 2023/24 Annual Report observed that '[o]perational and financial independence reinforces the rule of law and is crucial for bolstering public trust and confidence in the NPA. It is

also an important obligation under various international and regional treaty requirements and key judgements by South Africa's Constitutional Court. It's an imperative that the NPA has been championing for many years.' The NPA reported that it is 'working with the DoJ&CD to promote legislation that will entrench the NPA's operational and financial independence [and] give full effect to the President's response to the Zondo Commission's recommendations.'

Capacity and performance: The NPA's budget was 'substantially increased by 21.6% between 2021-2023', but cost containment measures will continue and filling vacant posts 'will depend on the new [budget] allocations.' The NPA reports crucial private sector partnerships, including with Business Against Crime for in-kind support that includes establishing a Specialised Digital Evidence Unit to enhance the IDAC's capacity to investigate complex state capture cases. While the NPA has 'significantly increased' its staff complement in the past five years, 'it experienced negative personnel growth during the last financial year due to limits on the allocated compensation budget'.

During its operations the SCC had more investigators with more experience than does the NPA currently. In May 2025, the IDAC had about 20 of its own investigators and borrowed others. The Directorate's under-capacitation (budget and skilled, experienced staff in numbers adequate to the task) remains a weakness (applicable to the entire NPA) that has contributed to the slow progress of state capture investigations and the absence to date of successful high-profile prosecutions. While the NDPP may appoint investigators as members of the IDAC, their remuneration and conditions of service are determined by the Minister of Justice. The IDAC thus struggles to be a competitive employer – losing skilled personnel to organisations that can pay higher salaries. Ideally, the NPA should, like the SIU, not be tied to DPSA-regulated salary scales.

This dependency on unduly slow-moving executive and legislative branches of the state exacerbates the pressures facing law enforcement agencies They are exemplified by the President's delay until 21 July 2025 to act on the NDPP's 2023 request to suspend South Gauteng Director of Public Prosecutions Andrew Chauke pending an inquiry into his fitness to hold office.

It is therefore necessary to monitor the extent to which the NPA and other law enforcement agencies generally comply with the STIRS criteria identified in the binding majority judgment of the Constitutional Court in the 'Glenister Two' decision. Although the ruling focused on an independent anti-corruption agency, it is suggested that these same criteria are also applicable to the NPA. Thus, they should be staffed by **S**pecialists who have **T**raining in anti-corruption expertise, enjoy structural and operational **I**ndependence, as well as adequate and guaranteed Resources and enjoy **S**ecurity of tenure in office, i.e., without fear of arbitrary dismissal (emphasis added).

The DoJ&CD stands out as having been especially slow to respond to the pressing needs for institutional and legislative reform. It has also failed to provide the NPA with appropriate practical operational support by facilitating unhindered access to the SCC database.

While reform of the NPA is important, it is concerning that no other law enforcement agencies are included in the government's reform agenda. The SAPS in particular — including the DPCI — should receive similar attention, particularly where appointment procedures are concerned. There has been no communication about a strategy for ensuring that these institutions are properly capacitated, for ensuring proper oversight, or for addressing internal corruption. It is to be hoped

that the inquiries by the Madlanga Commission of Inquiry and a parliamentary ad hoc committee into renewed allegations of politicisation, factionalism, and corruption in the CJS will now be an opportunity to address this gap in the reform strategy.

Government's slow response to NACAC's report in 2024 regarding a fit-for-purpose anti-corruption architecture, and failure to release it, have left unresolved issues of coordination regarding the allocation of cases between the NPA, the DPCI and the wider SAPS, as well as the SIU. While the National Priority Committee on Organised Crime (NPCOC) exists to coordinate this work, amongst other things, there is no higher-level strategic oversight of that structure.

There is also an urgent need (as with public procurement and personnel practices) for an integrated digital case management system. The Integrated Justice System, under development for over two decades, has not yet been established, which has major implications for efficiency and oversight of the CJS.

2.2. Anti-corruption architecture

Main problems identified by the SCC and its recommendations: The SCC Report included an extensive analysis of the flaws in the present procurement system, characterising it as a, if not the, key site of state capture, particularly the 'redirection' of state resources, and included many recommendations for reform. In the Commission's view, however, regulatory reform would not be adequate to confront the fundamental problem of undue political influence. The SCC's proposed solution was to establish a public procurement anti-corruption agency, fully independent of the Executive. The recommendations included detailed proposals for how such a body might be structured, staffed and resourced. It would include a council, inspectorate, litigation unit, tribunal and specialised court.

The SCC also proposed the establishment of a permanent commission of inquiry that would 'investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, and make findings and recommendations to the President'. This commission would have oversight over the Executive and have similar powers of compulsion to the SCC, and it would also be empowered to 'step in' if the chairperson determined that Parliament was failing in its oversight functions. The SCC Report did not detail why the existing architecture was inadequate, nor did it elaborate on the specific need for a permanent commission, except to argue that such a structure should play a role in relation to Parliament due to the legislature's failure to prevent state capture.

President's response: The President indicated that these recommendations needed further consideration in the context of processes already underway to review and redesign South Africa's anti-corruption architecture, including by NACAC and the DoJ&CD.

Analysis of Government's progress: The Presidency's 2025 Progress Report indicates that NACAC has concluded its extensive research and consultations into the institutional reform recommendations of the SCC, and has submitted its proposals on both institutions, which are 'currently' under consideration by the Executive.

The 2025 Progress Report further indicates that the President announced in his State of the Nation Address (SONA) on 6 February 2025 that the Minister of Justice would report on this in the then-

'current financial year', i.e. 2024/25 ending on 31 March 2025. The Minister of Justice has not reported on this matter, nor has NACAC's report been released to the public, although NACAC has indicated its wish for it to be released.

Contrary to the statement in the Presidency's 2025 Progress Report, the SONA does not mention 'this financial year', merely 'this year', neither does the SONA indicate to whom the Minister will report: the public or Cabinet. It is therefore possible that the Minister may yet report during the 2025 calendar year, although it is unclear to whom the report will be submitted/released. It is our understanding that the report may be awaiting tabling before Cabinet for discussion.

The Department's 2025/26 Annual Performance Plan (APP) was presented to the Justice Portfolio Committee on 17 June 2025. The APP includes an undertaking that the country's anti-corruption architecture will be reviewed and strengthened through the tabling in Parliament of several pieces of legislation during the current financial year. This undertaking bears close monitoring in view of the urgency of this reform.

NACAC has already shared its recommendations publicly on several occasions, including in December 2024 and May 2025. There is therefore no apparent reason for the government to treat the document as confidential. Indeed, continued secrecy is inconsistent with the multi-stakeholder nature of NACAC's composition and with the whole-of-society approach adopted by the NACS.

2.3. Money laundering and financial crime

Main problems identified by the SCC and its recommendations: The SCC revealed money laundering networks operating within South Africa and across borders. The SCC felt it was not best placed to issue comprehensive recommendations, but made some proposals for strengthening the anti-money laundering (AML) regime, including: the need for a 'co-ordinated and co-operative approach to targeting money laundering' from all relevant law enforcement agencies; the need for a statutory framework for the sharing of detailed AML information by banks; and the need to investigate the effectiveness of the current system of suspicious transaction and cash threshold reporting to the Financial Intelligence Centre (FIC).

President's response: The Presidency committed to strengthening the country's AML regime in response to both the SCC and adverse findings made by the Financial Action Task Force (FATF). The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, fully commenced by April 2023, introduced stricter regulations to detect, investigate, and prevent financial crimes. The Presidency has since reported that the country is on track to be removed from the FATF grey list by October 2025. Law enforcement agencies have been working together in a number of different cooperative fora. The FIC is also reportedly finalising an independent review of the reporting of state capture transactions.

Analysis of government's progress: Significant progress has been made to strengthen South Africa's AML regulatory environment and to realign with FATF standards. The creation of the Beneficial Ownership Register is an especially important step forward. However, a growing body of evidence suggests that the compliance- and risk-focused global regulatory regime has significant weaknesses, and therefore should be supplemented by other reforms, including transparency measures to empower non-governmental actors to access and monitor vital information.

2.4. Restoring the South African Revenue Service

Main problems identified by the SCC and its recommendations: The SCC found that SARS was targeted by state capture and endorsed the findings of the Nugent Commission of Inquiry of a 'massive failure of integrity and governance' and made detailed recommendations 'to rebuild SARS and reverse its capture'. The SCC recommended amending the SARS Act to provide for an open, transparent, and competitive process for appointing the SARS Commissioner, in addition to other recommendations concerning the conduct of Bain & Co. and the former Commissioner.

President's response: The President supported the recommendations and had committed to tabling the amendment by June 2023. In 2025, this is still pending, and the President reported that Cabinet approval for the proposed amendment would be sought in December 2025. SARS has reported good progress in implementing the recommendations made by both commissions and appears to be functioning well.

Analysis of government's progress: The evidence uncovered by both commissions clearly demonstrates the importance and urgency of appointment reform. It is unclear what progress has been made since 2022 and why the government has missed its promised deadline to introduce legislation in mid-2023 – a delay of over two years.

2.5. Procurement system reforms

Main problems identified by the SCC and its recommendations: The Commission identified public procurement as a primary site for state capture and corruption and made more recommendations concerning public procurement than for any other area of reform – some 25 proposals. These included the establishment of an independent public procurement anti-corruption agency; the development of a national charter against corruption in public procurement, including a code of conduct; legislation protecting accounting officers/authorities from criminal or civil liability for anything done in good faith; incentivising disclosures regarding procurement fraud and corruption by awarding the whistleblower a percentage of proceeds recovered (if the information was material in the obtaining of the award); the professionalisation of the procurement function in the state; greater transparency standards for public procurement consistent with the Organisation for Economic Co-operation and Development (OECD) principles; and lifestyle audits for officials and executive authorities. The SCC recommended multiple amendments to legislation or guidelines for the procurement process, including the better regulation of deviations from competitive bidding.

The Commission recommended a greater degree of centralisation in public procurement, and greater harmonisation in public procurement legislation. Further, the Commission noted that clarity was needed concerning the state's interpretations of the relationship between (and the relative weight given to) the Constitutional provisions guiding public procurement in section 217(1), that public procurement must be done in a manner that is, 'fair, equitable, transparent, competitive and cost-effective', and the provisions concerning the use of public procurement for transformation objectives in section 217(2).

President's response: The President deferred responding directly to the proposal for a procurement focused ant-corruption agency, referring to NACAC's role in providing proposals to the President on a model for future anti-corruption architecture, and a process of reviewing the

anti-corruption architecture being undertaken by the DoJ&CD. The President noted that the Public Procurement Bill would address many of the SCC's concerns.

Analysis of government's progress: The Public Procurement Bill has since been enacted, though regulations to bring the legislation into effect are still being developed. The Act responds to several of the SCC's recommendations, i.e. regarding legislation that supports transparency and greater civil society oversight of public procurement; professionalisation of the procurement function, including the formalisation of a code of conduct; and support for lifestyle audits. Further, the Act prohibits any person from trying to interfere with or influencing procurement and it establishes mechanisms for reporting and managing unlawful instructions. The Act strengthens procedures for debarment of suppliers who violate the procurement system. These are significant positive developments for procurement integrity.

The Office of the Chief Procurement Officer (OCPO) in the National Treasury will need to be substantially resourced and staffed to effectively pursue its expanded mandate, needing capacity especially in areas of policy and legal development, governance and compliance, strategic procurement support, and ICT systems. This should be monitored. In addition, government should move with urgency to establish an integrated electronic system and set of data standards for public procurement, which covers all organs of state, to support greater oversight of the system, and anti-corruption initiatives.

Government has not substantially responded to the Commission's recommendations regarding consideration of incentivised whistleblowing (instead including it in its 2023 'Discussion Document on Proposed Reforms for The Whistleblower Protection Regime'. See 2.7 below). However, international best practice sees the incorporation of such mechanisms into sector-specific legislation, not in general law for protected disclosures. The drafting process for the Public Procurement Act (PPA) did not engage with this.

It is not clear whether the PPA addresses the fragmentation in the public procurement regulatory framework. The Act defers important policy decisions, best embodied in statute law, in as yet unpublished regulations, and the Act is facing constitutional challenge (in part related to the relationship between sections 217(1) and (2) of the Constitution). The Act contains a clause obligating the state to undertake a review of the Act within two years of its promulgation, offering an opportunity to reflect on some of the issues raised above.

2.6. Intelligence services reforms

Main problems identified by the SCC and its recommendations: The SCC found that the security and intelligence services were politicised and compromised at the highest level so that those involved in the state capture project could proceed with their illicit activities with impunity. A weak regulatory framework was put in place to ensure that the SSA could be abused for political and personal gain.

The SCC made many recommendations concerning, inter alia, improving financial controls and accountability, empowering and capacitating the Inspector-General of Intelligence (IGI), improving oversight by the Auditor-General (AG) and the Joint Standing Committee on Intelligence (JSCI), preventing Executive involvement in recruitment and operations, de-politicising the intelligence services, addressing weaknesses in vetting, gun control, the creation of intelligence reports and

other areas, and endorsed the recommendations of the 2018 High-Level Review Panel. The SCC also heard evidence about similar abuses occurring in the SAPS Crime Intelligence Division and noted that many of its recommendations on intelligence could also apply to it.

President's response: The President supported these recommendations. The General Intelligence Laws Amendment Act (GILAA) was enacted in March 2025. It fulfils the President's commitment to disestablish the SSA and establish two separate entities responsible for foreign and domestic intelligence, respectively, and contains a number of provisions to improve oversight and address the concerns of the SCC and High-Level Review Panel. The Act has not yet commenced, and the restructuring is still in progress; the SSA is still in operation as a single intelligence agency. The President has reported that the SCC has implemented many of the recommendations concerning various controls and internal processes. The President's response did not refer to Crime Intelligence, and it has remained unaddressed in all progress updates.

Analysis of government's progress: The disestablishment of the SSA is long overdue, and the GILAA does contain provisions strengthening oversight and preventing Executive interference. However, critical weaknesses in the legislative and regulatory framework remain. Some provisions in the Act are overly broad and could enable abuse, and civil society has raised important concerns about the powers and reach of intelligence agencies. Concerns remain that the AG, the JSCI, and the IGI are unable to adequately oversee expenditure from the SSA's secret service account. Weaknesses also persist in the powers, structure, and capacity of the IGI. While some former officials are facing charges, many implicated by the State Security Council (SSC) remain embedded in the SSA, and none of the key figures responsible for weaponising the organisation have been held accountable for their actions. The lack of engagement with the SCC's evidence and findings related to the Crime Intelligence unit is also a cause for serious concern.

2.7. Whistleblower protection measures

Main problems identified by the SCC and its recommendations: The SCC emphasised the critical role of whistleblowers in exposing corruption, and it recommended strengthening legal protections for those who disclose wrongdoing. The SCC recommended: (1) legislation to ensure that whistleblowers are accorded the protections stipulated in the UN Convention Against Corruption; (2) legislation to allow whistleblowers to be offered immunity in certain cases; and (3) incentivising whistleblowers by awarding them a fixed percentage of monies recovered if the information disclosed by the whistleblower has been material to the recovery of funds.

President's response: The President acknowledged the importance and urgency of whistleblower protection reform and reported that the DoJ&CD had commenced a review of the relevant legislation. In June 2023, the DoJ&CD published a 'Discussion Document on Proposed Reforms for The Whistleblower Protection Regime in South Africa' for public comment. This document recommended several legislative measures to strengthen whistleblower protection. In the 2025 SONA, President Ramaphosa announced the government's commitment to 'finalise the whistleblower protection framework and introduce the Whistleblower Protections Bill in Parliament during this financial year.'

Analysis of government's progress: The draft bill is still to be published for public comment, so it is unclear whether its provisions will adequately strengthen the whistleblower protection regime. The extended delay in finalising this vital legislation is a matter for profound concern. No reasons

have been put forward for the failure to finalise these reforms to date, and any draft bill still has to undergo lengthy public consultation and legislative processes. Reform of the whistleblower protection regime has been a consistent demand from civil society organisations (CSOs) and has been highlighted by the NACAC as a top priority.

2.8. Professionalisation of the public administration

Main problems identified by the SCC and its recommendations: The SCC found that the ability to 'strategically position' political associates in key posts within the public administration was the 'essential mechanism' of state capture. While the SCC did not provide specific recommendations on personnel practices regarding the public service and municipalities, it noted that it is unlawful to introduce political criteria into appointment and removal decisions in the public administration.

President's response: The President positioned the 'National Framework towards the Professionalisation of the Public Sector' (adopted in 2022) as an important instrument to address the Commission's concerns. Amongst other interventions, the President noted that the Framework considers 'an enhanced role for the Public Service Commission (PSC), working with a new Head of Public Administration, in the appointment of top officials'. The PSC's role to enhance checks and balances will 'be confined to managing appointment processes to the point of recommendation, preserving the executive's prerogative as appointing authority'. Reforms would thus be instituted which 'give effect' to key recommendations in Chapter 13 of the National Development Plan (NDP) on 'Building a Capable State' to limit the role of Ministers in appointing and dismissing accounting officers, and further amendments to legislation would resolve the conflicting provisions in the Public Service Act and the Public Finance Management Act (PFMA) concerning the respective roles of accounting officers and executive authorities. Amendments would also be made to the Guide for Members of the Executive, and a code of conduct for special advisers would be developed. Such reforms would ensure a clearer regulation of the respective roles of politicians and administrators.

Analysis of government's progress: Public Administration: The Public Service Amendment Bill, currently before the National Council of Provinces (NCOP), more clearly delineates the powers and responsibilities of executive authorities and Heads of Departments (HoDs). It transfers operational and administrative authority – such as appointments, performance management, and discipline – from Ministers and Members of the Executive Council (MECs) to HoDs. These amendments will reinforce the authority needed by HoDs as accounting officers to exercise their financial management responsibilities in terms of the PFMA and the Municipal Finance Management Act (MFMA). Further, the Bill prohibits HoDs or any person reporting directly to them, holding political office in a political party. It is thus important that the Bill is passed as a much-needed step in the journey towards a depoliticised public service. However, while the Bill officially establishes a 'Head of the Presidency', it does not provide for this office to play a role in supporting appointment processes for HoDs, or in the management of HoDs' career incidents.

The Public Service Commission Bill, also before the NCOP, is a positive development in the professionalisation of the public administration, in that it strengthens the independence of the PSC, and extends oversight of the PSC to the local government sphere. No mention is made, however, of a role for the PSC in safeguarding senior appointment processes in the public service. Further reforms are also needed to depoliticise the public administration in *local government.*

The legislation currently under deliberation in Parliament thus represents a partial or incomplete implementation of the promised reforms aimed at depoliticising the public administration. Given that such reform strikes at the heart of the patronage system, we suggest that there is room for government to experiment with a gradual, but progressive implementation of such reforms to reduce potential political pushback but enable further movement in the professionalisation agenda.

A Code of Conduct for Special Advisers has been drafted, and under the Professionalisation Framework, officials, politicians, and their advisors, will need to undertake mandatory induction programmes. According to reporting by the Department of Public Service and Administration (DPSA), there appears to be progress in the implementation of lifestyle audits. Amendments to the Public Administration Management Act (PAMA) (also in Parliament) strengthen prohibitions on state employees conducting business with the state – a positive development, as are the draft regulations for a central register of disciplinary cases for state employees. These latter two initiatives do not, however, cover all organs of state. These should be gradually extended.

It is vital that integrated digital infrastructures and data collection standards are developed for the whole of the public administration (including in local government and public entities) to support enhanced oversight of personnel practices by the policy holders and Parliament. Further, it will be important to ensure that the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PA-EID-TAU) in the DPSA has the necessary resources and legal authority to effectively implement its mandate.

Analysis of government's progress: Executive accountability measures: The focus here is on what the Professionalisation Framework refers to as 'professionalism' – 'practices, conduct, values and behaviour that a person exhibits regardless of training, qualifications and levels of responsibility'.

The commencement of lifestyle audits for members of the Executive constitutes welcome progress. However, it is unclear from the Presidency's Progress Report whether the scope of these audits includes members of the national and provincial executives, whether a timeline has been set for their completion, whether the outcomes will be communicated to the public, and whether these audits will be undertaken more than once. It may be necessary for provisions concerning lifestyle audits to be accorded the force of law by inclusion in the Executive Members' Ethics Act and Code.

It is noted that the current Members of the Executive were inducted in a manner that 'clarified the delineation between strategic oversight by executive authorities and the administrative responsibilities of accounting officers'. No date has been given for finalisation of the updated Guide, but it is suggested that it should not be delayed much beyond the adoption of the Public Service Amendment Bill currently before Parliament. It may be instructive to assess the extent to which the contents of the Guide differ from the guidance published by the PSC in May 2024.

Reforms such as inductions and updates to guidance provide little counterweight to a far broader problem of a political system that enables patronage. It is more important for the country to see progress on the big reforms being implemented and beginning to have impact, such as criminal prosecutions for corruption, and reforms to the Public Service Act that ensure that politicians (executive authorities) are clearly removed from any possible involvement in operational and procurement matters of departments and SOEs, etc.

2.9. Strengthening the audit system

Main problems identified by the SCC and its recommendations: The SCC highlighted concerns related to the auditing of public entities by private firms and recommended that the AG office be further capacitated to audit all public entities, or that private firms should only be appointed to audit SOEs if they can demonstrate that they have the requisite skills and understanding of their unique obligations. The SCC supported the 2018 amendments to the Public Audit Act that strengthen the ability of the AG to enforce remedial action. The SCC warned that the term 'irregular expenditure' should be used with care and specificity to avoid losing its utility as a remedial tool.

President's response: The President reported that the National Treasury had partnered with academia on a research project to enhance the oversight function and value of public sector audit committees, which was completed in 2022. In 2025, the Presidency reported that these findings would inform legislative reforms during the review of the PFMA/MFMA. It was also reported that the National Treasury and the AG had reviewed the concept of irregular expenditure to shift focus toward identifying corrupt, suspicious, or bad faith expenditure. These definitions were incorporated into draft amendments of the PFMA and MFMA, which have not yet been made public.

The AG developed a response plan and reported in December 2024 that it had completed 'much of the work' regarding the SCC recommendations on strengthening the audit system, which would be finalised and institutionalised during the next strategic period.

Analysis of government's progress: The implementation of changes to the Public Audit Act concerning material irregularities is a positive development, with the AG reporting a noticeable impact on public sector accountability resulting from these enhanced powers. Anticipated amendments to the PFMA and MFMA should be monitored, given their potential significance with regard to the definition and application of the concept of irregular expenditure.

2.10. State-owned enterprises

Main problems identified by the SCC and its recommendations: A substantial portion of the Commission's work was dedicated to corruption within SOEs, as they were the primary targets of state capture. The SCC identified improper appointments and dismissals as the key mechanism of capture in SOEs, raising concerns regarding the lack of transparency of these processes, and the unchecked power of ministers to make critical appointments to SOEs. The SCC provides a proposal for a 'Standing Appointment and Oversight Committee', comprising independent persons, to make recommendations on appointments to the boards and senior posts of SOEs.

President's response: The President noted that the principles of the SCC's recommendations would 'guide government's reform of board appointment processes to ensure greater transparency, scrutiny and checks and balances in the appointment of SOE board members.' The 2022 response noted, *inter alia*, government's development of a new shareholder ownership model for SOEs, which would be accompanied by enhanced governance frameworks and appointment processes. Provision would be made in the final 'Guide for the Appointment of Persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions' for independent panels of relevant stakeholders and experts to play a role in nominating candidates to the relevant minister.

Analysis of government's progress: Government has positioned the National State Enterprises Bill as the significant instrument to address governance challenges in SOEs (the Bill establishes a shareholding company into which the large SOEs will be transferred). The extent to which the Bill will in fact address the challenges is unclear, and it may be some time before the Bill comes into effect. Clarification and finalisation should be pursued with urgency.

The Bill in its current version before the National Assembly includes some robust provisions regarding the appointment of the first board of the holding company and new clauses regarding transparency on director removals. However, the Bill does not specify how the boards and executives of SOEs subsidiary to the holding company will be appointed. Under the current wording of the Bill, once SOEs are transferred to the holding company, the PFMA would no longer apply, nor the PPA once it is in force. This is worrying in view of the SCC's concerns regarding the need for greater harmonisation of legislation for public procurement. In July 2025, the National Treasury reported to Parliament that the Treasury and the Department of Planning, Monitoring and Evaluation (DPME) have 'agreed that a hybrid application of the PFMA and the Companies Act should be considered, as a proposed amendment to the [National State Enterprises] Bill'.

The Bill caters for the large public entities (some 13 entities), and not for the thousands of other entities at national, provincial and local government level. It is not clear how and when governance challenges for these entities will be addressed, but the extensive evidence in the SCC Report demonstrates the urgent need for far-reaching reform.

2.11. New criminal offences

Main problems identified by the SCC and its recommendations: The SCC recommended that the government consider creating a 'statutory offence rendering it a criminal offence for any person vested with public power to abuse public power vested in that person by intentionally using that power otherwise than in good faith for a proper purpose'. The SCC was concerned about 'the extent to which certain public representatives failed to exercise their power, and the resultant massive losses to the fiscus and the suffering caused to vulnerable members of the public.' The SCC also recommended that Prevention and Combatting of Corrupt Activities Act (PRECCA) be amended to introduce a provision criminalising the failure of persons or entities to prevent bribery (see 2.12 below).

President's response: The Presidency directed the DoJ&CD to research possible legislative provisions and their parameters and implications. The South African Law Reform Commission (SALRC) researched this topic, and their recommendations are under discussion and evaluation in the DoJ&CD. This is expected to produce a draft bill by November 2025.

Analysis of government's progress: As the SALRC's research and recommendations are not publicly available, we cannot comment on the substance of any new provisions. In any event, the benefit of a new offence depends on the ability of law enforcement agencies to detect and prosecute that offence.

2.12. Private sector accountability

Main problems identified by the SCC and its recommendations: The SCC exposed the central role played by private sector actors in corruption and state capture, through both direct involvement in corrupt deals and as 'professional enablers'. To enhance accountability, the SCC recommended: (1) amending of the Companies Act to permit applications for a director to be declared delinquent to be brought after two years; (2) amending PRECCA to criminalise the failure of persons or entities to prevent bribery; (3) introducing legislation for Deferred Prosecution Agreements (DPAs) to tackle economic crimes; and (4) amending the Political Party Funding Act (PPFA) (see 2.13 below).

President's response: The President supported amending the Companies Act and PRECCA, and both have been duly amended and enacted. The question of DPAs was referred to the SALRC as part of its review of the criminal justice system. SALRC has finalised a discussion paper on 'non-trial resolution' (NTR) mechanisms, including DPAs, which was released to the public in February 2025.

Analysis of government's progress: The President's commitments to amend the two pieces of legislation have been met, but official guidance/policy on how the new provision in PRECCA is to be applied in practice needs to be developed and adopted. The SALRC review on NTRs should be finalised without delay, and the development of an NTR framework should be a priority. Strong enforcement will be required to hold corporate actors accountable, and to ensure that NTRs and the new PRECCA provisions work effectively as intended, without allowing the wealthy to buy their way out of accountability. Neither the SCC nor the President addressed the broader systemic problems exposed by the Commission's body of evidence in how private firms do business with the state. The government should consider regulatory reforms in this regard, especially concerning professional enablers and corporate transparency.

2.13. Amendment to the Political Party Funding Act

Main problems identified by the SCC and its recommendations: The SCC identified a link between the corrupt manipulation of tenders and political party financing, which could be 'an existential threat to our democracy'. The SCC recommended that the PPFA be amended to criminalise donations to political parties in the expectation of tenders or contracts as a reward.

President's response: The President supported the recommendation, and the Political Funding Act has been amended to make it an offence – punishable by a fine, imprisonment, or both – where donations are made to political parties or candidates with the 'expectation' that they will 'influence' the awarding of tenders, licenses, approvals, or other government decisions.

Analysis of government's progress: The impact of this new offence will depend on effective enforcement. Recent attempts to increase reporting thresholds will significantly weaken the PFA's effectiveness as a tool for transparency and accountability in political financing, making it difficult to enforce the new provision. Given the dangerous role of political finance as highlighted by the SCC, this is a serious concern and further attempts to compromise the scope and efficacy of the PFA should be opposed.

2.14 Parliamentary oversight

Main problems identified by the SCC and its recommendations: The SCC found that Parliament had failed to fulfil its oversight mandate due to the lack of political will from the (then) majority party. The report found that Parliament's oversight powers and the tools available to it were generally sufficient, but that these were not used effectively. The report made specific recommendations on improving oversight, including reforms to mitigate the negative impact of the political environment.

President's response: The President limited his commitments to recommendations concerning the interface between Parliament and the Executive, acknowledging the need to determine whether the existing processes of reporting and accountability through the Leader of Government Business are 'sufficient and appropriate'. The 2025 Progress Report noted that engagements on these issues have taken place. Parliament developed its own response and implementation plan. It has adopted some of the SCC recommendations but decided against adopting many others, finding that it has sufficient powers and further intervention was unnecessary.

Analysis of government's progress: With no knowledge of the content of those engagements and any consequent decisions, it is impossible to determine whether the substantive questions raised about the legislative/Executive interface have been addressed. There have been some positive changes in Parliament; for example, the decision to proceed with a committee to oversee the Presidency is an important step forward, and it should be finalised with urgency.

The composition of Parliament and the Executive have both changed significantly since the last election, resulting in new dynamics and practices arising within the institution. Close attention should be paid to how multi-party and coalition politics will change Parliament's oversight practices and the effectiveness of its oversight function.

2.15 Electoral system reform

Main problems identified by the SCC and its recommendations: The Commission mooted the adoption of a 'constituency-based (but still proportionally representative) electoral system', and suggested consideration of constitutional amendments which would see the President of the country directly elected by citizens.

President's response: The President's 2022 response noted that these recommendations would require an extensive process of society-wide consultation and deliberation that would need to be debated by Parliament. At the time, the President had noted the Electoral Laws Amendment Bill was before Parliament and argued that this process should conclude before further commitments could be made.

Analysis of government's progress: Regarding the proposal to directly elect the country's President, the Commission's reasoning was insubstantial, and while there are arguments for and against such a significant change, the state has not responded to this proposal, nor does it appear to be an issue taken up in any notable way by civil society.

Regarding electoral reform, the Electoral Amendment Act of 2023 allows independent candidates to contest national and provincial elections; an amendment that was implemented just in time for

the 2024 national elections. However, the Act does not provide for such candidates to do so on nearly an equal footing as members of political parties. This limitation has been highlighted by recent civil society submissions to the Electoral Reform Consultation Panel, whose report on electoral reform is due by the end of August 2025.

Electoral reform is a very complex issue, with potentially profound impacts for the character of South Africa's democracy. Reforms should therefore proceed slowly and carefully. This is because of the high stakes of such change, the necessity of political consensus-building for that reform (and strong, long-running citizen education campaigns), and the need for major investment in electoral institutions, such as the Independent Electoral Commission (IEC).

Full Report

Introduction

National Anti-Corruption Advisory Council (NACAC) Terms of Reference

The National Anti-Corruption Advisory Council (NACAC) developed Terms of Reference (ToRs) requiring an independent assessment of government's progress in implementing the recommendations of the State Capture Commission (SCC), also known as the Zondo Commission, with particular reference to the 'implementation by government institutions of the President's 60 actions in response to the recommendations' and to develop 'a robust assessment framework to critically assess' such implementation.

Research team

The Public Affairs Research Institute (PARI) was approached by the NACAC secretariat to undertake an independent assessment of progress in implementing the SCC recommendations. A team of experts was convened to undertake the research that forms the basis for this assessment.

Core team members:

- Dr Sarah Meny-Gibert (PARI, Senior Researcher and Programme Lead: State Reform).
- Ms Devi Pillay (PARI Research Associate).
- Adv. Gary Pienaar (HSRC Research Associate).

We acknowledge with appreciation research assistance from the following subject experts (although any errors remain our own):

- Prof. Jonathan Klaaren (PARI Research Associate).
- Mr Ryan Brunette (PARI Research Associate).
- Mr Gareth Newham (Institute for Security Studies, Head: Justice and Violence Prevention Programme)

Background

NACAC Mandate

According to the NACAC ToRs, 'the primary purpose of the NACAC is to be an advisory body which will monitor the implementation of the National Anti-Corruption Strategy (NACS 2020-2023).[1]

In their Presidential appointment letters, NACAC councillors were also instructed to advise key role-players on the overarching thrust of the Strategy; advise on strengthening of South Africa's

[1] NACAC advisory note to the President regarding the implementation of the Zondo Commission's recommendations, 19 October 2022, para. 2.2.

anti-corruption architecture; host the national anti-corruption summit(s); and advise on the implementation of the recommendations of the SCC, from a 'strategic and systemic perspective' (emphasis added).[2]

This report aims to assist NACAC with the last of these functions, i.e., to advise on Government's implementation of the SCC recommendations.

NACAC Advisory Note

In accordance with this presidential mandate and stipulated priority functions, NACAC dedicated its first advisory note to the President (NACAC, 19 October 2022) to his planned response to the SCC's recommendations. 'Given the urgency of advising on the implementation of the [SCC] recommendations',[3] the aim of the note was to make 'specific proposals that could be considered by the President when tabling his implementation plan in Parliament in relation to the recommendations'.[4]

NACAC's note highlighted that the 'strategic nature of the findings and recommendations of the Zondo Commission lie in the fact that the phenomenon of state capture, fraud and corruption has been well-diagnosed and published for all to know'.[5] In accordance with NACAC's mandate to adopt a 'strategic and systemic' approach, its advisory note, while recognising the necessarily limited scope of the SCC's mandate and resulting recommendations, focused primarily on state-owned enterprises (SOEs), nevertheless also acknowledged that 'the Zondo Commission is viewed as presenting [a] significant body of evidence that points to the fact that corruption is endemic in our country and extraordinary measures must be put in place to combat and prevent the spread and recurrence of this scourge'.[6]

The advisory note recalled that the NACS was adopted by the Cabinet in 2020 while the investigations by the Zondo Commission were still in progress. 'The six strategic pillars of the NACS cover various domains of work that should be taken forward in a whole-of-government and [whole-of-]society fashion. Additionally, the NACS acknowledged the recommendations of the previous judicial commissions of inquiry and court rulings that must be taken into consideration in the fight against corruption' (emphasis added).[7]

The advisory note thus highlighted that –

> 'The NACS is the centrepiece guide regarding South Africa's fight against corruption in a systemic and strategic manner across all spheres of government and sectors of society. The findings and recommendations of the Zondo Commission report are viewed from the integrated perspective of the vision, values, objectives and strategic pillars of the NACS to have implications beyond the mentioned individuals and institutions. As a form of grand corruption, state capture must be prevented and combated across the board using the NACS strategic pillars e.g. rebuilding the capacity of law-enforcement agencies to act without fear, favour or prejudice' (emphasis added).[8]

[2] Ibid. para. 2.3.
[3] Ibid. para. 2.5.
[4] Ibid. para. 1.
[5] Ibid. para. 4.1.
[6] Ibid.
[7] Ibid.
[8] Ibid. para. 4.1(b).

With this foundational perspective in mind, the advisory note then identified certain priority issues for the President's attention and inclusion in his response to the SCC recommendations.

It bears noting that the advisory note was possibly too late to influence preparation of the President's initial response, which was tabled in Parliament and published in the same month of October 2022. Nevertheless, subsequent progress reports from the Presidency have not reflected any acknowledgment of NACAC's recommended prioritisation of reform actions.

The priorities and proposed related actions identified in the advisory note were as follows[9] –

1. Whistleblower protection.
2. Principles to guide appointments.
3. Transparent public procurement.
4. Balancing the response to cover both private and public sectors.
5. Resourcing of law enforcement agencies.
6. Culture change towards adherence to constitutional values and ethical leadership.

Assessment methodology

These priorities have informed this assessment's analysis of the President's initial response and subsequent updates on implementation action, specifically from NACAC's 'strategic and systemic' perspective. The assessment has been undertaken mindful of the NACS six pillars:

1. Promote and encourage active citizenry, whistleblowing, integrity and transparency in all spheres of society.
2. Advance the professionalisation of employees to optimise their contribution to create corruption-free workplaces.
3. Enhance governance, oversight and consequence management in organisations.
4. Improve the integrity and credibility of the public procurement system.
5. Strengthen the resourcing, coordination, transnational cooperation, performance, accountability and independence of dedicated anti-corruption agencies.
6. Protect vulnerable sectors that are most prone to corruption and unethical practices with effective risk management.

In each (thematic) section of the report, the research team has outlined the primary findings and recommendations of the Commission, which provide a basis against which to make an evaluative judgement about progress in addressing state capture. This approach does not assume that all the SCC's recommendations should be implemented, and we are mindful of the brief to *assess progress in implementing the President's 60 commitments* in responding to the SCC. Further, in some areas, the President's 2022 response actively engaged with the SCC's proposals to argue against the adoption of some proposals. We include information on the original findings and recommendations of the Commission to remind us of the systemic and structural issues raised by the Commission in responding to state capture (i.e. with relevance for NACAC's mandate).

This is followed by a summary of the specific commitments made by the President in his 2022 response (tabled in Parliament) and against which the Presidency has provided detailed reporting

[9] The advisory note did not explicitly indicate a priority hierarchy among these six priorities.

(in 2023, and in 2025 – further details provided below). These two reports provide a good deal of information for tracking progress on implementation. In the final part of each thematic section, we have provided an analysis of progress, i.e. against the President's 2022 commitments, and mindful of the systemic and structural issues to be addressed. Where possible, we independently verified some of the progress reported (especially regarding the extent to which legislative amendments have responded to the big issues). Verification relied on the researchers' own knowledge of the sectors, supplemented by engagement with departmental reports and reporting to Parliament, and occasional reference to external publications (research publications, media statements and reports, submissions or public comments from civil society or other stakeholders).

President's Response to the SCC Recommendations

The President's Response of October 2022

The President's response to the SCC's Recommendations was published in October 2022: '*Response by President Cyril Ramaphosa to the Recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud'*.[10]

The Executive Summary outlined the response as follows:

> '2.1.4 The greatest number of recommendations are directed to the law enforcement agencies for investigation and possible prosecution. While these agencies are within the Executive arm of the state, they are constitutionally and legislatively mandated to exercise their responsibilities independently.
> 2.1.5 This report focuses on the recommendations that are directed to the Executive and those that affect its work.'[11]

The Preface to The President's response noted that:

> 'While the Commission's recommendations focus on the institutional and legislative mechanisms to tackle corruption, it is critical that we give equal attention to the responsibility of individuals – wherever they are – to act ethically and honestly. We need to ensure that we have people of integrity in the Executive, the public service and all other state organs who will execute their functions in service of the people of South Africa on an ethical basis and in accordance with the values of our Constitution.'[12]

Accordingly, the President's response was structured according to three primary focus areas:

1. Dealing with the perpetrators of state capture.
2. Reforms to prevent future occurrence of state capture.
3. Broader systemic reforms arising from the work of the commission.

[10] The President, 'Response by President Cyril Ramaphosa to the Recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud', October 2022, published by the Presidency, https://www.gov.za/documents/other/response-president-cyril-ramaphosa-recommendations-judicial-commission-inquiry (accessed: July 2025).

[11] The President (2022: 4).

[12] The President (2022: 3).

These three focus areas and their contents have guided the structure of this assessment.

The President's response reported that the Presidency had 'established a centralised Programme Management Office (PMO) to coordinate the efforts of the institutions that are responsible for executing the response plan, SCC Steering Committee and Cabinet. The SCC Steering Committee will report to Cabinet on a quarterly basis, which will inform regular updates to the country by the President'.[13]

Progress reporting by the Presidency

The PMO has developed public tracking reports in 2023 and 2025, the latest of which was presented to Parliament during July 2025.

The first update was published by the Presidency in November 2023, entitled '*The Tide is Turning: Progress Report on Implementation of President Ramaphosa's Response to the Judicial State Capture Commission'*. The update followed the same structure as the 2022 'Response' and included (as Annexure A) a 'High-Level Progress Table' that listed 60 actions (or commitments) and progress made as either 'In progress' or 'Completed', including their previous and current status (Presidency, 2023: 20-21). It also included a tabulated section 'Detailed Progress Against Actions'.[14]

A second progress report in 2025 followed a similar format.

A 'strategic and systemic' perspective on the SCC Report

The exhaustive and far-reaching focus of the SCC means that its reports provide a fairly comprehensive account of state capture and the patterns of corrupt activity that took place within various state institutions. The SCC made a serious effort to track and explain the social and political context of the state capture phenomenon, as well as the mechanisms that have enabled systemic corruption.

Despite this enormous amount of work, it is apparent that the Commission could not hope to fulfil the onerous mandate given to it. As Chief Justice Zondo wrote in the first volume of the report, the ToRs "required the Commission to investigate allegations of corruption and fraud in every municipality, every provincial government department, every national government department and in every state-owned entity or organs of state. Such an investigation would take more than ten years." The Commission was also under-resourced, especially in light of the mammoth task with which it was charged. As a result, the report of the SCC is – understandably – uneven. The attention paid to different facets of state capture was sometimes inconsistent and certain areas were under-served. Not all the Commission's critical observations and findings led to specific recommendations, but government still needs to engage with this broader body of evidence if it is to meaningfully tackle corruption and state capture.

[13] The President (2022:11-12).

[14] These updates were also uploaded onto a new government website 'State of the Nation' available at: https://www.stateofthenation.gov.za/state-capture-commission-recommendations/actions-on-recommendations

It is therefore essential that the Commission's report be considered holistically, especially in terms of its findings on the systematic and structural weaknesses in the state that enabled and facilitated state capture. The recommendations contained in the report should not prevent government from exploring other ways of strengthening the state and the legal framework.

The President's response endeavoured to focus simultaneously on dealing with the perpetrators of state capture and on the measures to prevent a recurrence. However, despite the recognition of the need for coordination and prioritisation, it failed to recognise what has since become clearer – that state capture is not over but that it has merely changed its form, and in some cases is continuing as usual. In addition, the President's response failed to give due attention to all those areas that the SCC identified as needing attention but which it had not been able to fully investigate.

As a result, the response plan did not give adequate attention to the range of necessary preconditions for effectively pursuing the individual perpetrators of state capture. While systemic reforms are included in the plan, they are not presented within a framework that indicates a thorough understanding of cause and effect, of dependencies and priorities. As a result, institutions that were weakened by state capture and were denuded of adequate capacity have not been timeously reformed and rebuilt in order to enable them to effectively both pursue the identified perpetrators of state capture and prevent the continued operation of the types of networks that redirected and extracted public resources. One result of these continued institutional and systemic weaknesses has been the persistence of equally organised systems to extract state resources, as well as the deepening of corrupt networks, in many instances taking on the form of organised crime.

Section 1: Individual accountability

Section 1 covers recommendations made by the SCC concerning individual instances of wrongdoing: further investigations, prosecutions, asset recovery, and other forms of direct consequence management. As the ToRs for this assessment require a systemic/strategic analysis, this assessment does not reflect on how individual cases have been managed but focuses on whether systemic weaknesses in these various forms of accountability have been revealed.

1.1 Criminal investigations and prosecutions

Main problems identified by the SCC and its recommendations

The Commission made 218 recommendations with respect to criminal and other investigations (and possible prosecutions where relevant) of individuals, entities and named groups of people, as well as asset recovery.[15] The recommendations were directed to law enforcement agencies, in particular, the South African Police Service (SAPS), its Directorate for Priority Crime Investigation (DPCI), the National Prosecuting Authority (NPA) and its Investigating Directorate (ID). In a few cases, the Report recommended that the President 'take steps to ensure, through the relevant members of the Executive that… the NDPP [National Director of Public Prosecutions] immediately appoints a team to oversee the investigations and the prosecutions of those suspected of committing criminal offences in respect of wrongdoing'.[16]

Nature of the President's response

According to the Presidency's 2022 response plan, the ID had enrolled 26 cases and declared 89 investigations, and 165 accused persons had appeared in court for alleged state capture-related offences.[17]

The NPA created a dedicated task force in January 2022.[18] The Task Force originally comprised internal NPA units, the ID, the Asset Forfeiture Unit (AFU), the Specialised Commercial Crime Unit (SCCU), the Tax Unit and others. The DPCI joined the Task Force and '[r]esources have been pooled between the NPA and DPCI and a well-coordinated approach to prosecution-guided investigations has been implemented. The NPA has also established an advisory panel of experienced prosecutors and investigators from the DPCI to provide advice to investigators and prosecutors dealing with complex corruption cases addressed by the ID, SCCU or the Task Force.'

The Presidency's initial response in 2022 indicated that, in addition to the people and companies named in the Commission's report, analysis by the Financial Intelligence Centre (FIC) had 'identified an additional 595 individuals and 1,044 entities that may be implicated in the flow of funds from state capture. Relevant information has been compiled into reports to various law enforcement agencies, other bodies like the State Security Agency (SSA), the South African Reserve Bank (SARB), the Public Protector South Africa (PPSA), the Independent Police

[15] The President (2022: 22).
[16] The President (2022: 22).
[17] The President (2022: 22).
[18] The President (2022: 32).

Investigative Directorate (IPID) and the Financial Sector Conduct Authority, and a number of law enforcement agencies in other countries.'[19]

Progress reported

By March 2025, the 'Integrated Task Force', led by the NPA, and established to coordinate the implementation of the Commission's recommendations for criminal investigation, prosecution, and asset recovery, was reporting on 218 recommendations spanning the multiple focus areas identified by the Commission.[20] These matters involve Bosasa, Transnet, SAA and Associated Companies, SABC, Waterkloof Landing and the Passenger Rail Agency of South Africa (PRASA), Eskom, the 'Flow of Public Funds', SSA and Crime Intelligence, Free State Asbestos Project, Alexkor, Vrede Dairy/Estina, Gupta Bank Accounts, Denel, EOH, the South African Revenue Service (SARS), etc. Of the 2018 cases:

- 10 cases were finalised with an outcome of verdict, conviction, acquittal, withdrawal, or terminated investigation.
- 35 cases were enrolled, with trial in progress, or partially finalised.
- 111 cases were under active investigation with regular progress updates.
- Nine (9) cases were delayed but proceeding; investigation continuing despite delays from new enquiries or dependencies.
- 35 cases where progress stalled due to external dependencies such as extradition requests, including the Gupta brothers.
- 17 recommendations where no investigation has been initiated or authorised.

The Investigating Directorate Against Corruption (IDAC) is responsible for 125 cases, the DPCI for 75, and the AFU, the Special Investigating Unit (SIU) and the IPID for the remaining 18.

Several high-profile cases are reported as currently in progress, with trials scheduled for 2025-2026, including cases related to Bosasa, Transnet, the Free State, and SA Express.[21] Four state capture-related cases have concluded with guilty verdicts (the Free State housing project, a case concerning witness identity disclosure, one SSA fraud case, and one PRASA fraud case).[22]

Analysis

While this document is largely concerned with strategic and systemic reforms, the importance of individual accountability cannot be understated. The President's response emphasises the importance of effective individual accountability and its systemic effect:

> 'Holding individuals and companies responsible for past conduct reduces future risks of violations by signalling that those who break the law are not immune from being held to account. Equally important, failing to hold to account officials and the executive authorities

[19] The President (2022: 24).

[20] The Presidency, 'Progress Report on Implementation of Actions in the President's Response to the Recommendations of the State Capture Commission as at the end of Quarter 2024/5', July 2025, published by the Presidency, p. 3. https://www.thepresidency.gov.za/sites/default/files/2025-07/PROGRESSREPORT/ (accessed: July 2025).

[21] The Presidency (2025: 4).

[22] The Presidency (2025: 4).

who have violated norms and legal requirements has a negative impact on the morale, performance and incentives of the majority of officials who have not done so.'[23]

In addition to creating effective deterrents for wrongdoing, effective accountability serves to build public trust in government and the criminal justice system, and to repair the legitimacy of the state. These are critical for the functioning of a democracy.

Effective accountability, in terms of criminal justice, relies on the ability of law enforcement agencies to effectively investigate and prosecute these cases. Our law enforcement institutions and environment are facing serious challenges. These are discussed below in section 2.1.

Key takeaways

- Investigations and prosecutions are ongoing, but the justice system is facing significant challenges related to capacity, independence, and institutional architecture.
- Monitoring and communicating effectively with the public about state capture-related cases are critical for building trust and legitimacy.

1.2. Asset recovery

Main problems identified by the SCC and its recommendations

The Commission found that an estimated R57 billion in public funds had been 'tainted' by state capture, and it made 27 recommendations to recover funds that were the proceeds of crime in terms of the Prevention of Organised Crime Act (POCA). In addition, recommendations were made regarding legal steps to be taken by certain entities, including SOEs, themselves to recover funds.[24]

Nature of the President's response

The Presidency 'fully supported' these recommendations and reported that they were receiving 'priority attention' from the NPA's AFU and from the SIU.[25] A Joint Task Force was established, working in collaboration with other agencies, including SARS and the FIC.

The Presidency reported that expertise had been reassigned to state capture matters and that the AFU would increase its litigation and investigative capacity. The AFU, ID, deputy directors of public prosecutions (in the NPA) and other agencies would develop a strategy for asset recovery in state capture matters. Key initiatives prioritised 'include the appointment of external forensic auditors to quantify the asset recovery potential of matters identified in the Commission's findings and the appointment of international asset recovery entities to assist with asset recovery from foreign jurisdictions using ordinary civil remedies.'[26]

[23] The President (2022: 22).
[24] The President (2022: 24).
[25] The President (2022: 25).
[26] The President (2022: 25).

The SIU had identified several recommendations that were within the scope of existing proclamations and would take action to recover losses as part of those investigations.[27] The Presidency also reported that various public entities had initiated legal processes for the recovery of funds.

Progress reported

A specialist 'Enablers Team' was established by the FIC in June 2023 to focus solely on the enablers of state capture as identified in the recommendations as having directly and/or indirectly assisted the 'Gupta criminal enterprise'. The Team includes the NPA's IDAC and AFU, and the DPCI.[28]

The AFU has implemented a four-pronged strategy focusing on international asset recoveries, civil asset recoveries, Corporate Alternative Dispute Resolution and targeting professional enablers of state capture. These approaches 'have yielded results and will continue to be prioritised'.[29]

In 2023, the Presidency reported that R5.4 billion had been recovered and R14.18 billion in assets had been frozen in state capture-related cases. SARS had acted against people named in the report and recovered R4.8 billion in unpaid taxes.[30] As of March 2025, the total amount recovered by the SIU and the AFU has increased to R10.9 billion, and assets currently under restraint or preservation orders total R10.6 billion.[31]

Analysis

As one might expect with the use of civil proceedings and provisional orders, asset recoveries and seizures have made notable progress. The SIU and the AFU are delivering commendable results.

The NPA's 2023/2024 Annual Report notes that the AFU has been at the forefront of the NPA's strategy to deal with corruption and the findings of the SCC.[32] The NPA notes that conviction-based recovery can be delayed by complex investigations and lengthy legal processes. The AFU therefore had focused on non-conviction-based recoveries envisaged by Chapter 6 of POCA, including the use of the Corporate Alternative Dispute Resolution mechanism adopted by the NPA in 2024. At least two major settlements (the ABB settlement of R2.55 billion and the SAP settlement of R1.16 billion) were secured through Corporate Alternative Dispute Resolution, which indicates that it is working effectively in terms of asset recovery. Corporate Alternative Dispute Resolution is discussed in more detail below, in section 2.13.

Key takeaways

- There has been substantial progress in recovering the proceeds of state capture.
- Non-trial resolutions (NTRs) of cases, including the NPA's Corporate Alternative Dispute

[27] The President (2022: 25).
[28] The Presidency (2023: 4).
[29] The Presidency (2025: 5).
[30] The Presidency (2023: 9).
[31] The Presidency (2025: 5).
[32] The NPA. 2024. *2023/2024 Annual Report* (11) Available at: https://www.npa.gov.za/sites/default/files/uploads/NPA%202024%20Annual%20Report_web_2.pdf

Resolution mechanism, have been effective in recovering assets.

1.3. Accountability and the Executive

Main problems identified by the SCC and its recommendations

The Commission made adverse findings with respect to five members of the Executive at the time and certain observations about their suitability to hold these positions, and it recommended that law enforcement agencies investigate possible (criminal) violations:

- of the Prevention and Combating of Corrupt Activities Act (PRECCA) by Minister Gwede Mantashe in relation to the installation of a security system at his home;
- by Deputy Minister Thabang Makwetla in relation to contracts with Bosasa;
- by Deputy Minister David Mahlobo in relation to handling of cash at the SSA;
- of the Public Finance Management Act (PFMA) by members of the Board of Denel during the period when Minister Khumbudzo Ntshavheni was a member of its Board; and
- that the President considers the position of Deputy Minister Zizi Kodwa in relation to alleged payment of inducements.[33]

The Commission found that the Premier of the Free State 'should have performed his oversight function over the MEC, Mr Zwane, and the Head of Department but failed dismally. … It is necessary that there be consequences for people who fail to do their job. Otherwise, this corruption and these acts of state capture are going to continue forever to the detriment of the country and all people. … Premiers must know that they must supervise the MECs and their departments.'[34]

Nature of the President's response

The President's response acknowledged the responsibilities of the President and premiers to hold members of their cabinet/MECs to account for wrongdoing and poor performance.[35] The President committed to undertaking 'a review of the positions of those members of his Executive implicated in wrongdoing in the report and to determine, on a case-by-case basis, in line with his discretion and obligation to observe the principle of legality and to act rationally, whether any action ought to be taken'.[36] These matters have been referred to the NPA and other law enforcement agencies for action in terms of their mandates.

The President noted that, in exercising his powers to appoint and dismiss members of the Executive, he would take into account the Commission's findings, observations and recommendations about particular individuals, and consider them while monitoring 'the status of relevant legal processes, as such matters arise'.[37]

[33] The President (2022: 64).
[34] The President (2022: 61).
[35] The President (2022: 61-62).
[36] The President (2022: 63).
[37] The President (2022: 65).

Progress reported

President Ramaphosa reaffirmed in a Parliamentary reply on 19 March 2024 that any action against members of his Executive will be informed by the outcomes of the processes undertaken by law enforcement.[38] No further progress has been reported.

Analysis

The slow pace of criminal investigations, (and the President's insistence on awaiting the outcomes of investigations and related legal process), and at least one legal challenge by a Cabinet Minister (Gwede Mantashe) to the Commission's findings, has meant that no members of the Executive have been removed as a result of the Commission's recommendations. Zizi Kodwa resigned under pressure from his position as Minister of Sports, Arts and Culture.[39]

There is a persistently high level of public demand for urgent accountability for members of the Executive implicated by the SCC. Resources should be prioritised to finalise investigations and institute prosecutions where warranted. However, other accountability mechanisms are available to the President, and he need not await the outcome of lengthy investigations and prosecutions, especially given the backlog of state capture criminal matters and the limited capacity within the NPA.

The President and each member of the Executive is required by their oath of office to uphold the Constitution and its values including accountability.[40] In his own response to the SCC recommendations, the President identified the relevant standards of conduct and his responsibilities. Thus, 'Presidents and Premiers must ensure that Ministers or MECs are accountable for their actions. It further implies that they should apply appropriate sanctions, which may include dismissal, in instances of poor performance or wrongdoing.'[41]

Members of the Executive are also bound by the Executive Ethics Code, which enjoins Members of the Executive to perform their duties and exercise their powers diligently and honestly; fulfil all the obligations imposed upon them by the Constitution and law; and act in good faith and in the best interest of good governance, and act in all respects in a manner that is consistent with the integrity of their office or the government, 'to the satisfaction of the President or Premier'.[42]

As the President's response plan acknowledges:

> 'The President or Premier would be expected to exercise their judgment as to whether a particular member of the Executive has breached that oath or solemn affirmation, in what respect and to what degree, and hence what action would be appropriate. In making

[38] The President (2025: 7).

[39] 'Cosatu welcomes Zizi Kodwa's resignation, questions why ANC returned him to Parliament' *Daily Maverick,* 25 July 2024. Available at: https://www.dailymaverick.co.za/article/2024-07-25-cosatu-welcomes-zizi-kodwas-resignation-questions-why-anc-returned-him-to-parliament/

[40] Constitution of the Republic of South Africa, 1996 - Schedule 2. Available at: https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-schedule-2-oaths-and-solemn

[41] The President (2022: 62).

[42] Executive Ethics Code (2000) in terms of the Executive Members' Ethics Act, 1998. Available at: https://static.pmg.org.za/docs/020628execethicscode.htm

decisions of this nature the President and Premiers are enjoined to act rationally and observe the principle of legality.'[43]

Given the evidence, findings, recommendations and observations by the Commission, the question must be asked whether the President has acted rationally and in accordance with the principle of legality by not drawing on his constitutional prerogative to act against implicated members in the Executive.

We note also that Pillar 3 of the NACS 'Ethical Governance With Oversight And Consequence Management' includes the commitment to 'Timeous and effective parallel investigation (non-criminal) of reported incidents of alleged corruption, maladministration and wrongdoing, in compliance with the relevant organisational/labour relations policies, procedures and applicable laws'.[44] Continued failure to ensure accountability further undermines public trust in government and the President, and in our constitutional democracy.[45]

Even in the absence of criminal wrongdoing, questions remain about the competence and integrity of members of the Executive implicated in the SCC. The SCC criticised the President's reluctance to use his powers of discretion relating to Executive and other senior appointments, which he expressed when he testified before the Commission. In the case of David Mahlobo and Arthur Fraser, the President remarked that he was waiting for the finalisation of the SCC Report. The SCC noted in its report that 'there is a high risk that nothing will be done for a long time while legal processes are ongoing' and that 'even if Mr Mahlobo and Mr Fraser have not been found guilty of criminal offences, the state of the SSA under their leadership – which President Ramaphosa freely acknowledges is both dire and dangerous – is surely a reflection on their competence and integrity. It is therefore difficult to understand how they could reasonably be considered suitable for appointment to senior positions in the state.'[46]

Key takeaways

- There is persistent public demand for Executive accountability, especially in respect of the most serious findings and recommendations by the SCC. Failure to act contributes to a worrying decline in public trust in political leadership and in our constitutional democracy.
- Instead of awaiting the outcome of lengthy criminal investigations and possible prosecutions, attention should be focused on other accountability mechanisms available to the President. These mechanisms are included in, for example, the Constitution and the provisions of the Executive Members' Ethics Code.

[43] The President (2022: 62).

[44] Republic of South Africa. 2020. 'National Anti-Corruption Strategy 2020-2030', p. 35, https://www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf (accessed July 2025).

[45] According to the latest (unpublished) data from the Human Sciences Research Council's (HSRC) 2024 South African Social Attitudes Survey (SASAS), trust in the President is at a consistently low level of 37%, while trust in the national government stands at 29% and the level of satisfaction with democracy is a mere 23%.

[46] Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud Report (SCC Report), Part VI, Vol. 2 (2022: 117).

1.4. Referrals to professional, regulatory, and other bodies

Main problems identified by the SCC and its recommendations

The SCC made 11 recommendations with respect to further investigation of and possible action against individuals and entities for alleged violation of relevant statutory or professional standards.[47] Recommendations were directed to bodies such the SA Institute of Tax Practitioners, Legal Practice Council (LPC), South African Institute of Chartered Accountants (SAICA), Independent Regulatory Board for Auditors (IRBA) and the South African Diamond and Precious Metals Regulator. These recommendations concern professional misconduct by some legal and financial practitioners identified as enablers and perpetrators of state capture.

The SCC made 15 recommendations with respect to further investigation of and possible action against individuals and entities for disciplinary offences, tax offences, delinquency of directors and other activities. These recommendations were made to SARS, SARB, the SSA and to the boards of certain SOEs to investigate allegations against certain board members who may have breached their fiduciary duties and whether proper value was received for the sale of goods or the provision of a services.[48]

Three recommendations arising from the Commission's investigation into the Vrede Dairy Project called for independent investigation of abuses and non-responsiveness or inaction by the SAPS.[49]

The Commission recommended a special commission of inquiry to examine 'why PRASA was allowed to slide into almost total ruin, who should be held responsible for that, and who could have benefitted from … that unacceptable state of affairs.'[50]

Nature of the President's response

The Presidency accepted these recommendations for referrals, and that these matters had been referred to the bodies identified by the Commission. The 'responsible government departments' would engage with the relevant bodies to monitor implementation of these recommendations. In particular, the Minister of Justice had engaged the LPC on referrals by the Commission for investigation of members with the LPC 'expected to determine whether these individuals should continue practicing as attorneys and advocates'. Disciplinary cases were 'unfolding in these matters.'[51]

The Presidency reported that:[52]

- SARS had actioned all recommendations for tax-related investigations.
- The SARB had actioned investigations against officials and other persons identified as transferring illegally acquired funds to overseas jurisdictions and in the process transgressing exchange control regulations.

[47] The President (2022: 27).
[48] The President (2022: 26).
[49] SCC Report, Part VI, Vol. 1 (2022: 90-94).
[50] SCC Report, Part V, Vol. 2 (2022: 854).
[51] The President (2022: 28).
[52] The President (2022: 27).

- The Department of Public Enterprises was 'working to identify and launch delinquency proceedings against former board members of SOEs which fall under their mandate', including Eskom, Transnet, Denel and Alexkor. Delinquency proceedings would be launched by 31 March 2023.
- Certain other SOEs, 'including Eskom, Denel, SAA and Transnet, [were] taking steps against board members and employees implicated by the Commission in wrongdoing.' All actions against board members and employees were to be launched by 31 March 2023.

The three matters involving SAPS conduct related to the Vrede Dairy matter were referred to the IPID, which had assigned a team of investigators to deal with these allegations. The team started its work in September 2022.[53]

Regarding PRASA, the Presidency indicated that there were 'existing initiatives that are probing the collapse of PRASA'. These included investigations into PRASA by the DPCI that were 'at an advanced stage' and a 'wide-ranging probe' by the SIU under proclamation 51 of 2019 that 'includes investigating governance and maladministration'. In addition, the Department of Transport, which oversees PRASA, advised that the PRASA board had 'embarked on a structural review of PRASA to determine an optimal model' to deliver on its mandate. Therefore, the possibility of such an inquiry would be 'held in abeyance' until the completion of the investigations by the SIU. The Presidency committed to making determination then on whether these processes sufficiently addressed the matters raised by the Commission and whether a Commission of Inquiry would serve that purpose.[54]

Progress reported by the Presidency

In 2025, The Presidency reported on the 11 referrals to professional bodies: 8 were concluded and 3 pending. It was also reported that the Department of Public Enterprises referred 71 director delinquency applications to the Companies and Intellectual Property Commission (CIPC) based on broader SCC evidence. CIPC has so far initiated nine court proceedings across Denel (3 cases) and Eskom (6 cases). Additional cases at Alexkor, SAA, and Transnet are paused pending court outcomes, additional evidence, or witness assistance.

The Department has also referred 54 former SOE directors implicated in the Commission's report to professional bodies for possible code of conduct breaches, including SAICA (accountants), IRBA (auditors), LPC (legal practitioners), Engineering Council of South Africa (engineers) and the Health Professions Council of South Africa (health practitioners).

The 2025 Progress Report indicated that one of the three IPID investigations is still ongoing, with two cases having reached conclusion.[55] It appears that the SIU investigation into PRASA has not yet been completed.[56]

[53] The President (2022: 28).
[54] The President (2022: 28-29).
[55] The Presidency (2025: 24).
[56] The Presidency (2025: 7).

Analysis

There has been some positive movement and responsiveness from professional bodies that have reflected on the nature of professional sanctions for corruption. For example, although not directly in response to SCC recommendations, regulations promulgated by the IRBA have dramatically increased the penalties for 'improper conduct'. Fines of up to R10-million may be imposed against errant auditors and up to R25 million against auditing firms, per offence.[57]

While the SCC did not give focused attention to the role of professional bodies and their members in state capture, there is a need for more dedicated research on the role of 'enablers'[58] and the efficacy of these bodies in upholding professional standards of conduct and exercising discipline to sanction and deter corruption.

The delinquency proceedings should be supported and monitored, as effective enforcement may interrupt the revolving door and ensure that directors involved in or failing to prevent wrongdoing cannot be appointed to other positions.

While the outcome of the SIU's investigation of PRASA and any civil recoveries must be awaited, the NPA and the DPCI have allegedly been dilatory in finalising their criminal investigations and taking a decision whether or not to prosecute those implicated. Open Secrets recently initiated litigation seeking a court order to compel action by these agencies. As noted in the Open Secrets founding affidavit: '...almost a decade after the criminal complaints were laid, not one former PRASA Board member or executive has been prosecuted in connection with the Siyangena and Swifambo contracts'.[59]

Key takeaways

- Effective sanction by professional bodies would greatly enhance the accountability environment in both the private and SOE sector.
- Delinquency proceedings should be monitored and reported on.
- Consideration should be given to further research into the role of professional bodies in failing to prevent state capture and the effectiveness in exercising discipline to sanction and deter future corruption.
- Monitor litigation in *Open Secrets NPC v National Head: DPCI, National Director of Public Prosecutions and PRASA*.

[57] 'Minister of Finance gazettes maximum fines for auditor improper conduct', IRBA, 19 June 2023. Available at: https://www.irba.co.za/news-headlines/press-releases/minister-of-finance-gazettes-maximum-fines-for-auditor-improper-conduct

[58] Open Secrets (2020) *The enablers: The bankers, accountants and lawyers that cashed in on state capture.* Available at: https://www.opensecrets.org.za/the-enablers/

[59] Para. 122 of Open Secrets' Founding Affidavit dated 8 May 2025. Available at: https://www.opensecrets.org.za/hawks-npa-prasa-corruption-delays/

1.5. Corporate accountability

Main problems identified by the SCC and its recommendations

The SCC made adverse findings regarding the conduct of certain private entities. It found that several companies had, in various ways, aided the process of state capture and highlighted the role of professional enablers in facilitating corruption and state capture.[60] Many individuals and firms are included in the referrals for investigation, prosecution, and other action discussed in the sections above.

Recommendations were also made in relation to asset recovery (discussed in section 1.2 above) and certain reform measures to enhance private sector accountability (discussed in section 2.12 below.)

Nature of the President's response

The Presidency's initial response indicated that the CIPC had begun reviewing 'the compliance of companies implicated in the Commission's report with CIPC requirements, whether there is inter-connectedness of directorships, whether there is a need for concern around audit firms and partners auditing the entities, and whether there are any solvency and liquidity concerns.'

The Presidency's response indicated that action had begun to implement the SCC's recommendations:

- National Treasury has imposed a 10-year ban on Bain & Co. doing business with the South African state. This ban will run from 5 September 2022 to 4 September 2032.
- Similar action was being considered against other companies implicated in the Commission's report.
- Consideration was also being given to claims for civil damages against these companies.
- Investigative authorities overseas have been approached to investigate multinational companies involved in state capture.
- The CIPC will provide quarterly reports on the progress made on holding directors and auditors accountable for their compliance with company law requirements.[61]

Progress reported

By 2025, the CIPC had completed reviews for 10 private sector entities implicated in the SCC Report, with six investigations still ongoing. The CIPC had received eight new referrals from the SIU related to private entities linked to SAA, which are currently under assessment. The 10 concluded reviews include LSG Sky Chefs, Bid Air Group and Bid Air Cargo, PwC, Airbus Southern Africa, Albatime, Nzunzo Investments (linked to Bosasa), Glencore Operations SA and Glencore

[60] The President (2022: 29).
[61] The President (2022: 30).

Holdings SA and EOH Holdings. Six ongoing investigations involve JM Aviation, Swissport SA, Nkonki Inc., Air Chefs, Homix,[62] and Blackhead Consulting.[63]

The National Treasury-imposed ban on Bain & Co. runs for 10 years. However, Bain has initiated litigation challenging the constitutionality of the restriction process. Bain & Co. recently announced the closure of their consultancy business in South Africa.[64] It is unclear whether this may have implications for their pending litigation.

The FIC has established the 'Enablers Project' with law enforcement agencies to trace state capture fund flows. Information requests were sent to the United Arab Emirates (UAE), China, Hong Kong, and India. The FIC has reportedly facilitated meetings between South African and UAE authorities on mutual legal assistance processes. Responses received from these countries have been analysed and shared with relevant investigative bodies including the NPA's AFU and IDAC, and the DPCI.[65]

Analysis

The outcome and consequences, including any sanctions, of the CIPC's 10 closed investigations are not included in the Presidency's 2025 Progress Report.

National Treasury's prompt action to debar Bain & Co. is to be welcomed. Although the debarment is currently subject to a legal challenge by Bain, the Civil Society Working Group on State Capture has noted that if the sanction is upheld, it could be 'a stepping stone for National Treasury and state institutions to effectively hold other private sector actors who are implicated in corrupt activities to account. It is a chance for companies like KPMG, McKinsey, and PwC, along with a host of other private sector actors, including banks, named in the Commission's reports, to face accountability and to break the cycle… of impunity that … allowed corruption to thrive at the expense of the public in South Africa.'[66] Many of these firms earn substantial amounts of money from doing business with the state, and the legitimate threat of debarment could prove an effective deterrent against corruption and other wrongdoing.

Significant progress has been made on recovering fees and penalties from private sector actors implicated by the SCC (see section 1.2 on asset recovery above). Many of these recoveries (SAP, ABB, and McKinsey, for example) resulted from voluntary settlements or NTRs, including the use of the Corporate Alternative Dispute Resolution mechanism by the NPA and the AFU. However, it is critical that these NTRs are used only where they are able to deliver effective accountability, and

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[62] YAS Bhikhu and his company Homix were recently convicted on 66 counts of fraud against Transnet to the value of R66 million. He was sentenced to an effective five years in prison. The Pretoria Regional Court ordered him to reimburse Transnet in an amount of R300 000, and Homix was fined R500 000, which was conditionally suspended. The conviction was the result of an investigation by IDAC and other law enforcement agencies. 'State capture conviction: Businessman to serve five years in jail over R66m Transnet fraud', *News24,* 18 July 2025. Available at:https://www.news24.com/southafrica/crime-and-courts/state-capture-conviction-businessman-to-serve-five-years-in-jail-over-r66m-transnet-fraud-20250718-1177

[63] The Presidency (2025: 6).

[64] 'Bain shuts down SA consultancy three years after govt ban' *News24,* 29 July 2025. Available at: https://www.news24.com/business/companies/bain-shuts-down-sa-consultancy-three-years-after-govt-ban-20250729-0548

[65] The Presidency (2025: 6-7).

[66] Civil Society Working Group on State Capture (CSWG) *A Collective Civil Society Response to the Zondo Commission and the State Capture Report* (2024: 17).

that directors and employees are still held accountable for their actions, so that corporate actors are unable to 'buy their way' out of accountability via settlements. As noted by the South African Law Reform Commission, penalties imposed by NTRs should 'provide a sufficient deterrent for future wrongdoing' so that they are not 'viewed as a mere cost of doing business'.[67]

It is important to note the role of the international anti-corruption environment in the pursuit of accountability for foreign or multi-national actors. At least one significant settlement (the McKinsey settlement of R1.12 billion) was reached as a result of the U.S. Department of Justice enforcing the Foreign Corrupt Practices Act (FCPA) provisions on foreign bribery. Enforcement in other jurisdictions, especially the United States, has been helpful to many countries with comparably weaker criminal justice systems. The changing international landscape – such as President Trump's 'pause' on FCPA enforcement and dismantling of the 'Task Force KleptoCapture Kleptocracy' – may have an impact on domestic efforts to hold multi-national corporates (and foreign individuals) accountable.

Key takeaways

- There is still outstanding information on National Treasury's review of banks' conduct standards and CIPC outcomes.
- Monitor the Bain & Co. litigation, and National Treasury should continue to use the existing list for tender defaulters.
- Settlements with corporate parties have resulted in impressive recoveries of funds, but this must be accompanied by effective accountability and penalties to deter future wrongdoing.
- The capacity and willingness of international actors such as the US to act against multinational firms and foreign individuals is an important factor in the pursuit of accountability domestically, and changes to the international anti-corruption environment may impact this work.

[67] SALRC, *Discussion Paper 165: Review of the Criminal Justice System: Non-Trial Resolutions* (2025: 14).

Section 2: Systemic institutional and policy reforms

Section 2 covers recommendations made by the SCC for structural, legislative, or policy reforms, as well as other systemic or strategic undertakings made by the government in direct response to the findings of the Commission.

2.1. Law enforcement

Main problems identified by the SCC and its recommendations

The Commission found that state capture was facilitated by 'a deliberate effort to subvert and weaken law enforcement and intelligence agencies at the commanding levels so as to shield and sustain illicit activities, avoid accountability and to disempower opponents'. However, the Report made very few recommendations concerning the criminal justice system (CJS). At the handover ceremony for the final part of the report, the Chairperson said that corruption in law enforcement agencies was not dealt with, even though the Commission had started that line of investigation. It was taking much more time than initially anticipated, and the issues were not straightforward.[68]

Nevertheless, the evidence contained in the report — and in the Commission's body of evidence more generally — shows clearly that these institutions need substantial reform. The most alarming revelations about the CJS at the Commission concerned lack of independence. The evidence presented at the Commission showed that law enforcement agencies were politicised and compromised at the highest levels. The weakening and hollowing out of these institutions, through undue influence over appointment and removal processes, had served to de-professionalise them while enabling further patronage. The evidence presented at the Commission concerned the NPA, the DPCI, SAPS Crime Intelligence, and the IPID.

The Commission recommended that the President undertake 'a thorough reappraisal [and possibly an 'investigation'] of the structure of the NPA in order to understand the causes and the nature of its institutional weaknesses so that these can be addressed presumably by way of legislative reform'.[69]

The Commission also recommended introducing legislation for Deferred Prosecution Agreements (DPAs) by which the prosecution of a corporation accused of economic crimes can be deferred on certain terms and conditions, primarily if they cooperate with and assist in investigation of offences. This was partly proposed to reduce the burden faced by the NPA. This is discussed below in section 2.13.

Nature of the President's response

The President's response to the SCC acknowledged the need to 'restore the criminal justice system to a healthy state' and committed to several measures to rebuild law enforcement capacity and strengthen anti-corruption institutions. The Presidency reported that the government had since

[68] https://mg.co.za/news/2022-06-22-law-enforcement-corruption-not-investigated-says-zondo/
[69] The President (2022: 63).

2018, 'embarked on far-reaching measures to restore the integrity and rebuild the capability of the country's law enforcement agencies and criminal justice system more broadly.'[70]

The President committed to strengthening the CJS in the following ways:

- Building the capacity of the NPA, including filling vacant posts, increasing the number of prosecutors and investigators in specialised roles, long term training strategies, morale (re)building, leveraging private sector support, and increased resourcing.
- Establishing the ID, which investigates and prosecutes corruption and state capture matters, as a permanent entity within the NPA.[71]
- Consideration of specialised courts and dedicated court rolls.
- Tracking disciplinary cases across government spheres and public enterprises.[72]
- Considering further structural reforms to the NPA: 'a thorough reappraisal of the structure of the NPA will form part of the work of NACAC to develop a proposal for the establishment of long-term anti-corruption institutional arrangements'.[73]
- Introducing greater transparency and consultation in the process for selection and appointment of the NDPP through legislative amendments, drawing on the process adopted for the selection of the current NDPP.[74]
- Work would be undertaken 'to clarify the Minister's "final responsibility" over the NPA … and settling aspects related to the NPA's financial and administrative independence'.

In response to the SCC's first report, the NPA created a dedicated task force in January 2022.[75] The Task Force was originally composed of internal NPA units, the ID and the AFU, Directors of Public Prosecutions who have jurisdiction over matters, as well as coordinators from specialised units such as the SCCU, the Tax Unit and others. The DPCI became a member of the Task Force and '[r]esources have been pooled between the NPA and DPCI and a well-coordinated approach to prosecution-guided investigations has been implemented. The NPA has also established an advisory panel of experienced prosecutors and investigators from the DPCI to provide advice to investigators and prosecutors dealing with complex corruption cases addressed by the ID, SCCU or the Task Force.'

Progress reported

The National Prosecuting Authority Amendment Act, 2024 (Act No. 10 of 2024) was signed into law by the President on 24 May 2024. This Act created a permanent Investigating Directorate Against Corruption (IDAC) in the NPA, absorbing the previous Investigating Directorate established by Proclamation No. 20 of 2019. the IDAC officially commenced operations on 19 August 2024. the IDAC has been granted police powers and criminal investigation capabilities, allowing, the Presidency noted, greater effectiveness in tackling high-level corruption cases.

The commitment to enhance transparency in the NDPP appointment process through legislative amendments has been delayed due to 'constitutional considerations raised by the Department of

[70] The President (2022: 6).
[71] The President (2022: 6).
[72] Discussed in Section 2.8: Professionalisation of the public administration.
[73] The President (2022: 62-63).
[74] The President (2022: 7).
[75] The President (2022: 32).

Justice and Constitutional Development. [Nevertheless], a possible amendment to the NPA Act is now being considered that would provide for a transparent and open process to be determined by the President through the development of "Practice and Guidelines" for the appointment process of the NPA leadership. This is expected to be completed by November 2025.' The Presidency acknowledged that the 'matter remains time-sensitive as the term of the current NDPP, Advocate Shamila Batohi, ends in early 2026'.[76]

Analysis

The NPA Amendment Act to establish the IDAC as a permanent unit with investigative powers within the NPA was an important step towards properly capacitating the NPA. It is now essential that this key piece of legislation is supported by adequate resources. This would make a meaningful contribution to rebuilding public confidence that law enforcement agencies are willing and able to act expeditiously on the SCC's findings and recommendations to effectively combat corruption and state capture. The opposite is also true, however, as a failure to change the trajectory of anti-corruption efforts will result in those implicated remaining unaccountable, with a further decline in public trust.

There has been an extended delay by the government in effecting an amendment of the NPA Act to clarify the requirements for a 'transparent and open' (presumably competitive) and independent process for the selection of the NDPP. It is unclear why the government's undertaking has apparently changed to now afford the President the discretion to include a relatively informal practice in 'Guidelines' rather than in a more binding legislative amendment as originally undertaken. Enshrining in legislation a robust process for the selection of the NDPP does not usurp Presidential prerogative to appoint; it simply introduces a check and balance into the selection process. It is suggested that there is no clear reason why such a process should not also enshrine in legislation the kind of representative and participatory process envisaged in section 193(6) of the Constitution but not followed to date except by way of the nominations stage. The relevant subsection provides that 'the involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1)(a)' of the Constitution (emphasis added). Consideration may be given to including civil society (broadly defined to include, for example, civil society organisations (CSOs), academia and the legal profession) in the independent panel that the President has constituted in the past to interview and recommend suitable candidates for the President's consideration in terms of section 179(1) of the Constitution.

The process for choosing the current NDPP's successor should be clearly communicated to the public as a matter of urgency (with the NDPP set to retire in 2026), noting also that another two deputy national public prosecutors are due to retire in the next year,[77] and a deputy national public protector with lengthy experience passed away last year.

Moreover, the government has not set out a timeframe within which the urgent reform of the NPA will be undertaken. Granted, the process for amending the relevant provisions of the NPA Act, particularly section 35(1) regarding the prosecution policy, also entails amending the provisions of section 179(5)(a) of the Constitution. However, such a constitutional amendment should not be

[76] The Presidency (2025: 8).

[77] According to a written reply by the Minister of Justice and Constitutional Development in the National Assembly late last year: https://pmg.org.za/committee-question/27065/.

inordinately complex or difficult to effect since the NPA Act already provides for parliamentary oversight of the NPA's implementation of its prosecution policy. The provisions of section 35(1) of the NPA Act[78] stipulate that the 'prosecuting authority shall be accountable to Parliament in respect of its powers, functions and duties under this Act, including decisions regarding the institution of prosecutions'. However, this appearance of independence, which is akin, for example, to the accountability of independent constitutional bodies established in terms of chapters nine and ten, is undermined by the contradictory stipulations in section 33(1) that the Minister exercises 'final responsibility' over the NPA; in section 33(2) the Department of Justice and Constitutional Development (DoJ&CD) must, albeit 'in consultation with' the NDPP, 'prepare the necessary estimate of revenue and expenditure of the prosecuting authority'; and in section 33(3) that the Director-General of the DoJ&CD is responsible for managing the finances of the NPA.

Progress towards NPA independence

The NPA's 2023/24 Annual Report observed that '[o]perational and financial independence reinforces the rule of law and is crucial for bolstering public trust and confidence in the NPA. It is also an important obligation under various international and regional treaty requirements and key judgements by South Africa's Constitutional Court. It's an imperative that the NPA has been championing for many years'.[79]

The NPA reported that it is 'working with the DoJ&CD to promote legislation that will entrench the NPA's operational and financial independence … to give full effect to the pending legislative amendment. This will also give effect to the President's response to the Zondo Commission's recommendations.'[80]

Capacity and performance

The NPA's budget was 'substantially increased by 21.6% between 2021-2023.'[81] The NPA reported that it has 'averted extensive budget cuts for the next Medium-Term Expenditure Framework (MTEF), but cost containment measures will continue and filling vacant posts 'will depend on the new [budget] allocations.'[82] The NPA reported crucial partnerships, including with Business Against Crime for 'in-kind support [that] focuses on specialised consultancy services, project management support and capacity development for NPA personnel working on complex state capture matters.'[83] The NPA asked 'the private sector for in-kind support to establish a Specialised Digital Evidence Unit [to] enhance the IDAC's capacity to investigate state capture cases, particularly … complex digital evidence.'[84] While the NPA has 'significantly increased' its staff complement in the past five years, 'it experienced negative personnel growth during the last financial year due to limits on the allocated compensation budget. At the end of March 2024, the NPA had 168 fewer employees compared to the previous year' (emphasis added).[85]

[78] See https://justice.gov.za/legislation/acts/1998-032.pdf (as amended in 2024).
[79] NPA Annual Report 2023/24 (2024: 16).
[80] Ibid.
[81] The Presidency (2023: 6).
[82] Ibid. at p. 30.
[83] Ibid. at p. 31.
[84] Ibid. at p. 32.
[85] Ibid. at p. 17.

Advocate Paul Pretorius SC, who was head of the SCC of Inquiry's legal team, said recently[86] that during its operations the SCC had more investigators with more experience than does the NPA currently. Pretorius subsequently confirmed the NPA's very limited capacity when he said in May 2025 that, 'Not too long ago, a month ago, [IDAC] had about 20 of its own investigators and borrowed others. So, the capacity of the NPA is a huge problem.' He added that the quality of technology available to the NPA is also a concern, as is its 'access to the Zondo Commission archives'.[87]

Despite the legislative enhancement of the IDAC legal powers of investigation, the IDAC remains within the structurally flawed NPA, which lacks full financial, operational and prosecutorial independence. As such, while the NDPP may appoint investigators as members of the IDAC (section 19D of the amended Act), the provisions of section 19F prescribe that their remuneration and conditions of service are determined by the Minister of Justice and Constitutional Development. the IDAC thus struggles to be a competitive employer – losing skilled personnel to organisations that can pay higher salaries. Ideally, the NPA should, as is the case with the SIU, be outside of the Department of Public Service and Administration (DPSA) regulated salary scales.

The Directorate's under-capacitation in terms of budget and skilled, experienced staff in numbers adequate to the task remains a weakness (applicable to the entire NPA) that has contributed to the slow progress of state capture investigations and the absence to date of successful high-profile prosecutions.

Beyond salaries, the NPA's current location with the DoJ&CD has other implications. For example, the Office for Witness Protection is administered by the NPA, but it reports to the DoJ&CD, with the NPA not having the authority needed to fully manage this office. Ideally, such an office should be located in an institution that is structurally independent.

It bears noting that the President delayed until 21 July 2025[88] to act on the NDPP's 2023 request (submitted through the Minister of Justice) for the President to suspend South Gauteng Director of Public Prosecutions Andrew Chauke pending an inquiry into his fitness to hold office.[89] The President's own media statement acknowledged that 'The President believes Adv. Chauke's continued tenure as Director of Public Prosecutions – while facing serious accusations – would negatively affect the reputation of the National Prosecuting Authority as a whole.' While

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[86] Adv. Pretorius delivered the keynote address at a workshop titled "What Now Since the State Capture Commission?" co-hosted by the Public Affairs Research Institute (PARI) and the Council for the Advancement of the South African Constitution (CASAC) on 15 November 2024. Author's notes of Adv. Pretorius' keynote address.

[87] SABC 'NPA not capacitated to effectively prosecute state capture cases', *SABC News*, 7 May 2025. https://www.sabcnews.com/sabcnews/npa-not-capacitated-to-effectively-prosecute-state-capture-cases/ (Accessed: 12 May 2025.)

[88] The Presidency 'President Cyril Ramaphosa suspends South Gauteng Director of Public Prosecutions' 21 July 2025. Available at: https://www.gov.za/news/media-statements/president-cyril-ramaphosa-suspends-south-gauteng-director-public-prosecutions. See also M Thamm 'Ramaphosa suspends Andrew Chauke, alleged State Capture enabler and South Gauteng prosecutions head' *Daily Maverick* 22 July 2025. Available at: https://www.dailymaverick.co.za/article/2025-07-22-ramaphosa-promptly-suspends-andrew-chauke-alleged-state-capture-enabler-and-south-gauteng-prosecutions-head/?utm_source=dm-app&utm_medium=link

[89] 'Gauteng prosecuting head's suspension at advanced stage, Kubayi tells Parliament' *News24,* 14 May 2025. Available at: https://www.news24.com/politics/gauteng-prosecuting-heads-suspension-at-advanced-stage-kubayi-tells-parliament-20250514-1115

Presidential approval for removal of senior prosecutors[90] is, in principle, an important safeguard against arbitrary dismissals from the NPA, the delay by the President was inordinate and may have perpetuated state capture dysfunction in the NPA, especially in the highly significant Gauteng provincial office of the NPA. This dependency on unduly slow-moving executive and legislative branches of the state exacerbates the pressures facing law enforcement agencies.

In addition to tracking legislative amendments and NPA performance,[91] NACAC should also monitor the extent to which the NPA and law enforcement agencies generally comply with the 'STIRS criteria'. In the 'Glenister Two' decision by the Constitutional Court,[92] the binding majority judgment requires that 'a single body, outside the control of the executive, be created to deal with corruption'.[93] The court specified detailed criteria that should characterise that body, now widely known as the 'STIRS' criteria. Thus, it should be staffed by **S**pecialists who have **T**raining in anti-corruption expertise, enjoy structural and operational **I**ndependence, as well as adequate and guaranteed **R**esources and enjoy **S**ecurity of tenure in office, i.e., without fear of arbitrary dismissal (emphasis added). While the judgment is concerned with an independent anti-corruption agency, it is suggested that these same criteria are also applicable to the NPA.

The CJS faces numerous additional challenges that affect its ability to achieve the objective of accountability. Among these challenges are basic issues involving court infrastructure, including the regular supply of electricity and water.

Another significant challenge involves the allegations that recently (re-)surfaced involving politicisation and factionalism in the SAPS, and which will now be investigated by the Madlanga Commission of Inquiry[94] and by a parliamentary ad hoc committee.[95]

In general, the DoJ&CD stands out as having been especially slow to respond to the pressing needs for institutional and legislative reform (responding to NACAC proposals, ensuring NPA operational independence, finalising a process for safeguarding the selection process for the NDPP, and updating the PDA). It has also failed to provide the NPA with appropriate practical operational support by facilitating unhindered access to the SCC database. The Department has

[90] In terms of the provisions of section 12 read with section 14 of the NPA Act.

[91] The DoJ&CD 2024/25 Annual Performance Plan (APP) targets the number of State Capture, complex corruption, and related matters 'enrolled'. Audited performance in 2022/23 was 18, while estimated performance in 2023/24 is lower at 12. Performance targets for the medium term are even lower at 6 (2024/25), 10 (2025/26) and 10 (2026/27). PMG 'DoJ&CD and NPA 2025/26 Annual Performance Plans (with Ministry)' Justice and Constitutional Development Portfolio Committee 17 June 2025. Available at: https://pmg.org.za/committee-meeting/40977/.

[92] *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6 (17 March 2011). Available at: https://www.saflii.org/za/cases/ZACC/2011/6.html

[93] 'Accountability Now open letter to Ramaphosa on corruption complaints made by General Mkhwanazi', *Polity,* 17 July 2025. Available at: https://www.polity.org.za/article/accountability-now-open-letter-to-ramaphosa-on-corruption-complaints-made-by-general-mkhwanazi-2025-07-17

[94] The Presidency 'President Cyril Ramaphosa: Establishment of Commission of Inquiry into allegations regarding law enforcement agencies' 13 July 2025. Available at:https://www.gov.za/news/speeches/president-cyril-ramaphosa-establishment-commission-inquiry-allegations-regarding-law

[95] Parliament of SA 'National Assembly Agrees to Establish ADHOC Committee on Mkhwanazi Matter' 23 July 2025. Available at: https://www.parliament.gov.za/press-releases/national-assembly-agrees-establish-adhoc-committee-mkhwanazi-matter

provided several reasons[96] for restricting access to SCC evidence and records, but none seem entirely convincing as they have the effect of hindering the NPA from efficiently pursuing its investigations.[97]

While reform of the NPA is important, it is concerning that no other law enforcement institutions are included in this reform agenda. The SAPS in particular — including the DPCI — should receive similar attention, particularly where appointment procedures are concerned. There has been no communication about a strategy for ensuring that these institutions are properly capacitated, for ensuring proper oversight or for addressing internal corruption.

The slow response regarding a fit-for-purpose anti-corruption architecture (whether in a single or multi-agency form), has in effect meant that the issues of coordination regarding the allocation of cases between various bodies remains a significant issue between the NPA, the DPCI, and the wider SAPS, as well as the SIU. While the National Priority Committee on Organised Crime (NPCOC) exists to ensure coordination of such work, amongst other things, there is no higher-level strategic oversight of that structure.

We also note the need (as with the areas of public procurement, personnel practices) for an integrated, digital system for case management. The Integrated Justice System, under development for over two decades, has not yet been established, which has major implications for efficiency and oversight of the criminal justice system. (Pillar 5 of NACS commits to, 'Improve systems for capturing and analysing relevant intelligence information and data on reported or suspected cases of corruption.')

Key takeaways

- The NPA Amendment Act has made the IDAC permanent.
- The NPA Act amendment to make NPA operationally, financially and prosecutorial independent is outstanding and now requires urgent attention.
- The NPA Act amendment to ensure a transparent, open and independent appointment process for the NDPP is outstanding and now requires urgent attention, as does the need to communicate a robust succession plan for the top leadership structure of the NPA, ahead of the retirement of a number of its senior staff.
- Monitor the imminent NDPP appointment process for adherence to good practice, including both The President's undertaking and the closer involvement of civil society.

[96] National Assembly Meeting of the Justice and Constitutional Development Portfolio Committee, 'Access to the Zondo Commission evidence database: DoJ&CD and NPA input (with Minister)' 10 September 2024. Available at: https://pmg.org.za/committee-meeting/39447/

[97] See, for example, R Davis 'Shots fly between NPA and justice ministry over Zondo database access' *Daily Maverick* ,10 September 2024. Available at: https://www.dailymaverick.co.za/article/2024-09-10-shots-fly-between-npa-and-justice-ministry-over-zondo-database-access/. See also DoJ&CD Media Statement 'Justice Department and National Prosecuting Authority address access to State Capture Commission Data before the Portfolio Committee' 10 September 2024. Available at: https://justice.gov.za/m_statements/2024/20240910-StateCaptureData.html; and DoJ&CD Media Statement 'Department of Justice and NPA strengthen collaboration on State Capture Commission Database Access' 20 December 2024. Available at: https://www.justice.gov.za/m_statements/2024/20241220-State-Capture.html#:~:text=The%20Department%20of%20Justice%20and,of%20the%20State%20Capture%20Commission.

- Consider similar principles and processes and appropriate appointment criteria for heads of other CJS agencies.
- Monitor the achievement of STIRS criteria for a fully capacitated NPA that is able to increase the prioritisation of state capture cases.
- Monitor the Madlanga Commission of Inquiry and related parliamentary inquiry for their implications for effective law enforcement.
- Ensure police reform is given proper consideration in developments related to addressing state capture and continuing corruption, including urgent finalisation of the development of appropriate systems and infrastructures for law enforcement, such as a fully functioning (end-to-end) electronic case management system as part of the Integrated Justice System that has been in development for over two decades. This is critical for enhanced law enforcement effectiveness and oversight of law enforcement.

2.2. Anti-corruption architecture

Main problems identified by the SCC and its recommendations

The SCC recommended the creation of a permanent and independent anti-corruption commission, and an independent public procurement anti-corruption agency.

The SCC Report included an extensive analysis of the flaws in the present procurement system, characterising it as a, if not the, key site of state capture, particularly the 'redirection' of state resources, and included many recommendations for procurement reform (see section 2.5). In the Commission's view, however, regulatory reform would not be enough to confront the fundamental problem of undue political influence:

> '...it is not appropriate that any government department be tasked to lead the fight against corruption in public procurement. The vulnerability of any government department to undue political interference remains and will always remain and the answer to state capture does not lie in replicating the very same features that allowed state capture to succeed in the first place.'[98]

The SCC's proposed solution was to establish an independent public procurement anti-corruption agency, free from political oversight (specifically understood to be ministerial control) and fully independent of the Executive. The recommendations include detailed proposals for how such a body might be structured, staffed and resourced. It would include a council, inspectorate, litigation unit, tribunal, and specialised court.

The proposed permanent commission would 'investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, and make findings and recommendations to the President.'[99] The envisaged commission would have oversight over the Executive and have similar powers of compulsion as the SCC, and would additionally be empowered to 'step in' if the chairperson determined that Parliament was failing in its oversight

[98] SCC Report, Part I, p. 843.
[99] SCC Report, Part VI, Vol. 4 (2022: 186).

functions. The public and televised nature of the proposed commission's work was emphasised. Unlike its analysis of the proposed procurement-related agency, the SCC Report did not detail why the existing architecture was insufficient, nor did it elaborate on the specific need for a permanent commission, except to argue that such a structure should play a role in relation to Parliament due to the legislature's failure to prevent state capture.

Nature of the President's response

The President's response indicated that '[t]hese recommendations need further consideration in the context of processes already underway to review and redesign South Africa's anti-corruption architecture, including by the NACAC and the Department of Justice.[100]

Progress reported

The Presidency's 2025 Progress Report indicates that NACAC has concluded its extensive research and consultations into the institutional reform recommendations of the SCC. NACAC has developed and submitted proposals 'currently' under consideration by the Executive.[101] These proposals address the SCC's recommendations on both proposed institutions.

The 2025 Progress Report further indicates[102] that the President announced in his State of the Nation Address (SONA) on 6 February 2025[103] that the Minister of Justice -'current financial year', i.e. 2024/25 ending on 31 March 2025.[104]

Analysis

The Minister of Justice has not reported on this matter, nor has NACAC's report been released to the public despite the fact that NACAC has indicated its wish for it to be released. It is our understanding that the report is in the office of the Director-General and is awaiting tabling before Cabinet for discussion. Contrary to the statement in the Presidency's 2025 Progress Report, the SONA does not mention 'this financial year', merely 'this year', neither does the SONA indicate to whom the Minister will report: the public or Cabinet. It is therefore possible that the Minister may yet report during the 2025 calendar year, although it is unclear to whom the report will be submitted /released.

The Department's 2025/26 Annual Performance Plan (APP) was presented to the Justice Portfolio Committee on 17 June 2025.[105] The APP includes an undertaking that the country's anti-corruption architecture will be reviewed and strengthened through the tabling in Parliament of several pieces of legislation during the current financial year.[106] The presentation to Parliament on the APP contains the following commitment for the 2025/26 FY: 'Report on the review of South Africa's anti-corruption architecture submitted in Parliament'.

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[100] The President (2022: 6).
[101] The Presidency (2025: 8).
[102] The Presidency (2025: 8).
[103] State of the Nation Address by President Cyril Ramaphosa, 6 February 2025, Cape Town City Hall. Available at:https://www.stateofthenation.gov.za/assets/downloads/SONA_2025_Speech.pdf
[104] The Presidency (2025: 8).
[105] Available at: https://pmg.org.za/committee-meeting/40977/
[106] Available at: https://www.justice.gov.za/MTSF/DOJCD-APP-2025-26[20250722].pdf

NACAC has already shared its recommendations publicly on several occasions, including in December 2024 and May 2025. There is therefore no apparent reason for government to treat the document as confidential, especially in light of the 'whole-of-society' approach underscored in the NACS.

Key takeaways

- It is unclear why the DoJ&CD has not publicly released NACAC's report and recommendations on the anti-corruption architecture. The lack of transparency and silence on the matter is concerning and may give rise to unwarranted speculation and suspicion.
- Even if the Minister is working on a report due to be tabled in Parliament later this year, it would be consistent with the spirit and objectives of the NACS to release the NACAC report now for public debate pending the Minister's report.
- The undertaking to table legislation on the anti-corruption architecture in Parliament during the current financial year bears close monitoring.

2.3. Money laundering and financial crime

Main problems identified by the SCC and its recommendations

The Commission revealed the existence of widespread, sophisticated money laundering networks operating within South Africa and across borders, diverting the proceeds of corruption – stolen public funds – to offshore secrecy jurisdictions. The money laundering networks used by the Gupta enterprise were 'complex, well-established and embedded in a pre-existing *milieu* of criminality and wrongdoing,' servicing criminal enterprises straddling offences currently regulated and policed by multiple enforcement agencies, and have links with international money laundering networks with multi-billion-rand turnovers.

While it did make recommendations on specific enforcement actions, the Commission noted that tools such as forfeiture orders are often poor deterrents, as they can be absorbed as a cost of doing business. Prosecution and asset forfeiture can tip the scales only when the costs of money laundering begin to outweigh the benefits. Even so, the Commission noted, because these networks are flexible and adaptable, 'prosecutions of historical contraventions alone are unlikely to make much of an impact on the money laundering industry … unless they are a part of a sustained ongoing process to target that criminal industry.'

The Commission acknowledged that it was not best placed to determine the best way to target money laundering, but it made certain specific observations about reforms to the anti-money laundering (AML) regime:[107]

- The need for a 'co-ordinated and co-operative approach to targeting money laundering' from all the relevant enforcement agencies, including at least the NPA's AFU and ID, the Hawks, FIC, SARS, SARB and SIU.

[107] The President (2022: 55-56).

- The need for a statutory framework providing for the controlled sharing of detailed AML information by banks.
- The need to investigate the effectiveness of the current system of suspicious transaction and cash threshold reporting to the FIC.

Nature of the President's response

The Presidency committed to strengthening the country's AML regime, both in response to the Commission and the adverse findings against South Africa by the Financial Action Task Force (FATF).

The Presidency also supported the Commission's call for a holistic and collaborative approach to AML, noting an existing forum set up by the DPCI, NPA, SARS and the Reserve Bank and an agreement between the NPA, FIC and DPCI to fast-track AML matters. It also noted that the South African Anti-Money Laundering Integrated Task Force (SAMLIT) 'has led to the preservation and directives to freeze accounts in the amount of R86 million in criminal assets.'[108]

The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, which had been tabled in Parliament and was then before the NA Finance Portfolio Committee, addressed the need for a statutory framework for partnerships to share financial information. The Bill also aimed to address the deficiencies identified in the 2021 FATF and IMF mutual evaluation of South Africa.[109]

The Presidency also reported that the FIC had appointed attorneys to conduct an urgent independent review of the effectiveness of the Financial Intelligence Centre Act (FICA) regulatory reporting regime.

Progress reported

In February 2023, South Africa made a high-level political commitment to work with the FATF and to strengthen the effectiveness of its AML regime.

The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 (Act No. 22 of 2022) introduced stricter regulations to detect, investigate, and prevent financial crimes, addressing weaknesses that previously allowed illicit financial flows to go undetected. The General Laws Amendment Act introduced reforms to five key laws:

- FICA: Strengthened customer due diligence, beneficial ownership verification, and suspicious transaction monitoring.
- Trust Property Control Act: Required trustees to maintain and report records of beneficial owners.
- Companies Act: Mandated companies to submit beneficial ownership details to the CIPC, which would maintain a central Beneficial Ownership Register.
- Non-Profit Organisations Act: Required certain categories of NPOs to register and disclose funding sources.

[108] The President (2022: 56-57).
[109] The President (2022: 57-58).

- Financial Sector Regulation Act: Enhanced regulatory oversight of financial institutions.

These reforms were implemented in two phases (December 2022 and April 2023), 'significantly improving South Africa's ability to track illicit financial flows and prevent misuse of corporate and trust structures,' according to the Presidency. By February 2025, 20 of the 22 deficiencies identified by the FATF had been addressed. The Presidency reported that the country is on track to be removed from the grey list by October 2025.[110]

The Presidency reported in 2025 that the FIC, NPA and SARB 'have intensified enforcement efforts'. The FIC reported a 40% increase in compliance with AML requirements through stricter due diligence measures, improved beneficial ownership disclosures, with a rise in suspicious transaction reports being filed. Law enforcement agencies 'have also seen an increase in financial crime investigations and asset forfeiture cases, demonstrating that the regulatory framework is being actively enforced.'

The Presidency's 2025 Progress Report indicated that the FIC had completed its review, which had examined banks' reporting of state capture transactions, FIC's actions, referrals to law enforcement, and subsequent agency responses. The final Independent Review Report was delivered to the FIC on 29 March 2025. The FIC is 'finalising comments and developing an action plan to address the findings.'[111]

Analysis

In the absence of details of the findings and recommendations in the Independent Review Report, it is difficult to make any assessment about the recommendations concerning the FIC and the reporting framework. The other SCC recommendations have been addressed, but the broader question of the strength of the AML regulatory framework remains.

At its June 2025 Plenary, the FATF determined that South Africa had 'substantially completed its action plan and warrants an on-site assessment to verify that the implementation of AML/CFT reforms has begun and is being sustained, and that the necessary political commitment remains in place to sustain implementation in the future.'[112] The next step towards South Africa exiting the grey list will be a FATF field visit scheduled for July 2025.[113]

National Treasury commended the efforts and commitment of law enforcement agencies 'for the sustained increase in investigations and prosecutions of serious and complex money laundering and terror financing activities' that made it possible for South Africa to fulfil its FATF commitments.[114]

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[110] The President (2025: 28).

[111] The Presidency (2025: 9).

[112] Available at: https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/increased-monitoring-june-2025.html

[113] 'FATF president praises SA's 'political commitment' to getting off grey list ahead of key visit', *News24,* 18 July 2025. Available at: https://www.news24.com/business/economy/sa-has-ticked-all-or-almost-all-boxes-to-get-off-grey-list-ahead-of-key-fatf-visit-20250718-0839

[114] Available at: https://www.fic.gov.za/wp-content/uploads/2025/06/Media-release-FATF-greylisting-progress-update-for-South-Africa-June-2025.pdf

The government's AML strategy is presently aligned with global regulatory efforts as exemplified in FATF and its standards, and notable progress has been made in this regard. The creation of the Beneficial Ownership Register is an important step forward in addressing financial and economic crime.

However, it must be noted that there is an increasing body of evidence that these compliance-focused and risk-based regulatory regimes have serious shortcomings, and that there is a limited empirical understanding of existing reforms.[115]

One of the key weaknesses of the global regulatory consensus is that these measures tend to exclude non-governmental actors, with information access limited to official governmental uses and purposes. This significantly limits the effectiveness of these measures because the initial exposure of illicit financial activities – and anti-corruption initiatives more broadly – is frequently driven by the investigations of non-governmental actors such as journalists and CSOs, which are only subsequently followed-up by official investigations and enforcement actions. These actors are largely excluded from intergovernmental mechanisms, 'suggesting the need for a redefinition of the [illicit financial flows] IFF framework to better support the broad public foundations essential for government accountability.'[116]

This trend is evident in the recent reforms in South Africa; for example, the Beneficial Ownership Register is not accessible to the public. Reformers invested in strengthening our AML regime and fighting financial crime should pay close attention to the growing research on the effectiveness of these regulatory frameworks and ways to address the weaknesses that are becoming evident over time.

Key takeaways

- Significant progress has been made to strengthen South Africa's AML regulatory environment and to realign with FATF standards.
- The FIC review has not been made publicly available and so cannot be assessed.
- A growing body of evidence suggests that the compliance- and risk-focused global regulatory regime has significant weaknesses, and therefore should be supplemented by other reforms, including transparency measures.

2.4. Restoring the South African Revenue Service

Main problems identified by the SCC and its recommendations

SARS was a key state agency hollowed out through state capture. The Commission endorsed the findings of the Nugent Commission of Inquiry established by President Ramaphosa in 2018. The Nugent Commission found a 'massive failure of integrity and governance' at SARS and made

[115] See for example Haberly et. al (2025), available at: https://giace.org/resources/the-regulation-of-illicit-financial-flows-riff-dataset/

[116] Haberly, Garrod and Barrington. (2024) *From Secrecy to Scrutiny: A New Map of Illicit Global Financial Networks and Regulation*, p. 5. Available at: https://giace.org/resources/from-secrecy-to-scrutiny-a-new-map-of-illicit-global-financial-networks-and-regulation/

detailed recommendations 'to rebuild SARS and reverse its capture'. The Nugent Commission made 16 recommendations and 27 sub-recommendations, 17 of which relate to internal governance and are the responsibility of the Commission, and 10 of which relate to external governance and are the responsibility of National Treasury.

The SCC made an additional recommendation – that the SARS Act of 1997 be amended to provide for an 'open, transparent and competitive process for the appointment' of the SARS Commissioner. The SCC also made recommendations concerning the debarment of Bain & Co. due to its involvement in weakening SARS.[117]

Nature of the President's response

The President supported the recommendations, reporting that the National Treasury had initiated the process to amend the SARS Act, including providing for an open, transparent and competitive process for the appointment of the SARS Commissioner and the appointment of adequate oversight mechanisms such as an inspector-general. The Presidency committed to tabling this legislation by June 2023.

The President also reported additional measures undertaken to rebuild SARS, including the appointment of new leadership, a flatter, more accountable organisational structure, several measures to strengthen governance recommended by the Nugent commission, increasing capacity to tackle corruption cases, and more.

Progress reported

The Presidency reported in 2025 that consultations with stakeholders were ongoing to review proposals concerning the appointment of the SARS Commissioner, Deputy Commissioner, and enhanced governance mechanisms. The target to complete the consultation process was reported as the second quarter of the 2025/26 financial year, and to seek Cabinet approval on the proposed amendment by December 2025.[118]

In its 2023/2024 Annual Report, SARS reported that of the 17 Nugent Commission recommendations, 14 had been implemented and 3 were ongoing. It also reported that it was acting on recommendations made by the Zondo Commission for SARS to investigate several tax-related matters.[119] The Commissioner noted that SARS has 'substantively implemented' the recommendations of the Nugent Commission and that the SCC's recommendations 'have been addressed'.[120]

Analysis

The process to amend the SARS Act has been dilatory in the extreme. As the SCC endorsed the Nugent Commission's recommendations, it has been clear since they were made in 2018 what needed to be done to reform and strengthen SARS. It is unclear what progress has been made

[117] Discussed in Section 1.5: Corporate accountability.
[118] The Presidency (2025: 29).
[119] Ibid.
[120] SARS Annual Report 2023/24 (2024:4).

since 2022 and why the government has missed its promised deadline to introduce legislation in mid-2023 – a delay of over two years.

Nevertheless, the government has demonstrated confidence in a reforming SARS by an increased budget allocation to support SARS' revenue collection efforts.[121]

Key takeaways

- SARS has made good progress on implementing the recommendations by the Nugent and Zondo Commissions.
- The President initially committed to finalising the amendments to the SARS Act concerning the appointment of the Commissioner by June 2023. The unexplained delay (of almost three years) is concerning.
- The evidence uncovered by both commissions clearly demonstrates the importance and urgency of this specific reform.

2.5. Procurement system reforms

Main problems identified by the SCC and its recommendations

The Commission identified public procurement as a (arguably, the) primary site for state capture and corruption and made more recommendations concerning public procurement than for any other area of reform - some 25 proposals.

In sum, it recommended:

- The establishment of an independent public procurement anti-corruption agency to combat corruption in public procurement.
- The development of a national charter against corruption in public procurement, including a code of conduct, to be signed by state leaders, political parties, organised business and labour, and civil society, and by any person and business tendering to, or contracting with, the state.
- Legislation protecting accounting officers/authorities from criminal or civil liability for anything done in good faith, unless such person acts negligently.
- Incentivising disclosures regarding procurement fraud and corruption by awarding the whistleblower a percentage of proceeds recovered, provided that the information disclosed was material in the obtaining of the award.
- Legislation to provide for the training and guidance of public procurement officials and the establishment of a professional body for procurement officials.
- Greater transparency standards consistent with the Organisation for Economic Co-operation and Development (OECD) principles for integrity in public procurement.
- Institutionalisation of routine lifestyle audits for officials in supply chain management, and 'subjecting executive authorities to lifestyle audits on a periodical basis'.

[121] 'SARS gets largest chunk of Treasury Budget transfers' *SAnews,* 9 July 2025. Available at: https://www.sanews.gov.za/south-africa/sars-gets-largest-chunk-treasury-budget-transfers. Accessed: 9 July 2025.

- Legislation to introduce DPAs by which the prosecution of an accused corporation can be deferred on certain terms, for example involving voluntary self-reporting, corrective action and payment of a fine. (This is dealt with below in section 2.12 on corporate accountability.)
- And it recommended multiple amendments to legislation or procurement process with regards to: the better regulation of competitive bidding and deviations from such bidding; for ensuring compliance with standards set for suppliers in tendering; for tighter regulation of sub-contracting and the use of implementing agents; for procurement planning and contracting management; for enhanced public procurement reporting and oversight structures; and for enhanced 'consequence management'.

The Commission recommended a greater degree of centralisation in public procurement, and greater harmonisation in public procurement legislation. Further, the Commission noted that clarity was needed concerning the state's interpretations of the relationship between (and the relative weight given to) the Constitutional provisions guiding public procurement in section 217(1), that public procurement must be done in a manner that is, 'fair, equitable, transparent, competitive and cost-effective', and the provisions concerning the use of public procurement for transformation objectives in section 217(2).[122]

Nature of the President's response

The Presidency's 2022 report noted that the recommendations concerning a dedicated anti-corruption procurement agency were being considered by NACAC as part of its work to advise on strengthening the country's anti-corruption institutional arrangements.

Regarding the wide-ranging proposals made by the SCC concerning the public procurement system, the 2022 report noted that several of the Commission's proposals were 'already reflected to varying degrees in the draft Public Procurement Bill'.[123]

The Presidency did not consider incentives for whistleblowers as a *procurement-specific* recommendation and noted that the Department of Justice would consider this in its review of the Protected Disclosures Act (PDA).

Progress reported

The Presidency reported in 2025 that NACAC has concluded research into the institutional reform recommendations of the Commission and has crafted proposals currently under consideration by the Executive.

The Presidency's latest report notes that the Public Procurement Act (PPA), gazetted in 2024 and enacted but not yet brought into effect, consolidates 'South Africa's previously fragmented procurement system into a single regulatory framework designed to enhance transparency, efficiency, and economic development', and addresses Zondo's recommendations regarding procurement integrity, transparency, and enhanced processes. Regulations to the Act are 'envisaged to be promulgated during the third quarter of the 2025/26 financial year'. The Presidency's 2025 update report included a detailed list of issues it feels were addressed in the new Act.

[122] *State Capture Commission Report, Part 1, Vol. 3, p. 797.*
[123] The President (2022: 7).

It noted that the recommendation for lifestyle audits for supply chain officials has been implemented: 'the eDisclosure system covers these officials using a three-tiered approach (review, investigation, evaluation) to identify discrepancies between declared assets and visible lifestyle'.

Analysis

The PPA responds to many, though not all, of the Zondo Commission's concerns and recommendations.

The Act establishes, amongst other institutions, the Public Procurement Office within the National Treasury, tasked with ensuring compliance, promoting standards, and fostering transparency. Its formal establishment is welcomed, though much will depend on the Office's predecessor institution, the Office of the Chief Procurement Officer (OCPO), developing the capacity to enforce the Act. The OCPO is not yet resourced and staffed to effectively pursue its expanded mandate, needing capacity especially in areas of policy and legal development, governance and compliance, strategic procurement support, and ICT systems.[124]

The Act contains provisions for enhanced oversight, transparency, and integrity. It prohibits any person from trying to interfere with or influencing procurement and it establishes mechanisms for reporting and managing unlawful instructions. It strengthens procedures for debarment of suppliers who violate the procurement system. Certain categories of people – mainly public office bearers and people who work for the state – may not do business with the state. Furthermore, the Public Administration and Management Amendment Bill provides clarification regarding the prohibition against employees conducting 'business with organs of state', and it introduces a 'cooling-off' period of 12 months for employees involved in procurement decisions, barring them from working with related service providers immediately after their tenure. That Bill is still making its way through Parliament.

In addition, the introduction of significant sanctions for the Auditor-General's (AG) findings on 'material irregularities' under the Public Audit Act is a positive development, and it should be closely monitored to assess efficacy over the next few years.

The PPA creates opportunities for greater transparency in public procurement. It requires proactive disclosure on a central online portal of a range of categories of procurement information, including the beneficial ownership records of winning bidders and the particulars of bids awarded to persons related to persons automatically excluded from procurement. It introduces transparency standards, including mandating the use of an electronic system with public access requirements.

The Act thus provides the potential for greater oversight of public procurement processes by CSOs (tendering, contract delivery). It also contains provisions for access to procurement processes, envisaging more real-time scrutiny by members of the public, civil society, and the media. These may well turn out to be very positive developments. Nevertheless, the categories of information to be proactively disclosed remain in some cases vague and open-ended. These will need to be specified and elaborated in subordinate legislation and there is some risk of over-broad

[124] PARI. 2024. 'Mapping the Public Procurement Oversight System in South Africa'. (Report commissioned by GIZ, Pretoria).

interpretation of confidentiality provisions. Moreover, the state has thus far demonstrated limited capacity to envision and develop the kinds of supporting systems and infrastructures required for substantial transparency. Plans to modernise government's information technology with the development of an Integrated Financial Management System, have been in the pipeline for over a decade. (Pillar 4 of NACS includes a commitment to, 'Establish an integrated, digital financial and procurement management system incorporating the principles of open governance and open contracting.').

The state has not substantially engaged with the Commission's proposals regarding incentivised whistleblowing (Pillar 4 of NACS includes a commitment to incentivise and support whistleblowing on illegal conduct in the public procurement system). The DoJ&CD's 2023 discussion document on whistleblowing contains little engagement with it, and in any event, internationally, legal provisions for such mechanisms are most often contained in sector specific legislation (e.g. tax law, procurement law and environmental law) and not in general legislation for protected disclosure. The reason for specific legislation is that different domains of practice create different opportunities and risks for incentivising whistleblowing, which must therefore be regulated in different ways. For instance, violations of tax and procurement law often result in large financial damages, the recovery of which can be used to amply reward whistleblowers without provisions from the fiscus. In procurement, incentivisation can encourage vexatious accusations that can delay procurement processes and thereby disrupt often urgent public operations. Constraining such accusations requires specific regulatory fixes, which may not be as necessary in taxation, where the risks of disruption to public operations are relatively small. The Public Procurement Act does not provide for sector-specific incentivised whistleblowing. In public procurement as well as in tax and financial sector governance, there is still an urgent need for the state to experiment with (pilot and administrative) incentivised whistleblowing schemes with a view to refinement and later explicit inclusion in sector-specific legislation.

In the pre-existing legislative scheme, debarment proceedings were relatively discretionary and unconstrained, which has meant limited recourse to debarment and has opened up opportunities for litigation. Section 15 of the Act strengthens procedures for the debarment of bidders or suppliers who have contravened provisions of the Act, which should have the effect of strengthening the debarment process.

The Act introduces a code of conduct for officials (though not the more encompassing charter envisioned by the SCC), and shields officials (in law at least) from liability for good faith actions. The Act includes provisions to support the professionalisation of the procurement function through the Public Procurement Office, and the 2022 Cabinet-adopted National Framework for the Professionalisation of the Public Sector includes supply chain management (SCM) as an occupation for dedicated attention under the 'professionalisation agenda'. Furthermore, Pillar 2 of NACS commits to, 'Enhanc[ing] the professionalisation of occupations within the SCM value chain in state organisations and public entities. Develop a compulsory training programme for senior management and accounting officers on SCM.' However, progress with implementing this agenda has been very slow, with little communication from the OCPO: according to the MAPS Assessment (2024), the Interim Supply Chain Management Council, which was created in 2018 to support professionalisation, has not been active since its inception.[125]

[125] MAPS (Methodology for Assessing Procurement Systems). 2024. 'Assessment of South Africa Public Procurement System', published by the National Treasury, OECD, African Development Bank and the World

Regarding lifestyle audits, and oversight of declarations of interest, it is not clear from the information provided by the Presidency whether this fully caters for the concerns raised by the SCC. For example, it is unclear how often lifestyle audits are undertaken, and how widely this is in fact being implemented. This should be specified in subordinate legislation and implementing policy.

Further, while the SCC did not make recommendations regarding local government, it is clear that the issues raised by the Commission's investigations, such as the capture of personnel decisions (appointments and dismissals) for control over procurement decisions, pervade local government.[126] While progress is being made on systems and data with relevance for anti-corruption in the public service (e.g., central register of disciplinary cases, data on compliance with minimum requirements for employment in SCM, central register for disclosures, some improvements in public procurement data), the lack of uniform data systems at municipal level significantly hampers anti-corruption efforts.[127]

There is currently no indication that the state intends picking up on the Commission's recommendations regarding a dedicated public procurement anti-corruption body. The large majority of the corruption and maladministration currently investigated by the SIU is related to public procurement, suggesting that any general anti-corruption body in South Africa may largely be dealing with public procurement in any event. Nevertheless, the government's exceedingly slow response in detailing an updated, fit-for-purpose anti-corruption architecture (and simply responding to the NACAC proposals) essentially leaves this SCC recommendation unaddressed.

Finally, the Presidency has noted that the PPA addresses the fragmentation in the public procurement regulatory framework. The SCC correctly identified this fragmentation as creating significant room for non-compliance and, by extension, corruption. It is not yet clear if the Act in fact addresses this fundamental issue. Some CSOs, academics, and businesses have argued that the Act does not provide a clear framework for public procurement.[128] For one thing, they have raised concerns about the Act's extensive recourse to subordinate law: i.e. deferring important policy decisions, best embodied in statute law, for inclusion in as yet unpublished regulations. A full evaluation of the framework provided by the Act is not yet possible in the absence of these regulations. In accordance with international best practice, the Act could have elaborated a more sophisticated outline of procurement methodology, backed by a clear elaboration of the principles guiding procurement. This would provide clearer guidance for officials and enhance the capacity of oversight institutions when evaluating decisions made in procurement by procuring organisations.

Bank Group: https://www.mapsinitiative.org/content/dam/maps-initiative/en/assessments/south-africa/maps-assessment-south-africa-main-report.pdf/_jcr_content/renditions/original./maps-assessment-south-africa-main-report.pdf (accessed: July 2025).

[126] Klaaren, J., F. Belvedere, R. Brunette, N. Gray (2022) 'Public Procurement and Corruption in South Africa'. Working Paper No. 2. Public Affairs Research Institute: Johannesburg. PARI website: https://pari.org.za/working-paper-public-procurement-and-corruption-in-south-africa/ (accessed: July 2025).

[127] PARI. 2024. 'Mapping the Public Procurement Oversight System in South Africa'. (Report commissioned by GIZ, Pretoria).

[128] 'Public Procurement Bill: public hearings', NCOP Select Committee for Finance, 23 February 2024, Parliamentary Monitoring Group website: https://pmg.org.za/committee-meeting/38408/ (accessed: July 2025).

The Act currently faces litigation from a number of parties. The arguments contained in these challenges vary, and none have, as yet, been brought on the basis of explicit concerns regarding how the Act responds to anti-corruption imperatives. However, the cases include challenges to the constitutionality of the Act, in part regarding the interpretations on the relationship between Sections 212(1) and (2) of the Constitution (see comments regarding Judge Zondo's concerns above).

Significantly, the Act contains a clause obligating the state to undertake a review of the Act within two years of its promulgation, offering an opportunity to reflect on some of the issues raised above.[129]

Key takeaways

- The PPA responds to several of the Commission's recommendations, i.e. regarding legislation that supports transparency and greater civil society oversight of public procurement; professionalisation of the procurement function, including the formalisation of a code of conduct, and support for lifestyle audits.
- The Act prohibits any person from trying to interfere with or influencing procurement and it establishes mechanisms for reporting and managing unlawful instructions. The Act strengthens procedures for debarment of suppliers who violate the procurement system.
- These are significant positive developments for procurement integrity.
- The OCPO (and its designated successor) will need to be substantially resourced and staffed to effectively pursue its expanded mandate, needing capacity especially in areas of policy and legal development, governance and compliance, strategic procurement support, and ICT systems. This should be monitored.
- Government should move with urgency to establish an integrated electronic system and set of data standards for public procurement, which covers all organs of state, to support greater oversight of the system, and anti-corruption initiatives.
- The state has not substantially responded to the Commission's recommendations regarding consideration of incentivised whistleblowing, which, as noted, needs to be catered for in sector-specific (public procurement) legislation.
- It is not clear whether the PPA addresses the fragmentation in the public procurement regulatory framework. The Act defers important policy decisions, best embodied in statute law, in as yet unpublished regulations, and the Act is facing constitutional challenge. The Act contains a clause obligating the state to undertake a review of the Act within two years of its promulgation, offering an opportunity to reflect on some of the issues raised above.
- Whether or not there is a basis for a procurement specific anti-corruption body, the state has yet to substantially respond to the Commission's recommendations regarding the creation of a permanent and independent anti-corruption commission, and an independent public procurement anti-corruption agency. This has been deferred to the state's response on NACAC's advisory regarding an Office of Public Integrity and the DoJ&CD's review, which are still pending.

[129] Section 68 provides that the Minister of Finance must review the Act's implementation and the need for amendments to the Act by 23 July 2026; consult stakeholders, including NEDLAC, during the review; and make public a report on the review and submit it to Parliament by 23 October 2026.

2.6. Intelligence services reforms

Main problems identified by the SCC and its recommendations

The high-level findings of the State Security Council (SSC) relating to security and intelligence was that they were politicised and compromised at the highest level so that those involved in the state capture project could proceed with their illicit activities with impunity. A weak regulatory framework was put in place to ensure that the SSA could be abused for political and personal gain. This resulted in particular intelligence projects being conceived primarily as 'special purpose vehicles to siphon funds.'[130] Particular individuals close to the former President were implicated in a variety of unlawful activities related to vetting, mismanagement of firearms and SSA resources, and theft of funds.

The Commission's recommendations regarding the SSA focused on addressing four main concerns:

1. The concentration of power and resultant lack of checks and balances arising from the merger of various intelligence functions into a single agency.
2. Executive overreach whereby operational level programmes were directed by Ministers.
3. A breakdown or overriding of internal controls resulting in disappearance of large amounts of cash and firearms.
4. The need to investigate, prosecute implicated individuals and recover stolen assets.

Its recommendations included *inter alia*:

- Holding certain individuals accountable.
- Ensuring that security vetting processes are not abused.
- Improving financial controls and accountability.
- Ensuring the Minister is not involved in operations.
- Enhancing the mandate, powers, and capacity of the Inspector-General of Intelligence (IGI).
- Empowering the AG to access and audit intelligence services' financials.
- Clarifying the roles of the IGI, AG and Parliament to ensure that secrecy does not prevent accountability.
- Clarifying and strictly enforcing recruitment criteria and preventing Executive involvement in recruitment.
- Improving gun control directives and procedures.
- Addressing the problem of false intelligence reports.
- Preventing the intelligence services from being used for political and partisan purposes.
- Mandating an outgoing Joint Standing Committee on Intelligence (JSCI), before an election, to report to Parliament on as much as possible of the period preceding the election.
- Consider bringing the intelligence services closer to the spirit, guidelines and principles of the Intelligence White Paper.

[130] SCC Report, Part V, Vol. 1, p. 296.

Many of the Commission's findings and recommendations aligned with the report of the *High-Level Review Panel on the State Security Agency* of December 2018.[131] The panel had identified 'political malpurposing and factionalisation of the intelligence community' and recommended several key reforms including: separating the SSA into domestic and foreign services, developing a National Security Strategy, strengthening oversight mechanisms, and preventing Executive interference in operational matters.

The SCC also heard extensive evidence about Crime Intelligence, a domestic intelligence unit within the SAPS. Although its findings and recommendations in the final report were limited, the SCC found that similar abuses had occurred in Crime Intelligence, and that 'the recommendations made in respect of false reports, irregular recruitments and abuse of secrecy made earlier in this report in respect of the SSA, also hold good with regard to SAPS Crime Intelligence.'[132] In particular, the SCC heard detailed evidence about the abuse of Crime Intelligence slush funds for corrupt purposes and about irregular appointments of both employees and 'informants'.

Nature of the President's response

The President reported that a new General Intelligence Laws Amendment Bill (GILAB) has been drafted and would be tabled by the end of the 2022/2023 financial year. The Bill would amend the National Strategic Intelligence Act (39 of 1994), Intelligence Services Act (65 of 2002) and other relevant intelligence laws so as to, among others, disestablish the SSA and establish a domestic intelligence service and foreign intelligence service in accordance with the Constitution, among other provisions to strengthen the oversight of the intelligence agencies by bodies such as the IGI, the AG, and the JSCI.[133]

The President also endorsed the principle that no member of the Executive may be involved in the operational matters of the intelligence services, and the review of the Intelligence Services Act would give practical effect to this.

The SSA's new leadership had developed and was in the process of implementing a 'comprehensive response plan' to address the SCC's recommendations, and 'consequence management' was being implemented through disciplinary action at the SSA. It was also reported that several cases had been referred to the ID for further investigation and prosecution. Furthermore, National Treasury would work with the AG and SSA to tighten financial controls, and the SSA would complete a review of recruitment directives in line with the SCC recommendations by March 2023.

The President's response does not refer to SAPS Crime Intelligence at all.

Progress reported

The General Intelligence Laws Amendment Act (GILAA) was enacted in March 2025. The Act amends the National Strategic Intelligence Act and Intelligence Services Act to disestablish the SSA and establish two separate entities: the South African Intelligence Service (responsible for foreign intelligence) and the South African Intelligence Agency (responsible for domestic

[131] https://www.gov.za/sites/default/files/gcis_document/201903/high-level-review-panel-state-security-agency.pdf
[132] SCC Report, Part VI, Part 6, pp. 118-119.
[133] The President (2022: 51-52).

intelligence). The Act has not yet commenced, and the restructuring is still in progress. To date the SSA is still in operation as a single intelligence agency.

The Act also strengthens oversight by empowering the IGI and the National Intelligence Coordinating Committee (NICOC) Coordinator to appoint staff and determine structures, with Parliament appropriating budgets for both offices. The Act provides that the Director-General may issue functional directives ‘in consultation with the Minister,’ rather than under the Minister's direction.

In January 2023, the Director-General issued a strengthened Standard Operating Procedure on for Clearance and Dissemination of Intelligence Products, which serves as a quality control mechanism for intelligence products. The agency has introduced training and refresher programmes aimed at enhancing members' awareness of national security requirements, intelligence information management, and constitutional principles that require security services to be politically non-partisan and serve the interests of all South Africans.

To improve financial controls and accountability, the SSA has established enhanced oversight of cash holdings. The Reserve Bank grants yearly approval for the SSA to hold cash. As part of the approval, the Executive Authority reports to the Reserve Bank on all transactions that have been processed in cash during the year; including any foreign payments made. AG auditing has raised no negative findings in this regard. Internal Audit is supporting the AG in auditing the operational environment. The Office of the IGI has signed a Memorandum of Understanding with the AG as part of their oversight function.

The SSA has implemented directives for the possession, training, and storage of official firearms and ammunition. The SSA has also reviewed human resource directives to align with recruitment criteria recommendations, which are currently awaiting ministerial approval.

The National Security Strategy was approved by Cabinet in March 2024 following extensive consultations. The NICOC has completed drafting a public version, which is awaiting ministerial approval after necessary review processes.

The Presidency’s 2025 progress update reports that the SSA has referred all cases between 2020 to 2024 to the IDAC for further investigation and possible prosecution. Three cases have been successfully finalised, and the Agency has so far recouped R1.2 million through the AFU. The Minister has committed to establishing independent disciplinary panels chaired by senior counsel, to hold to account officials accused of corruption and misconduct.

Neither of the updates from the Presidency referred to SAPS Crime Intelligence in any way.

Analysis

The initial Bill tabled in Parliament attracted significant criticism from civil society and security experts, who worried that the Bill failed to implement adequately the key safeguards identified by the Commission as critical. Civil society sounded alarms over provisions in the Bill that would dramatically expand the scope of intelligence and surveillance, while weakening oversight and

neglecting necessary safeguards.[134] Parliament also decided that it would enact no new legislative amendments to oversee the intelligence services, despite the Commission's recommendations to the contrary.

While the GILAA of 2025 was generally welcomed as an improvement on the Bill that was introduced to Parliament, a number of concerns remain. These include that terms such as 'national interest' and 'national security threat' remain overly broad and could still be open to abuse.

The Office of the IGI still cannot make legally binding recommendations, thereby enabling a lack of accountability. Moreover, the post of a Deputy Director was not provided for in the GILAA, which means that if the IGI post becomes vacant, there is no one to automatically take up the position on an acting basis. In the past, long periods went by without this post being filled, creating a lack of meaningful oversight of the SSA.

Concerns also remain that the AG, the JSCI and the IGI are unable to adequately oversee expenditure from the SSA's secret service account. This could enable continued irregular expenditure or abuse of these funds.

Of particular concern is the lack of demonstrable accountability of the individuals implicated in unlawful conduct at the SSA. While some former officials are facing charges for theft, fraud and money laundering,[135] many officials implicated by the SSC remain embedded in the SSA. Those who were on suspension as a result of their implication in the reports of the High Level Panel and SCC were reinstated into their positions by the former Minister of State Security Ayanda Dlodlo, who was eventually removed due to intelligence failures related to the July 2021 violence.[136] High profile figures deeply implicated in much of the wrongdoing unearthed by the SSC, such as former State Securitty Minister David Mhlobo (who remains in the cabinet as Deputy Minister of Water and Sanitation), former SSA Director General Arthur Fraser, and Thulani Dlomo who headed up Special Operations and reported directly to former President Zuma, remain unaccountable for their alleged unlawful conduct.

In the 2025/26 budget speech of the SSA on 15 July 2025, it was stated that a panel of two independent senior advocates and other counsel have commenced an assessment of the allegations made in various reports on the SSA, including that of the SSC with a view to initiate disciplinary actions or recommend cases for criminal action to the relevant authorities.[137] However, the precise ToRs of this panel and the timeframe for its work were not provided, nor was any indication given as to whether its findings and recommendations would be made public to ensure that accountability measures are indeed taken.

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[134] For an overview of issues with the Bill, see for example: https://intelwatch.org.za/2024/04/08/despite-important-gains-the-new-general-intelligence-laws-amendment-bill-fails-to-safeguard-against-a-second-state-capture/

[135] https://www.news24.com/southafrica/news/former-intelligence-officers-arrested-for-alleged-theft-of-r58m-in-state-funds-20250331

[136] https://www.news24.com/investigations/ssa-denies-maintaining-criminal-networks-reappointed-suspended-officials-are-being-kept-in-check-20220221

[137] https://www.gov.za/news/speeches/minister-khumbudzo-ntshavheni-state-security-agency-dept-budget-vote-202526-15-jul

In November 2021, a panel led by Prof. Sandy Africa was commissioned to investigate the shortcomings of the security services in responding to the riots of July 2021. The panel made recommendations about stabilising the police service, depoliticising it and cleaning up Crime Intelligence, as well as national intelligence.[138] It is of significant concern that neither of these reports nor the SCC recommendations have led to any reform strategy for Crime Intelligence, and that there has been virtually no communication about the future of the unit. An escalating series of scandals, arrests, operational failures, and other indicators of dysfunction in recent years has demonstrated the need for careful and comprehensive reform. The newly-appointed Madlanga Inquiry has been mandated to investigate political interference in the CJS, including Crime Intelligence. Reform of Crime Intelligence has been sorely needed for many years and should proceed without delay.

Key takeaways

- The General Intelligence Laws Amendment Act does deliver many of the amendments and reforms to which the President committed himself. However, the Act has not yet commenced, and the restructuring is still ongoing. Especially, the disestablishment of the SSA and the creation of two separate agencies are long overdue. The President should provide a timeline for this work to be completed.
- Reforms in the GILAA to enhance accountability measures are welcomed, but do not go far enough. Further strengthening of the IGI is especially necessary.
- Some provisions in the Act are overly broad and could enable abuse.
- The lack of demonstrable accountability for those responsible for weaponising and damaging the institution is severely hampering reform efforts and trust in the government.
- The lack of engagement with the SCC's evidence and findings related to the SAPS Crime Intelligence Division is a cause for serious concern.

2.7. Whistleblower protection measures

Main problems identified by the SCC and its recommendations

The SCC emphasised the critical role of whistleblowers in exposing corruption, and it recommended strengthening legal protections for those who disclose wrongdoing. The Commission made three key recommendations:

1. Legislation to ensure that whistleblowers are accorded the protections stipulated in the UN Convention Against Corruption.
2. Legislation to allow whistleblowers to be offered immunity in certain cases.
3. Incentivising whistleblowers by awarding them a fixed percentage of monies recovered if the information disclosed by the whistleblower has been material to the recovery of funds. (This is dealt with in the section on procurement reform above.)

[138] https://www.thepresidency.gov.za/sites/default/files/2022-05/Report%20of%20the%20Expert%20Panel%20into%20the%20July%202021%20Civil%20Unrest.pdf

Nature of the President's response

The Presidency's plan acknowledged that whistleblowing is an 'essential weapon in the fight against corruption' and that 'whistleblowers need protection from retaliatory action – in the form of disciplinary action or criminal charges – by public and private bodies at which corruption has been alleged'.[139] It was reported that the Department of Justice had already commenced a review of the PDA and Witness Protection Act (WPA). The review would include consultation with stakeholders and NACAC, and would be completed by the end of April 2023. It also committed to considering whether the mandate for the Office for Witness Protection should be extended to whistleblowers who are not witnesses.

Summary of progress reported by the Presidency

In June 2023, the Department of Justice published a 'Discussion Document on Proposed Reforms for The Whistleblower Protection Regime in South Africa' for public comment. This document recommended several legislative measures to strengthen whistleblower protection, including criminalising threats against whistleblowers, incentivising credible disclosures, and shifting the onus of proof to those seeking to deny whistleblower claims.

In the 2025 State of the Nation Address, President Ramaphosa announced the government's commitment to 'finalise the whistleblower protection framework and introduce the Whistleblower Protections Bill in Parliament during this financial year.'[140] In the 2025 Progress Report, the Presidency reported that the review process had progressed with inputs received and proposals refined, resulting in the preparation of a draft Bill.[141]

Analysis

The Department's 2023 discussion document did canvass the protections mentioned.[142] The review of whistleblower protections was due to be completed by the end of April 2024.[143] The undertaking in the 2025 SONA that a Whistleblower Protections Bill would be introduced in Parliament during 'this financial year' (i.e., by 31 March 2025) was not met.[144] The Department of Justice's 2025/26 Annual Performance Plan (APP) indicates a commitment to amend the Whistleblower Framework/Bill and introduce it in Parliament in the 2025/2026 financial year.[145]

It could not be independently confirmed that a draft Bill has been prepared or that it includes the protections envisaged. The proposals put forward in the 2023 discussion document were supported by civil society groups but were criticised for not going far enough.[146] It is unknown whether the new draft bill differs meaningfully from the 2023 proposals.

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[139] The President (2022: 53).

[140] Available at: https://www.stateofthenation.gov.za/assets/downloads/SONA_2025_Speech.pdf

[141] The Presidency (2025: 11-12).

[142] Available at: https://www.stateofthenation.gov.za/assets/scc-legislation-and-reports/20230629-whistleblower-protection-regime_cover.pdf

[143] DoJ&CD Annual Report 2023/24 (2024: 128). Available at: https://www.justice.gov.za/reportfiles/Annual-Report-2023-24-DOJCD.pdf

[144] PMG 'All tabled Bills' available at: https://pmg.org.za/bills/tabled/year/2025/

[145] Available at: https://www.justice.gov.za/MTSF/mtsf.htm

[146] See, for example, CSWG (2024: 18).

In March 2025, the Platform to Protect Whistleblowers in Africa (PPLAAF) and NACAC convened a high-level conference 'to assess and bolster whistleblower protection mechanisms and generate actionable recommendations'.[147] The conference report made important and detailed recommendations on the institutional framework for the whistleblowing regime, whistleblower protection and support, reporting systems, and specific critical provisions for inclusion in legislative reforms, incentivisation, and public education. The joint conference report emphasised the urgency of legal reforms. Civil society groups have stressed the urgent need for reform and cautioned against further delays.[148]

The extended delay in finalising this vital legislation is a matter for profound concern. No reasons have been put forward for the failure to finalise these reforms to date, and any draft bill still has to undergo lengthy public consultation and legislative processes. The draft bill is still to be published for public comment, so it is unclear whether its provisions will adequately strengthen the whistleblower protection regime.

Key takeaways:

- After a promising start to policy and legislative reforms, there has been slow progress, latterly outside the public domain, on a matter highlighted by NACAC as one of its top priorities in the fight against ongoing corruption.
- Draft amendments to the PDA and WPA should, as a matter of urgency, be made available for public comment.

2.8. Professionalisation of the public administration

Main problems identified by the SCC and its recommendations

Appointments, dismissals, and reform of the public administration was a consistent theme throughout the various workstreams of the Commission, including in government departments, SOEs, and law enforcement institutions. The Commission found that the ability to 'strategically position' political associates in key posts within the public administration was the 'essential mechanism' of state capture. Corrupt politicians and officials used appointment and disciplinary processes to remove law-abiding public servants and replace them with those who were willing to be complicit in corruption. The SCC found that broad executive powers of appointment and removal, without effective checks and balances, have allowed patronage considerations to pervade public administrative personnel practices, blurring lines in the political-administrative interface.

The Commission recommended specific reforms to personnel practices in SARS, the intelligence services, the SOEs, and certain proposed bodies like the Public Procurement Anti-Corruption Agency. While the Commission did not provide specific recommendations on personnel practices with regards to the public service and municipalities, it noted that it is unlawful to introduce political criteria into appointment and removal decisions in the South African public administration. And the

[147] Available at: https://www.pplaaf.org/wp-content/uploads/South-Africa-Hive-Document-1-1.pdf
[148] Ibid.

Commission dedicated quite substantial space to analysing the policy of cadre deployment, declaring its efforts to influence appointment and removal decisions as unlawful.

Nature of the President's response

The President's response acknowledged that the SCC had found that '[a] key mechanism of state capture was the strategic positioning of individuals in positions of power through the abuse of public sector appointment and dismissal processes'. It added that the National Framework towards the Professionalisation of the Public Sector (hereafter Professionalisation Framework), adopted by Cabinet on 19 October 2022, made 'specific proposals to stabilise the political-administrative interface, ensure merit-based recruitment and selection and more effective consequence management. All public sector legislation governing professionalisation will be reviewed and, where necessary, amended to align with this Framework' (emphasis added).[149]

The Professionalisation Framework makes specific proposals to stabilise the political-administrative interface, to ensure merit-based recruitment and selection, as well as making proposals for professionalising certain occupations in the state seen as important for state capacity (SCM, HR, ICT, planning, and occupations in the built environment sector). The Presidency noted that, 'All public sector legislation governing professionalisation will be reviewed [to] … align with [the Professionalisation Framework].'[150]

The Presidency's response committed to the following:

- The Professionalisation Framework considers 'an enhanced role for the Public Service Commission (PSC), working with a new Head of Public Administration [HOPA], in the appointment of top officials'. The PSC's role to enhance checks and balances will 'be confined to managing appointment processes to the point of recommendation, preserving the Executive's prerogative as appointing authority'.
- Accounting officers' functions in the use of public funds are set out primarily in the PFMA and Municipal Finance Management Act of 2003 (MFMA). Accounting officers 'should not be penalised for audit findings that relate to minor technical missteps or actions taken in good faith'. Only decisions made in bad faith [or with corrupt intent] should expose an [accounting officer] to criminal investigation, personal financial sanctions or other disciplinary actions'.
- The reforms will 'give effect' to key recommendations in Chapter 13 of the National Development Plan (NDP) on 'Building a Capable State' to 'limit the role of Ministers in appointing and dismissing [s]' and to resolve the conflicting provisions in the Public Service Act and the PFMA concerning executive authorities' and accounting authorities' responsibilities for public sector financial management and procurement processes.
- To clarify the relationship between executive authorities and accounting officers, the following measures will be undertaken:
    - Revisit the induction process for new Ministers and reformulate relevant sections of the Guide for Members of the Executive. (Completion expected by the end of 2022/23).

[149] The Presidency (2022: 11).
[150] Ibid.

    - The Public Service Amendment Bill will regulate ‘more clearly’ the respective roles and functions of executive authority and accounting officers. (It was expected that the Bill would be submitted to Parliament in the 2022/2023 financial year).
    - Develop a code of conduct for special advisers that clarifies their role and ‘reinforces the existing provisions’ that they have authority over accounting officers and ‘shall refrain from interfering in the administration and management’ of departments.
    - Executive authorities will be ‘legally obliged to record in writing all directives and advice’ to AOs, and other officials or office-bearers in a public entity, without which it has no force or effect’.
    - Executive authority advice and directives must be channelled through accounting officers to have force and effect.
- ‘Current initiatives underway to give effect to the above include amendments to the Public Service Act, the Public Administration Management Act, the Public Finance Management Act, the Public Procurement Bill and the implementation of the [Professionalisation Framework].’[151]

Progress reported

The Presidency noted that:

- The Code of Conduct for Special Advisers has been developed, helping to clarify the role of Special Advisers.
- The Presidency has completed the induction of newly appointed Members of the Executive, clarifying the delineation between strategic oversight by executive authorities and the administrative responsibilities of accounting officers.
- A task team has been established with a project plan to conclude a ‘comprehensive revision’ of the Guide for Members of the Executive within the current financial year.
- The Public Service Amendment Bill currently before the National Council of Provinces (NCOP) devolves administrative powers from executive authorities to accounting officers; establishes the Director-General in the Presidency as the Head of the Public Administration; requires executive advice and directives be channelled through Accounting Authorities; and that these are recorded in writing.
- The Public Administration and Management Amendment Bill also before the NCOP ‘addresses the Commission's concerns about conflicts of interest and corruption providing clarification regarding the prohibition against employees conducting business with organs of state’ (criminalising it), and introduces a ‘cooling-off’ period of 12 months for employees involved in procurement decisions, barring them from working with related service providers immediately after their tenure. Further, the DPSA is strengthening its monitoring of Section 8 of the original Act, including monthly monitoring of the Central Supplier Database and comparing this information with the Personnel Salary System (PERSAL) to identify public service employees attempting to register as service providers.
- Draft regulations have been developed for a central register to track officials dismissed or who resigned pending disciplinary cases, noting this register applies across the three government spheres. The Register will serve as a mandatory vetting tool for all prospective public sector employees.

[151] The Presidency (2022: 72-74).

- The Commission's recommendation on lifestyle audits has been implemented for national and provincial departments, with lifestyle audits mandatory since 2021 for national and provincial departments, with 138 departments reporting implementation to the DPSA by 2024.
- The eDisclosure system has been expanded and enhanced to include senior managers, supply chain officials, and other designated categories of employees, supporting the use of lifestyle audits.

Analysis

Government has made slow, halting progress with reforms to personnel practices in the public administration.

Tensions at the political-administrative interface (between executive and accounting authorities) have been problematic because delegations to accounting officers have been inconsistent and discretionary, often leaving the latter vulnerable to undue political pressure from their executive authority.[152] Further, there is lack of alignment between the extensive administrative powers given to executive authorities (not DGs or HoDs) in the public service under the Public Service Act, and the increasingly stringent *responsibilities* assigned to departmental accounting officers under the PFMA, and other legislation such as the Public Audit Act. These issues were noted as early as 2012 in the NDP.[153] The Public Service Amendment Bill more clearly delineates the powers and responsibilities of Political Executives and HoDs, and transfers operational and administrative authority – such as appointments, performance management, and discipline – from Ministers and MECs to DGs and HoDs, addressing misalignment between the PFMA and the Public Service Act. These amendments in the Bill will reinforce the authority needed by accounting officers to exercise their financial management responsibilities in terms of the PFMA and MFMA.[154] It is important that the Bill is passed as a much-needed step in the journey towards a depoliticised public service.

The Code of Conduct for Special Advisers has been drafted, which is a welcome development, though it is not clear when it will be implemented. We also note that under the Professionalisation Framework, both officials and politicians will need to undertake mandatory induction programmes.

Chapter 13 of the NDP and the more recent Professionalisation Framework (2022) also call for reform to recruitment and selection processes for senior officials in the state, and the Presidency committed to movement in this regard in its 2022 response to the Commission (see above). Furthermore, in Pillar 2, NACS commits government to, 'Support[ing] professionalisation of the public sector by giving effect to Chapter 13 of NDP.'

The Professionalisation Framework proposes an enhanced role for the PSC, working with a new HOPA, in the appointment of top officials.[155] These two institutions, the PSC and the HOPA, are

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Human Sciences Research Council. 2024. Draft Report: *Synthesis evaluation of State capacity with A special focus on Directors-General and Heads of Department*.

[153] National Planning Commission (NPC). 2012. 'National Development Plan 2030: Our Future - make it work'. NPC: Pretoria, p. 414.

[154] Public Service Amendment Bill, committee deliberations: https://pmg.org.za/bill/1147/ (accessed: July 2025).

[155] National School of Government. 2022. 'A National Framework Towards the Professionalisation of the Public Sector'. NSG: Pretoria: https://www.thensg.gov.za/wp-content/uploads/2022/10/NATIONAL-FRAMEWORK-BOOKLET.pdf p. 63 (accessed: July 2025).

to act as a check and balance in selection processes – while the Executive would retain the prerogative to make the final appointment. The NDP's proposals in this regard were more robust: the NDP envisioned the PSC playing a direct role in the recruitment of the most senior posts.[156] The chair of the PSC, together with the proposed administrative head of the public service, would convene the selection panel for DGs and HoDs and their deputies. The NDP noted that 'This would allow for a transparent process that could reinforce confidence in the way heads of department are appointed'.

In addition, the NDP proposed strengthening the PSC's independence and authority, necessary for the PSC to ensure the objective and impartial implementation of public service recruitment and appointment procedures.

The PSC Bill, passed by the National Assembly and currently being considered by provincial legislatures, does include provisions for strengthening the independence of the PSC. For example, it establishes a permanent secretariat under the authority of the PSC, with its own budget, in contrast to the (current) Office of the PSC that sits as a unit under a national department (DPSA). This Bill is a positive development, though the PSC Bill is not mentioned in the Presidency's 2025 Progress Report, despite the vital role identified for the PSC in the NDP and the Professionalisation Framework: 'the PSC needs to be a robust champion of a meritocratic public service with a stronger oversight role'.[157] It should be noted, however, that the Public Service Amendment Bill [B13B-2023] does not explicitly remove the PSC from the list of departments and entities that are part of the public service in Schedule 1 to the Act. This should be addressed to align the Public Service Act with the intentions of the PSC Bill.

The Public Service Amendment Bill also establishes the DG in the Presidency as the Head of the Presidency, officially tasked with coordination across the public service. However, the Bill does not clearly establish the DG as the HOPA.

Assuming the PSC Bill and the Public Service Amendment Bill are passed, these legislative changes only partially address the commitments made in the President's response:

- While the Public Service Amendment Bill establishes the Head of the Public Presidency, there is no mention of accounting officers' career incidents being overseen by this office, as envisaged in the NDP and Professionalisation Framework.
- Neither the Public Service Amendment Bill nor the PSC Bill provide for either the Head of the Presidency or the PSC to play a role in bolstering selection processes for senior officials.
- Similarly limited are the claimed '[r]equirements that executive advice and directives be channelled through Accounting Officers'. If these requirements are indeed present in the Public Service Amendment Bill, they appear to be largely implicit in the Bill's provisions. The only clear instance of the '[r]equirements that executive authorities record directives in writing' is limited to circumstances in which the accounting officer is reluctant (perhaps because the instructions may be irregular or unlawful in some way) to comply with an

[156] Brunette, R. 2024. 'Checking Political Discretion in Recruitment to South Africa's Public Administration', Public Affairs Research Institute (PARI) Working Paper 2 of 2024, https://pari.org.za/working-paper-checking-political-discretion-in-recruitment-to-south-africas-public-administration/ (accessed: July 2025).
[157] NPC (2012: 412).

instruction from their responsible executive authority and 'refuses or fails to fulfil a power or duty' in terms of section 3(9)(a) of the Public Service Amendment Bill. If the accounting officer persists in their refusal or failure, the executive authority must report them to the President or Premier, whichever is appropriate. Notably, they are not reported to the DG in the Presidency as a HOPA.

- Further, the Head of the Presidency appears to have no role in such disagreements or disputes, but some protection is afforded to accounting officers who may consider themselves obliged to resist potentially irregular or unlawful instructions.

An important remedial measure to promote depoliticisation of the public service that *is* included in the Public Service Amendment Bill, but that is not mentioned in the Presidency's Progress Report, is the prohibition on any '[accounting officer] or any person reporting directly to them hold political office in a political party, whether in a permanent, temporary or acting capacity'. The Amendment to the Municipal Systems Act applied this prohibition to all staff in municipalities, a clause which was successfully challenged in court by organised labour. Ideally, this prohibition should apply to senior (and possibly middle) managers in local administrations.

Further changes are needed to depoliticise the public administration in local government, including the development of more robust processes for appointing senior officials, i.e. which include check and balances in selection processes. The Professionalisation Framework moots proposals in this regard.

Regarding the PAMA, the Amendment Bill currently before Parliament criminalises an official conducting business with the state and designates this as dismissible 'serious misconduct'. The Bill's 12 months' 'cooling-off' period for public sector employees involved in procurement decisions, barring them from working with related service providers immediately after their tenure, is long overdue and to be welcomed. The Bill does not extend this offence to public entities: this a major omission.

The establishment of a central register for disciplinary cases will be a welcome development, though there is no deadline for establishing and implementing the register. Furthermore, the register does not appear to apply in the case of municipal entities. The regulations for the register also fail to provide that aggregated information should be regularly reported to the PSC and/or Parliament, so that compliance and trends can be monitored. Lastly, it will be important to ensure that the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PA-EID-TAU) in the DPSA, tasked with overseeing the register, amongst other related functions for integrity management, has the necessary resources and legal authority to effectively implement its mandate.

Regarding lifestyle audits, according to the latest available DPSA Annual Report (2023/24), 142 departments are compliant with the three-tiered process. It is not clear from the progress reports which entity or entities are responsible for undertaking these audits, whether there are any minimum criteria for 'compliance' and any quality assurance checks. It is unclear whether or when lifestyle audits may be extended to local government – admittedly, a substantial undertaking.

We note that the NACS includes a commitment that 'Bodies mandated to provide oversight such as Chapter 9 institutions, regulators, and those responsible for oversight in local government are supported, strengthened and adequately resourced'.[158]

Executive accountability measures

Strictly speaking, although these measures are reported on as part of this section on professionalisation, it is not appropriate to talk about 'professionalisation' of the Executive - as elected public representatives they are quite distinct from the public administration, performing different functions and with different types of responsibilities. However, the National Professionalisation Framework distinguishes between the concepts of 'professionalisation' and 'professionalism'. It is suggested that this latter concept can be appropriately applied to Members of the Executive as it consists of 'practices, conduct, values and behaviour that a person exhibits regardless of training, qualifications and levels of responsibility'.[159]

Summary of progress reported by the Presidency

Lifestyle Audits for Members of the Executive

The Presidency has developed the methodology for conducting lifestyle audits for the Members of the Executive. The 6th Administration Members of the Executive submitted their financial interest disclosures to the Registrar of Financial Interest for Members of by Executive by 24 May 2024. New Members of the Executive in the 7th Administration submitted their financial interest disclosures by 2 September 2024. Members also submitted consent forms to conduct the lifestyle audits. The process of verification and analysis of information is underway.[160]

Induction of Members of the Executive

As part of the reforms outlined in the President's response, the Presidency has completed the induction of newly appointed Members of the Executive. This induction clarified the delineation between strategic oversight by executive authorities and the administrative responsibilities of accounting officers.[161]

Guide for Members of the Executive

The President's Response also identified the need for a review of the Guide for Members of the Executive. Following an initial revision published in November 2022, a task team has been established with a project plan to conclude a comprehensive revision within the current financial year.[162]

Analysis

The commencement of lifestyle audits for Members of the Executive constitutes welcome progress. However, it is unclear from the Presidency's progress report whether the scope of these audits includes members of the national and provincial executives, whether a timeline has been set for their completion, whether the outcomes will be communicated to the public, and whether these

[158] NACS (2020: 35).
[159] NPF (2022: 9).
[160] The Presidency (2025: 14).
[161] The President (2022: 72, 73).
[162] The President (2022: 73).

audits will be undertaken more than once. It may be necessary for provisions concerning lifestyle audits to be accorded the force of law by inclusion in the Executive Members' Ethics Act 82 of 1998 and Code.

It is noted that the current Members of the Executive were inducted in a manner that 'clarified the delineation between strategic oversight by executive authorities [EAs] and the administrative responsibilities of accounting officers'. The revised Guide (presumably the Ministerial Handbook) will be an update of an interim revision produced in 2022.[163] No date has been given for this update, but it is suggested that it should not be delayed much beyond the adoption of legislation currently before Parliament, particularly the Public Service Amendment Bill. Publication of the subsequent Guide will need to be closely monitored, and its guidance assessed. It may be instructive to assess the extent to which the contents of the Guide differ from the content of the guidance published by the PSC in May 2024.[164]

These sorts of reforms - inductions, updates to guidance - provide little counterweight to a far broader problem of a political system that enables patronage. More importantly, the country needs to see progress on the big reforms being implemented and beginning to have impact, such as criminal prosecutions for corruption, and reforms to the Public Service Act that ensure that politicians (executive authorities) are clearly removed from any possible involvement in operational and procurement matters of departments and SOEs, etc.

Key takeaways

Public Administration

- The legislation currently under deliberation in Parliament (the Public Service Amendment Bill and the PSC Bill) represents a partial (incomplete) implementation of the promised reforms aimed at depoliticising the public administration.
- Given that such reform strikes at the heart of the patronage system, we suggest that there is room for government to experiment with a gradual, but progressive implementation of such reforms to reduce potential political pushback but enable further movement in the professionalisation agenda.
- Amendments to PAMA strengthen prohibitions on state employees conducting business with the state.
- And the draft regulations for a central register of disciplinary cases is a welcome initiative.
- These latter two initiatives do not cover all organs of state. This should also be gradually extended. In addition, supporting digital infrastructure and data collection standards should be developed to enable proper oversight of personnel practices (as per the analysis above on the lack of integrated systems for public procurement across all

[163] Department of Public Service and Administration (DPSA). 2022. *Guide For Members of the Executive.* Available at: https://www.dpsa.gov.za/dpsa2g/documents/acts&regulations/Guide_for_members_of_the_executive/Guide%20for%20Members%20of%20the%20Executive%202022.pdf

[164] The Public Service Commission published a *Guide on Governance Practice for Executive Authorities and Heads of Departments* in May 2024. Available at: https://www.psc.gov.za/documents/reports/2024/PSC_Guide_on_Governance_Practice_for_EAs_and_HODs.pdf

organs of state). Integrated systems and standardised data collection would support oversight by policy holders (e.g. the Department of Cooperative Governance and by Parliament).

- It will be important to ensure that the PA-EID-TAU in the DPSA has the necessary resources and legal authority to effectively implement its mandate.

Executive accountability

- The commencement of lifestyle audits for Members of the Executive is welcome progress. Further details should be made available, including their scope, date for finalisation, and their outcomes, as well as their frequency.
- To enhance the influence and strengthen the impact of the mandated lifestyle audits, it may be necessary to consider inclusion of provisions mandating their methodology, scope and frequency in the Executive Members' Ethics Act.
- That the induction of the new Executive and updated guidance includes clear delineation of authority between EAs and AOs is also to be welcomed.
- Updated guidance is likely after enactment of amendments to the Public Service Act that are currently under consideration by Parliament, which requires monitoring.

2.9. Strengthening the audit system

Main problems identified by the SCC and its recommendations

The Commission highlighted certain concerns related to the auditing of public entities. It noted that the auditing of private firms tends to focus on ensuring that statements have been prepared in accordance with the financial reporting framework, whereas in respect of public entities there must also be a focus on compliance with the applicable laws, regulations, SCM policies, etc. Private audit firms are sometimes ill-equipped to do this work, whereas the AG 'specialty' is ensuring compliance, and has the requisite skills, experience, and level of independence.

For this reason, the Commission recommended that the AG's office be further capacitated so that it can audit all public entities. Alternatively, to the extent that the latter is not practicable, private firms should only be appointed to audit SOEs if they can demonstrate that they have the requisite skills and understanding of their obligations to the public at large when they audit an SOE.

Specific recommendations included:

- Support and ensure compliance with the recent amendments to the Public Audit Act that strengthen the ability of the AG to enforce remedial action.
- Ensure that the term 'irregular expenditure' is used with care and specificity by the AG and in general to avoid losing its utility as a remedial tool.

Nature of the President's response

The President's response indicated that the AG had developed a detailed response plan to the work of the Commission. It also noted that the National Treasury had partnered with academia on

a research project to enhance the oversight function and value of South Africa's public sector audit committees, which was completed in 2022. This research was to be used to inform legislative reforms.

The Presidency also committed to reviewing the respective roles of the AG and private auditors (as well as recommendations on the public sector audit committees) by September 2023.

Summary of progress reported by the Presidency

The AG developed a response plan to the Commission, involving changes to its audit directives, training, scoping decisions, systems/tools, internal environment, consequence management, approach to material irregularities, etc. In December 2024, the AG reported that it had completed 'much of the work' regarding the Commission's recommendations on strengthening the audit system, and that the 2025-28 strategic period would be used to complete the remaining actions, and institutionalise the work delivered prior.[165]

In the 2025 Progress Report, the Presidency reported that the findings of the audit committee research project would inform legislative reforms during the review of the PFMA/MFMA, with work on the PFMA Amendments Bill continuing in the first quarter of 2025/2026. It was also reported that the National Treasury and the AG have reviewed the concept of irregular expenditure to shift focus toward identifying corrupt, suspicious, or bad faith expenditure. Instruction No. 4 of 2022/2023, issued in 2022, established new reporting requirements for irregular and fruitless expenditure, requiring detailed disclosure in annual reports and financial statements. These definitions have been incorporated into draft amendments of the PFMA and MFMA, which have been prepared for public comment with the intention of presenting to Parliament in 2026.

Analysis

The implementation of changes to the Public Audit Act (made in 2018) concerning material irregularities is a positive development. These allow the AG to take remedial steps following the identification of a 'material irregularity', which is any fraud, theft, breach of a fiduciary duty or contravention of the law that could result in a material financial loss, the misuse or loss of a material public resource, or substantial harm to a public sector institution or the general public. The AG can refer a suspected material irregularity to a public body with the mandate and powers for dealing with that irregularity, such as the PPSA, the SIU or police, or the AG can make its own recommendations. The AG must take binding remedial action if these are not implemented, and where necessary, issue a directive to the accounting officer or accounting authority to quantify and recover the loss from the responsible person. If remedial action does not follow, the AG must issue a certificate of debt in the name of the relevant accounting officer or accounting authority. It is the responsibility of the relevant executive authority to recover the loss from the accounting officer or authority.[166] In 2023, the AGSA reported a noticeable impact on public sector accountability resulting from these enhanced powers. The AG noted that material irregularity notices often 'jolt' accounting officers into action.[167]

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[165] https://pmg.org.za/committee-meeting/40076/

[166] Public Audit Act, sections 5A and 5B.

[167] Corruption Watch, 'Billions lost to material irregularities, but AGSA is making progress', published November 2023, https://www.corruptionwatch.org.za/billions-lost-to-material-irregularities-but-agsa-is-making-progress/ (accessed: July 2023), and AGSA 2023 Annual Report.

Regarding the update of the PFMA and the MFMA, it is a concern that planned reforms to this legislation have not proceeded with greater urgency. Given that these amendments (including changes to the definition of, and reporting requirements for, irregular expenditure) have not been made public yet, we were not able to provide specific comment on them. These amendments, once public, should be engaged with by NACAC, given the central role of the AGSA's findings on irregular expenditure as an indicator of non-compliance with law in South African public institutions.

Key takeaways

- The implementation of changes to the Public Audit Act (made in 2018) concerning material irregularities is a positive development, with the AGSA reporting a noticeable impact on public sector accountability resulting from these enhanced powers.
- Anticipated amendments to the PFMA and MFMA (not yet made public) should be monitored, given their potential significance with regards to the definition and application of the concept of irregular expenditure.

2.10. State-owned enterprises

Main problems identified by the SCC and its recommendations

A substantial portion of the Commission's work was dedicated to corruption within SOEs, as they were the primary targets of state capture. The SCC identified improper appointments and dismissals as a key mechanism of state capture in SOEs. It raised two key concerns: the de facto unchecked power of ministers to make critical appointments to SOEs, and the lack of transparent, open, independent appointment processes.

The Commission's report provides a detailed proposal for a 'Standing Appointment and Oversight Committee'. It envisages inter alia that the Chief Justice, the LPC, and the Independent Regulatory Board of Auditors participate in constituting a committee for appointments to the boards and senior posts of SOEs.

Nature of the President's response

The Presidency accepted 'the principle of greater transparency and rigour in the appointment of SOE boards and executive leadership' and the need for 'a process for the appointment of SOE boards that is not open to manipulation, including the involvement of independent panels with appropriate technical expertise to recommend suitable candidates to the relevant executive authority.' The initial response plan raised several, reasonable concerns with the model suggested by the Commission.

The Presidency promised that the principles of the Commission's recommendations would 'guide government's reform of board appointment processes to ensure greater transparency, scrutiny and checks and balances in the appointment of SOE board members'. It specifically committed to the following:

- The Presidential SOE Council to be tasked with considering a framework for appointments, in addition to its existing work of strengthening the SOE governance framework, which includes the introduction of overarching legislation governing SOEs and the determination of an appropriate Shareholder Ownership Model. This model would include the option of a centralised holding company, which would introduce more objectivity and transparency to appointments.
- Provision to be made in the final 'Guide for the Appointment of Persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions' for independent panels of relevant stakeholders and experts to play a role in nominating candidates to the relevant minister. To be finalised in 2023/24.
- The establishment of a central database of potential candidates (through a process of nomination and vetting) that can be appointed to the boards of SOEs, upon conclusion of the aforementioned Guide.
- A State-Owned Enterprises Bill and its regulations to codify the appointment process, to be finalised in 2022/2023.

Summary of progress reported by the Presidency

In August 2023, the President stated that the draft National State Enterprises Bill would align the process for appointing SOE boards and executive management with the recommendations of the Commission, and that this new law would improve oversight, transparency and accountability of SOEs. The National State Enterprises Bill introduced the single shareholder model by establishing a holding company to supervise identified state enterprises. The draft legislation also envisages the disbandment of the Department of Public Enterprises, which was set up in the 1990s to exercise political and legislative control over SOEs. Since the latest government was formed in 2024, the ministry no longer exists.

The government reintroduced the National State Enterprises Bill to Parliament in January 2024 after it lapsed at the end of the Sixth parliament.[168] The Bill proposes the State Asset Management SOC Ltd to centralize governance of SOEs, with provisions for merit-based board appointments.

The Memoranda of Incorporation for State-Owned Companies have been reviewed to remove provisions for Board Procurement Committees and ministerial involvement in procurement processes.

The development of the 'Guide for the Appointment of Persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions' and the creation of a central database of potential candidates remain pending. These actions will be regulated by Regulations to be developed once the National Public Enterprises Bill becomes an Act.

Analysis

The Presidency has pinned the majority of its SOE reform agenda on the National State Enterprises Bill. It is challenging to evaluate this package of reforms from the perspective of anti-corruption (versus the wider reform of the SOE model), because the President has not made clear the theory of change, specifically how the new ownership model will address, mitigate, or solve the structural and systemic problems in SOE *governance* demonstrated by the Commission. (We

[168] The Bill is currently in Parliament: https://pmg.org.za/bill/1208/

make no comment on the model's implications for operational efficiency, and its abilities to pursue developmental goals.)

The Commission itself made this criticism in response to the government's discussion document on vision and foundational elements for a centralised shareholder model and a state-owned holding company of SOCs dated 14 December 2021: '...the discussion document has little to say as to how, and why, its proposal for a state-owned holding company for SOCs will insulate the SOEs from state capture in the future.'[169]

The Bill is said to assist in insulating the large SOEs from political interference via their placement in the shareholding company. Certainly, the current version (B1-2024) of the Bill introduces some good provisions regarding the appointment of the first board of the holding company. Appointments are through an independent selection panel composed of a retired judge and two members of the National Executive appointed by the President, a person appointed by organised business and organised labour (respectively) represented in the National Economic Development and Labour Council (NEDLAC), and three persons appointed by the President who have been or are chief executive officers of public companies. They recommend appointees to the President. Future appointments to the board are on the recommendation of the Board and appointment by the President. NEDLAC deliberations on the Bill have seen amendments that support enhanced governance. For example, to address social partners' concerns about director removals, the holding company memorandum of incorporation will require the shareholder to publish reasons for dismissals (i.e. greater transparency), and a new clause requires the shareholder to provide written motivation for rejecting board-nominated directors.[170]

However, many of the concerns raised by the SCC remain unaddressed. The Bill does not specify how the boards and executives of SOEs subsidiary to the holding company will be appointed. In addition, there is no mention of how board appointments will be reformed in the case of public entities *not* transferred to the holding company. The Bill caters for the large public entities, such as Transnet, Eskom and so forth (some 13 entities), and not for the thousands of other entities at national, provincial and local government level.

International best practice suggests clear principles to guide appointment reform: appointment and removal should be governed by criteria of merit, performance and commitment to developmental mandate (and, per South Africa's transformation commitments, by representativity considerations); in order to guard against the introduction of patronage considerations into appointment and removal processes, independent bodies or persons should assume a role as check and balance within selection and removal processes; and appointment and removal processes must be open and transparent.

Aside from reforms to board appointment processes, other interventions are needed to insert safeguards against abuse of the procurement system in SOEs. As analysed above, the PPA contains some positive developments regarding enhanced transparency, and other integrity measures, for public procurement. However, under the current wording of the National Enterprises

[169] SCC Report, Part VI, Vol. 3 p. 220.

[170] 'National State Enterprises Bill: NEDLAC briefing', meeting of the National Assembly Portfolio Committee for Planning, Monitoring and Evaluation, 21 May 2025, Parliamentary Monitoring Group website: https://pmg.org.za/committee-meeting/40754/ (accessed: July 2025).

Bill, once SOEs are transferred to the holding company, the PFMA would no longer apply, nor the PPA once it is in force. This appears to be at odds with the push to harmonise the currently fragmented and vulnerable procurement framework. In a recent presentation to Parliament, the National Treasury has raised its significant concerns in this regard. The National Treasury and Department of Planning, Monitoring and Evaluation (DPME), custodian of the Bill, have, according to the Treasury, agreed that a hybrid application of the PFMA and the Companies Act should be considered, as a proposed amendment to the [National State Enterprises] Bill'.[171]

The Bill is not just introducing new governance measures – it is an entirely new economic and organisational model for a substantial portion of government. A legislative amendment of this scale is extremely time consuming. This Bill has taken years before being introduced into Parliament, and it will inevitably be delayed further as it is contested in the legislature. Other reform commitments by the Presidency will only be implemented after the Bill is enacted. This has led to a substantial delay in addressing the deep governance issues that continue to plague our SOEs, and gaps remain regarding reforms for the majority of public entities.

Key takeaways

- Government has positioned the National State Enterprises Bill as the significant instrument to address governance challenges in SOEs. The extent to which the Bill will in fact address such challenges is not yet clear, and it may be some time before the Bill comes into effect.
- For example, the Bill in its current version (B1-2024) introduces some robust provisions regarding the appointment of the first board of the holding company and new clauses regarding transparency on director removals. However, the Bill does not specify how the boards and executives of SOEs subsidiary to the holding company will be appointed.
- Under the current wording of the Bill, once SOEs are transferred to the holding company, the PFMA would no longer apply, nor the PPA once it is in force. This is worrying in view of the Commission's concerns with the need for harmonising legislation for public procurement. In July 2025, the National Treasury reported to Parliament that the Treasury and the DPME have 'agreed that a hybrid application of the PFMA and the Companies Act should be considered, as a proposed amendment to the [National State Enterprises] Bill'.
- The Bill caters for the large public entities (some 13 entities), and not for the thousands of other entities at national, provincial and local government level. It is not clear how governance challenges for these entities will be addressed.

2.11. New criminal offences

Main problems identified by the SCC and its recommendations

The Commission recommended that the government consider creating a 'statutory offence rendering it a criminal offence for any person vested with public power to abuse public power vested in that person by intentionally using that power otherwise than in good faith for a proper

[171] 'National Treasury and FFC briefing on National State Enterprises Bill; with Minister', meeting of the National Assembly Portfolio Committee for Planning, Monitoring and Evaluation, 9 July 2025, Parliamentary Monitoring Group website: https://pmg.org.za/committee-meeting/41238/ (accessed: July 2025).

purpose'. The Commission explained that 'potential violations might range from the case of a president of the Republic who hands a large portion of the national wealth, or access to that wealth, to an unauthorised recipient to the junior official who suspends a colleague out of motives of envy or revenge'.[172]

The Commission was concerned about 'the extent to which certain public representatives failed to exercise their power, and the resultant massive losses to the fiscus and the suffering caused to vulnerable members of the public, [including] in respect of PRASA-related matters, and the premium that the Constitution places on accountability, perhaps it is time for South Africa to ensure that its public representatives fulfil their obligations by introducing a … sanction for what may be termed constitutional and political malpractice'.[173]

The Commission recommended that PRECCA be amended to introduce a provision criminalising the failure of persons or entities to prevent bribery. This is discussed in more detail in section 2.12 on private sector accountability.

Nature of the President's response

The Presidency did not support or reject these recommendations, but it directed the DoJ&CD to research possible legislative provisions and their parameters and implications. This work was to be completed by December 2023.[174]

Summary of progress reported by the Presidency

The Presidency's 2023 Progress Report confirmed this due date for completion of the research.[175]

The Judicial Matters Amendment Act (Act 15 of 2023), which commenced on 3 April 2024, added a new section 34A to PRECCA that creates an offence of failure by private sector entities or state-owned entities to prevent corruption.[176] Organisations can now be held liable if a person associated with them provides gratification to gain business advantages, unless the organisation can demonstrate it had 'adequate procedures' in place to prevent such corruption.

Regarding the creation of a statutory offence for abuse of public power, the recommendations of the South African Law Reform Commission (SALRC) are under discussion and evaluation in the DoJ&CD. This is expected to produce a draft bill by November 2025. Similarly, sanctions for constitutional and political malpractice are also being considered, with the SALRC recommendations under discussion and evaluation in the Department of Justice. This evaluation process is also expected to be completed by November 2025.[177]

[172] The President (2022: 60).
[173] The President (2022: 60).
[174] The President (2022: 60).
[175] The Presidency (2023: 18).
[176] Available at: https://pmg.org.za/bill/1133/
[177] The Presidency (2025: 15).

Analysis

This section should be considered in relation to the earlier section on Executive accountability as the offences recommended by the SCC relate to conduct by public representatives as well as public officials.

The Presidency's progress reports provide no detailed information concerning research on these issues by the SALRC, nor could any related reference be found on the SALRC website[178] of any research, issue or discussion papers, or of any research report. In any event, the benefit of the creation of any new offences depends largely on the ability of law enforcement agencies to detect and prosecute that offence.

Key takeaways

- The amendment of PRECCA as recommended by the SCC is welcomed.
- It will be necessary to monitor publication by the DoJ&CD of the promised draft bill dealing with abuse of power due by November 2025.

2.12. Private sector accountability

Main problems identified by the SCC and its recommendations

The Commission exposed the central role that private sector actors played in state capture, through direct involvement in procurement corruption, fraud and money laundering, but also by enabling corruption through the provision of professional services and in weakening institutions that stood in the way of state capture. Perpetrators, large multinational firms amongst them, included management consultants, advisors, accountants, auditors, lawyers, bankers and providers of goods and services.

The Commission did not make many direct recommendations for addressing the role of private sector actors in state capture, though many of the other recommendations are relevant (procurement reform, anti-money laundering reforms, and so on.) Four specific recommendations are relevant:

1. The Commission recommended amending of the Companies Act to permit applications for a director to be declared delinquent to be brought even after the two-year time bar, on good cause shown.[179] This would solve a straightforward problem identified by the Commission: it often takes many years for the facts of delinquency to be uncovered, and the two-year limit would prevent a company from holding such directors accountable (and ensure they do not serve on other boards in the future.)
2. The Commission recommended that PRECCA be amended to introduce a provision criminalizing the failure of persons or entities to prevent bribery, which would serve to 'strengthen the duty of private sector entities to put in place measures against bribery.'[180]

[178] Available at: https://www.justice.gov.za/salrc/index.htm
[179] SCC Report, Part I, p. 78.
[180] SCC Report, Part I, p. 854.

A private sector firm or incorporated SOE would be guilty of an offence under PRECCA if an employee or other person performing services for it offered or paid a bribe, *unless* that entity 'had in place adequate procedures designed to prevent persons associated with A from giving, agreeing or offering to give any gratification prohibited under Chapter 2.'

3. The Commission recommended introducing legislation for DPAs by which the prosecution of a corporation accused of economic crimes can be deferred on certain terms and conditions, primarily if they cooperate with and assist in investigation of offences. In the Commission's view, this would not solve, but would go some way to improving, the problem of 'the combatting of corrupt activities and money-laundering … being hampered by the onerous burden of proof upon prosecutors (whose tasks are frustrated by inadequate resources).'[181] The Commission proposed that DPAs (provided they are subject to oversight) could be a useful tool in that 'they enable investigators and prosecutors to become aware of corporate crimes from the perpetrators and hold them and their implicated employees and agents accountable while avoiding the harsh consequences of an indictment on innocent employees and other stakeholders.' However, the Commission stressed that a DPA should – as far as possible – be accompanied by the criminal prosecution of the implicated individuals to ensure that individuals are held accountable and to 'mitigate against any suggestion that DPAs allow the corporate criminal to "get away" with crime.'
4. The Commission recommended amending the Political Party Funding Act (PPFA) to criminalise the making of donations to political parties in the expectation of tenders, contracts or influence over government decisions. This is dealt with below in section 2.13.

The SCC also drew attention to the closure of bank accounts by banks and suggested that legislation be amended or introduced to add a requirement of fairness.

Nature of the President's response

The President committed to amending the Companies Act (review to be completed in late 2023) and PRECCA (to be included in the Judicial Matters Amendment Bill, to be submitted to Cabinet in late 2022) as recommended by the Commission. The President referred the question of DPAs to be considered by the SALRC as part of its review of the criminal justice system. This review was expected to be finalised at the end of the 2023/2024 financial year.[182]

Regarding banks, the Presidency's initial response indicted that:

- In terms of the Financial Services Regulation Act, the Financial Sector Conduct Authority has issued Banking Conduct Standards 3 of 2020, which requires banks to treat their customers fairly, including for bank account closures.
- National Treasury would review whether the current standards need to be strengthened to better protect retail customers from bank closures from a financial inclusion perspective, where closures are to comply with AML and other legislation.

[181] SCC Report, Part I, p. 816.
[182] The President (2022: 47-48).

Summary of progress reported by the Presidency

The Companies Second Amendment Act (Act 17 of 2024), which commenced on 27 December 2024, amended section 162 to extend the time limits to five years for delinquency proceedings against directors implicated in serious misconduct.[183] The Judicial Matters Amendment Act (Act 15 of 2023), which commenced on 3 April 2024, added a new section (34A) to PRECCA that creates an offence of failure by private sector entities or state-owned entities to prevent corruption.[184]

The SALRC has considered DPAs as part of its review of the criminal justice system. It has finalised a discussion paper on NTR mechanisms, including DPAs.[185] The document was released to the public on 20 February 2025. Comments are reportedly being collated and analysed and are due to be factored into the report by July 2025.

In early 2024, the NPA adopted the Corporate Alternative Dispute Resolution policy. According to the NPA, Corporate Alternative Dispute Resolution 'is an important tool in the NPA's wider toolbox to extract accountability through punitive reparations, enhanced cooperation in criminal matters, and recovering stolen money swiftly to support broader law enforcement efforts.'[186] To be considered for Corporate Alternative Dispute Resolution, companies typically must pay back a significant amount of money, improve their anti-corruption policies and prevention methods, collaborate with law enforcement authorities and take disciplinary action against individual wrongdoers. The NPA is still able to proceed with prosecutions and asset forfeitures against the company's directors, employees or agents, even where a case against a corporate entity has been resolved using this mechanism.

Analysis

It is unclear from the Presidency's progress reports whether the National Treasury has reviewed bank conduct standards.

It is understandable that the possibility of DPAs required research and an opportunity for public comments before summary implementation. It is hoped that the SALRC will finalise its report without undue delay so that a decision can be made for adoption into law.

The NPA's Corporate Alternative Dispute Resolution mechanism is an instrument of prosecutorial policy that does not require legislative reform. DPAs would be a different matter as the NPA is not empowered to enter into agreements with implicated parties nor to impose penalties, which is the purview of the judiciary (indeed, there are no explicit legal provisions for the conditional withdrawal of criminal charges in these cases.)[187] The Corporate Alternative Dispute Resolution mechanism also does not provide for transparency, oversight, or monitoring of compliance.

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[183] Available at: https://pmg.org.za/bill/1170/

[184] Available at: https://pmg.org.za/bill/1133/

[185] Available at: https://www.justice.gov.za/salrc/dpapers/DP165-Project151-Non-TrialResolutions.pdf

[186] NPA (2024: 18). The policy is available at: https://www.npa.gov.za/sites/default/files/uploads/Annexure%20A%20PART%2051%20Corporate%20ADRM_0.pdf

[187] See https://dullahomarinstitute.org.za/acjr/acjr-publications/policy-brief-the-national-prosecuting-authority-directives-for-corporate-alternative-dispute-resolution-cadre-by-lukas-muntingh-and-jean-redpath

The SALRC draft report finds that the use of non-trial resolutions for economic crimes in South Africa would probably improve anti-corruption enforcement. However, a strong legal framework would need to be developed, and it would require careful consideration of the incentive structure for companies to enter into non-trial resolutions, given South Africa's comparably weak enforcement capability. The SALRC makes a number of detailed proposals for what that legal framework could look like and how non-trial resolutions and DPAs could work in South Africa, including the role of judicial oversight.

As emphasised by the SALRC, the SCC and other observers, the use of non-trial resolutions must accompany effective enforcement and prosecution of private sector actors in order to have any impact on the incentives of businesses to engage in corruption. The introduction of section 34A of PRECCA is an important development, but more guidance is needed about how this section is to be applied in practice, and it remains to be seen whether this will exercise a positive impact on the conduct of private sector firms. Without the threat of enforcement, it may prove to be a weak incentive for change.

The Commission did not make substantial recommendations concerning reforms to the private sector. However, the body of evidence contained in the Commission's report demonstrates serious vulnerabilities in the ways that private actors do business with the state – and with each other. Some of these vulnerabilities can be addressed through procurement reform, but others require a focus on the structure, activities, and anti-corruption controls of private sector firms themselves.

For example, both the Commission and the President in his response acknowledged the role of professional service providers as 'enablers' of corruption and state capture, and both have acknowledged the importance of addressing this issue. Yet neither party has engaged with the matter beyond consequence management for those persons and companies implicated in wrongdoing. There is a growing body of evidence on the role of enablers (especially in terms of illicit financial flows), which suggests that regulatory frameworks that are common in most jurisdictions, including ours – where 'professions' self-regulate to detect risks and report them – are not sufficient to address corruption risks.[188] The self-regulation regime puts firms in the role of both player and referee with profits on the line. There is a clear case for developing stronger oversight measures over professional activities that play a critical role in the facilitation of corruption, money-laundering, and other wrongdoing.

It is also important to consider regulatory interventions to change the 'ways of doing business' that create opportunities and incentives for corruption.[189] For example, all-service firms face conflicts of interest inherent in their business practice model. Auditors must conduct independent oversight and are mandated to act on irregularities they identify, but they may be disincentivised to do so if other arms of their firms are simultaneously engaged in high-paying work for the same client. Furthermore, legal and financial advisers are routinely employed to help clients evade accountability – while the same company conducts their audits. This is why the UK's Financial Reporting Council ordered the Big Four accounting firms to break up their audit and non-audit operations. This is one example of a structural problem and possible reform approach.

[188] See, for example, Arshinoff, Humphreys and Tassé (2022).
[189] See Thakur and Pillay (2022) and Open Secrets (2020).

On a broader level, greater corporate transparency is necessary and urgent. Beneficial ownership transparency and similar reforms would empower anti-corruption actors to detect and act against corruption and state capture (the creation of the Beneficial Ownership Register and new provisions in the PPA for capturing beneficial ownership data for public procurement are therefore welcome). Non-governmental actors have been the first movers in investigating many of the corruption cases before the Commission, and their tracking of the directorship and ownership of companies, shell companies, and other corporate vehicles was essential to unravelling state capture. Corporate transparency reforms that put vital information in the public domain could prove an effective use of the 'whole-of-society' approach espoused by the government and NACS.

Key takeaways

- Commitments to amend the Companies Act and PRECCA have been met, and these changes are now in place. Official guidance/policy on how section 34A of PRECCA is to be applied in practice is necessary.
- The SALRC review on non-trial resolutions should be finalised without delay, and the development of a non-trial framework should be a priority.
- Strong enforcement is required to hold corporate actors accountable, and to ensure that non-trial resolutions and the new PRECCA provisions work effectively as intended.
- Greater attention must be paid to regulatory reforms concerning the private sector, especially concerning professional enablers and corporate transparency.

2.13. Amendment to the Political Party Funding Act

Main problems identified by the SCC and its recommendations

The evidence given at the Commission established a link between the corrupt manipulation of tenders and political party financing: 'Such a link can represent an existential threat to our democracy. It is inconceivable that political parties should finance themselves from the proceeds of crime, and yet there is alarming evidence to that effect.'[190] The Commission also canvassed the role of party politics in enabling corruption and state capture and in shielding party leaders from accountability.

Prosecution, in the Commission's view, would not be sufficient to address the problem, and the PPFA 'does not go as far as it should.' Therefore, the Commission recommended that the PPFA be amended to criminalise donations to political parties in the expectation of tenders or contracts as a reward.[191] In the Commission's view, for this to be effective, it would be necessary for the legislation to require external inspections both of tenderers and political parties by a designated authority with appropriate powers of search and seizure, and for significant monetary penalties to be imposed on both parties in the event of breach.

Nature of the Presidency's response

[190] SCC Report, Part I, pp. 802-806.

[191] The Presidency (2022: 46); State Capture Commission Report, Part 1, Vol. 3, Ch. 4, p. 854.

The Presidency committed to implementing this recommendation alongside other consequential amendments that will be required following the approval of the Electoral Amendment Bill before Parliament at the time.[192]

Summary of progress reported by the Presidency

The Electoral Matters Amendment Act (Act 14 of 2024) amended the Political Funding Act to make it an offence – punishable with a fine, imprisonment of up to five years or both – where donations are made to political parties, members, independent candidates, or representatives with the 'expectation' that they will 'influence' the awarding of tenders, licenses, approvals, or other government decisions. The Act commenced on 8 May 2024.[193]

Analysis

The new provision in section 19(3) of the renamed Political Funding Act (PFA) creates the promised offence, which extends beyond only tenders. The provision does not require an explicit promise or undertaking in order to give rise to an 'expectation'; it requires only that the offender 'will influence' the award of a 'tender, licence, approval, consent or permission, or the relaxation of a condition or restriction in relation thereto'. The phrasing of these elements eases the burden of proof and makes any breach easier to prove. The creation of any new offence will only be as effective as the enforcement required to ensure compliance and accountability.

The Commission's proposed amendment is motivated by a concern over the influence on money over politics, and specifically the link between party financing and procurement corruption, and its body of evidence supports the need for greater transparency in politics and in state spending. It is therefore of significant concern that, in May 2025, the National Assembly voted to double the disclosure threshold and donations cap stipulated by the PFA, which were raised from R100,000 to R200,000 and R15 million to R30 million respectively. The portfolio committee had ignored objections from CSOs as well as a report prepared by the Parliamentary Budget Office, which warned that South Africa already exceeds global norms for private political donation limits.[194] The Budget Office's report revealed that the original thresholds lacked a clear foundation and rationale.[195] The National Assembly adopted the committee's recommendation and the matter is now before the President for his assent. The adoption of the new thresholds would significantly weaken the PFA's effectiveness as a tool for transparency and accountability in political financing.

Key takeaways

- Section 34A has been adopted and even strengthened beyond the SCC's initial recommendation. Its effectiveness will depend on enforcement.
- Recent attempts to increase the reporting thresholds will significantly weaken the PFA's effectiveness as a tool for transparency and accountability in political financing, making it difficult to enforce the new section 34(A).
- Given the role of party financing as highlighted by the SCC, this is a serious concern.

[192] The Presidency (2022: 48). Most of the other amendments to the PFA involved independent candidates.
[193] Proclamation Notice No. 165 in Government Gazette 50628 dated 8 May 2024.
[194] https://myvotecounts.org.za/na-votes-to-increase-secrecy-in-party-funding/
[195] See https://pmg.org.za/committee-meeting/40164/

Any further attempts to compromise the scope and efficacy of the PFA should be vigorously opposed.

2.14 Parliamentary oversight

Main problems identified by the SCC and its recommendations

The Zondo Commission report was critical of Parliament's failure to intervene in corruption and state capture. It found that the legislature had failed to fulfil its oversight and accountability obligations because the governing party was determined to protect its leaders implicated in state capture, and it was unwilling to expose allegations of malfeasance to public scrutiny. The report found that Parliament's oversight powers and the tools available to it were generally sufficient for it to fulfil its constitutional obligation to hold the Executive accountable, but that these were not generally used effectively.

The report made a number of detailed recommendations on parliamentary oversight, including ensuring that it is properly resourced, establishing a committee to oversee the Presidency, considering the appointment of committee chairs from opposition parties, reforming the process of appointments to state institutions made by Parliament, ensuring that Members of the Executive are responsive and accountable, and monitoring, tracking and enforcing parliamentary resolutions. Most of these recommendations were directed to Parliament itself, though some concerned the interface between Parliament and the Executive.[196]

The Commission's findings on Parliamentary oversight can be summarised as follows:

- There has been a lack of political will to hold the Executive accountable. This is primarily attributable to the broader political environment, which disincentivises scrutiny of the Executive.
- There are a number of practical problems that hamper effective oversight, such as the lack of a system for tracking and monitoring the implementation of recommendations, etc. While these are not the primary cause of oversight failures, they exacerbate deeper issues and can be exploited by those wishing to avoid accountability.
- There is a need for practical mechanisms that can practically minimise the negative impact of the political environment, while respecting the democratic mandate of parties in Parliament.
- There is a need to address weaknesses in the interface between the Executive and Parliament, and specifically to track and monitor Parliamentary resolutions and Executive responsiveness.

Nature of responses from the President and Parliament

The President, mindful of the separation of powers, did not comment on the recommendations directed to Parliament and limited its commitments to recommendations concerning the interface between Parliament and the Executive. Specifically, the Presidency acknowledged that it is necessary to determine whether the existing processes of reporting and accountability through the

[196] SCC Report, Part VI, Vol. 2.

Leader of Government Business (and any sanctions that may be imposed) are 'sufficient and appropriate' but did not make any commitments in this regard. It was also noted that the National Treasury would engage with Parliament to determine the most appropriate way to give effect to the Commission's recommendations on the funding of Parliament.

In November 2022, the National Assembly began formally processing the Zondo Report. The Rules Committee convened and adopted an Implementation Plan to deal with the Commission's recommendations.[197] In June 2023, former Speaker Mapisa-Nqakula presented a progress report on the implementation plan.[198] This progress report was the last update on these matters provided to the public to date, although information on progress can be gathered from the activities of individual committees. It is not within our scope to provide a detailed breakdown of Parliament's response to the SCC recommendations, but a summary of Parliament's decisions and actions has been developed by the Parliamentary Monitoring Group.[199]

Progress reported

The 2025 update states that the Leader of Government Business has interacted with Parliament's Presiding Officers on the recommendations in the President's Response that relate to the interface between Parliament and the Executive, and engagement between Leader of Government Business and Presiding Officers on relevant recommendations 'have taken place.' Budget allocation was confirmed in the 2023/24 Budget, but no information was provided on how the SCC's concerns about oversight functions being appropriately funded have been addressed.

The Rules Committee of the National Assembly considered and decided against adopting many of the SCC recommendations, finding that it has sufficient powers and did not require further intervention. A summary of key decisions made concerning the SCC recommendations is as follows:

- Parliament decided not to enact legislation protecting MPs from losing their party membership, and therefore their seats in Parliament, for exercising their oversight duties reasonably and in good faith, as it felt that MPs were already adequately protected.
- Parliament has appointed additional content advisors, legal advisors and researchers.
- The Rules Committee decided there was no need for further legislation or rules about reports by representatives of the executive to Parliament, ministers failing to attend portfolio committee meetings, or ministers failing to report back on remedial measures.
- The Rules Committee decided not to adopt any legislation on 'amendatory accountability' (i.e. where the Executive accepts that something has gone wrong and takes positive actions to remedy the situation in a substantial way).
- The Rules Committee did not agree with the recommendation that more chairpersons be elected from minority parties.

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[197] Available at: https://static.pmg.org.za/221104RESPONSE_BY_PARLIAMENT_OF_SOUTH_AFRICA_TO_Zondo_C_reports.pdf?_gl=1*12vlaiz*_ga*MTgyMzUyNDc3NS4xNzE0NjQwNDY0*_ga_EBG7VD75NV*MTcxNTI1ODIxNC4xOC4xLjE3MTUyNjI5NDAuMC4wLjA

[198] Available at: https://www.parliament.gov.za/storage/app/media/Links/2023/6_june/30_June_2023/20230625_ACTION%20LIST_Final_pdf_230629_092834.pdf

[199] Available at: https://pmg.org.za/6th-parliament-review/articles/state-capture

- The Rules Committee decided not to amend its processes for parliamentary appointments and would continue to use 'existing best practices.'
- The National Assembly mandated the Speaker to maintain a comprehensive record of House Resolutions and to engage with the Leader of Government Business in cases of delays in responses or actions from the Executive.
- Measures to improve tracking and monitoring, including piloting of an electronic system and procedures for regular reporting on the implementation of house resolutions, have not been adopted. Parliament's 2023/2024 Annual Report noted that the new monitoring and tracking mechanism had not been developed and recommended leveraging existing Resolutions Tracking Mechanisms since House resolutions emanate from Committee recommendations. The use of the existing monitoring and tracking mechanism would be formalised during the 7th Parliament.
- The Rules Committee of the 6th Parliament did not decide whether to institute an oversight committee on the Presidency. It undertook a study tour to explore international best practice. The Rules Committee of the 7th Parliament has supported the creation of an oversight committee on the Presidency and is developing specific proposals in this regard. This work has been ongoing since October 2024.[200]
- Twelve cases of ethical breaches were referred to the Joint Committee on Ethics and Members' Interests. The 6th Parliament reported that eight were concluded and four were found to have breached the code of ethics and held accountable; another four were ongoing. There have been no further updates since the commencement of the 7th Parliament.
- The Committee noted that the previous code did not have provisions that dealt with some of the unethical conduct detailed in the Zondo report. A new Code of Ethical Conduct was adopted by the Committee in May 2024, shortly before the dissolution of the 6th Parliament, and ratified in October 2024.[201] The new Code provides for slightly stronger penalties for breaches and risk-based lifestyle audits (including members facing allegations of corruption), but no longer applies to any Member of Parliament who resigns or otherwise ceases to be a member.

Analysis

Government has fulfilled its commitments to engage. However, without any information on the content of those engagements and any consequent decisions, it is impossible to determine whether the substantive questions raised about the legislative/executive interface have been addressed.

The Rules Committee decided against many of the recommendations as they were considered unnecessary. However, it tended to interpret the recommendations fairly narrowly. The core findings of the Commission with regards to failures of oversight were not examined and responded to in a holistic, programmatic and systematic way. If, as the Rules Committee finds, the rules are indeed sufficient (and they may well be), then how did the oversight failures of the previous Parliaments occur? The evidence of the SCC suggests that there were structural or systematic weaknesses in Parliamentary oversight that facilitated state capture, and that led to inadequate

[200] https://pmg.org.za/committee-meeting/39800/

[201] The Code was amended in November 2024. Available at: https://www.parliament.gov.za/storage/app/media/Ethics/Code%20of%20Ethical%20Conduct/Code_of_Ethical_conduct_V2.pdf

oversight more broadly. It has not been made clear how Parliament plans to address these questions or the impact of state capture on the legislature more broadly.

The decision to proceed with a committee to oversee the Presidency is an important step forward, and it should be finalised with urgency. The process appears to have moved very slowly over the past eight months, with only three political parties having made submissions.[202] The activities of the President and the Presidency are presently not subject to adequate oversight, particularly given the increasing number of programmes and bodies that are being established in the Presidency. An effective oversight mechanism that is ongoing, systematic, and programmatic is needed for the President and the Presidency. This means the activities and the outcomes of the work of the Presidency must be routinely scrutinised in a forum that is structured, predictable, resourced, supported by research, and open to the public. A portfolio committee is the best form for this kind of oversight.

Evidence supports the SCC's recommendation that oversight activities are in serious need of more resourcing. It is unclear whether there is a plan in place to take this forward, and the legacy report of the Sixth Parliament's Joint Committee on the Financial Management of Parliament shows dissatisfaction with the budget process:

> The Committee remains concerned that Parliament, although it is a separate arm of the State, is funded in the same manner as the Executive government departments. That Parliament is reliant on the Executive it is obligated to hold to account, is untenable. The slow progress in negotiations with the Minister of Finance towards a funding process that is appropriate for Parliament as a separate arm of State, remains of grave concern as it impacts Parliament's ability to execute its constitutional obligations of law-making, oversight of the Executive, and meaningful public participation. The Committee has since 2019 consistently recommended that Parliament's budget should be allocated in a separate process from that according to which the budgets of government departments and entities were allocated. In a meeting with the National Treasury held on 21 May 2021, it was agreed that as the appropriate process for the allocation of Parliament's budget was a policy matter, the discussions should most appropriately be between the Minister of Finance and Parliament's Executive Authority. Although Parliament's Executive Authority has since that meeting consistently reported discussions between the two parties were progressing well, the Committee's efforts to receive a joint briefing by both parties on progress made, have been unsuccessful.[203]

It should be noted that the national budget making process happens through the tabling of an act of Parliament, and that Parliament has more power to engage and amend the budget than has tended to be used by Parliament.[204]

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[202] https://pmg.org.za/committee-meeting/40914/

[203] https://pmg.org.za/files/240328jcfinancialreport_1.pdf

[204] See for example here: https://www.dailymaverick.co.za/opinionista/2022-02-22-budgeting-for-a-future-hung-parliament-when-the-rubber-stamp-becomes-contested-terrain/

The evidence and analysis of the SCC shows that the failures of Parliamentary oversight, while they may have been exacerbated by structural weaknesses, were ultimately political in nature.[205] That is, they resulted from the political incentives and contestations that played out in the legislature. While reforms to Parliament's oversight functions may mitigate, to a degree, the negative impact of the political environment, they cannot address the core problems identified by the SCC. However, the composition of Parliament and the Executive have both changed significantly since the last election, resulting in new dynamics and practices arising within the institution. It is too early to assess how multi-party and coalition politics will change Parliament's oversight practices and the effectiveness of its oversight function.

One example of this is that, while Parliament declined to adopt any formal rules regarding the allocation of committee chairs to opposition parties, in practice, many more committees in the 7th Parliament are now chaired by members from different parties due to the formation of the Government of National Unity. Other changes are being noticed by observers, including the individual practices of committees and the way oversight meetings are run.[206]

Key takeaways

- No information has been provided about how questions about the legislative/executive interface have been addressed and resolved.
- Parliament has processed most of the SCC recommendations. Many have not been adopted as the Rules Committee deemed that Parliament was sufficiently empowered by the existing legislation and policy.
- The decision to proceed with a committee to oversee the Presidency is an important step forward, and it should be finalised with urgency.
- The composition of Parliament and the Executive have both changed significantly since the last election, resulting in new dynamics and practices arising within the institution. It is too early to assess how multi-party and coalition politics will change Parliament's oversight practices and the effectiveness of its oversight function.
- Close attention should be paid to how the existing oversight model is working in light of these changes.

2.15 Electoral system reform

Main problems identified by the SCC and its recommendations

The Commission made recommendations for the consideration of amendments to the electoral system – specifically, to consider the adoption of a 'constituency-based (but still proportionally representative) electoral system', including substantial engagement with the 'majority recommendation' of the Van Zyl Slabbert report, and to consider constitutional amendments which would see the president of the country directly elected by citizens.[207]

[205] See also Pillay and Meny-Gibert (2023).
[206] See https://pmg.org.za/blog/Fivereflectionsonthe7thParliamentoneyearon
[207] SCC Report, Part VI, Vol. 4.

The Commission's concerns arose out of a sense of the limitations of the closed list proportional representation system: In this system, voters have no choice over the candidates selected to represent the party as these are determined by the party, limiting those politicians' accountability to voters, and limiting the rigour of their oversight of their own party's members' conduct (it incentivises party loyalty over programmatic commitment).

Nature of responses from the President

The President's report acknowledged these concerns, but noted that, 'Due to the far-reaching consequences of the Commission's recommendations on electoral reform, they require an extensive process of consultation and deliberation that involves the whole of society. Among other things, this process would need to answer whether the deficiencies identified by the Commission justify revisiting previous decisions on these matters.'[208] The President's response also made reference to the original reasons for South Africa's choice of a proportionally representative system, i.e. a system that could, 'support reconciliation, nation building, peace and stability, and social and political reforms.'[209]

The President noted that the Electoral Laws Amendment Bill that was before Parliament (at the time) and argued that this process should first be concluded before making further commitments. He noted that the direct election of the President would require constitutional amendment and should be considered, 'by the various political parties represented in Parliament and by the Parliament's Joint Constitutional Review Committee.'[210]

Progress reported

The Electoral Amendment Act of 2023 allows independent candidates to contest national and provincial elections. Further, a review of the electoral system is being undertaken by the Electoral Reform Consultation Panel, comprising academics and other experts on electoral reform, the public sector, and election administrators, whose final report will be delivered in August 2025.[211]

Analysis

Regarding the proposal to directly elect the country's President, the Commission's reasoning was insubstantial,[212] and while there are arguments for and against such a significant change, the state has not responded to this proposal, nor does it appear to be an issue taken up in any notable way by civil society.

Regarding electoral reform, the Electoral Amendment Act of 2023 allows independent candidates to contest national and provincial elections; an amendment that was implemented just in time for the 2024 national elections. However, the Act does not provide for such candidates to do so on

[208] The President (2022: 59).
[209] The President (2022: 59).
[210] The President (2022: 59).
[211] The Presidency (2025: 16).
[212] See page SCC Report, Part VI, Vol. 4, p. 191 for the Commission's argument.

nearly an equal footing as members of political parties. This limitation in the Act has been highlighted by recent civil society submissions to the Electoral Reform Consultation Panel.[213]

There are widely varying proposals for electoral reform from different organised groups – from minor changes to the existing system (for example, a mechanism for voters to recall candidates mid-elections), to a major overhaul, such as a fully constituency-based system (proportionality, we should note, is currently enshrined in South Africa's Constitution). Electoral reform is a very complex issue, with potentially profound impacts for the character of South Africa's democracy. My Vote Counts, an NGO focused on supporting democratic participation, has cautioned that reforms should proceed slowly and carefully.[214] This is because of the high stakes of such change, and the need for major investment in electoral institutions, such as the Independent Electoral Commission (IEC), and long-running citizen education campaigns (New Zealand and Indonesia's electoral reform journeys, for example, proceeded incrementally, and over some 15 to 20 years).

The Global Network for Securing Election Integrity[215] suggests that electoral reform should be guided by the following principles: there should be political consensus-building for that reform – it must be considered legitimate by society; the process for reform should be transparent, inclusive, and informed by evidence; adequate timeframes and resources should be allocated to support the reform; and there should be clear accountability structures in place (clear leadership identified, oversight structures, and robust commitments to resourcing the process).[216]

[213] Civil Society Electoral Reform Panel's submission to the Electoral Reform Consultation Panel Call, dated 31 October 2024, and uploaded to the My Vote Counts website: https://myvotecounts.org.za/wp-content/uploads/2024/11/CSERP-Submission-31-Oct-2024-2.pdf (accessed: July 2025).

[214] My Vote Counts, 'Electoral reform is absolutely critical but should not be rushed' blog post, undated (circa 2024), https://myvotecounts.org.za/electoral-reform-is-absolutely-critical-but-should-not-be-rushed/ (accessed: July 2025).

[215] For more information see here: https://www.kofiannanfoundation.org/publication/launch-of-the-global-network-for-securing-electoral-integrity-gnsei/ (accessed: July 2025).

[216] Global Network for Securing Election Integrity, 'Principles for Democratic Electoral Reform Processes' October 2024, accessed on the International Idea website, https://www.idea.int/sites/default/files/2024-09/gnsei-principles-for-democratic-election-reform-processes.docx%20(002).pdf (accessed: July 2025).