

**State capture and its effects on institutional  
isomorphism and deinstitutionalization**

**by**

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## **DECLARATION**

I, **Mihloti Bridget Masuluke** declare that this research document and its contents, which I hereby submit in fulfilment of my studies for the degree of Doctor of Philosophy at the University of Pretoria, Gordon Institute of Business Science, is my own work and has never been submitted by me to this or any other tertiary institution.

**Mihloti B Masuluke**

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**Signature**

September 15, 2023

**Date**

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## **ABSTRACT**

The credibility of Institutions contributes towards public trust, which ordinarily increase when institutions achieve their set mandate and objectives. The reliance on state institutions to deliver basic social services to the public requires effective systems and injection of financial capital for sustainability. All these happen while institutions continue to evolve and battle with the everchanging complexities and need to adapt to various trends and pressures. The study established that many of the initiatives introduced for institutions to remain agile and self-sustainable have provided a gateway for shadow states to enter, capture and sustain corrupt activities in the Constitutional state, despite the norms, standards, practices, rules and laws enacted to govern them.

The study investigates how state institutions were infiltrated and captured by shadow states through various passageways. It is anchored within the broadly studied Institutional theory that perceives institutions as structured based on enforcement of rules and laws that govern them. Due to high volume of data collected on the subject, three papers were developed aimed at bringing back Institutional theory to the scholarly debate, a theory said to have gone beyond its purpose. We use South Africa as the context of study. The articles produced respectively focused on three related thematic areas, i.e., how firms gained and sustained state capture in South Africa; the role played by oversight structures in aiding state capture; lastly the transformation initiatives introduced to redress the imbalances brought about by the colonial era and how these became a machinery for state capture. The investigation revealed how similar traits and strategies were used to deinstitutionalize well established state entities, an example is how they all suffered financial distress requiring additional funds. These resulted in institutional isomorphism.

The study contributed to the broadly studied Institutional theory through exploring how these structured institutions were deinstitutionalized by state capture. It further filled a methodological gap by using the uncommon qualitative approach in Institutional theory research. Distinguishing the study from others is the selection of the ultra-elite high profile respondents. The study established that enablers of state capture are the role-players within the Constitutional state that provide entry opportunities to shadow state to capture the state. The practical contribution will aid scholars and technocrats to develop strategies to address the phenomenon.

*Key words: State Capture, Deinstitutionalization, Institutional Theory, Institutional disruptions*

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# RESEARCH REPORT

## 1. CHAPTER ONE - INTRODUCTION

Institutions have to adapt to evolving global trends and environmental disruptions in pursuit of sustainability. These bring about the need to continuously identify risks and mitigation strategies to reinforce the identified weaknesses. The study noted the behavioural influence and similarities across state entities which resulted in deinstitutionalized institutions. Although various scholars have studied institutions and their behaviours (DiMaggio & Powell, 1983; Kaufmann, 1997; Nellis, 1988; North, 1991; Rose-Ackerman, 2002; Scott, 1987; Venard, 2009), there remains paucity in literature on how these formidable institutions which are perceived to be managed through laws were deinstitutionalized by state capture phenomenon.

The investigation is anchored within the well-developed Institutional theory, which perceives institutions as structured entities due to the enforcement of rules, norms, standards and laws that govern their existence (Liedong, 2017; North, 1991, 1993, 1998; Scott, 2008). Academic work further revealed that Institutional theory is concerned with the sociological view of how institutions interact and affect society, which is driven by the need for legitimacy and certainty (Alvesson & Spicer, 2019; Davoodi & Tanzi, 2002; Dimaggio et al., 2012; DiMaggio & Powell, 1983; Holm, 1995; North, 1991; Powell & Colyvas, 2012; Raab et al., 2018; Scott, 1987; Sillince & Barker, 2012; Tolbert & Zucker, 1996; Weir, 2009). Academics submit that deinstitutionalization unfolds over time and reflects the interplay of society (Ahmadjian & Robinson, 2001).

Scholars postulate Institutional theory to have reached adolescent stage (Scott, 2006). Despite the theory's maturity, limitations are noted on what informs institutions' responses to institutional pressures (Powell & Colyvas, 2012). I established that although the theory is broadly studied, a gap continues to exist on the experiences of the role players since most of the studies are quantitative. I use the theory to study a more modern phenomenon of state capture which is a unique form of corruption. I use South Africa to investigate how these strong institutions were prone to institutional disruptions caused by state capture.



The study investigates the under-developed and under theorized concept of state capture which has been studied from different settings by various scholars (Billger & Goel, 2009; De Rosa et al., 2010; Frye, 2002; Ghosh & Neanidis, 2011; Grzymala-Busse, 2008; Hanson & Teague, 2005; Hanson, 2009; Hellman et al., 2003; Hellman & Schankerman, 2000; Kaufmann et al., 2000; Kenny & Soreide, 2008; Martin & Solomon, 2017; Pesic, 2007a; Wang & You, 2012; Wilson & Damania, 2005), while corruption in general has been widely studied from diverse aspects for a few decades (Aidt & Dutta, 2008; Argandoña, 2005; Asiedu & Freeman, 2009; Asongu, 2013; Billger & Goel, 2009; Cariño, 1979; Clarke & Xu, 2004; Cordero & Blais, 2017; Damania, 2002; Davoodi & Tanzi, 2002; De Rosa et al., 2010; Doh et al., 2003; Fazekas et al., 2014; Fredriksson & Svensson, 2003; Ghosh & Neanidis, 2011; Hellman et al., 2003; Hyslop, 2005; Johnson, 1975; Kenny & Soreide, 2008; Levine, 2005; Lodge, 1998; Méon & Weill, 2010; Mironov, 2015; Neu et al., 2015; Nguyen & van Dijk, 2012; Olken, 2009; Pulakos et al., 2015; Rose-Ackerman, 1996, 2002; Smith, 2004; Teal & McArthur, 2004; Uhlenbruck, Rodriguez, Doh, & Eden, 1998; Y Wang & You, 2012; Wilson & Damania, 2005; Xu & Yano, 2017; Yogi Prabowo, 2014). The distinguishing factor of the study is the differentiation from general corruption and focus on state capture, and how the phenomenon managed to deinstitutionalize formal institutions in South Africa.

The complexity of the state capture phenomenon is displayed through the varying definitions proposed by scholars (Hellman et al., 2000; Hellman & Schankerman, 2000; Kaufmann et al., 2000; Martini, 2014). Scholars theorizes that generally the corruption definition changes constantly as the corruption research field develops. This study sponsors a condensed and more accurate definition aligned to the objective of the investigation conceptualised as follows: "State Capture is a process whereby the Shadow-State (firms) takes over the strategic function of the Constitutional State through influencing the direction of policies at the point of law-making (legislators), the implementers of the law (executive) as well as the Judiciary (law enforcement agencies), which ultimately negatively impact the economy and the welfare of a country's citizens". The study noted that the state capture transactions ultimately benefit the shadow-state, the individuals who are captured (both politicians and officials) as well as to some extent the political parties through funding their activities in return for business favours.

The study postulate that state capture is both systematic (Hanson & Teague, 2005) and systemic (Asongu, 2013). Systematic in that the *Shadow State*<sup>1</sup> puts together a system on how they will lobby, claim, and benefit from the Constitutional state; and systemic in that the internal role-players manipulate the whole system (Funke & Solomon, 2002; Reno, 2000; Söderbaum, 2004), and, in this context, this is inclusive of procurement, oversight and accountability to redirect funds for personal gains. Neu et al. (2015) theorizes that corruption has become a social problem because transgressors engage in unethical behaviour for personal benefit.

Current literature on anti-corruption has not assisted in combatting corruption despite the growth in theorists who studied the concept. A debate amongst scholars continues on this subject (Martinsson, 2021). The nature of state capture is that it is not easily picked up by most risk management tools, and this submission was proven when major rating agencies failed to detect the State Capture activities in South Africa at an early stage prior to it deinstitutionalizing State entities. Consistently, normal corruption theory could not pick up state capture until it had negative impact in South Africa. In addressing the corruption phenomenon, South Africa has adopted various reforms and anti-corruption strategies aimed at mitigating the scourge (Hanson, 2009).

The scourge of state capture in South Africa has resulted in Institutional isomorphism (Liedong, 2017; Rose-Ackerman, 2002; Venard, 2009; Venard & Hanafi, 2008), whereby similar trends in the state entities were observed with a negative socio-economic impact resulting in job losses noted in The New Age<sup>2</sup>, ANN7<sup>3</sup>, KPMG<sup>4</sup>, Bell Pottinger SA<sup>5</sup>, Bain & Co SA<sup>6</sup>, South African Broadcasting Corporation (SABC) and South African Airways (SAA). Scholars posit that billions of dollars are lost in public entities through acts of corruption (Neu et al., 2015).

Due to scarcity of resources, firms compete for financial resources, whereas institutions also compete for political power and legitimacy, therefore Institutional theory becomes a

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<sup>1</sup> In this context a Shadow State is an external network that runs parallel to the formal State bureaucracy

<sup>2</sup> A National daily newspaper in South Africa, owned and operated by TNA Media (Pty) Ltd, established in June 2010 and published its last edition on 29 June 2018, owned by the Gupta family.

<sup>3</sup> African News Network 7 was a 24-hour satellite TV news channel that operated from August 2013 to August 2018 owned by the Gupta family.

<sup>4</sup> An Audit Firm which operated in South Africa which was linked to State Capture in South Africa.

<sup>5</sup> A British firm accused of facilitating state capture for the Gupta family.

<sup>6</sup> A firm accused of colluding in state capture by helping government officials degrade South African Revenue Service's ability to probe tax evasion.

relevant and useful tool to understand the politics that pervade the organizational life of State-Owned entities.

Literature revealed that there is a need for institutions to move focus from finding out the determinants or factors causing corruption and direct the focus on strategies to combat corruption (Liedong, 2017). This postulation is aligned to the need for this study which explored the various complexities and proposed response strategies for addressing the state capture scourge. The study delved on the antecedents of what led to state capture to form the basis for the proposed model. On the same paradigm, literature has revealed that Institutional theory draws its explanatory authority from social factors and therefore is found to be the relevant theory to add to our understanding of the response that Institutions should employ in order to explain the modern concept of state capture, since the theory adopts various behavioural assumptions (Combs et al., 2009).

The research questions provided orientation of the investigation design and methods. A qualitative approach was selected to close the methodological gap identified by scholars (Suddaby, 2010) who critique that counting processes does not provide a story line from the perspective of role players. The choice of embedded multiple-case study provided context as the cases had to be similar in time and context and analysed on a case by case basis (Yin, 2013). Multiple cases study set a criteria for evaluating data comparisons against cases (Ackroyd & Fleetwood, 2004) which contributed to responding to the overall research question. Interviewing the “*ultra-elite*” (Zuckerman, 1972) becomes the distinguishing factor for the study. The choice of multiple sources of data collection contributed to saturation and replication. Yin (2013) submits that replication ‘*contribute towards building a rich theoretical framework*’ which was the ultimate objective of this research, to design a theoretical response to a practical problem. Based on the high volume of data collated on the investigation, three distinct papers were produced guided by supplementary questions supporting the main research question.

## **1.1 OUTLINE OF REPORT**

Chapter one introduces the report whereby I present the practical and theoretical rationale for the investigation which constitutes the problem statement. I present the

research questions which provide context for the study. I then outline a brief discussion on the three articles and provide theoretical linkages between the papers and the research questions.

Chapter two presents the context of the Study while Chapter three outlines the literature reviewed and the theoretical basis for the value add of the investigation. I identify the theoretical gaps in Institutional theory and provide reasons why the theory is relevant for the investigation forming the basis for the research questions which are presented in chapter one. Chapter four outlines the methodology used to respond to the question as well as the rationale for the choice. This is inclusive of data sources, collection, quality, data limitations and risks for the investigation. The data analysis process undertaken is also presented in this chapter. Ethical considerations which are imperative for the study are deliberated in this chapter.

This is followed by a presentation of the three distinct papers which are outlined wholly and independently in Chapter five. Finally, I conclude the write-up with a summary of the main findings and how they enhance knowledge and understanding. The practical contribution is covered including a proposed model for state capture. The limitations for the study are outlined together with the opportunities that the investigation has opened for future research in this final chapter.

## **1.2 PROBLEM STATEMENT**

The continuous changes in institutional dynamics, environmental, social, political impact and technological advancements as well as economic distress pose a major challenge to institutions, which have to adapt the relevant mechanisms and techniques to manage the ever changing complexities (Dahlmann & Grosvold, 2017; North, 1998). The constant evolution of the societal environment contributes to these complexities. With newer trends and challenges posed by the Covid pandemic and other factors such as digitalisation, Industrial Revolution and Artificial Intelligence, managing for sustainability is proving to be a challenge for state institutions as well as private firms. Scott (2003) contends that when scientific management is introduced, institutions operate at higher levels of complexity, which compels the role of both management and workers to be transformed to align to the challenges at hand. Any gap identified in

internal controls provides an opportunity for institutional disruptions by internal and external opportunists. These disruptions require real-time effective solutions. It is within this paradigm of institutional transformation and deinstitutionalization, that this study is anchored.

### **1.3 RESEARCH QUESTIONS**

The study investigates the underlying assumptions of the broadly studied Institutional theory which presumes that the theory is broadly studied and has reached mid-life crisis and potentially “*stretched far beyond its purpose*” (Suddaby, 2010). The state capture concept which is a modern phenomenon is a disruptor to the matured theory. In formulating the research question, I combined the principles of gap-spotting which focused on identifying gaps in existing literature as well as problematization which challenges old beliefs (Alvesson & Orgen, 2011; Sandberg & Alvesson, 2011). The maturity of the theory motivated the relevance of this approach to aid the research question formulation, considering that gap-spotting has the likelihood of reinforcing or revising already influential theories (Sandberg & Alvesson, 2011), while problematization aimed at disrupting the line of reasoning that assumes that the theory has surpassed its intended purpose (Suddaby, 2010). Gap-spotting is the prevalent way of generating research questions in qualitative studies within political context (Sandberg & Alvesson, 2011).

I further noted the crucial aspect of the role played by social norms when constructing research questions which ultimately guides the orientation and research strategies of the investigation (Bryman, 2007; Gilgun, 2005). The question provided a broad spectrum of avenues to be explored from varying angles to enrich the responses.

#### **1.3.1 Primary Research Question**

*How does State Capture gain isomorphism and deinstitutionalize state institutions?*

The formulation of the research question was informed by existing literature on the concept and management theories (Bhorat et al., 2018; Estrin et al., 2016; Fazekas et al., n.d.; Helliker & van der Walt, 2016; Hellman & Kaufmann, 2003a; Hellman et al.,

2003; Innes, 2013; Labuschagne, 2017; Martin & Solomon, 2017; Matei, n.d.; Meyer & Luiz, 2018; Mtimka, 2016; Myburgh, 2017; Pesic, 2007a). Foundational literature that contributed to the formulation of the question is largely on the basis that most corruption research is based on criminal studies (Charron & Lapuente, 2016; Yogi Prabowo, 2014).

The disruption of state entities through corrupt activities questioned the view held by the theory that governance frameworks provide a structured premise for solid institutions based on enforcement of rules and regulations governing them (North, 2018) and therefore are impenetrable. These disruptions led to these legal entities being deinstitutionalized. Suddaby (2010) identifies possibilities upon which Institutional Theory may be brought *“back to its core assumptions and objectives”*. The scholar submits that *“counting the outcome of an institutional process fails to account for all the processes of Institutional Theory”* (Suddaby, 2010). This view confirms the gap spotted in the methodology of studying the theory being that of qualitative, which brings about the views and experiences of role-players that is currently missing from the quantitative studies commonly used for institutional theory.

The question investigates commonalities displayed in state capture entry and sustainability causing isomorphism. It also investigates the voids that enabled shadow states to sustain the capture over a period. To understand the deinstitutionalization aspect, the study analysed the consequences resultant from state capture. While scholarly work on institutional corruption was consulted (Adeleye et al., 2020; Lessig, 2012; Thompson, 2018), the study takes an approach that the output of state capture results in weaker and not necessarily new institutions as the question of legitimacy and transparency remains the foundation of a legal entity.

The primary research question generated supplementary questions to bring context to the investigation and provide potential future avenues for research investigations. Supplementary questions were formulated based on the literature on institutionalization and corruption in general.

### 1.3.2 Supplementary Research Questions

*RQ1: How do firms gain and sustain state capture?*

This question investigates the mechanisms used by firms to infiltrate the state entities. The dependency of state on private firms to deliver basic services (Dassah, 2018; Kenny & Soreide, 2008; Littlewood & Holt, 2018) brought a rich basis for the formulation of this question. In responding to the primary question, institutional voids that provided an entry point to shadow-states to access the state institutions had to be explored focusing on the scholarly work of Reno (Funke & Solomon, 2002; Reno, 2000; Söderbaum, 2004) as well as other theorists (Adeleye et al., 2019; Dahan et al., 2015; Dau et al., 2021; De Waal, 2010; Liedong, 2017; Littlewood & Holt, 2018; Luiz & Stewart, 2014; Rajwani et al., 2013). In narrowing down, scholars cite that too many firms are involved in state capture (Hellman & Schankerman, 2000) without explicitly outlining how these managed to be sustained over a period.

*RQ2: What is the dilemma faced by state entities in transformation?*

Strategic organizational transformation is the ability of the organization to transform itself to ensure long term survival (Davis et al., 2010). This transformation entails a major change in internal mechanisms such as structure, systems, processes and culture. It is against this scholarly view that we anchor our study from considering the change that the state entities had to adapt to with the evolution of democracy in South Africa. Noting that institutions are established to provide solutions to predefined problems (Holm, 1995). Further noting that a democracy opens opportunities to redress existing challenges. Exploration of literature included the role of single-party dominance (Alence & Pitcher, 2019a; Boucek, 2012; Innes, 2013; Luiz, 2016a, 2016b; Meyer & Luiz, 2018) in shaping the developmental agenda brought about by the transformation initiatives and how that affect deinstitutionalization of state entities. How to transform ethically with competing priorities became the basis upon which the question was constructed.

*RQ3: What is the role of governance structures in mitigating against state capture?*

The question was formulated from the foundational literature on governance (Asongu, 2013; Hellman et al., 2000; Nguyen & van Dijk, 2012; Thomas, 2012). Consideration was given to factors that create voids within governance structures and frameworks (Alence & Pitcher, 2019b; Natural Resource Governance Institute, 2017; North, 1998). Responding to the supplementary question provided a varying angle on how the state ultimately suffered deinstitutionalization from the state capture phenomenon though there were oversight systems in place. This contributed to responding to the overall primary question.

#### **1.4 SUMMARY OF THE THREE PAPERS**

The study collated data through multiple sources as discussed in the methodology section in chapter four. The data collected was used to develop three thematic and distinct papers with their foundation being Institutional theory. One of the papers was presented to the Third Annual International Conference on Social Justice hosted by the University of Stellenbosch under the theme Public Governance, Democratic Leadership and Access to Justice (see Annexure C- Programme page 6 and Annexure D – Letter of gratitude). The second paper was submitted to the Journal of Business Ethics and editorial comments received from the journal are yet to be incorporated while the other paper is yet to be published.

The three papers responded to the primary research question:

*RQ: How does State Capture gain isomorphism and deinstitutionalize state institutions?*

To achieve the intended objective of the investigation, each of the papers focussed on one of the supplementary research questions:

*RQ1: How do firms gain and sustain state capture?*

*RQ2: What is the dilemma faced by state entities in transformation?*

*RQ3: What is the role of governance structures in mitigating against state capture?*



The three cases, although distinct, were embedded in nature and provided rich data information for the development of different perspectives and strategies responding to the same research problem. Hereunder follows the summary of the papers.

#### **1.4.1 Institutional Disruptions resulting from State Capture: How Firms gained and sustained entry into the South African State**

The case responded to RQ1 in addition to the overall question which investigates two firms that became synonymous with State Capture in South Africa. The Gupta firm was owned by a family of foreign nationals which arrived in South Africa post democracy, while Bosasa was owned by a South African who grew in the ranks of the governing party, the African National Congress (ANC) since the apartheid era. The investigation noted that the state's mandate is provision of basic services to the public. To deliver these services, private firms are essential partners of the state. The interdependencies between state and firms create an opportunity for cultivating relations, some of which are not legitimate.

Due to the country evolving from the apartheid era (Luiz, 2016a; Martin & Solomon, 2017; Mhlanga & Steyn, 2017), a need for transformational change arose forcing the governing party to develop relevant policies in response to the new era and societal expectations. Some of these initiatives created service delivery demands aligned to the new needs. The state in turn had to direct capital investments towards these initiatives aimed at bringing the much needed change within the country. These opportunities exposed the state to be susceptible to "shadow networks" which captured the Constitutional State. Noting the impact of corruption on the economy, the paper identified the factors leading to the capture. Emphasis is made on gaining entry and strategies employed to sustain the capture over time.

##### **1.4.1.1 Paper One Findings**

The paper established that firms engage in State Capture through accessing the State with the aim of gaining upper hand to receive favourable inside information, business deals and bid awards to assist them in eliminating competition. Upon entry, the firms create barriers of entry by other firms, thereby enabling them to sustain the capture. Further, the study found that for a developing country with rapidly evolving institutions,

there are certain demands that require adaptation. These demands require relevant response strategies. The evolution from the apartheid era and its remnants is one such demand. To address the inherent challenges, the research found that the ANC led government created a developmental policy which offered an opportunity to enter and sustain the capture by private firms. This is observed wherein the study exposed that the two firms studied targeted various state entities for capture and deployment of “loyalists” who would benefit them, thus creating institutional isomorphism across the entities. Similar tactics were used by the firms studied to create entry and barriers for competition which included weakening of state agencies.

#### **1.4.2 Role of Governance Oversight in mitigating against Institutional Disruptions: State Capture of SOEs in South Africa**

The case responds to supplementary research question three (RQ 3) and studies the role that oversight structures play in mitigating against State Capture. Differentiation of state capture from ordinary corruption is made, clearly identifying the former as a complex modern phenomenon which is not broadly studied. Similar to other scholarly articles, the paper is anchored on Institutional theory and explores state entities. The purported strong governance frameworks in South Africa motivated the focus area. These frameworks resulted in South Africa being ranked quite high on both governance and accountability index (Natural Resource Governance Institute, 2017). Despite this ranking, the investigation identified voids which rendered these frameworks inept. Both systemic and systematic processes were embarked upon by shadow networks to capture the State. Key institutions which include auditing firms, financial institutions and law enforcement agencies were infiltrated and captured.

The investigation noted that the appointment of board members who were not adequately equipped with experience and knowledge to oversee these entities contributed to their financial distress. Of note is the conflicting regulatory frameworks on the appointment of Chief Executive of state entities by the Minister and the board which also contributed to poor governance oversight. Regular and continuous financial support (bailouts) by the state to the entities attracted the capturing agents. Although corruption is mainly studied within the criminal literature, the paper noted that no major

consequence management steps have been taken against transgressors despite corruption malefactors being widely popularised.

Additionally, the research established that the number of inquiries and high financial investments made by the State to investigate corruption is not commensurate to the ultimate prosecution of these perpetrators. The weaknesses in Parliament effectively holding the Executive accountable were identified and recommendations made. A futuristic recommendation for exploration by scholars was made based on developments in the country. Corruption in general, impacts on foreign direct investments which affects the economy of a country. The study noted that individuals at key oversight levels unlocked the potential for state capture, these included the ultra-elite such as individual holding the office of President, Ministers and board Members who were implicated in corrupt activities.

#### **1.4.2.1 Paper Two Findings**

The findings of the study on this paper displayed that the prevalence of investigative journalism contributed to exposing state capture activities. Additionally, barriers created by governance frameworks in holding the Executive arm of government accountable due to the party-political arrangements which challenges questioning of a senior party political (Ministers) within the formal governance structure contributed to failure of a good governance process. These deliberate diversions resulted in mismanagement of resources in state entities which became the key inhibitor to good governance. Further, the misuse of the “*cadre deployment*” concept which benefit the few as well as loyalist to key individuals or Political Parties, provided a fertile ground for state capture. The paper predicts that proactive prevention strategies for corruption will be more beneficial than managing the repercussions of State Capture *post facto*.

#### **1.4.3 Ethical Dilemma of Transformation in South African’s State Entities**

The last case responded to supplementary research question two (RQ2). The paper concedes that unethical conduct is rife within the state sector globally, and these vulnerabilities continue to be a challenge to manage and mitigate against. The paper investigates the dilemma that state institutions face regarding the responsibility of

strategic organizational transformational change while still pursuing their mandate. South Africa provided a rich context for this study given that it emerged from an unequal era which necessitated a need to develop mechanisms to bring about equality, decrease poverty and unemployment for addressing historical challenges (Madonsela, 2019; Mangaliso & Nkomo, 2001; Thomas, 2012). This required the country to develop protocols and practises to drive this agenda of bringing change and correct the anomalies of the past. Radical socio-economic transformation strategies were initiated; however, these provided a gateway for powerful interest groups to influence policy formulation for their own benefit.

Almost thirty years (30) post-democracy, the Political party which has been in the governing seat since democracy, acknowledged that they lack a response strategy to address these inherited challenges and transformation in particular. Critical to the research is the conflicting priorities that state entities are faced with which requires them to be change agents through creation of job opportunities against delivery of basic services which is their mandatory obligation. These conflicting mandates led to the collapse of the entities and resulted in job losses, reversing the objectives of the transformation objective.

#### **1.4.3.1 Paper Three Findings**

The outcome of the study on this paper established that the transformation initiatives at state entities provided opportunities for state capture to take place and thrive. These opportunities gained traction due to the expectation from state entities to deliver basic services to the citizens as well as further respond to unemployment challenges while mainstreaming the transformational agenda. This then led to the collapse of entities resulting from unsustainable high wage bills contrasted against capital budgets and contributing to loss of jobs, thereby reversing all the attempts to address the challenges of unemployment and poverty.

It was further deduced through the study that the dilemma of balancing the transformation initiatives while meeting the mandate and objectives of the entity remains a challenge, while transforming ethically and successfully remains a theory. The paper found out that the governing party's policy of "*cadre deployment*" compromised quality of the technocrats being deployed or appointed in key positions in state entities as well

as the Board members tasked with the role of playing oversight to the operations of the entities. It further allowed for “*recycling*” of officials across state entities which enabled institutional isomorphism. This compromised the quality-of-service delivery due to appointment of firms which would not ordinarily possess the expertise required and qualified them on the basis of the transformational change agenda.

The paper concluded that the collapse of entities negatively impacted the economy of the country as well as direct foreign investment. The same initiatives intended to address the ramifications of the apartheid era ended up reversing the objectives of the transformational agenda, which was also substantiated by the governing party which acknowledged that they did not have a plan to address the imbalances brought about by the pre-democracy era.

## **1.5 LINKAGES AND CONTRIBUTION OF THE PAPERS**

A common framework for the three papers was to establish the institutional disruptions that resulted in state capture, which ultimately deinstitutionalized formal and legitimate institutions which are governed by rules and laws. Institutions are seen as a set of rules of the game, while organizations are the players or actors within the game (Kaufmann et al., 2000; Liedong, 2017; North, 1991, 1993, 1998; Scott, 2008; Venard & Hanafi, 2008). This investigation explored the role played by actors in creation of institutional isomorphism contributing to deinstitutionalization.

### **1.5.1 Theoretical Contribution**

The investigation disrupted scholars’ line of reasoning that argue that the theory has reached adolescent stage (Scott, 2006), mid-life crisis (Suddaby, 2010) and is overstudied (Alvesson & Spicer, 2019). Academics posit that there is paucity of literature on deinstitutionalization of institutions since scholars have not broadly delved into the contributors of institutional theory, which ultimately impact on its technical and economic efficacy (Ahmadjian & Robinson, 2001). The qualitative approach selected for the study noted the methodological gap in existing literature whose focus robs scholars of the perspectives and lived experiences of role players (Suddaby, 2010). A modern concept

of state capture was used to contribute to a matured and broadly studied theory. To achieve the theoretical objective, the three papers explored the same primary research question, although they varied on the secondary questions:

*Overall RQ: How firms gained and sustained State Capture that resulted in Institutional disruptions?*

The framework involved the identification of surfacing patterns and relationship between Institutional theory and state capture, thereby narrowing the range of plausible explanations. The linkages to the three papers are depicted below and elaborated immediately thereafter:

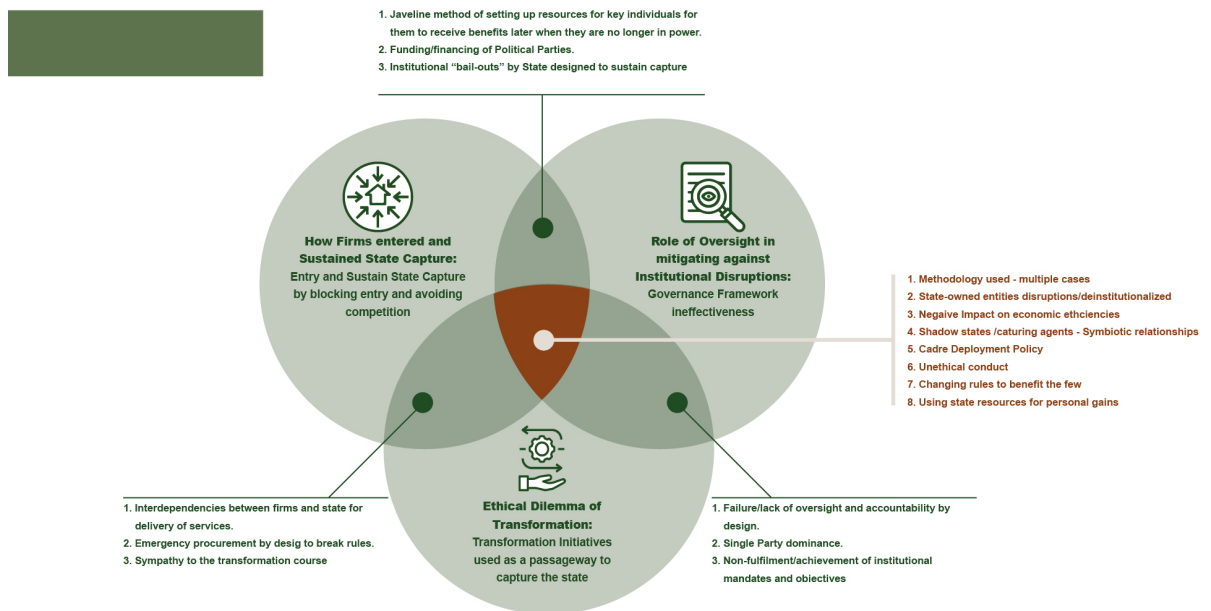


Figure 1 : Linkages between all three papers

The three papers aligned to the philosophy of bending rules in order to benefit a closed group while denying access to others (Fazekas et al., 2014; Kenny & Soreide, 2008; Venard & Hanafi, 2008). Similar to grand corruption, state capture takes place at higher levels of the institution and involve policy and decision makers. State capture has the capability of bringing even the most powerful institutions under distress, as its after-effects can be long lasting (Ghosh & Neanidis, 2017). Eskom, the largest power utility in Africa, which generated 95% of the electricity used in South Africa and an estimated 45% in Africa (Eskom, 2018) was deinstitutionalized by state capture, similar to South African

Airways (SAA) which was regarded as the largest in Africa, founded in 1934 (South African Airways, 2018) which could not continue to operate, resultant from consequences of state capture.

The disruption of well-established formal entities was noted in all the three papers contrary to the assumption of the theory that sponsors that institutions are impenetrable due to their strong governance. Corrupt activities were justified by the creation of institutional crisis (Dong et al., 2011). The artificial crisis made the entities to be susceptible to state capture, which contributed to deinstitutionalization. Institutions grow isomorphic and imitate each other when under pressure (Combs et al., 2009), an observation noted by capturing agents when noting that there were no consequence management for transgressors, and further exacerbated by the redeployment of “loyalists” to lucrative entities with high capital budgets increased the chances of isomorphism. The papers evidently displayed unethical behaviours, practices and conduct (Liedong, 2017; Rose-Ackerman, 2002; Venard, 2009; Venard & Hanafi, 2008).

The challenge of “*Single-Party*” (Alence & Pitcher, 2019a; Boucek, 2012; Innes, 2013; Luiz, 2016a, 2016b; Meyer & Luiz, 2018) contributed in weakening institutional governance. Similar institutional voids were identified across all three cases which included strategies and techniques of creation of parallel institutions and networks “shadow-states” to gain access to the Constitutional state.

## **1.5.2 Practical Contribution**

While all three papers contributed to the body of knowledge on the broadly studied Institutional theory, they further contributed to the complex yet understudied state capture phenomenon. Despite a number of scholarly work on social sciences, there is still paucity of literature on corruption (Asiedu & Freeman, 2009) and state capture specifically, that is aimed at providing a theoretical and practical solution to the phenomenon. The current literature on anti-corruption has failed to combat corruption despite the growth in theorists studying the concept (Martinsson, 2021). Scholars postulate that the linkage of corruption on corporate and national governance remains unexplored (Kaufmann et al., 2000), which therefore creates a gap in knowledge. The experiences from this unique and under-theorized form of corruption (state capture) have

been documented through the study and voids which provided a fertile ground for state capture within the system identified.

Practically, the investigation produced a clearer understanding of how the state entities were disrupted by the scourge of state capture which was sustained over a period. The study identified a common framework across the three articles which responded to the research questions and used the findings of the study to propose institutional responses to the identified challenges associated with institutional disruptions which results from State Capture.

The findings provided a basis for proposing relevant, innovative and sustainable response mechanisms to enable business continuity, institutional legitimacy as well as reducing the risk of uncertainty that can mitigate against institutional disruptions related to state capture. These proposed mechanisms serve as a tool to the community of scholars as well as a guide to other institutions and practitioners in various fields. We observed that recent developments and risks posed within institutional management as well as social and political landscape present managers with a more challenging task of having to execute their duties from the watchful eyes of the taxpayers with very minimal resources, while adapting to evolving institutional challenges and trends.

We noted that state capture occurrences present researchers with more tools and scope to understand the relevant strategies and methods which can be applied to effectively respond to the phenomenon. Many institutions invest a lot of resources on risk mitigation, whilst at the same time the government has been investing a lot more resources on commissions of inquiry into state capture and corruption. In-depth understanding of the real-life phenomena was gained through the investigation, providing an addition to the body of knowledge.

The findings can be used as a guide to practitioners and experts to address similar institutional disruptions in varied settings. Additionally, the study observed the need for an evolution of the current perceived strong governance processes to mitigate against institutional disruptions.

The study proposes a model for state capture depicted below to summarise the capturing agents who become the shadow state that create a parallel institution that systematically takes over the governing of the Constitutional state through capturing the stakeholders as depicted below. The outer layer depicts the negative impact realised



from state capture. The impact is further displayed as the model output of state capture taxonomy (see below).

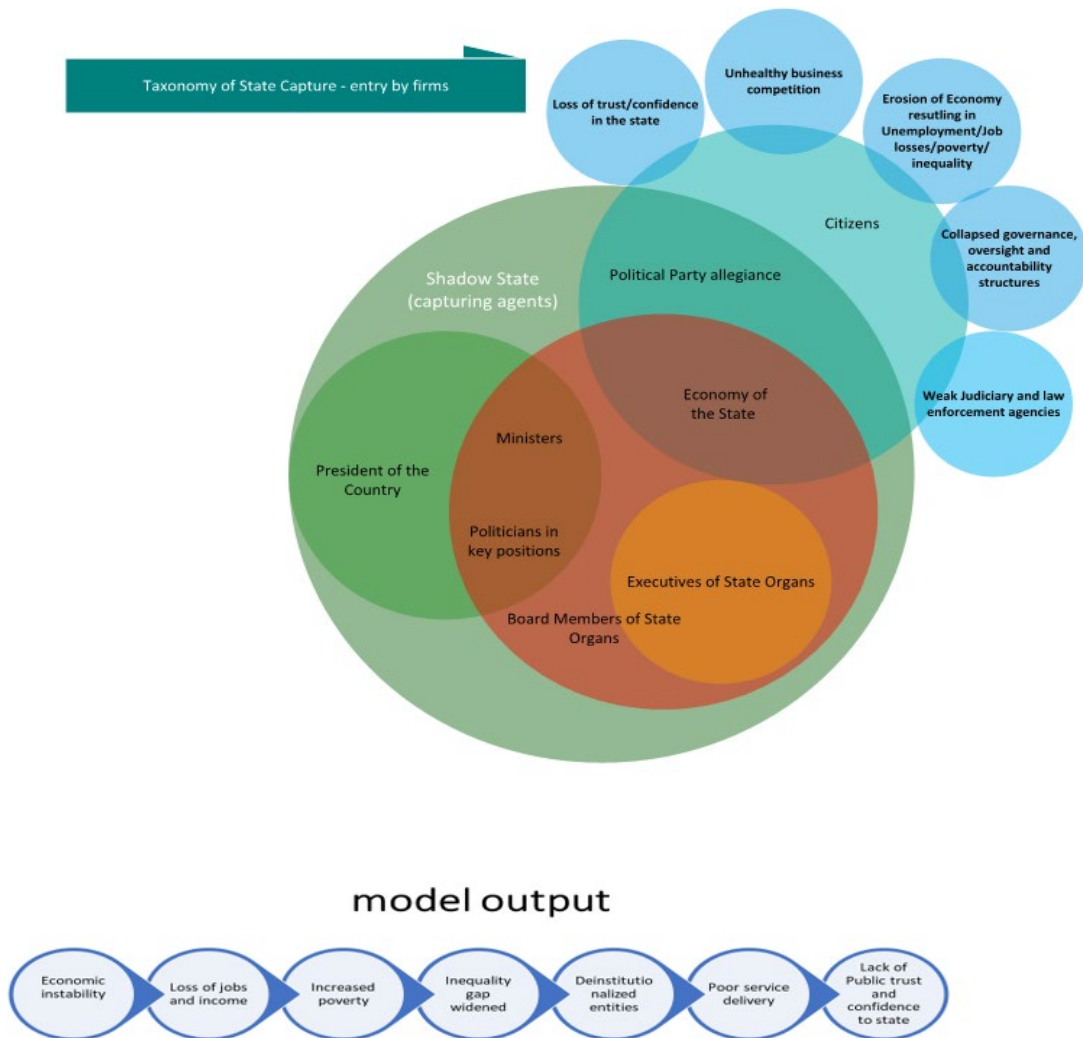


Figure 2: Proposed Model for State Capture

## 2. CHAPTER TWO - SOUTH AFRICA AS A CONTEXT

The research acknowledges that the root of political science is in the study of institutions (Peters, 1999). These institutions must battle with adapting the evolving needs and integrating the wishes of pressure groups. When studying corruption in state institutions, examining the governments' role in the process is inevitable (Venard, 2009). With their mandate of delivering key services, the focus of these institutions naturally requires major capital projects which are state-funded, and this directly attracts shadow-states, thereby providing a fertile ground for state capture.

In South Africa, financially distressed state-owned entities such as South African Airlines (SAA), South African Broadcasting Corporation (SABC), Denel<sup>7</sup> and Eskom<sup>8</sup> are synonymous with state capture. These entities are solely or partly owned by the state (Abramov et al., 2017; Ngwenya & Khumalo, 2012). The entities are an extension of government, based on the objective of their establishment, and are founded through an Act of Parliament (Ngwenya & Khumalo, 2012; Republic of South Africa, 1999). These entities co-exist with government in order to maximise provision of social services (Klovienė & Gimžauskienė, 2014) and wealth building (Estrin et al., 2016; Zahra & Pearce, 1989) and they base their success on how effective and efficient they meet the needs of their constituencies (Kaplan, 2001). These institutions are also expected to generate adequate revenue for self-sustainability, although some scholars argue that their goal should not be for profit intensification, but aimed at maximising the delivery of social welfare services to the public (Klovienė & Gimžauskienė, 2014).

Role players utilize their positions to maximize individual goals as postulated by Peters (1998). This is substantiated by majority of witnesses' affidavits in the State Capture Commission of Inquiry in South Africa chaired by Judge Zondo<sup>9</sup>. The Commission found that majority of actors manipulated the internal processes and systems to enrich themselves, alternatively direct financial resources to their political parties through capturing the State. In their report, the Public Protector mentioned offering of cabinet Ministers' positions and influencing removal of certain Ministers by the

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<sup>7</sup> State entity in South Africa producing innovative defense, security and related technology solutions.

<sup>8</sup> State entity in South Africa providing electricity. Largest producer of electricity in Africa.

<sup>9</sup> A Commission of Inquiry appointed by the President in South Africa to investigate allegations of state capture, corruption and fraud in the public sector including organs of state also known as Zondo Commission.

Gupta family<sup>10</sup>, who were granted powers by the President to appoint Ministers and Board directors of state entities, for instance, Mr Nhlanhla Nene was removed as Finance Minister with Mr Mcebisi Jonas offered his position, of which he declined. Mr Nene was replaced by Mr Des Van Rooyen who subsequently moved to Cooperative Governance and Traditional Affairs four (4) days after his appointment, following pressure from stakeholders. Likewise, Ms Vytjie Mentoor was offered a post of Minister of Public Enterprises in exchange for cancelling the SAA India route, with the conditions of appointment being that they work with the Gupta family (Public Protector of South Africa, 2016).

The State Capture Commission heard of how the journalists and high profile politicians were controlled from the Bosasa<sup>11</sup> firm (Agrizzi, 2019). The confession by the Chief Operations Officer before the Commission confirms that state capture is a phenomenon that commences with the capturing of key persons responsible for major decisions within the institution. Key individuals implicated include Members of Parliament as well as the former President Zuma (Agrizzi, 2019). The latter openly acknowledged his friendship with the Guptas including that of his son which evolved into state capture. Bosasa and Guptas leveraged on these relationships with the politicians to receive preferential treatment in state contracts.

Additionally, the rationale for selecting South Africa as a context for study is that it emerged from apartheid with the first democratic elections held in 1994, however its high rate of corruption rapidly evolved into state capture within a short period. The country emerged from the era with three major challenges to redress, namely, poverty, inequality and unemployment. The response strategies by the government included several transformation initiatives which became an access point for state capture activities.

Due to the nature of these entities to deliver basic services, very minimal competition is allowed to penetrate the sector. Department of Public Enterprise (DPE) reported massive recurring financial losses in rescuing these financially distressed entities (Republic of South Africa & Department of Public Enterprises, 2018; Republic of South Africa, 2018b). The entities attracted media and public interest, with corrupt

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<sup>10</sup> A wealthy and influential family originating from India which became synonymous with state capture in South Africa.

<sup>11</sup> A South African company whose COO became the first witness before the State Capture Commission.

activities reported in governance and operations resulting in instability at both executive and board level.

Admittedly, a variety of industry disruptions have been documented globally over the years, some of which have led to social science research. The United Nations (UN) in its first ever meeting on corruption, peace and security in Venezuela established that corruption results in a humanitarian crisis, whereby the natural resources become a focus for embezzling funds, corruption and fraud (United Nations, 2018). During the apartheid regime (Hyslop, 2005; Minnaar, 1999; Radygin et al., 2015) South Africa was excluded from economic activities internationally (Minnaar, 1999). This confirms the study's developing view that state capture can collapse the economy of a country.

In South Africa, protests and unrests have been rife since the advent of democracy as community formations use the opportunities created by freedom and democracy to voice their dissatisfaction on how their tax is spent (Guillamón et al., 2011). In response to the public outcry, the government continuously injected financial capital to distressed entities. In his 2016 budget speech, the Minister of Finance allocated over ZAR 800 billion (USD 46.3 billion<sup>12</sup>) to capital infrastructure projects (Republic of South Africa, 2016). The prevalence of investigative journalism in the country contributed to exposing state capture activities. Whereas leaders called for the government to implement consequence management to transgressors. In his speech, the Member of Parliament of the Republic of South Africa, Tim Brauteseth indicated that: *“when you promise a reward, go out of your way to deliver. When you promise punishment, make damn sure you deliver, no matter the pain you feel as a loving parent”* (Brauteseth, 2015a).

The state capture's approach of capturing actors in the highest echelons raises a question on who oversees the overseers? In his departing speech from Parliament, former President Nelson Mandela indicated that *“Parliament should not be a carriage on the gravy train”* (Mandela, 1999). It should remain the responsibility of leaders to instil hope to the country. Weakening of oversight structures provided access to the capturing agents.

King Report contributed in institutionalizing ethical business culture in South Africa (Adeleye et al., 2020). Despite legal protocols prescribing that deviations from the

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<sup>12</sup> Exchange rate at as of 29 July 2023

set norms constitute criminal offence, as well as setting out the penalties to be instituted (Republic of South Africa; 1999), transgressions continue to be reported in several entities (Auditor-General South Africa, 2016, 2017, 2018a; Department of Cooperative Governance and Traditional Affairs, 2009; SALGA, 2015) including in local government as outlined by councillor Nawa of South African Local Government Association (SALGA) during the anti-corruption strategy summit, whereby the organisation pleaded with its members to implement punitive measures to the deserving (SALGA, 2013).

State entities account for a major component of job creation within the country. In 2017, these entities contributed 21% towards the country's gross domestic product<sup>13</sup> (GDP) while the private sector contributed 63%, and the remainder of 16% was made up from the government (Republic of South Africa, 2018b). These entities required financial relief as they were not able to meet their financial obligations. Alarming effects include job losses resulting from state capture.

This rich historical background as well as South Africa's developing economy provides a fertile ground for social science research as supported by scholars who studied the field (Hyslop, 2005; Lodge, 1998).

## **2.1 History of Corruption in South Africa**

Due to the exclusion of South Africa from the international economy, resultant from the historical challenges, its entrance to international economy post democracy brought about new experiences in terms of organised crime and corruption. Hyslop (2005) theorises that in the ten years leading to the first democratic dispensation, the public entities were riddled with corrupt activities. The looming democracy was reason enough to accelerate corruption within the high levels of administration, with the highest recorded as being in the military, police and intelligent services as well as the Department of Education. The then President, FW De Klerk resolved to close *"down the department of development affairs in 1991 after the Commission under Judge Pickard found that it was a swamp of corruption"* (Hyslop, 2005).

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<sup>13</sup> GDP – gross domestic product is the monetary value of all goods and services produced by all people within the country's borders over a period of time (Callen, 2008).

Hyslop (2005), further conceives that in the new era of democracy, the public entities *"have shown some fair degree of functionality with corruption relatively constrained"*. Same argument however cannot hold in the wake of state capture events that ensued in those state entities.

With the dawn of democracy, South Africa introduced transformation initiatives on procurement as BBBEE<sup>14</sup>, which closed competition from those companies that would ordinarily qualify based on expertise and experience. The implementation of the BBBEE (Hellman et al., 2003; Thomas, 2012) aimed at uplifting the lives of the poor has been highly criticised for creating a platform for entrenching economic inequalities and building an entitlement culture as well as crony bias. This created institutional gaps and disruption opportunities to necessitate the need to pay bribes (Hellman & Kaufmann, 2003b; Kenny & Soreide, 2008; Teal & McArthur, 2004; Wilson & Damania, 2005) in order to secure contracts.

The uncertainty provided by the political leadership positions, posed a challenge, in that some leaders opted to *"play javeline"* a phrase that has become known for engaging in corrupt activities that will lead into the politician getting their rewards on the other end should their position be prematurely terminated. This notion is supported by Hyslop (2005) who submits that Minister Mac Maharaj who was heading the Department of Transport serving under President Mbeki awarded a multi-million-rand contract to a consortium that included *"Schabir Shaik who then commenced personal payments to Maharaj. When Maharaj left office in 1999, he became a board member of FirstRand Bank whom he had awarded contracts during his term as a Minister. Corruption has large adverse effects on social welfare"*.

With corruption at play, the quality of service bears the risk of being lowered due to payment of bribes (Rose-Ackerman, 2002), alternatively, creates a risk of the state entities having to enter into contracts which results in loss of revenue for the institution. These deals may include the design of contractual requirements that are suitable to particular service providers, which will in turn result in quick payoffs spread over a longer period (Rose-Ackerman, 2002). Ghosh and Neanidis (2011) argue that corrupt officials may opt to shift funds to where the possibility of inflating spending expenditure is higher with lower production. Access to basic infrastructure services has expanded in developing countries (Kenny & Soreide, 2008), further exposing the State to potential

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<sup>14</sup> BBBEE – Broad Based Black Economic Empowerment Act which prescribed black economic empowerment to assist on the transformation process.

capture. Hanson (2009) further indicates that, unaddressed endemic corruption can foster unrests which were observed in South Africa.

Doh et al. (2003) submits that both direct and indirect cost of corruption results in high taxes as well as shift risks to other stakeholders. A relevant aspect to the South African setting is outlined by Doh et al. (2003) (figure 3 below) is the foregoing market supporting institutions, which consist of costs incurred as a result of judicial intervention for enforcement of contracts when in dispute. South Africa invests financial resources in setting up Commissions of Inquiries and investigations aimed at addressing state capture allegations in state entities. The Life Esidimeni<sup>15</sup> hearing case alone, costed the taxpayers an amount of ZAR 47 million (USD 2.6 million) excluding the ZAR1.2 million (USD 68 thousand) awarded to each of the affected families. The legal bills for the former South African President's court battle were reported to be ZAR16.7 million (USD 948 thousand) by 2018 with the possibility of increasing as the case continued. The Judicial Inquiries into state capture which commenced in 2017 had costed the taxpayer ZAR 300million (USD 17 million) by August, 2019, broken down as follows: Zondo Commission into State Capture - ZAR230 million (USD 13 million); Public Investment Cooperation Inquiry – ZAR 54.5 million (USD 3 million); South African Revenue Services Inquiry – ZAR 8.8 million (USD 499 thousand) and lastly the National Prosecuting Authority Inquiry – ZAR 3.6 million (USD 204 thousand) (Fin24 & City Press, 2019).

Whereas, crony bias has been found to have a very negative effect on public institutions, in that it results in lower tax compliance and high bribery levels (Hellman & Kaufmann, 2003). The Commission on allegations of state capture heard evidence of tax evasion. This consequently result in low revenue base which impacts the high state expenditure burden. This has a potential to culminate into weak state institutions as well as capture by the more influential (Hellman & Kaufmann, 2003).

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<sup>15</sup> Esidimeni is a health recovery centre whereby the Department of Health in Gauteng Province of South Africa transferred some mental patients. The health ombudsman's report detailed the 94 known cases in which mental patients died between 23 March and 19 December 2016 whereby 81 of the deaths was as a result of the termination of the contract by the state.

### Direct Costs of Government Corruption

Type	Explanation
Bribes	Monetary and non-monetary payments to those with some degree of public power as a response to extortion or in exchange for some misuse of public power.
Red Tape/Bureaucratic Delay	Non-monetary and opportunity costs of dealing with corrupt officials or of complying with the illegitimate bureaucratic requirements of corrupt regimes.
Avoidance	Efforts to avoid and limit the firm's exposure to extortionary behavior by corrupt officials, including hiding output and opting out of the official economy.
Directly Unproductive Behavior	Investments in channels of influence to gain advantage in dividing up the benefits of economic activity; includes lobbying and more direct vote and influence peddling.
Foregoing Market Supporting Institutions	Costs imposed on the firm as a result of foregoing the use of courts for the enforcement of contracts, local financial operations, etc.
Engagement with Organized Crime	Monetary and non-monetary costs imposed on firms as a result of willing or unwilling engagement with organized crime.

Figure 3: Cost of Corruption to government - Adapted from Doh et al., 2003.

While corruption is regarded as a social and political matter and has increased to an epidemic level in China (Xu & Yano, 2017), Martin & Solomon (2017) in their assessment of South Africa, submit that *"all variables for the outbreak of such a catastrophe are present in the country and that it is only a matter of time"*. The outbreak did indeed erupt shortly after the assessment in 2017. Aguirre (2004) postulates that corruption is categorised into different types which culminates into an institutional crisis.

Clarke & Xu (2004) submit that corruption is lower in countries that are characterised by the following elements:

- a) open to international trading,
- b) former British colonies,
- c) protestant faiths,
- d) exposed to democracy for longer,
- e) politically stable,
- f) have press freedom,
- g) have parliamentary systems of government and fiscal decentralisation.

Although the period that justifies the exposure to democracy is not explicit in the above argument, South Africa compares positively on these characteristics however state entities were disrupted through corrupt activities irrespective of the country meeting most of the characteristics theorized by Clarke and Xu (2004). The study submits that irrespective of the characteristics of a country, corruption can be rampant in any state where the systems provide access and allows for it to thrive.



Corruption contribute to political instability (Fredriksson & Svensson, 2003), and probably result in an institutional crisis, which in certain instances could lead to a collapse of institutions (Venard & Hanafi, 2008). Strong entities collapsed in South Africa emanating from state capture. Changes in political leadership further pose a risk as the incumbents may want to personally gain as much as they can while still occupying office, as it is the case with the attribution by (Hyslop, 2005) on the Maharaj case. Rose-Ackerman (2002) submits that uncertainties increase corrupt activities since those holding office are not sure if they will finish their term or not and prepare for any eventuality.

Minnaar (1999), cites that prior the first democratic elections in 1994, corruption was not dealt with in a systematic and coherent manner. Minnaar (1999) argues that the transition from the old regime into the democratic dispensation posed a dilemma in which people who were technically skilled to do the job were not trusted by the new government (Hyslop, 2005), this is in contrast to the view that the normative dimension of institutional theory sponsors in terms of the wealth and knowledge of the professionals within an institution.

State capture bears societal effects due to the impact on economic growth of a country. The reason for taking such a stance include loss of contracts similar to what happened in KPMG in South Africa (New York Times, 2018); job losses at the South African Broadcasting Corporation (SABC) (Eyewitness News, 2018), ANN7, The New Age as well as the liquidation of institutions such as what transpired in the Bell Pottinger case (New York Times, 2018). The Bell Pottinger case proves that state capture *“eats the firm from inside and destroys it before anyone can do anything to save it”* (Frye, 2002).

A decrease in economic growth in South Africa worsens governments burden to address challenges of unemployment, poverty and inequality (Chibba & Luiz, 2011). The South African Institute of Race Relations reported that in 2016 over 17 million South Africans depended on social grants, with the number having increased by 328% from 2001 (South African Institute of Race Relations, 2017). Freedom of speech brought about by democracy brought an outcry by the public to call for accountability on the utilisation of tax revenue. Gosh (2011) submits that corruption is characterised by three main end results which are; decreased tax revenue, increase in government spending as well as reduction in productivity (Ghosh & Neanidis, 2011).

## **2.2 Conclusion**

As a developing country, South Africa provided a rich context for the study due to its historical background and perceived strong governance frameworks. The establishment of various investigations commissions including a Commission of Inquiry into State Capture chaired by a judge provided the investigation with rich and high data volumes which contributed to the choice of article-based thesis. The criminal elements exposed by the inquiries and how those were allowed to manifest over a period assisted in identifying how the scourge managed to weaken the state entities and undermine their legitimacy. The chapter outlined that corruption in general and state capture specifically goes way beyond the scope of the study as it is evident where the former President FW de Klerk had to close down a department post an investigation which revealed that the department was infested with corruption (Hyslop, 2005). For corruption to thrive, access by external agents would require to be granted by the internal role-players.

### 3. CHAPTER THREE - LITERATURE REVIEW

Although the Institutional theory is postulated to have reached adolescent stage, reached mid-life crisis and has '*gone beyond its purpose*' (Alvesson & Spicer, 2019; Suddaby, 2010), the study established that there is paucity in literature that explains how state-owned institutions that are perceived to be rule-driven were susceptible to institutional disruptions such as state capture. The maturity of the theory provided an apparent opportunity and rationale for studying this broadly studied theory through a modern phenomenon of state capture. The study explored the theoretical gaps and further designed a theoretical response to a practical problem. Literature revealed that despite the enforcement of the rules, laws and standards that govern institutions, voids (Dassah, 2018; Grzymala-Busse, 2008; Kenny & Soreide, 2008; Littlewood & Holt, 2018) inclusive of unethical behaviours remain core in making these institutions susceptible to state capture.

Economies have societal, political and socio-cultural path-dependencies cemented within them (Bardhan, 1997; Grewal & Dharwadkar, 2002; Hellman et al., 2003; Madonsela, 2019), for instance, South Africa suffered sanctions during the apartheid era (Radygin et al., 2015), which affected the country both socially and politically (Ellison et al., 1996), as they were excluded from international economic activity. Some of the dependencies include unethical conduct (Liedong, 2017; Rose-Ackerman, 2002; Venard, 2009), which is associated with corruption. These dependencies contribute on how actors in institutions execute their operational and fiduciary duties. We submit that corruption has an effect of contaminating the country holistically if no effective and sustainable response mechanisms are employed.

Leading to the formulation of the overall and supplementary research questions, literature from management theories, policy and criminal scholarly articles was studied. In reviewing literature, three fundamental dimensions guided the framework process of data processing which included three major stages as proposed by Levy and Ellis (2006). The process specifically targeted scholarly work of previous scholars who studied the key constructs of the research. Systematic information was processed through reviews which involved data gathering and screening for relevance to the study (Levy & Ellis, 2006). From then on, data was then processed following Bloom's Taxonomy and

subsequently followed by the outputs (Levy & Ellis, 2006), which then became the end product of the review. The three-way process is as depicted in figure 4 below.

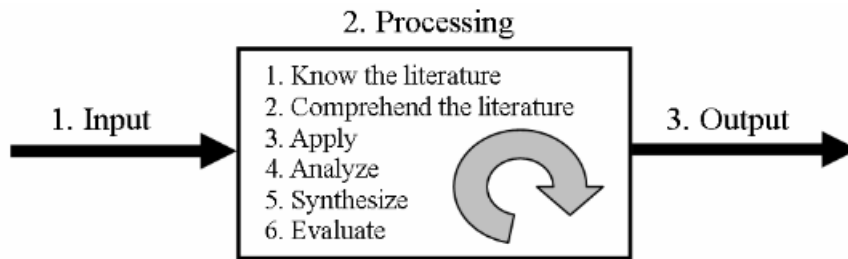


Figure 4: The three stages of effective literature review process (Adapted from Levy & Ellis, 2006)

The investigation takes the view that in state capture, shadow states take over the governing of the Constitutional state. Although Institutional theory and corruption in general are mature concepts that have been extensively investigated, state capture remains a concept that still require developing. Admittedly, state capture, graft or grand corruption is not idiosyncratic to state entities whereby the aim is to personally gain from the position in which the agent occupies.

### 3.1 ELEMENTS OF INSTITUTIONAL THEORY

Institutional theory is an adaptive vehicle shaped by the reaction to characteristics and commitments of participants as well as influences and constraints from external environment (Scott, 1987, 2008). These elements that constitute institutions are symbolic, however they provide normative guidance and cognitive schema that rules, constrains and empower social behaviour (Scott, 2008) and are best summarized hereunder by Scott (2003):

	<i>Regulative</i>	<i>Normative</i>	<i>Cultural-Cognitive</i>
<i>Basis of compliance</i>	Expedience	Social obligation	Taken-for-grantedness Shared understanding
<i>Basis of order</i>	Regulative rules	Binding expectations	Constitutive schema
<i>Mechanisms</i>	Coercive	Normative	Mimetic
<i>Logic</i>	Instrumentality	Appropriateness	Orthodoxy
<i>Indicators</i>	Rules Laws Sanctions	Certification Accreditation	Common beliefs Shared logics of action
<i>Basis of legitimacy</i>	Legally sanctioned	Morally governed	Comprehensible Recognizable Culturally supported

Figure 5: Conceptions of Institutions adapted from Scott (2003)

Scholars posit that Institutional theory is based on three widely studied elements, namely; regulative, normative and cultural cognitive (Alvesson & Spicer, 2019; Scott, 1987, 2003, 2006, 2008). These elements are deliberated hereunder:

### 3.1.1 Regulative

The regulative element relates to rule setting, monitoring and sanctioning activities (Grewal & Dharwadkar, 2002; Scott, 2008). Grewal and Dharwadkar (2002) contend that formulating public policy is a political process. Institutions are regulators and enforcers of laws as they interact with relevant structures through policies, generate accountability and set the standards under which institutional performance is assessed (Shen & Snowden, 2014). These are the laws that society expects to be followed by institutions to the latter as construed by Institutional theory.

Scott (2008) argues that it is easier to manipulate the regulative environment since it is subject to interpretation, elaboration, and revision. A notion this study observed where the regulatory environment was used to weaken governance processes which provided access to state capture. This notion further builds into the sponsored definition of state capture to be discussed later in this chapter. South Africa promulgated laws to

be instituted with oversight and accountability being the responsibility of Parliament (Ngwenya & Khumalo, 2012). The visible possibility of non-compliance to the regulatory environment despite the theoretical assertions from existing literature led to research supplementary questions which explored the role of oversight governance structures and how that relates to state capture.

### **3.1.2 Normative**

Scholars postulate that the normative element is associated with ethics and individuality, norms and values guiding the proper way of behaving by professionals (Grewal & Dharwadkar, 2002; Scott, 2008). Individuals in organizations are seen as reflexive, goal oriented and expected to be competent in their area of speciality (Alvesson & Spicer, 2019). These actors are denoted as always calculative of the implications and benefits of the choice of their actions, following what is termed the institutional model, whereby individuals follow norms without questioning, not reflective and with no behavioural resistance (Tolbert & Zucker, 1996), therefore if the decision making process continuum is driven by behaviour, certain behaviour is likely to be dominant over other continuums. Professionals would be distinguished by their professional and trade associations as well as accreditation agencies and use these platforms to stimulate patterns within the profession.

### **3.1.3 Cultural cognitive**

The cultural-cognitive element is referred to as shared cultural conceptions that constitutes the nature of social reality through which society derives meaning from (Scott, 2008). This element provides frameworks under which institutional logic is premised. The challenge is distinguishing on what is culturally acceptable against that which is ethically unacceptable. The debate of bringing balance on what can be legally unacceptable but culturally acceptable can be traced back to earlier scholarly work (Cariño, 1979) which I submit, in a diverse culture consideration of individual beliefs and values becomes a challenge. The aspect of holistically focusing on individuality has led to the limited scholarly work on cultural cognitive which is deemed as softer aspects (Scott, 2008). This becomes important in the study as the individuals become key role players

necessary to achieve the objective of the research. Laying foundations for cultural norms and habits lead to cognitive institutions (Grewal & Dharwadkar, 2002). It is difficult to remove cultural elements from institutions and this forms the fibre of institutions due to the human element involved.

### **3.2 INSTITUTIONAL ISOMORPHISM**

Institutional theory is based on the existence of institutions (DiMaggio & Powell, 1983). Scholars postulate that structural similarities brought about by the theory result in interconnectedness and remodelling of institutions (Dacin, 1997; DiMaggio & Powell, 1983; Venard, 2009). Scholars further argue the importance of the institutional environment in shaping the path that an institution takes and how these are embedded in the societal context (Grewal & Dharwadkar, 2002), these institutions are purported to have the authority to enforce formal rules and informal constraints comprising of behaviour and self-imposed codes of conduct. The behaviour of these individuals prescribes the kind of institution that will come into existence as well as the institutional framework that will guide it (North, 1998, 2018), therefore outlining the required skills and knowledge of the structure. Whereas, Institutional theory is aimed at bringing back to the agenda the issue of values and morality into institutional logics (Hirsch & Lounsbury, 2015; Leca & Naccache, 2006). These characteristics bring to life the institutional theory elements as discussed in 3.1 above.

Scholars have defined Isomorphism as a practice whereby processes are similarly constrained by both internal and external pressures, which forces institutions operating in the same environmental conditions or field to be isomorphic or resemble one another over time (Dacin, 1997; DiMaggio & Powell, 1983; Lin & Sheu, 2012; Venard, 2009; Weir, 2009). When institutions adopt common practices with those within the same field or industry, Institutional theory suggests that they become isomorphic (Combs et al., 2009). Neo-institutional theory is premised from the belief that practices, behaviours and actions of these institutions tend to be influenced by others in the same industry (Haunschild & Miner, 1997). Weir (2009) posits that these processes include identification and repetition of similar patterns while Haunschild and Miner (1997) postulate that institutions may selectively copy common practices or just certain features. From this perspective, it becomes very challenging for decision makers to imitate other

institutions using the model argued by Haunschild and Miner (1997) if they are not knowledgeable on the area under which they operate, which therefore lead to dependencies on the knowledge base of the professionals within the organization.

Isomorphism processes are categorized by different scholars into three dimensions; explicitly mentioned as coercive, mimetic and normative isomorphism (DiMaggio & Powell, 1983; Weir, 2009). The most commonly explored type of isomorphism is mimetic which this study found basis on. The study assumes that these dimensions of isomorphism provide a fertile ground for fighting state capture and corruption in general, noting that the shadow states target the institutional regulatory framework when taking over the Constitutional state. The crucial role played by the professionals within institutions to aid state capture cannot be ignored. The three dimensions are deliberated hereunder.

### **3.2.1 Coercive Isomorphism**

Coercive Isomorphism is concerned with practices which changes the regulatory framework, laws and policies due to pressures from dominant stakeholders and societal pressures (Scott, 2006; Weir, 2009). Scholars contend that coercive isomorphism is when formal institutions exert pressure of legitimacy and homogeneity on dependent actors (DiMaggio & Powell, 1983). Feasible policy prescriptions remain the measure that can tackle corruption, as argued by certain scholars (Bardhan, 1997). These regulatory frameworks can only make an impact if they are enforced, and if not, their influence on social behaviours become limited (Venard, 2009). Significantly, a weak institutional framework becomes a gateway for unethical behaviours to manifest (Venard, 2009). Venard's view of weak institutional frameworks is supported by scholars who theorize that institutions grow isomorphic when they are under pressure and thereby conform to coercive pressure when managers respond to formal and informal instructions or recommendations arising from governmental or professional organizations, which are the dominant stakeholders. While power can only be effective when the rules and laws set are backed by the necessary penalties for contravening those rules (Willmott, 2015). The need to explore the powers of oversight structures brought about the supplementary research question that focused on this aspect. Weir (2009) submits that coercive isomorphism stems from political influence which brought about the exploration of the



role of public representatives which are elected and deployed by political parties and how that influence would have aided state capture.

### **3.2.2 Mimetic Isomorphism**

Mimetic Isomorphism refers to the adoption of practices of successful firms by those less successful within the industry in order to respond to uncertainties (Combs et al., 2009; Scott, 2008; Weir, 2009; Willmott, 2015). Scholars postulate that the actors prescribe the paradox of institutions and make them similar (DiMaggio et al., 2012). Whereas, neo-institutional theorists argue that institutions routinely follow taken-for-granted models and standards that exist within a particular institutional environment, irrespective of their functional utility (Shen & Snowden, 2014). This scholarly view was explored to determine whether the theory was followed in modelling the state capture phenomena. With this view, scholars posit that institutions remodel unethical practices such as corrupt behaviour of other organs which are perceived as successful (DiMaggio & Powell, 1983; Rose-Ackerman, 2002; Venard, 2009). Weir (2009) further argues that when the institutional goals are ambiguous, there is bound to be uncertainty resulting from environmental and economic instability which may motivate institutions to imitate others. Data displayed some ambiguities in the mandate executed by the state entities studied which brought about the supplementary question that explored the transformational change initiatives which became part of a developmental agenda and whether those brought about the institutional instability referred to by Weir (2009).

### **3.2.3 Normative Isomorphism**

This dimension of normative Isomorphism is postulated to refer to the collective struggle of adopting practices informed by norms of the professionals within an industry, to define their working conditions and methods of operation in order to control both the production and procedures as well as the occupational autonomy (Combs et al., 2009; DiMaggio et al., 2012; DiMaggio & Powell, 1983; Venard, 2009; Weir, 2009; Willmott, 2015). Theory (DiMaggio & Powell, 1983) suggests that the actions of these professionals and societal norms can be easily reproduced leading to them becoming habitual (Grewal & Dharwadkar, 2002), in that it is internalized by others and reinforced by other actors

within the industry (Scott, 2003). Filtering of personnel has been posited as one of the critical components of ensuring that isomorphism gains traction (Martini, 2014). The study explored whether “recycling” of employees at Executive level across state entities created isomorphism on state capture within the studied institutions. The reproduction of these habitual behaviour (Grewal & Dharwadkar, 2002) gave rise to the need for the study to explore if state capture was resultant from players realising the personal gains derived from corrupt behaviours through observing others within the same professional space.

### **3.3 INSTITUTIONAL LEGITIMACY AND UNCERTAINTY**

Since institutions are referred to by North (1991) as humanly devised formal and informal constraints that structure political, economic and social interaction, they are established with the aim of promoting legitimacy and reducing uncertainty (North, 1991). These institutions are posited to strive for both economic legitimacy and relevance to social fitness (Grewal & Dharwadkar, 2002). Institutions that imitate other successful or leading organizations do so in a quest to be legitimate and limit the risk of uncertainty (DiMaggio & Powell, 1983; Grewal & Dharwadkar, 2002; Hirsch & Lounsbury, 2015; North, 1991; Scott, 2008; Shen & Snowden, 2014; Sillince & Barker, 2012; Varadarajan, 2017). In their study on financial institutions, Venard and Hanafi (2008) argues that scandals and unethical behaviour erode institutional confidence and has the potential to lead to the decline of the affected institutions, posing legitimacy risks. The legitimacy of an institution is a status inferred by social actors, therefore, a legitimate institution would therefore possess the same values and actions congruent with those of the social actor since they are dependent on its environmental aspects (Venard & Hanafi, 2008). One such example is where there is loss of public trust and confidence in state entities.

The general argument is that formal institutional structures reflect more than just technological imperatives, instead, includes resource dependencies, rules, laws and frameworks as well as the knowledge base of the actors (Scott, 2008). Herewith are the characteristics identified by Scott (2008); motives for compliance, logics of action, mechanism and indicators being implemented. The above claims legitimacy either from a legally sanctioned, morally obligated or culturally supported basis; for instance, compliance to the orders may be out of expedience, wherein actors comply in order to

avoid punishment; or because actors need to follow the norms as there is no other way of doing it. Meanwhile the rapid collapse of institutional structures in many countries has led to social implications such as worsening income inequality, poverty rates and institutional conditions based on uncertainty and high transaction costs (Dong et al., 2011). These institutional crises in many transition countries, form the basis for the justification of corruption by citizens, according to Dong et al., (2011). Should there be ambiguity in the phenomenological status of structural arrangements, there is bound to be uncertainties (Tolbert & Zucker, 1996). Uncertainties hinder innovation and threaten institutional efficiencies. The rapid collapse of institutions motivated the need to explore state entities in the context of study which were collapsing as a result of state capture.

### **3.4 CORRUPTION**

Corruption is postulated to occur when elected and appointed officials holding public office use their power to deviate from accepted moral standards, from both social and legal perspectives (Venard & Hanafi, 2008). State institutions and the political process are posited to be the main factors in corruption (Shleifer & Vishny, 1993). Although the corruption phenomenon has been studied for a few decades (Cariño, 1979), little has been done in terms of mitigation, based on effective institutional responses (Uhlenbruck et al., 2006). Having been broadly studied, with a few anti-corruption strategies being effectively implemented globally, inclusive of institutions such as the World Bank, United Nations and other international bodies, corruption remains a challenge that the scholars and practitioners as well as policy makers struggle to contain (Martinsson, 2021). This notion is supported by Liedong (2017) who posits that irrespective of several advancements introduced at different levels of government, corruption remains a barrier to the development of socio-economy in Africa.

Whereas scholars who theorize Institutional corruption concept posit that it manifest when there is a systemic and strategic influence which is legal or even ethical that undermines the institution's effectiveness by diverting it from its purpose or weakening its ability to achieve its purpose (Lessig, 2012; Thompson, 2018). This further confirms the assumption of the study that state capture is granted access by role players to manifest.

Scholars further argue that corruption in Africa does not only take place within the public sector and political strata, but also deep rooted in the private sector (Liedong, 2017). The challenge on lack of revolutionary leadership to tackle corruption in a dysfunctional system has led to citizens taking the responsibility and not rely on their political representatives as submitted by Liedong (2017). Below follows the reviewed types and effects of corruption:

### **3.4.1 Types and effects of corruption**

Fazekas et al. (2014) distinguishes grand corruption against petty corruption that consumers are faced with on day-to-day operations, from that which is done at very high level of the organisation. Scholars suggest that corruption in procurement, institutionalised grand corruption and legal corruption defines the different types of corruption (Fazekas et al., 2014). These different measures for corruption are however too narrow for testing theories of grand corruption and developing its solutions (Fazekas et al., 2014). Doh et al. (2003) hypothesise that there are two dimensions of corruption which are pervasiveness and arbitrariness. They submit that organised and structured corruption whereby companies may be required to pay a lump sum for them to win bids, falls within the pervasiveness dimension, while arbitrariness is more a non-systematic dimension which creates lots of uncertainties on whether the payment will yield the desired outcome in terms of who and what to pay, in that the company may be required to pay small amounts to lots of people to “*grease the wheels*” (Doh, Rodriguez, Uhlenbruck, Collins, & Eden, 2003). A similar view is shared by scholars who submit that the nature of corruption is that it is often repeated with no guarantees since the players of the game become monopolists due to their power to control transactions (Shleifer & Vishny, 1993). Doh et al. (2003) further claim that grand corruption activities take place in well-structured and stable regimes.

Scholars postulate that even though corruption is able to thrive in all countries, under-developed and developing economies are more likely to be plagued by the corruption phenomenon (Olken, 2009; Uhlenbruck et al., 2006). In their investigations, Uhlenbruck et al. (2006) theorize that scholars have studied corruption using Organisational theory, Management theory or Institutional theory to base their studies. The latter theory suggests that where guiding systems and practices are the acceptable

way of operation, organisations tend to conform to their institutional context (Uhlenbruck et al., 2006). I take a similar approach to previous scholars who believe that there is adequate space within the Institutional theory to further conduct exploration by delving on the theory and its application to a modern institutional setting of state capture.

Asongu (2013) postulate that corruption, poverty and unemployment are the three most national problems facing the African continent. Confirmation given by the former head of Nigeria's Anti-corruption Commission who was quoted as saying that if you tackle "corruption, it is the best way to attack poverty" (Hanson, 2009). While President Buhari of Nigeria was quoted in the African Union saying (Adeleye et al., 2020):

*“Corruption is indeed one of the greatest evils of our time. Corruption reward those who do not play by the rules and also creates a system of distortion and diversion by destroying all efforts at constructive, just and fair governance .....public confidence has been eroded by a focus on short-term priorities and payoffs, propelled by corruption which often leaves projects incomplete and promises unfulfilled”.*

In disaggregating between the systemic and systematic types of corruption, systemic is said to be involving bureaucratic elites, politicians and business men who embezzle large scale funds through false procurement of non-existent goods; whereas, systematic corruption's role players include public officials, politicians and businesses who personally gain through institutionalised kickbacks, bribery, large scale embezzlement, misappropriation of public tenders as well as large political donations (Asongu, 2013). The high levels of normal or general corruption is attributed to the need by supplier companies to be granted favour for business contracts which may include inside information, providing them with an upper hand against their competitors (Rose-Ackerman, 2002).

Although it is becoming more simpler to detect institutional corruption, the contours of institutional corruption are more complex and difficult to remedy (Lessig, 2012; Thompson, 2018). The cost of corruption is so high that it cannot be ignored (Doh, Rodriguez, Uhlenbruck, Collins, & Eden, 2003). Graft in Africa constitutes the largest financial cost in a country (Hanson, 2009). The effect of political competition on grand corruption is ambiguous and scholars claim that political competition has the capacity to reduce corruption (Wilson & Damania, 2005). No assertion to back this notion was found even though South Africa has seen an increased emerging political party representation

in all spheres of government, however both Parliament and the courts have been inundated with corruption allegations and calls for investigations. These matters have reached the media space and the argument by Wilson and Damania (2005) remains a theory worth testing. The study holds a view that single-party dominance (Alence & Pitcher, 2019b; Boucek, 2012; Dafydd & Badanjak, 2020; Innes, 2013) has the ability to unlock corrupt and unethical behaviour in the public sector.

### **3.5 THE EVOLUTION OF STATE CAPTURE**

Although corruption is vast, state capture is identified as some form of corruption. Many scholars have studied the corruption phenomenon; however, the state capture concept is relatively undertheorized. Weaknesses of central governments provides a fertile ground for state capture (Shleifer & Vishny, 1993). Scholars argue that corruption has evolved into an institution of its own whereby the elite extract state resources for their private gain, alternatively channel it to their political parties (Grzymala-Busse, 2008). Martin and Solomon (2017) advance that in the state capture discussion, both the state and the economy are treated as one entity since they affect each other.

In state capture, the external players have direct access to state resources and are allowed access to the state by internal players, who are risk averse and try to maintain power, and lower the probability of any chance of exiting (Grzymala-Busse, 2008). The players try to eliminate competition as any contest provides a risk for exit. Grzymala-Busse (2008) posits that countries infested with poverty and income inequality increase the possibility of redistributive strategy payoffs, which would then provide an opportunity for state capture. Different tactics are used to capture the state, such as weakening of the regulatory agencies, taking over of mineral wealth as well as politicising fiscal bodies (Grzymala-Busse, 2008).

In many instances state capture takes the organisation by surprise (Frye, 2002). It does not prepare the institution for the after-effects it will eventually suffer. Hanson and Teague (2005) states that in Russia, the state capture reports against Russia's richest businessman, did not prepare them for his imminent detention and imprisonment. Unlike other types of corruption, state capture is a special and unique kind of corruption which is different from normal corruption as it is not easily predicted and managed.

### 3.5.1 State Capture Defined

State capture phenomenon is quite complex. The varying definitions of the concept by scholars (Hellman et al., 2000; Hellman & Schankerman, 2000; Kaufmann et al., 2000; Martini, 2014) proves the complexity of the phenomenon. Although the definitions are different, it is observed that these definitions are related as various scholars have defined the concept from the context of their studies. It is to be expected that as the research field continues to develop, there will be a constant change of the definition study of the phenomenon.

State capture is defined as the phenomenon whereby individuals or groups operating within the public and private sector influence government policies for their personal advantage (Martin & Solomon, 2017). This definition fell close to the context of this investigation however the focus on policies implies that it may be focused only on policy makers. This definition short-changes the role played by various arms of the state. It was therefore found to be wanting in defining the concept from the context of the study.

Transparency International, refers to State Capture as a situation where powerful individuals, institutions, groups and companies within or outside a country use corruption to shape a nation's policies, legal environment and economy for their own interests (Martini, 2014). The study noted that state capture commences with powerful individuals, however this definition lacked in the actual capturing or shadow networks role. The shaping of the elements as included in the definition implies that the capturing agents are either within or outside, it lacks in indicating the need for players both inside and outside of the institution to make state capture effective.

Hellman (2000) who is regarded as the theorist who first observed the phenomenon in 1999, provides two definitions to state capture; with the first being a *“process whereby a firm or persons with narrow interests shape up the policy and environment of a state through providing benefits to politicians or key role players in order to gain from the financial decisions taken within the state entity”* (Hellman & Schankerman, 2000) and the second one being an extension of the first definition in including how the corporate sector shapes the *“rules of the game”* which includes laws

and court decisions (Kaufmann et al., 2000). What can be observed in the second definition is the emphasis on mentioning of the courts, although the Judiciary is regarded as part of the state. The need to review the initial definition by Hellman proves my view that the definition will constantly evolve as the scholarly work grows. I use these definitions by Hellman as a basis for my sponsored definition.

The study further noted that the state capture transactions ultimately benefit the shadow-state, the individuals who are captured (both politicians and officials) as well as to some extent the political parties through funding their activities in return for business favours when they ultimately gain or retain the governing seat. The research then sponsors a condensed and more accurate definition for the context of the investigation conceptualised as follows: “State Capture is a process whereby the Shadow-State (firms) takes over the strategic function of the Constitutional State through influencing the direction of policies at the point of law-making (legislators), the implementers of the law (executive) as well as the Judiciary (law enforcement agencies), which ultimately negatively impact the economy and the welfare of a country’s citizens”. When analysing all the definitions and based on literature, I hold a view that state capture is institutionalized. This definition notes the role played by various players within the three arms of the state as well as the impact of the scourge to the socio-economic aspects of a country and emphasized the view of institutionalization of corruption within the state.

State capture is both systematic (Hanson & Teague, 2005) and systemic (Asongu, 2013). Systematic in that the *Shadow State*<sup>16</sup> puts together a system on how they will lobby, claim, and benefit from the Constitutional state; and systemic in that the internal role-players manipulate the whole system, and, in this context, this is inclusive of procurement, oversight and accountability to redirect funds for personal gains. Noting the context of describing the shadow state as elaborated in the footnote hereunder, Reno (2000) defines shadow states as one that is constructed behind the facade of laws and government institutions by an internal ruler who has the ability to manipulate external actors’ access to formal and clandestine markets and thereby permits rulers to undermine the formal institutions of government (Reno, 2000). Neu et al. (2015)

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<sup>16</sup> In this context a Shadow State is an external network that runs parallel to the formal State bureaucracy



theorizes that corruption has become a social problem because transgressors engage in unethical behaviour for personal benefit.

The effects of grand corruption lead to the decrease in efficiency and effective functionality of institutions (Ghosh & Neanidis, 2017; Rose-Ackerman, 2002; Uhlenbruck et al., 2006). The process which is termed *quid pro quo* (Rose-Ackerman, 2002; Thompson, 2018) or *grease the wheels* (Méon & Weill, 2010) is a two-way process involving two or more parties, who trade off something in return for a favour. This process involves an element of both trust and fear between the players. Scholars postulate that it takes place at senior levels of the organisation (Rose-Ackerman, 2002). Within this process, there are willing players within the Constitutional state and capturing agents, who participate in the symbiotic relationship by changing the rules of the game and legitimise breaking them.

### **3.6 LITERATURE REVIEW CONCLUSION**

The reviewed literature revealed that institutional theory is broadly studied and is regarded as having reached adolescent stage and surpassed its purpose (Alvesson & Spicer, 2019; Sandberg & Alvesson, 2011; Suddaby, 2010) however, there is room for social science research to be explored considering that most scholars quantitatively studied the theory, missing the qualitative aspect which investigates the perspective of the actors. Considering that qualitative inquiry is regarded as highly effective when studying the public sector (Birchall, 2014). This methodological gap is a shortcoming to the benefits to be derived from the experiences of role players to enhance the scholarly debate on the theory.

From the perspective of Institutional theory which perceives institutions as solid structures due to enforcement of laws and rules (Liedong, 2017; North, 1991, 1993, 1998; Scott, 2008) , it is evident that there is a gap in literature on how these solid and structured institutions were disrupted and deinstitutionalized. This provided room for exploration within social science. While literature identified institutional voids which may provide access to state entities (Adeleye et al., 2019; Dahan et al., 2015; Dau et al., 2021; De Waal, 2010; Liedong, 2017; Littlewood & Holt, 2018; Luiz & Stewart, 2014; Rajwani et al., 2013), it however did not indicate what were the access point for State

capture and how these result in deinstitutionalized institutions which can be sustained over time within state entities, ultimately negatively disrupting the economy.

Additionally, literature displayed that professionals and those in key positions are enablers to copying trends and habits confirming institutional Isomorphism (Combs et al., 2009; Dacin, 1997; Grewal & Dharwadkar, 2002; Lin & Sheu, 2012; Scott, 2006; Weir, 2009), however what literature did not reveal is how isomorphism occurs. Although limited literature made reference to filtering of personnel as the main cause of isomorphism (Martini, 2014), this provided room to establish whether there are other elements that leads to institutional isomorphism specifically enabling state capture.

On the concept of state capture, literature revealed that the phenomenon is under-theorised with scholarly articles having been first published by Hellman (2000). This opens opportunities for studying this modern phenomenon using mature theories. Despite corruption being a global challenge, literature failed to provide a common definition of state capture proving its complexity. Literature further displayed that response strategies to mitigate against corruption in general remains a challenge globally (Rose-Ackerman, 2002).

Literature displayed adequate gaps both methodologically and in literature to substantiate the rationale for conducting this study.

## 4. CHAPTER FOUR – METHODOLOGICAL APPROACH

The choice of the research strategies was motivated by the research questions derived from literature as well as the methodological gaps identified in chapter three above. Noting the importance of a research design which provides a logical sequence that connects empirical data to the research question, which when answered, leads to the study's conclusions (Yin, 2013), this section therefore outline the research design that guided the investigation, characterised by the planning process, data collection, analysis, interpretation of data, production of the three papers and final report writing. Although it is noted that ontology shapes the research objects (Saunders et al., 2016), the key instrument for the investigation is the researcher who becomes part of the study (Erlingsson & Brysiewicz, 2013), therefore the values, beliefs and experiences of the researcher became crucial in shaping the direction of the study. In designing the approach to the investigation, the following depiction illustrates the steps taken:

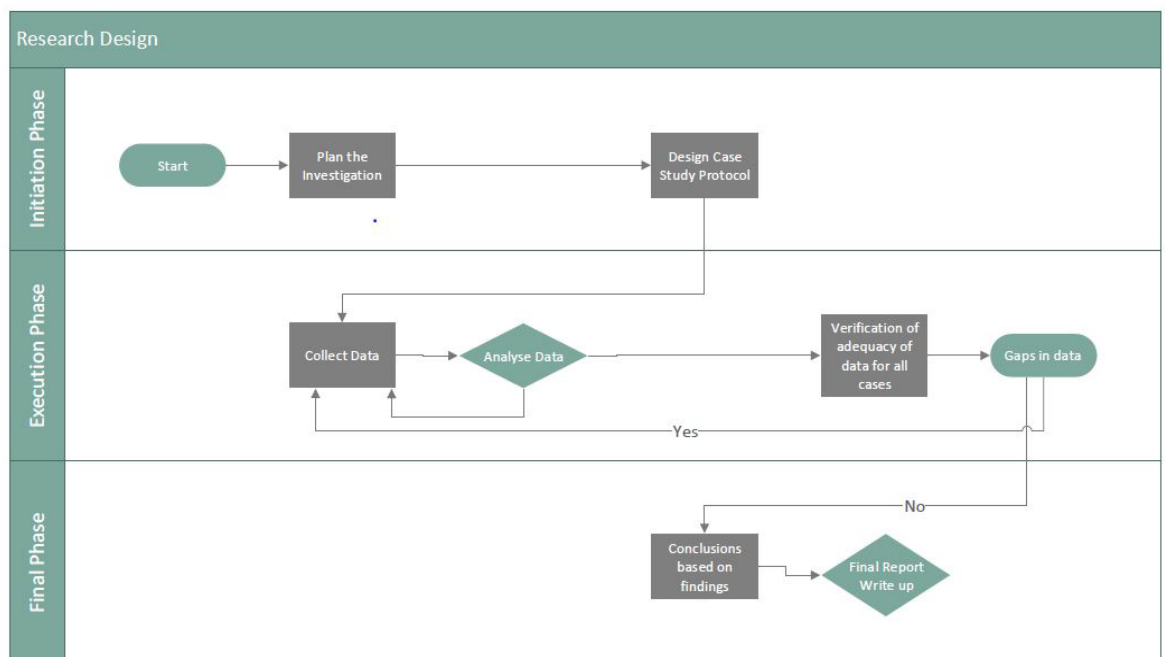


Figure 6: Research design

## 4.1 RATIONALE FOR QUALITATIVE APPROACH

Scholars posited that Institutional theory is missing its intended purpose methodologically, since many of the studies on the theory are quantitative, which is a method that fails to account for the outcome of the institutional processes (Suddaby, 2010). The qualitative approach is not widely used in Institutional theory and a need therefore exists to determine the social pressures experienced by the role players (Suddaby, 2010). This is supported by other theorists who postulates that Institutional theory has neither developed a set of standards nor variety of techniques such as case studies (Tolbert & Zucker, 1996). The research theorised that while analysing information from a statistical perspective is important, there is a need to find meaning to the institutional story of a real-life phenomenon through the perspective of the respective actors. This view is premised from theorists who suggest that there is a need to understand how individuals locate themselves in social relations and have their context interpreted from that perspective, as well as understanding how their daily actions transform institutions (Powell & Colyvas, 2012). From the same viewpoint, the voice of the researcher is often missing on Institutional theory studies, which limits the understanding of the experiences in organizations, and further creates a '*high opportunity for future inquiry*' (Lin & Sheu, 2012; Suddaby, 2010).

Realists believe that the identification of reasonable, unassailable deep explanations can be a major contribution to theory (Fleetwood & Ackroyd, 2004). For a theory that has historically been mainly focussing on quantitative research, the qualitative approach would positively contribute to scholarly debate and close gaps identified in prior studies (Suddaby, 2010; Tolbert & Zucker, 1996) which theorises that institutional theory fails to account for real-life phenomenon due to use of quantitative approach. The identification of this methodological gap, challenging old beliefs that the theory is overstretched and has surpassed its intended purpose, as well as the theory's assumption that institutions are established based on strong governance structures and are therefore impenetrable, brought a disruption in that line of reasoning, therefore problematizing the scholarly view.

Qualitative inquiries are highly effective in public sector investigations (Birchall, 2014), noting the state entities context for the study. This approach provides an opportunity to explore unique and diverse lived experiences as constructed by the

individuals (Erlingsson & Brysiewicz, 2013) and further enriches the investigation with evidence based data (Polkinghorne, 2005a) which assist in data confirmability and possibility of replicating the study. Furthermore, qualitative research provides an understanding of patterns, similarities and differences on the collated data (Erlingsson & Brysiewicz, 2013) which is crucial for the complex state capture phenomenon.

Contrary to quantitative investigations, qualitative approaches allow for data acquisition and knowledge integration with opportunities created by case studies for multiple sources of data (Scholz & Tietje, 2002). Primary and secondary data contributed to high volume of quality data collation enabling the development of three papers and final write-up of the research report. In a qualitative inquiry, the researcher brings into the investigation their own viewpoints, worldviews and paradigms into the project (Creswell, n.d.; Creswell & Poth, 2018; Erlingsson & Brysiewicz, 2013) which aids keeping focus during data collection and interpretation.

This inquiry, provided the researcher with an opportunity to acquire in-depth understanding of the complexity (Flyvbjerg, 2006) of state capture and extend the broadly studied institutional theory from the qualitative approach. The approach provided a potential for bringing back institutional theory to its core assumptions and objectives (Suddaby, 2010) enriched by the selected respondents to the investigation which challenges the scholarly view that the theory is saturated.

## **4.2 RESEARCH PHILOSOPHY**

All social science approaches are interconnected “*sets of assumptions based on their ontology, human nature and epistemology*” (Morgan & Smircich, 1980). Scholars submit that qualitative researches are based on the ontological assumptions of multiple realities and multiple truths, whereby individuals understand realities in different ways and perspectives (Erlingsson & Brysiewicz, 2013). This inquiry is therefore based on the core ontological assumption that institutions imitate corrupt behaviour or institutional isomorphism if the risks of punitive measures are low and the personal gains are high, which resulted in state capture taking place within the state entities in South Africa.

The investigation is underpinned by the critical realist philosophy (Fleetwood & Ackroyd, 2004; Leca & Naccache, 2006) which seeks to explain the causality aspects of

State Capture in terms of the underlying reality, as well as discovering mechanisms to determine outcomes. This philosophy believes that the actions of players and structures are in constant interaction, although they should be perceived to be different realities (Leca & Naccache, 2006). On the same perspective, Leca and Naccache (2006) suggests that critical realists should always contextualise their study, in that the way the structures' causal powers develop is dependent on the contextual conditions. South Africa provided context for the study. The investigation assumes that state capture is unlocked in higher echelons than the institution itself, although executed mainly at the institutional level. It further assumes that human nature dictates institutional isomorphism where there are potential high gains and low risk of penalties. Consistent to that, scholars have conducted studies on causal and effects relationships of a variety of phenomena (Maroun, 2014; Scholz & Tietje, 2012). Understanding the concepts being studied required an investigation wherein a clear understanding would be acquired to enable a description of the human experience on the phenomena (Polkinghorne, 2005b). Flowing from the explanation by Laws and Mcleod (2006) on what research entails, the study aimed at investigating the state capture phenomenon and establish how this led to deinstitutionalization of structured and well-developed entities.

### **4.3 PARADOX FOR CASES AND RATIONALE FOR THE SELECTION**

Thomas (2011) hypothesises that “*case study is one of the principal means by which inquiry is conducted in social science*”. A case study is also defined as “*in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular project, policy, institution, program or system in a real-life context*” (Thomas, 2011). Scholars described cases as effective tools to explore complex issues from a real life context (Crowe et al., 2011) and examination of a phenomenon (Laws & Mcleod, 2006). In support of Crowe et al. (2011), scholars posit that case investigates present-day phenomena for purposes of better understanding (Hutchinson, 2004).

Case studies take multiple perspectives into account and attempt to understand the influences of multi-layered social systems from the perspective and behaviours of actors (Gilgun, 1994; Grünbaum, 2007). The assumption of the study was that there are multiple layers of actors involved in the concept of state capture. The following characteristics

(Grünbaum, 2007) of a case study are cited as main contributors for the rationale of selecting the approach:

- a) The findings should be a “*universally recognised truth*” by researchers or scholars and how they believe that the reality can be understood or known.
- b) The case should clearly outline whether the objective of the investigation is to understand or predict, whereas the study aims to understand how the phenomenon resulted in the deinstitutionalisation of state entities.
- c) There should be some degree of flexibility that the research design tolerates, given that the practical reality of data collection could have slightly changed from the theoretical planning. This possibility was planned for during proposal drafting and allowance for flexibility built into the investigation. It became a reality and a necessity given the global Covid-19 Pandemic that created both a risk and opportunity for the investigation.
- d) Cases should provide clarity on whether the study intends to result in qualitative or quantitative outcomes and which “*methods of analysis are considered scientifically correct*” to lead to the final interpretations. The development of a model was cited as the intended outcome.
- e) Whether data analysis is based on “*deductive or inductive reasoning*”. The study used the quasi-inductive approach (Gilgun, 2005) which puts aside the preconceptions of the researcher while seeking to understand the perspective of the respondents. Although some level of deductive approach was considered in the conceptualization of the framework which sought to understand the social processes and attribute meaning to the events that led to state capture.
- f) “*Broad and holistic findings as opposed to precise and more demarcated*”.

The above characteristics (Grünbaum, 2007) were adapted to the study and provided a foundation for the rationale as well as shaping the investigation strategy. The investigation studies a single unit researching multiple variables for generalization while context remains important, describing the setting, providing information on the subjects, data collection methods and analysis (Gilgun, 1994). Embedded case study method integrates both quantitative and qualitative knowledge (Grünbaum, 2007; Scholz & Tietje, 2002), this research collected both qualitative and quantitative secondary data to be analysed and interpreted. In addition to investigating real life and complex phenomena, it also focussed on current and relevant societal problems shaped by

environmental factors (Ackroyd & Fleetwood, 2004; Ampatzoglou et al., 2013; Grünbaum, 2007; Scholz & Tietje, 2012; Scholz & Tietje, 2002). The state capture phenomenon has been posited as a complex type of corruption which is very prevalent in South Africa (Meyer & Luiz, 2018). The critical distinction of an embedded case study from other case studies is that it involves one case with sub-cases with more than one unit or object of analysis, although the multiple cases should be treated as multiple experiments which follow a certain replication logic (Li et al., 2012; Scholz & Tietje, 2002). South Africa therefore becomes the overall case with multiple experiments taking place. What becomes important for this study is the definition of the case and Unit of analysis, respectively (Gilgun, 1994; Grünbaum, 2007; Hutchinson, 2004; Pentland & Feldman, 2005; Tellis, 1997; Yogi Prabowo, 2014). Both are defined by Grünbaum (2007) together with a case study as follows:

*“a case is defined as an intensive, holistic description and analysis of a bounded phenomenon such as a programme, an institution, an individual, a process or a social unit. While a case study is seen as a research strategy that focusses on understanding the dynamics present within a single setting”* whereas a *“Unit of Analysis is a central concept aimed at understanding, preparing and implementing a case study.*

The rationale for the selection of the design is that, embedded case studies are regarded as an effective method of investigating complex, unique cases and large scale data collection methods (Ampatzoglou et al., 2013; Fleetwood & Ackroyd, 2004; Scholz & Tietje, 2012). This investigation considered and analysed large scale data from records and archival documentation as well as interviews, which are characteristics of embedded cases (Scholz & Tietje, 2012). Additionally, state capture is a unique concept (Fleetwood & Ackroyd, 2004; Hutchinson, 2004; Scholz & Tietje, 2012) and a very complex phenomenon (Shleifer & Vishny, 1993). In contributing to the Institutional Theory, South Africa was selected as the context of study under which the cases for the three papers were investigated. The cases are embedded in both time and context. The state capture phenomenon became prevalent in South Africa as a new concept around 2017, although this had been taking place for some time prior to the phenomenon being in the public domain. The state entities investigated all share commonalities, one of them being that they report directly to the Ministry of Public Enterprises and accountable to Parliament (Ngwenya & Khumalo, 2012), have to comply with the same regulatory and governance frameworks, had challenges with their board composition, suffered financial distress



requiring additional capital funding from government, were synonymous with state capture and were subjected to inquiries on allegations of state capture.

The unit of analysis was based on the submission by scholars that the unit of study can be an individual, a family, a community, or a country and that, the case studies can investigate multiple individual units (Gilgun, 1994). These units of analysis can be identified through purposefully selected individuals who have the knowledge that will respond to the research problem, therefore the Unit of analysis becomes the individuals or the actions of individuals (Grünbaum, 2007). The study investigates the actions of the respective players within the multiple cases that have been selected. These individuals were identified from those involved in the operations, management, oversight, experts in the different fields as well as those scholars and investigative journalists who authored work on the subject and context being studied.

A case is supposed to be unique and interconnected (Grünbaum, 2007). South Africa as a country is unique following the historical background of the country and its economical and societal challenges and reforms. Additionally, the state entities have unique mandatory obligations while at the same time interconnected in their structural and governance processes. Furthermore, scholars posit that embedded cases are longitudinal in nature and have the ability to examine the evolutionary process, historically or in real time (Ackroyd & Fleetwood, 2004; Saunders et al., 2016). Considering that State Capture could have been taking place long before its effects were realised, the postulation by the scholars constituted a basis for this choice. Considering the nature of the phenomenon investigated as well as the high volume of available secondary data because of state capture being a topical subject in the country of study, controlling the key concepts became crucial to ensure focus. Consistent to that, scholars suggest that longitudinal studies offer better confirmability (Bass et al., 2018) which is important for the study because of the different perspectives offered by respondents in similar corruption studies (Rose-Ackerman, 2002), which is a risk that was identified and mitigated against in this investigation and discussed under data risks and limitations below. From the same perspective, the case type of inquiry has the capability of getting into close proximity with the subject of interest compared to other form of techniques such as surveys and experiments (Laws & Mcleod, 2006). Cases have the ability to bring out values such as experience and knowledge from the setting being investigated, which ultimately contributes in lessons that can be gained, both theoretically and practically, due to personal involvement in the research (Stake, 1978).

Scholars support that the case is a reliable methodology when carried out with care (Tellis, 1997). This study has noted that institutions generally operate in high complexity given their continuous evolution and need to stay relevant. Key to embedded multiple-case study research is that they require to be carried out in closely similar context, which explains the rationale for selection of only cases within South Africa. The investigation was guided by the research questions as well as the values of the researcher as postulated by Fleetwood and Ackroyd (2004), who states that the effectiveness of the research approach lies within the research problem as well as the values of the researcher, who may select to choose a deep explanation within a narrow range or a shallow one across a wider range. Based on its design, this case offered the prospect to narrate realities of the concepts and propositions (Thomas, 2011). From the same paradigm, this technique is characterized by different variations and trajectories that it provides to the inquirer (Thomas, 2011). Besides the proximity to reality of the phenomenon investigated, it became imperative to the development of the nuanced view of both reality, theory and increasing knowledge (Flyvbjerg, 2006), as well as personally developing the researcher.

In order to learn from the process, the labyrinth structure informed the study (Braud, 1997), even though this is a lengthy process, it however allowed for the researcher to spend more time in the field, thereby gathering the different experiences which ultimately informed the findings. This was important given the high volumes of secondary data available on the phenomenon, in addition to being topical in the context investigated. The above argument supports the basis for the approach selected for the investigation.

#### **4.4 DATA SOURCES AND COLLECTION**

The purpose of data gathering in qualitative inquiries is to provide evidence for the experience being investigated (Polkinghorne, 2005b). The availability of rich information from the secondary data collection corroborated the responses received during interviews and further contributed to the investigation meeting its intended objectives. The selection of data sources remained open throughout the research process (Creswell, n.d.; Creswell & Poth, 2018; Polkinghorne, 2005; Yin, 2013) to allow

for flexibility by the inquirer if there were challenges with the planned strategy during implementation of the investigation.

The identified sources were reviewed to identify the strengths and weaknesses and assist the inquirer to mitigate against potential risks. This was analysed to verify the effect of each data source and sponsor mitigation strategies that assisted the research to achieve its intended objectives. Below is the table depicting the data review plan:

<b>Data Source</b>	<b>Strength</b>	<b>Weakness</b>	<b>Mitigation</b>
Documentation	<ul style="list-style-type: none"> <li>• It offers unwavering evidence which can be reviewed repeatedly.</li> <li>• It brings about conspicuous evidence that has been in existence prior the case study.</li> <li>• Information is specific to the area of study allowing the inquirer the opportunity to compare evidence.</li> </ul>	<ul style="list-style-type: none"> <li>- May be difficult to retrieve/access.</li> <li>- May be biased to the authors views.</li> <li>- Researcher may select based on personal philosophy.</li> <li>- Too much data which can derail the inquirer if not focussed</li> </ul>	<ul style="list-style-type: none"> <li>- Only authenticated information in the public domain was sourced.</li> <li>- Figure 9 below assisted in maintaining the focus of the investigation.</li> <li>- Research questions and validation of the information being gathered mitigated against the authors' views from dominating the study.</li> </ul>
Archival records	<ul style="list-style-type: none"> <li>• Evidence is written prior to the study.</li> <li>• Relevant and specific focus can be quantified.</li> <li>• Accurate evidence.</li> </ul>	<ul style="list-style-type: none"> <li>- Some documents may be embargoed for access.</li> </ul>	<ul style="list-style-type: none"> <li>- Planning for formal requests to be made to the relevant identified institutions where the information</li> </ul>

		<ul style="list-style-type: none"> <li>- The documents may be precise and mostly quantitative.</li> </ul>	<ul style="list-style-type: none"> <li>- was not public knowledge.</li> <li>- Quantitative data was interpreted and validated.</li> <li>- Interviews to mitigate against precise information through probing.</li> </ul>
Interviews	<ul style="list-style-type: none"> <li>• It is targeted to specific participants focusing on the topic of inquiry.</li> <li>• Clear responses to the research question.</li> <li>• Provide the inquirer with the space to control the direction of the conversation.</li> <li>• Provide opportunity for causal inferences and explanations.</li> </ul>	<ul style="list-style-type: none"> <li>- If questions are poorly constructed, the relevant information may be missed.</li> <li>- Biasness of respondents.</li> <li>- Respondents answering on the basis of what the inquirer wants to hear (Tellis, 1997; Yin, 2013);</li> <li>- Inaccuracies in recollection of events.</li> </ul>	<ul style="list-style-type: none"> <li>- Preliminary test of the interview questions was done (piloting the interview protocol).</li> <li>- Requests for interviews were sent to the ultra-elite who were identified with the concept.</li> <li>- The researcher kept a journal for recording all experience and information that emerged during the data collection phase.</li> </ul>

Figure 7: Types of Evidence Sources extended from Tellis (1997) and Yin (2013)

In responding to the research questions for the three papers, a hybrid approach of data evidence which includes both secondary and primary data was collected (Scholz

& Tietje, 2012), comprising of interviews as well as documentation and archival records. Multiple sources of data contributed in improvement of data quality (Yin, 2013). A systematic process was designed guided by Yin's (2013) case study protocol. Considering that the role of the researcher is to determine 'why', 'what' and 'how' when working with data, the case study method allowed the researcher to tease out deepening layers of reality (Fleetwood & Ackroyd, 2004). This 'onion' peeling metaphor which entails repeated process of data collection and analysis was applied for the study as depicted on the research design illustration (figure 6 above). This metaphor is supported by Fleetwood and Ackroyd (2004) who submits that realists work incrementally. The high volume of data available on the phenomenon and the need to respond adequately and reasonably to the research questions necessitated this process. Primary and secondary data was collected as depicted in figure 8 below:

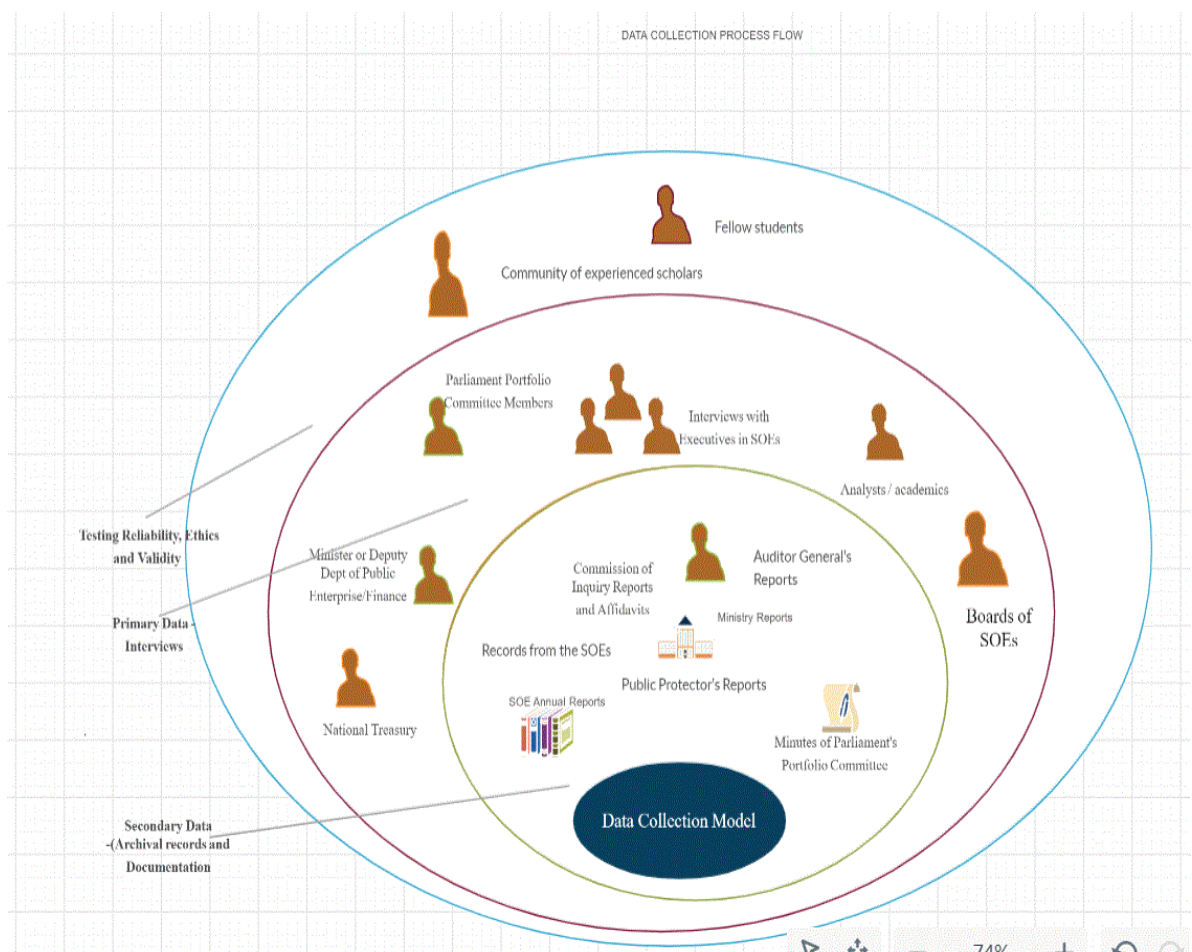


Figure 8: Primary and Secondary Data Collection Model

To ensure that the focus is retained (Grünbaum, 2007), every question in the interview guide was linked to specific data source.

Research Question to be responded to	Data Source
How State Capture happened	Investigation Reports Commissions of Inquiry reports Affidavits from Zondo Commission Media Reports Scholarly articles Interviews
Internal and external processes which led to deinstitutionalization of entities	SOE Annual Reports Auditor-General's Reports National Treasury Reports Ministry Reports Scholarly articles Interviews
The consequences of State Capture	Investigation Reports Media Reports Scholarly articles Interviews
Institutional voids resulting in state capture disruptions	Investigation Reports Parliament's Portfolio Committee Reports Auditor-General's Reports National Treasury Reports Interviews
Mitigation strategies of state capture	Recommendations from Investigation Reports Interviews

Figure 9: Data source against Interview Questions

#### **4.4.1 Secondary Data Collection**

Researching an evolving complex phenomenon on corruption required continuous analysis of data to enable further collection of additional data to substantiate certain aspects mentioned in the multiple data sources. Data analysis of both the archival records as well as interviews led to the development of the final papers and entire research report. Records and archival documents from four state entities were collated (Eskom – fifty-eight records [58], South African Broadcasting Corporation – thirty-four [34] records, South African Airways -fifty-seven [57] and Denel – thirty-six [36]). These records were inclusive of:

- a) Annual reports.
- b) Records from Parliament's Portfolio Committee meetings.
- c) Investigation reports.
- d) Ministry records (Departments of Public Enterprise<sup>17</sup>, Finance, Communications).
- e) Auditor-General's reports.
- f) Auditing firms audit outcomes.
- g) Commission of Inquiries' reports and affidavits.
- h) Media reports and news articles.
- i) Scholarly articles.

#### **4.4.2 Primary Data Collection**

Primary data collation involved interviews with targeted respondents as depicted in figure 8 above. A total of hundred and forty-two (142) potential respondents were identified and personalised invitations sent to seventy-eight (78) individuals (Annexure A – Interview Request and guide). Forty-seven (47) respondents accepted and indicated their willingness to participate. Some could not go through with the interviews and only thirty-four (34) were interviewed. The criteria for identification of participants included that all respondents meet the minimum requirements of being involved either as an

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<sup>17</sup> The Executive Authority mandated to provide oversight to all State-Owned Entities

employee executing operational duties in executive or senior management within state entities, alternatively done some work within the field as journalists, academia, analysts, experts and authors or having played any oversight role either as a board member or a Member of Parliament inclusive of Ministers, President or leaders of a Political Party.

The nature of the phenomenon created an opportunity for respondents who played more than one role, either as a technocrat and later as an overseer in certain instances. The investigation noted that certain individuals moved from one entity to the other and explored how that contributed to institutional isomorphism during the interview process. Noting that the Commission of Inquiry on state capture in South Africa remained in progress during the data collection phase, and that some of the respondents were also appearing as witnesses to the process, the interviews were based on respondents' willingness and availability as postulated by Yin (2013), as displayed in the varying number of respondents accepting and that of those actually interviewed in the above paragraph.

A summary of the respondents follows hereunder:

<b>Category of Respondents</b>	<b>Eskom</b>	<b>SAA</b>	<b>SABC</b>	<b>Denel</b>
Executives in State-entities, National Treasury and Labour Representatives	9	8	9	6
Experts, Academia, Investigative Journalists, Analysts, Media	14	15	14	15
Oversight Role (Ministers, Member of Portfolio Committees, Member of Parliament, Board Members)	14	13	13	12
<b>Total</b>	<b>37</b>	<b>36</b>	<b>36</b>	<b>33</b>

Figure 10: Primary Data statistics

Most interviews were conducted virtually with few contact sessions. Very few respondents preferred a physical session which were granted. The planning phase had not anticipated the novel Covid-19 pandemic and therefore some flexibility had to be considered as posited by Grünbaum, (2007) who argues that cases “*tolerate some kind of flexibility given the practical reality of data collection*”. An opportunity was presented



by the lockdown<sup>18</sup> period during the pandemic, with respondents readily available to contribute to the investigation as their diaries were open because of the calibre of the people identified as participants. The study on “*Interviewing the Ultra-elite*” (Zuckerman, 1972) guided preparation and ultimate conducting of interviews.

Preparations included researching and studying each of the respondents prior to the interviews. This assisted in understanding their views based on what they would have published or their public comments on the phenomenon, and in certain cases, the contents of their affidavit to the Commission of Inquiry, which provided the researcher with insight on how to manage the interview, maintain focus and to reach the study’s intended objectives. An interview guide was developed to ensure that the researcher remains focussed given the passion that some respondents had on the subject (Annexure A – Interview Request and guide).

All participants consented to recording of the sessions. Interviews were dual audio recorded. The dual recording served as a back-up to manage the risk of data loss. All the thirty-four (34) interviews were conducted in English, however issues of home language of the respondent, cultural barriers, sensitivity of the concept, roles played, and titles or profiles of the respondents were observed during the planning stage, interview requests as well as during the interviews.

The interview schedule was provided to participants prior the date of the interview, to allow for effective contribution during the session. Some respondents requested a pre-interview which would outline the expectations and allow them to prepare accordingly, which was always granted. Notes were taken during these pre-interviews and the participants were informed accordingly. The researcher actively listened to the point of view of participants to interpret their experiences from their perspective. Where there was ambiguity, the inquirer was able to probe further for clarification.

The researcher’s listening skills and creative questioning became an asset in the engagements, considering the sensitivity of the phenomena being investigated. The extended period spent during secondary data gathering (Braud, 1997) proved to be invaluable in probing questions during interviews. Information gathered from the archival records and documents was confirmed through the lived experience, views and opinions expressed by respondents during the engagements. The inquirer focussed on the

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<sup>1818</sup> Lockdown period in South Africa was categorized into levels whereby physical distancing and restrictions on leisure and social activities was not allowed with the aim of preventing the resurgence of the Corona virus.

relevant evidence based on the scope of the project throughout the process (Hutchinson, 2004).

The technique of open ended interview questions assisted in understanding the respondent's own experiences, since this approach allows the participants to express meaning in their own world (Brenner, 2006). Further, the open-ended questions allowed the researcher to provide direction to the interview process while engaging on an ongoing process of drawing meaning from the engagements. When conducting open ended interviews, the researcher considered the purpose of the interview to represent the voice of the participant. Brenner (2006) postulate that, open ended questions provide the participants with an opportunity to expatiate on the conversations through providing rich information, as it allows the inquirer to make follow-up through probing (Luiz & Stewart, 2014). The process required the ability to assess the quality of the interview while managing time, considering the profile of many of respondents in terms of their positions and competing work schedules as well as other breaking news given the timing which included the pandemic, regular electricity blackouts and need for some to present themselves to the Commission of Inquiry on State Capture which took place at the same time during data gathering.

## **4.5 DATA QUALITY**

The use of multiple sources of data contributed towards data quality (Scholz & Tietje, 2012; Yin, 2013), as the information could be verified between archival records and documentation which was confirmed or clarified during interviews. Whereas interviews contributed to triangulation (Abdel-Kader & Wadongo, 2011; Bass et al., 2018; Boesch et al., 2013; Bryman, 2007; Cousin, 2005; Creswell & Poth, 2018; De Waal, 2010; Fusch & Ness, 2015; Gilgun, 1994; Hinojosa & Mellar, n.d.; Hutchinson, 2004; Jick, 1979; Lampreia & Major, 2017; Maggs-Rapport, 2000; Motshwane, 2018; Patton & Appelbaum, 2003; Polkinghorne, 2005a; Saunders et al., 2016; Shen & Snowden, 2014; Shenton, 2004; Tellis, 1997; Tolbert & Zucker, 1996), considering that most responses to the research questions came from the available secondary data sources. The interviews also assisted to determine and obtain data saturation (Creswell & Poth, 2018; Francis et al., 2010; Fusch & Ness, 2015; Guest et al., 2006; Saunders et al., 2016), as no new information could be collated in all sources of data.

### **4.5.1 Replicability**

Qualitative research has the ability to generate rich evidence from everyday experience and mainly focuses on context and replicability which allows the researcher to explore meaning, interpretations and individual experiences (Birchall, 2014). The choice of multiple case study is that they can be considered as multiple experiments which follows a replication instead of sampling logic (Scholz & Tietje, 2012; Yin, 2013). Replication is intended to externally validate the research findings, which provides a domain for generalization (Yin, 2013). The study was tested through the community of experienced scholars for replicability as outlined in the outer layer of figure 8 (primary and secondary data collection model) above. This process contributed towards possible replicability of the findings in other state entities outside of the context investigated, considering that corruption is a global challenge (Rose-Ackerman, 2002).

### **4.5.2 Internal Validity**

Scholars postulate that validity and reliability have not been studied much from a qualitative and methodological aspect and are particularly important in new fields (Erlingsson & Brysiewicz, 2013). This study intends contributing to the paucity of literature on that aspect. Internal validity was achieved through explanation building. Due to the nature of the research, which investigated a topical phenomenon in the country of study, the risk of respondents using the platform to drive their personal agenda, mainly those that were implicated in state capture, appeared in media platforms or Commissions of Inquiry, as well as the sensitivity of corruption in general, increased the necessity for validity (Abdel-Kader & Wadongo, 2011; Boesch et al., 2013; Creswell & Poth, 2018; Saunders et al., 2016).

Triangulation done through primary data collection (interviews) also contributed to internal validity (Abdel-Kader & Wadongo, 2011), while data saturation assisted in confirming validity of the data collected (Francis et al., 2010). Yin (2013) identifies a threat to internal validity when the researcher reaches a conclusion on why certain factors led to the other without knowing that there was a third factor which led to the conclusion. In mitigating this threat, the experience of seasoned scholars and fellow

students strengthened internal validity (outer layer of figure 8 which was identified during planning stage). Respondents involved in various inquiries of state capture contributed to internal validity. All possibilities were considered prior to making conclusive findings. This was done through matching the coding and contrasting what is absent or present in each of the cases.

### **4.5.3 Reliability**

Increased reliability of information gathering is a benefit for any social inquiry (Abdel-Kader & Wadongo, 2011; Boesch et al., 2013). Hutchinson (2004) recommends that consideration should be given on who will review the preliminary findings to verify the information. During the data gathering phase, documentary evidence was carefully reviewed to avoid incorrect data gathering, which was guided by the research questions to maintain focus. Only authentic documentation was collected. The primary data gathered was corroborated against the secondary sources of data. Considering that state capture is a developing phenomenon, new data was anticipated on an ongoing basis, therefore all information had to be reviewed repeatedly after new information surfaced and this was compared against the researchers' journal of daily events. Regular reflection was done to verify and clarify the researcher's understanding (Hutchinson, 2004).

During the interviews, all the counter allegations by those who were implicated in state capture were considered and respondents requested to substantiate their counter allegations with authentic public information or authorised institutional records and documents. Care was taken to draw balance of those who are implicated and those who were whistle-blowers as well as role players who were closely linked to the cases. Reflections on the experience gained during data collection phase as well as the constant engagements with the community of scholars to review the information assisted to correlate the findings of the three cases.

A period of nine months was spent on review and collection of secondary data as well as the collection of primary data. This extended period allowed the researcher to gain extensive and adequate experience in the field being investigated. This was necessary to test reliability in a sequential manner, where two data sets based on the constructs get corroborated against the findings (Laws & Mcleod, 2006).

## 4.6 DATA RISKS AND LIMITATIONS

The state capture concept in South Africa became a topical phenomenon which posed a potential risk to the investigation. Consideration was given to possible data limitations for the choice of data sources (figure 7, Types of evidence sources) (Creswell & Poth, 2018; Greenhoot & Dowsett, 2012; Saunders et al., 2016). The study acknowledged the risk of accessibility to some respondents due to the state capture Commission of Inquiry being in progress during the investigation, as well as the sensitivity of the phenomenon, which has some criminal elements. In ensuring that the risk does not hamper the data collection process, proper planning and flexibility in the plans in identification potential respondents from the list of individuals who submitted written affidavits, media publications, academia, analysts and prominent leaders who played a role in state capture in any area of operation was done. To mitigate the risk, a larger pool of possible respondents (142 individuals) was compiled with names and cases relevant to each one of them to balance representation both from a category point of view as well as statistically.

Some participants were willing to participate, however when they were requested to appear in the Commission of Inquiry, opted to withdraw for fear of divulging information that may contradict that which was in the Commission or public domain. Other identified respondents felt that their knowledge was too generic for a scholarly project and opted not to engage in the interviews however indicated their support through providing documentary evidence that they thought would be relevant to the study.

The global Covid-19 pandemic contributed towards the withdrawal of participation by some of the identified participants due to being impacted by the virus during the scheduled interview period. Since most respondents were synonymous to state capture either as an analyst or playing a key role in the identified state entities, disruptions could not be avoided in case there was a breaking story on the state capture platform which led to cancellation or postponement of sessions at short notice, and at certain moments in the middle of an interview session. Priority would be given to a media interview given the profile of respondents. Follow up sessions were made to complete the interview and reschedule where disruptions occurred.

During primary data collection stage, South Africa experienced electricity blackouts resulting from challenges in the electricity generation and supply entity,

Eskom. These electricity blackouts or load-shedding impacted in the planned interview sessions as the virtual engagements had a dependency on network connectivity. Additionally, the deviation from normalcy whereby respondents had to bear the cold winter months without electricity would cloud the views of the participants during the interviews given that interviews depend highly on the perceptions of the respondents. The researcher accommodated these interruptions and reviewed the plans accordingly to mitigate against this risk of perceptions drawn by current circumstances.

The study identified the imminent risk of respondents providing information based on what they think the inquirer wants to hear (Tellis, 1997; Yin, 2013). This was mitigated by a clear outline of the purpose and context of the study prior or at the commencement of the interview. Where the respondents disputed information that is in the public domain, they were requested to lead the investigator on contrasting evidence which is also in the public domain or authorised by the respective institutions.

Due to large scale of data available on the phenomenon, the investigator ran the risk of maintaining control and focus throughout the process and avoiding what Fusch and Ness (2015) refer to as “*one-time phenomenon*”, a process where the researcher allows for one concept to be included in the data analysis based on a respondent with a strong character. The profiles of the targeted respondents made this risk a reality in that most participants were individuals who occupied positions of power and are used to putting their views across for buy-in within their respective areas of operation. The interview protocol (Annexure A) which guided questioning mitigated against this risk. The researcher avoided their own dominant personal ideologies and values to cloud the information collated, as this had the potential to hamper the replicability of the study. The listening skills of the researcher became an asset in mitigating this risk coupled with note taking during interviews. The community of scholars was used as a reference group to test the reliability and replicability of the study and mitigate against the limitations and risks.

## **4.7 DATA ANALYSIS**

The strategy adopted in analysing data was guided by the research questions as well as the examination of rival explanations as postulated by Yin (2013). High volume of available data led to a multi-layered approach in the data gathering process, whereby

the mention of one document in another would require the researcher to source the mentioned document if it met the minimum data collection criteria as outlined in figure 9. The following depicts the amount of secondary and primary data collected and analysed and is inclusive of state entities annual reports, and other documentation and records, Parliament’s Portfolio Committees reports, reports on inquests commissioned against the state entities, affidavits submitted to the Inquiry into state capture Commission, Ministry reports, mass media reports and scholarly articles on the state entities, Auditor-General’s reports as well as primary data relating to the number of interviews held:

<b>Entity</b>	<b>SAA</b>	<b>SABC</b>	<b>Denel</b>	<b>Eskom</b>
Secondary Data	57	34	36	58
Primary Data	36	36	33	37
<b>Combined data</b>	<b>93</b>	<b>70</b>	<b>69</b>	<b>95</b>

*Figure 11: Summary of Primary Data statistics*

The annual financial statements of the different state entities which is mostly quantitative data, was analysed and interpreted qualitatively. Noting that state capture is a developing phenomenon in South Africa, the risk of emerging data was imminent, and this had to be saturated prior to final data analysis commencing. The researcher has grounds that data saturation in terms of the objectives of the study has been reached through both the secondary data and the interview process, since no new information could be established from the various sources. The outcomes of the Commission of Inquiry were outside of the scope of the investigation, although taken into account when making recommendations for future research.

Guided by the study on corruption and multinationals in South Africa which shares similar characteristics (Luiz & Stewart, 2014) with this study, the multiple-case enabled a set criteria for evaluating data. Data analysis involves examining, categorizing, tabulating, testing and recombining evidence to draw empirically based conclusion (Greenhoot & Dowsett, 2012; Onwuegbuzie & Leech, 2006; Yin, 2013). Data was analysed through coding and thematic analysis as suggested by both Brenner (2006) and Luiz & Stewart (2014). The research questions provided the inquirer with thematic areas to achieve the framework selected.

Embedded cases are described within the same time period and the case is to be treated as a whole entity when analysing data (Fleetwood & Ackroyd, 2004). This was achieved as the three papers are all based on the South African context and enabled analysis of data as a whole entity. Scholars submit that the advantage of homogenizing multiple-cases into periods provides consistency in order to make comparisons across multiple-cases (Ackroyd & Fleetwood, 2004). In social science, the researcher becomes the primary instrument of both data collection and analysis as well as interpreting the evidence (Hutchinson, 2004). To avoid speculating on underlying forces operating within the context, the inquirer assessed the impact of the contexts in a systematic way within and across the three papers. This brought about the overall findings and further enhanced knowledge.

Since embedded multiple-case studies are similar in time and context, therefore, they require to be analysed on a case by case basis (Yin, 2013). Analysis occurred logically and sequentially (Onwuegbuzie & Leech, 2006) and was captured using computer assisted tools. Data was broken down into manageable categories classified according to the research questions (Fleetwood & Ackroyd, 2004; Maggs-Rapport, 2000) using Atlas-ti software to code the information. These broken-down episodes resulted in threads which were then compared within one paper and across the other papers.

The following themes guided the main episodes; how state capture happened in South Africa, internal and external processes that led to deinstitutionalization of State entities, consequences of state capture, institutional voids which were enablers of state capture, gaps identified in addressing state capture and lastly, identification of alternative approaches for addressing State Capture. Information was sorted, organised and labelled in a repeated process (Hutchinson, 2004). Concepts, constructs, and themes were coded, analysed and interpreted using that framework. Coded data was analysed on the basis of what is present or absent in each of the cases (Fleetwood & Ackroyd, 2004). The process of data collection and analysis was iterative (Cousin, 2005), whereby data is collected and analysed repeatedly and simultaneously (Fleetwood & Ackroyd, 2004) throughout the process. This was necessary due to the high volume of data available on the subject.

The explanation building technique was adopted, whereby the causal links within the case is explained (Scholz & Tietje, 2012; Yin, 2013). Explaining the experiences of the respondents becomes a critical concept in qualitative investigations. Focus was on data related to responding to the research questions and drawing of meaning leading to



final conclusions (Hutchinson, 2004). The responses offered by the respondents based on the research questions led to comparability of findings. This approach allows for comparison on influence of outcomes, contexts, mechanisms and their relationship across cases (Fleetwood & Ackroyd, 2004). These were then interpreted against the theoretical underpinnings leading to conclusions, development of papers and writing of the research report.

## **4.8 ETHICAL CONSIDERATIONS**

Research should ensure that consideration is given to ethical components in the study being pursued (Hutchinson, 2004). The individuals involved in the study have to be protected (Brenner, 2006) and steps taken to ensure their wellbeing and lack of harm. Similar to the study by Luiz & Stewart (2014) on Corruption, South African Multinational Enterprises and Institutions in Africa, all interviews were conducted by the researcher using an interview protocol, recorded digitally and transcripts produced. In protecting the respondents (Hutchinson, 2004; Brenner, 2006), they were made aware of the ethical considerations including maintaining their anonymity throughout the interview and write-up, however they were informed that the deliberations would contribute towards the final report.

The participants were informed that their identity is confidential, and their participation is voluntary and may discontinue at any given time before or during the interview. Respondents gave consent either in writing or during the commencement of the interview, the latter was recorded and transcribed as such. Although some of the respondents were willing to be openly quoted since they made same pronouncements or views in the public domain, confidentiality was maintained. Throughout the research process secure data recording and storage tools were used.

Transcribers signed a consent form that barred them from divulging the contents of the recordings, and that the consent is binding (Annexure B – Transcribers' consent). The transcribers were given limited access to the recordings which expired after a short period, and they were not given any rights to download the recording. Accordingly, data was backed up and securely stored in coded files. In storing the data, the transcripts were coded based on the category of the respondent and date of the interview, followed by a unique number. Raw data was stored securely, and password protected, whereas

the cleaned-up data was also coded to maintain anonymity of the respondents. Safe storage devices and data back-up on cloud was done which were all password protected. In maintaining data quality, all transcripts were personally edited by the researcher.

The main ethical challenge identified in the study is breaching the undertaking to maintain anonymity of the respondents in situations where some phrases may identify the respondent, considering that the views of the respondents would be in the public domain, although most of the respondents indicated that they did not mind that their identity be revealed. This challenge could not be mitigated against, although care was taken to leave the conclusion to the reader.

State capture is studied mainly within the corruption and criminal theories, this necessitated observation of all ethical considerations in all phases of the investigation. The study acknowledged that given the sensitivity of the research area, ethical considerations such as confidentiality and anonymity may be breached by legal requirements in an instance where the interview reveals acts of gross criminal behaviour that by law the researcher is required to disclose and report to law enforcement agencies (Orb et al., 2001; Wiles et al., 2008). This risk had a low probability since all the information that was gathered was already available in the public domain.

Due to the researcher's interest and long attachment to the area of investigation, the risk of losing focus was identified as imminent. To mitigate against that, the inquirer maintained the guidance of the table shell as tabulated in figure 9 above to retain focus. The engagement with the community of scholars contributed to ethical and moral decisions throughout the investigation. This process addressed the risk of the researcher making inferences that are biased.

#### **4.8.1 Confidentiality and anonymity**

Confidentiality is concerned with the researcher not discussing the content of the interview with others and presenting the findings in a way that will ascertain that the respondent cannot be identified (Wiles et al., 2008). Anonymity and confidentiality were not a concern on documentary evidence since this was already in the public domain. Regarding interviews, signed consent forms were administered and no names of participants were mentioned in the transcripts even where the participants opted to be openly quoted. Assurance was provided to the participants in writing prior to the interview

and raw data kept highly confidential between the researcher, supervisor and transcriber. Respondents were assured of their anonymity in the process. This provided trust, safety (Gibson et al., 2013) and ease of participating in the interview.

Although the undertaking was made in clause 4.6 on data risks and limitations above, the challenge of maintaining the undertaking in instances where certain quotes or phrases during the report writing would identify the respondent, for instance, there are not many individuals who have been found by a court of law to be delinquent directors. In specific areas where there is a need to mention a particular respondent who selected to be anonymous during the final report writing, pseudonyms have been used (Wiles et al., 2008) to ensure absolute anonymity (Gibson et al., 2013). As much as raw data has been kept confidential, the outcomes of the interviews contributed toward the final report writing and respondents were informed of this aspect during the interview process.

## **5 PRESENTATION OF THE THREE PAPERS**

### **5.1 PAPER ONE - Institutional Disruptions resulting from State Capture: How Firms gained and sustained entry into the South African State**

The first paper was prepared for submission to the Journal of Business Ethics. The paper has followed the requirements of the Journal of Business Ethics as it was intended for this Journal which is inclusive of the font and layout. For purposes of the final research report and to comply with the university's requirements, the font will be aligned to the requirements.

**Institutional Disruptions resulting from State Capture: How Firms gained and sustained entry into the South African State**

**Mihloti Masuluke<sup>19</sup>, Albert Wöcke<sup>20</sup>**

**ABSTRACT**

Relationships between firms and state is based on multiple dependencies which perpetuates State Capture. While state depends on firms for delivering their basic services, politicians need financial resources to campaign and run for office, which can be provided for by firms that need to compete for State resources in pursuit of profits and sustainability. The State becomes an enabler to their objectives. We explore how two firms gain entry to capture the State and ultimately deinstitutionalize State entities. The paper studies the systematic approach used by the Gupta and Bosasa firms to gain entry and sustain their capture of the State in South Africa. We interview the ultra-elite comprising of Ministers, Leaders of Political Parties, Executives and Board Members who were prominent in the State Capture phenomenon in South Africa. The paper contributes theoretically, methodologically, and practically to the scholarly debate on the State Capture phenomenon.

The key players in the firms differed in that the one existed from within the governing party since the apartheid era, while the other was an external player of foreign origin, however managed to infiltrate the State structures for their own benefit. The paper notes that State Capture requires a susceptible state and in the case of South Africa, the

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transformation agenda of the governing party and service delivery demands from the populace provided a fertile ground. The ANC<sup>21</sup>, in its attempt to redress the imbalances created by the apartheid state developed practices, some of which remain in place, inclusive of democratic centralism and cadre<sup>22</sup> deployment. The ANC structures are still largely reminiscent of a mass-movement and liberation party. This means that the party runs parallel to the state and important policy decisions are made in mass-movement style with voting and competing factions. The study revealed how the firms took advantage of this parallel governing, since State capture requires the establishment and collaboration of a shadowy parallel network to the state and the destabilization of institutions to maintain and expand the network.

The study further noted the existence of rapidly changing institutions and demands from the populace, which in turn led to ANC “developmental state” policy and direct state involvement across the society. We draw conclusions related to Institutional Theory and the form of corruption known as State Capture.

The paper provides scholars with both an understanding of why and how firms cultivate relationships with the State, as well as an opportunity for further exploration of the concept in more varied organizational settings in the form of future research agendas.

*Key Words – Deinstitutionalization, State Capture, Corruption, Gupta, Bosasa,*

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<sup>21</sup> African National Congress – a Political Party in the governing seat since 1994.

<sup>22</sup> One of the respondents defined a cadre as a “*term used in the military denoting a soldier who takes orders without questioning.*”

## INTRODUCTION

State Capture has been classified as some kind of corruption and regarded as a fairly modern concept with the first scholarly articles on the phenomenon recorded by Helman (Hellman et al., 2000; Hellman & Schankerman, 2000). Scholars have sought to define types of corruption (Dong et al., 2011; Rose-Ackerman, 1996; Venard, 2009), although there is no common definition, most of the definitions are related. In this study we explore the various definitions and align our study to one that resonates closer to the study's objectives. South Africa recently gained democracy with the first democratic elections in 1994 which prompted the country to focus on redressing the imbalances resultant from pre-democratic era, which required financial resources to be invested on the course, thus making the state susceptible to corruption.

Africa is renowned for its natural resources from hydroelectric power supply to diamonds, gold, coffee, chromium, cocoa, palm oil and wild-life amongst others, however, despite these riches, inhabitants in countries in Africa are mostly faced with poverty, contributed to by the loss of economic revenue, unemployment, (Wanjala, 2012) and widely reported corruption. South Africa, a country that has emerged from years of apartheid into democracy in the 20<sup>th</sup> century, with its first democratic elections held in 1994 (Masipa, 2018), is regarded as the largest gold producer in Sub-Saharan Africa (Natural Resource Governance Institute, 2017). The Natural Resource Governance Institute scored South Africa's gold mining sector, 57 out of 100 points and ranked the country 23 out of 89 in its assessment conducted on the 2017 Resource Governance Index. Contrary to that unsatisfactory rating, the country scored 80 out of 100 for having an enabling environment, high government effectiveness as well as accountability. South Africa is regarded as the most diversified economy in the sub-

Saharan Africa (Natural Resource Governance Institute, 2017). Although regarded highly in other aspects, just like any other country in the continent, poverty resulting from inequality remains a major challenge. Inequality affects the economic growth of any country (Hellman & Kaufmann, 2003). Noting that South Africa, has been excluded for decades in international economic activities due to the apartheid era (Minnaar, 1999), and is regarded as a developing country and the backlog in both infrastructure and service delivery has resulted in increased state budgeting towards capital projects.

Although South Africa is ranked high in accountability, effective government and enabling environment (Natural Resource Governance Institute, 2017), this has not curtailed the scourge of corruption and State Capture in the country (Eyewitness News, 2021). Corruption and State Capture has been in the public domain in South Africa (Thomas, 2012) resulting in the President approving the setting up of a special Commission focussing on how the State was captured, which became known as the Commission of Inquiry into State Capture or the Zondo Commission. The highlights on media reports illustrated in Annexure A (Media Reports) confirms the public interest generated by the State Capture topic.

State Capture requires the establishment of a shadowy network that runs parallel to the formal State bureaucracy. In South Africa, the two networks studied were created to capture the State in distinctly different ways, one network consisted of a foreign family who built a network in the governing party, and the other consisted of members of the governing party that built their network from within the ANC. We explain the methods of these networks and contrast their tactics.

The shadow network exists to direct State resources towards private sector members of the network and requires either weakening or taking over institutions of the State for its continued existence. This study focuses on how two firms created shadow



states which governed in parallel to the State<sup>23</sup>. Both firms had material impact on the capturing of the State. The rationale for selecting the two firms for this study is because the Guptas were not known in South Africa before the dawn of democracy, while the Bosasa owner was a South African who had been part of the now governing Political Party, the African National Congress (ANC) during the struggle years.

We locate the study within the Institutional theory, which perceives institutions as great and structured entities due to the rules, norms, standards and laws that govern their existence (Liedong, 2017; North, 1991, 1993, 1998; Scott, 2008). Although the theory is broadly studied, a gap exists where very little is known about how shadow networks are formed, operate, and sustain their operations within these structured entities. In this paper we explore, how the South African State entities which are perceived to have strong governance structures and policy environment were susceptible to being captured by these two private firms in particular. The methodological contribution of the study is the use of cases which explore how firms gain and sustain entry into capturing the State. The rationale for the selection of the design is that case studies are regarded as an effective method of investigating complex, unique cases and large scale data collection methods (Ampatzoglou et al., 2013; Fleetwood & Ackroyd, 2004; Scholz & Tietje, 2012). This investigation considered and analysed large scale data from records and archival documentation as well as interviews, which are characteristics of cases (Scholz & Tietje, 2012). What distinguishes this study with the many is the sample of the respondents. We were able to reach the ultra-elite and key players within the State as well as governing political party. Ordinarily, these categories would have been difficult to reach considering both their profiles as well as the sensitivity of the phenomenon being investigated.

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<sup>23</sup> In this context, the State is defined as the governing body entrusted with the powers or authority to exercise and control law making, law implementation and law enforcement, that is the Legislature, the Executive and the Judiciary.

While we acknowledge the difficulty in collecting data from every firm that does business with the State, considering that too many firms are involved in State Capture (Hellman & Schankerman, 2000), we focussed on exploring South Africa and studied two firms that have been largely reported to meet the category being investigated in this paper. The rationale for the selection of the firms was their conspicuous mention during most of the corruption related Commissions of Inquiry or media coverage within the country, as well as the dynamics on the characteristics of the firms. Bosasa was part of the governing party's system and would be classified as capturing the State from within (internal) and the Guptas were international people and would be classified as (external). We commence by providing detail on what triggers State Capture and how this was sustained over a period.

The paper argues that State Capture impacts the economic growth of a country (Bardhan, 1997) and ultimately result in social consequences to the citizens. South Africa suffered major economic and social consequences aggravating the same challenges that the developmental agenda was aimed at addressing (Masipa, 2018). These consequences include job losses in some of the State-Owned Entities, while some of them collapsed and failed to continue to operate and other private firms had to close-down. Scholars theorizes that countries infested with poverty and income inequality increase the possibility of redistributive strategy payoffs, which would then provide an opportunity for State Capture (Grzymala-Busse, 2008). South Africa became a best model for this study as it continues to battle with these challenges which are not easily distinguishable (Barnard & Pendock, 2013) in a developmental state.

The study which contrasted between the two firms revealed how both gained entry into the State and how they managed to sustain such. Some of the tactics used include weakening of the regulatory agencies, taking over of mineral wealth as well as

politicising fiscal bodies (Grzymala-Busse, 2008). We suggest that the need for personal and political gain exacerbated the success rate of State Capture in South Africa and the various attempts aimed at addressing the challenge will not yield much results as long as the desire by actors to personally enrich themselves continue to exist.

We use the findings from the study to theorise how State entities are deinstitutionalized leading to State Capture. We conclude the study by noting that the State Capture concept, and corruption phenomenon in general has stimulated a lot of debate globally (Doh, Rodriguez, Uhlenbruck, Collins, Eden, et al., 2003), with challenges on how to eliminate it remaining a puzzle. The outcome of the study will provide scholars with both an understanding of why and how firms cultivate relationships with the state, as well as an opportunity for further exploration of the concept in more varied institutional settings in the form of future research agendas. We close the study by reflecting on potential areas for future investigation in the area of State Capture.

### **South Africa as a Context of Study**

The apartheid regime in South Africa (Hyslop, 2005; Minnaar, 1999; Radygin et al., 2015) has excluded the country from economic activities internationally (Minnaar, 1999). Therefore, this historical background as well as South Africa's developing economy, provides a fertile ground for research aimed at investigating various social aspects. In support of this, the debate on the South African corruption by both Hyslop (2005) and Lodge (1998) also provide grounds for this study. Admittedly, a variety of industry disruptions have been documented globally over the years, some of which have led to social science research. The United Nations (UN) in its first ever meeting on corruption, peace and security in Venezuela, established that corruption results in a

humanitarian crisis, whereby the natural resources have become a focus for embezzling funds, corruption and fraud (United Nations, 2018). This confirms the developing fears that State Capture can bring the economy of the country to an undesirable situation, details of which are discussed later in this article.

Another rationale for selecting South Africa as a context for this study, is that the country emerged from apartheid with the first democratic elections held in 1994, is classified as a developing country and has a high rate of corruption which rapidly evolved into State Capture within a very short period. Although the corruption history in South Africa is reported to have commenced pre-democracy (Van Vuuren, 2018). The State Capture phenomenon was initially observed in scholarly work in 2000 (Dassah, 2018; Hellman et al., 2000) and its elements were only recognised and became a public debate in South Africa in 2017 (See Annexure A-Media Reports). State organs become the hosts of State Capture due to their mandate of delivering public service to the citizens and the high expenditure on capital projects that the State directs towards these initiatives.

Whereas, the corruption phenomenon in general has stimulated a lot of debate globally (Doh, Rodriguez, Uhlenbruck, Collins, & Eden, 2003), with challenges on how to eliminate it remaining a puzzle. Noting that, South Africa has recently experienced a rise in exposing corrupt activities and State Capture specifically (see Annexure A) (Bhorat et al., 2018; Doh, Rodriguez, Uhlenbruck, Collins, & Eden, 2003; Hyslop, 2005; Lodge, 1998; Madonsela, 2019; Meyer & Luiz, 2018; Public Protector of South Africa, 2016; Shai, 2017; State Capacity Research Project, 2017), benefiting the few at the expense of the majority. The argument above provides both the need for the study as well as the basis for the context selected. In resolving the challenges, South Africa employed various initiatives to manage the scourge as discussed below. The study

revealed that the strong governance frameworks in the South African context are in line with the Institutional theory concept.

### *Initiatives to curb Corruption and State Capture in South Africa*

**Broad Based Black Economic Empowerment Act (BBBEE).** With the dawn of democracy, South Africa introduced procurement qualifying criteria such as BBBEE<sup>24</sup>, which closed competition from those companies that would normally qualify in terms of expertise and experience, therefore compromising on quality. The implementation of the BBBEE which was aimed at uplifting the lives of the poor and previously disadvantaged individuals and firms, has been highly criticised for creating a platform for entrenching economic inequalities and building an entitlement culture as well as crony bias. This, therefore, created gaps and opportunities to necessitate the need to pay bribes to win the contracts, leading to the motive for our study.

**Public Audit Act.** The amended Act, (Public Audit Act, No 25 of 2004, 2005), gives the Auditor General authority to recoup State funds reported in the Audits as irregular, wasteful and fruitless expenditures incurred by State entities. The Act was amended in 2018 and has not yet allowed for the institution mandated with its implementation to set up the relevant structures for us to note its impact. This provides an opportunity for future investigation on its impact on curbing State Capture.

**Inquiry Commissions.** The prevalence of investigative journalism in the country has contributed to exposing State Capture cases. Media reports (See Annexure A)

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<sup>24</sup> BBBEE – Broad Based Black Economic Empowerment Act which prescribed black economic empowerment to assist the transformation process. The Act gave prominence to historically disadvantaged individuals in procurement within the State.

demonstrate emerging distress from consumers who are affected by the high prices emanating from the economic downturn resultant from State capture. In attempts to investigate allegations of State Capture, a Commission of Inquiry into State Capture (known as the Zondo Commission – a name resulting from Judge Zondo who chaired the Commission) that has been constituted by the President and has actively engaged witnesses ranging from Executives in State organs, Board members and also Legislators for the most part of 2018 until 2021 with the final report presented to the President. Various other Commissions dedicated to specific state organs were set up to investigate corruption and State Capture activities, inclusive of forensic investigations. Inclusive was the request to the Public Protector to conduct an investigation into the capture of the State and the subsequent report to that effect (Public Protector of South Africa, 2016).

In South Africa, protests and unrests have been rife since the advent of democracy, as community formations make use of the opportunities created by freedom and democracy to voice their dissatisfaction over a variety of the low-quality or non-delivery of basic services by the State. The government continuously attempt to respond to the community needs, and displayed in his 2016 budget speech, the Minister of Finance allocated over ZAR 800 billion<sup>25</sup> (USD 545 million) to capital infrastructure projects (Republic of South Africa, 2016). The increase in budget allocation by the State for capital projects provides an opportunity for firms to compete for resources.

Larmour (2007) submits that State Capture distorts the whole economy, a notion that we agree with, given the state of affairs that South Africa finds itself in economically, following the scourge. The major contributing factor to the exposure of State Capture elements in South Africa has been investigative journalism and other media reports.

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<sup>25</sup> Exchange value at the time of submitting the article to the Journal.

State Capture continue to have negative effects in the ability of the State organs to meet their mandate, who remain in competition for financial resources to deliver on their mandate while coping with volatile, uncertain and complex work settings. Due to the nature of State Capture, it is not easily depicted through the normal measuring tools. Furthermore, State Capture has long lasting economic implications; for instance, when Mr Van Rooyen was appointed as the Minister of Finance in the South African Cabinet, the markets reacted very negatively. The rand has continued to suffer against the US dollar, due to the effects of State Capture. Additionally, the phenomenon has weakened the law enforcement institutions, creating a major challenge for the country. This was noted when the country was faced with massive looting and criminal activity following the call for the former President Zuma to be released from jail after he was incarcerated following his refusal to appear before the Commission of Inquiry into State Capture<sup>26</sup>.

Furthermore, we observe the debate on the consequences of State Capture in weakening the courts as sponsored by scholars (Kaufmann et al., 2000). Mr Agrizzi, a senior executive in the Bosasa firm, testified before the Zondo Commission of Inquiry that their firm would be presented with South African Police Service (SAPS) dockets for cases against them (Agrizzi, 2019), rendering the law enforcement inept. With the historical background of South Africa, State Capture is an unwelcome phenomenon due to its effects and the possibility of reversing all the transformative strides taken to improve the lives of the people who have been subjected to the apartheid system, which rendered them unequal.

On the same notion, the uncertainty provided by the political leadership, pose a challenge, in that most leaders have opted to "*play javeline*" a phrase that has become

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<sup>26</sup> The Commission established in South Africa to look into state capture occurrences, headed by Judge Zondo and has become known as the Zondo Commission.

known for engaging in corrupt activities that will lead into the politician getting their reward on the other end should their position be prematurely terminated. This notion is supported by Hyslop (2005) who submits that Minister Mac Maharaj who was heading the Department of Transport, serving under President Mbeki awarded a multi-million-rand contract to a consortium that included *“Schabir Shaik who then commenced personal payments to Maharaj. When Maharaj left office in 1999, he became a board member of FirstRand Bank whom he had awarded contracts during his term as a Minister. Corruption has large adverse effects on social welfare”*. Frye (2002) refers to State Capture as elite exchange, in that it takes place at the highest echelons of the institution, which in South Africa has been alleged to involve political office bearers such as Ministers, the former President of the country, Board members as well as the Chief Executives and Senior Executives of the state organs. This, therefore led to the identification of this category of ultra-elite as respondents for this investigation. Although State Capture is some form of corruption, this study limits the investigation on State Capture and not on general corruption activities.

Whereas South African Cabinet is made up of forty-two (42) National Departments, while each of the Nine (9) Provinces will have an average of around twelve (12) Provincial Departments. Due to the three tiers of government system in the country, there are two hundred and seventy-eight (278) Municipalities in South Africa. The country has over seven hundred (700) SOE<sup>27</sup>s and public entities which are represented within the National, Provincial and Local chapters of government. The high number of state organs results in more opportunities for firms to enter the State and create Shadow-States.

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<sup>27</sup> State-Owned Entities – entities whereby the state is the majority shareholder.



Active stakeholders and the general public is becoming more involved in the way their tax money is spent within public institutions (Ajam Ltd et al., 2007; Bahl & Bird, 2008; Guillamón et al., 2011), thereby calling for accountability and transparency. Resultant from that, many leaders have been calling for the government to implement consequence management to transgressors as noted on the speech debating the matter in the South African Parliament (Brauteseth, 2015b). Subsequent to the growing concerns on State Capture, South Africa experienced a rise in inflation rate from 3.8% to 4.5% in April 2018 (Republic of South Africa; Statistics South Africa, 2018). In their report, the Auditor-General indicated that 61% of municipalities in the 2015/16 financial year were not compliant to consequence management practices, which made them prone to corrupt activities. They further recommended that punitive measures should be implemented to officials who fail to comply with applicable legislation (Auditor-General South Africa, 2016).

## **LITERATURE REVIEW**

### *State Capture Defined*

The paper reviewed various definitions of State Capture and emanating from those, we sponsor a definition that resonates with our understanding of this complex phenomenon. Whereas, Transparency International<sup>28</sup>, refers to State Capture as a situation where powerful individuals, institutions, groups and companies within or outside a country use corruption to shape a nation's policies, legal environment and economy for their own interests (Martini, 2014). The context of our study provided the

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<sup>28</sup> A non-profit organization formed with the objective of combating global corruption.

opportunity to test this definition granted the historical challenges that the country of study is faced with. South Africa, being faced with high poverty, inequality, and unemployment levels, designed their regulatory framework around a developmental agenda. In shaping the policies of the state, scholars refer to one dimension of these powers that firms have on State as "capturing of regulatory agencies" (Barley, 2007). This factor brings about the main challenge of identifying and addressing State Capture as it is not easily distinguishable from *"the normal workings of democracy in market economies"* as stated by Barnard & Pendock (2013).

Our observation is that scholars have struggled to find a common definition of what State Capture is. Although most of the definitions are related, the lack of a common definition signifies the complexity of the phenomenon and possibly why it remains undertheorized. Hellman (2000) who is regarded as the scholar who first observed the phenomenon in 1999, provides two definitions to state capture; with the first being a *"process whereby a firm or persons with narrow interests shape up the policy and environment of a state through providing benefits to politicians or key role players in order to gain from the financial decisions taken within the state entity"* (Hellman & Schankerman, 2000) and the second one being an extension of the first definition in including how the corporate sector shapes the *"rules of the game"* which includes laws and court decisions (Kaufmann et al., 2000). What can be observed in the second definition is the emphasis on mentioning of the courts, although the Judiciary is regarded as part of the state. The role played by the courts in facilitating State Capture makes curbing the phenomenon through enforcement of laws a real challenge.

We therefore sponsor a definition that State Capture is a process whereby the Shadow-State (firms) takes over the strategic function of the State through influencing the direction of policies at the point of law-making (legislators), the implementers of the

law (bureaucrats) as well as the Judiciary (law enforcement agencies) which ultimately negatively impact the economy and the welfare of a country's citizens. The transactions ultimately benefit the firms, the individuals who are captured (both politicians and officials) as well as to some extent the political parties through funding their activities in return for business favours (Martini, 2014).

### *How did the firms gain access to the State?*

Noting that the State has a mandate to deliver basic services to its citizens, and that it depends mainly on private firms to achieve that set goal. Further noting that every firm measures its success through their capacity to remain competitive and sustainable. The above creates a need for both firms and State to work together with inter-dependencies leading to potential State Capture. Whereas, State Capture is a unique concept (Fleetwood & Ackroyd, 2004; Hutchinson, 2004; R. Scholz & Tietje, 2012) and a very complex phenomenon. The State Capture concept denotes that the relations between State and firms is mainly one-sided, in favour of business (Frye, 2002). These dependencies as well as the relationship of the State and firms affirms the need for this investigation.

Although literature suggest that the rationale for entering into corrupt relations by firms is to create a relationship that will give the firms an upper hand in terms of receiving favourable inside information aimed at making their business deals, bids and awarding of contracts more successful (Rose-Ackerman, 2002), literature however does not outline how they gain entry and sustain the capture for extended period. This challenge is substantiated by scholars who cite measuring State Capture to be a problem which is resultant from the high number of firms engaged in State Capture.

While we agree that State capture is a phenomenon that takes place within an institution (Hanson & Teague, 2005) of which the state hold minority or majority shares. These institutions comprise of individuals who share beliefs and values making up an organization. We submit that for State Capture to thrive and succeed, it involves both internal and external role players. The social need for private benefit and rent seeking<sup>29</sup> provides an opportunity to sustain the capture. The paper further revealed that firms capture the state through influencing the political power with the aim of shaping the government policies (Barley, 2007) in pursuit of remaining competitive and profiting from the process. We argue that politicians (who are representatives deployed by Political Parties to represent the citizens), as Public Office Bearers, are in turn legislators, and therefore, influencing them negatively results in State Capture whereby, the external players who assume the role of a Shadow-State<sup>30</sup> have direct access to State resources and are allowed access to the State by internal players, who are risk-averse and try to maintain power, and lower the probability of any chances of exiting (Grzymala-Busse, 2008). In this process, the internal players amass personal wealth while retaining public office. The external players try to eliminate competition as any contest provides a risk for exit. The similarities in the operations of the two Shadow networks seem to suggest that firms adopt identical corrupt behaviours in capturing the state, this notion is further supported by scholars (Venard & Hanafi, 2008).

One of the consequences of corruption is the institutional voids created within the state. Certain individuals within private firms identified these voids and used the opportunity to step in (Dahan et al., 2015) and create Shadow-states which captured the government. While other scholars (Dassah, 2018) submit that State Capture was

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<sup>29</sup> An economic concept which occurs when an entity seeks to gain wealth without any reciprocal contribution of productivity.

<sup>30</sup> A private entity that puts together a system on how they will lobby, claim and benefit from the Constitutional state. The system operates as a shadow from the real state and is systematic.

first observed in 1999 by Hellman (2000), we concur that the concept of State Capture is fairly new, although it is some form of corruption, which is a phenomenon that has been recorded even prior the democratic era in South Africa (Van Vuuren, 2018), confirming that it has been taking place for quite some time although not broadly studied by scholars, which makes it a modern phenomenon. Despite all the governance and legal frameworks governing state institutions, the anti-corruption strategies employed by the state, protocols and norms, the State continues to be susceptible to corruption and State Capture.

Hellman (2000) agrees to the notion that State Capture is a complex phenomenon, and postulate that there are a few indicators in the empirical literature on corruption in general. As outlined in the introduction on this paper, there is always a need for firms and State to work together, which creates dependencies which in turn provide an opportunity for State Capture. Although there are role-players within the State who amass wealth from these relationships, we concur with scholars that the State Capture concept denotes that relations between State and firms is mainly one-sided, in favour of business (Frye, 2002). We also recognise that there are some low-key firms that may struggle to succeed in acquiring tender awards from the State for reasons such as experience and other requirements, therefore lobbying with other firms depending on people with "*connections*", influential policy makers and officials, which therefore opened the gateway for State Capture to manifest and thrive. Scholars argue that these firms select to engage in State Capture as a strategy to compete against influential incumbents (Hellman et al., 2000, 2003). The rationale for firms to enter into corrupt relations is to create a relationship that will give the firms an upper hand in receiving favourable inside information, that will easily make their business deals, bids and awarding of contracts more successful (Rose-Ackerman, 2002). Grzymala-Busse (2008) posits that countries infested with poverty and income inequality increase the

possibility of redistributive strategy payoffs, which would then provide an opportunity for State Capture.

Although Hellman's (2000;2003) study which is based on the 1999 Business Environment and Enterprise Performance Survey (BEEPS) distinguishes between capture for private gain as just influencing the "*rules without recourse to private payments to public officials*", we suggest that the ultimate goal of the firm to influence decisions is not for the greater good of the citizens, however for their own private and profit-making gains.

#### *How Shadow-States Sustain the Capture?*

Weaknesses of central governments provide a fertile ground for State Capture to thrive as perceived by scholars in the study on corruption (Shleifer & Vishny, 1993). The debate about State-Owned Entities being captured is driven from the theory that dominant stakeholders attempted to engage on dependencies and to a certain extent, resource centralization (DiMaggio & Powell, 1983). Furthermore, scholars argue that corruption has evolved into an institution of its own, and this argument substantiate our view that State Capture is a process whereby the shadow state takes over the vulnerable state through a well-orchestrated system (Liedong, 2017). Within this perspective, the State Capture phenomenon is seen as the process whereby the elite extract state resources for their private gain, alternatively or additionally channel same to their political parties (Grzymala-Busse, 2008).

The phenomenon further hypothesises that State Capture is a systematic process which expand capturing agents' political and financial powers behind the scenes (Pesic, 2007b). The involvement of a holistic capture allows the firms to capture

role players of the targeted State organ through lobbying the individuals with the highest powers (Frye, 2002). Both players try to eliminate competition as any contest provides a risk for exit. The firms aim to monopolise the situation to generate more revenue and sustain their business, while the individuals amass personal wealth from this process and would want to sustain the status.

Furthermore, Hellman (2000) contrasted firm growth between those categorised as captor and influential against ordinary firms, and they revealed that those with captor and influence grows faster than other firms, although the social consequences are vast. Firms justify their corrupt behaviour as a means to their contribution to economic growth (Rose-Ackerman, 2002).

Different tactics are used to sustain the capture such as political dependencies by the spheres of government on firms, more-so since politicians highly depend on resources availed by firms to campaign and run for public office. Firms wield excessive political power which enables them to shape government policies (Barley, 2007) in pursuit of their own benefit. Barley (2007) refers to one dimension of these powers as "*capturing of regulatory agencies*". While this paper focusses on two firms with specific people leading the capture, we submit that Politicians who are captured justify the process in different forms, and some literature in Corporate Political Activity outline the corporate involvement in democratic processes (Rajwani et al., 2013). We further submit that so long as there are social and economic needs by the actors, they remain susceptible to being captured to feed their personal desires.

## *The Impact of State Capture on State Institutions*

State Capture results in deinstitutionalization of State Institutions. Deinstitutionalization comes with a very high cost at both political and financial level, which normally creates uncertainty based on the risk of reversal, should it prove to be unsuccessful (Shen & Snowden, 2014). Deinstitutionalization has the capacity to affect people's role and identity (Sillince & Barker, 2012), which is a societal aspect as actors identify with their work roles in society. The changes in status of a leader affects the institutional legitimacy and has the potential to bring about uncertainty (Sillince & Barker, 2012). Since institutions are referred to by North (1991) as humanly devised formal and informal constraints that structure political, economic and social interaction, they are established with the aim of promoting legitimacy and reducing uncertainty (North, 1991). These institutions are posited to strive for both economic legitimacy and relevance to social fitness (Grewal & Dharwadkar, 2002). Taken from the definition of Institutions, North (1991) theorizes that the direction of the evolution of the organization is highly dependent on the actors within the organization as well as the nature of the citizens who interact with the institution through the rules of the game, which is a conception that supports our choice of a multiple case study. Sources such as change or unplanned consequences are said to have capabilities of weakening the organization's power (North, 2018).

These consequences include job losses in some of the State-Owned Entities, resulting in them failing to continue to operate, while some of the private firms had to close-down. South Africa became a best model for this study as it continues to battle with these challenges which are not easily distinguishable (Barnard & Pendock, 2013) in a developmental state.



The involvement of political power in state affairs can lead to State Capture, which affects the economic growth of a country (Bardhan, 1997). Martin and Solomon (2017) advance that in the state capture discussion, both the state and economy are treated as one entity since they affect each other as also cited by one of the respondents.

With State Capture at play, the quality of service is at risk of being lowered by firms, which have to pay large sums towards bribes (Rose-Ackerman, 2002) and ultimately compromise on the quality of service. The deals entered into with shadow networks may include the design of contractual requirements that are suitable to particular service providers, which will in turn result in quick personal payoffs spread over a longer period as observed in some companies engaged by Eskom, which were awarded contracts for over forty (40) years (Ephron, 2021; Public Protector of South Africa, 2016; Republic of South Africa, 2018; Republic of South Africa, 2018a). Scholars argue that corrupt officials may opt to shift funds to where the possibility of inflating spending expenditure is higher with lower production (Ghosh & Neanidis, 2011), which ultimately compromises the quality of the service offering. This was observed in a number of State entities reviewed during the study (Alence & Pitcher, 2019a; Eberhard & Godinho, 2017; Public Affairs Research Institute, 2017; Public Protector of South Africa, 2016; Thomas, 2012).

The debate about state organs being captured is driven from the theory that dominant stakeholders attempted to engage on dependency and to a certain extent, resource centralization as posited by DiMaggio & Powell (1983). The investigation displays how the two firms (Bosasa and Gupta Family Group) were able to gain entry into the South African government and amass wealth which was sustained for an extended period. Documentation analysed on the two firms revealed the systematic capture of the state as detailed later in the article. A contrast between the two firms was

conducted using the outcome from the investigation as a basis, discussed later in the article.

While we noted that the majority of theoretical foundations on corruption studies have been drawn from criminal activity literature (Asongu, 2013; Billger & Goel, 2009), literature failed to conclusively display punitive measures applied to malefactors in the case of South Africa.

## **METHODOLOGY**

### *Rationale for Multiple-Case Study*

We selected the use of a multiple-case study and compare two cases in response to the research questions. There is generally a scholarly perspective that claim that Institutional theory is broadly studied (Scott, 1987, 2008; Tolbert & Zucker, 1996) , with Suddaby (2010) theorizing that it has reached mid-life crisis and has '*gone beyond its purpose*'. The author states the main reason for the theory missing the intended purpose as a methodological one, since many of the studies on Institutional theory are quantitative, which is a methodology that fails to account for the outcome of the institutional processes (Suddaby, 2010). This is supported by other theorists who postulates that Institutional theory has neither developed a set of standards nor variety of techniques such as case studies (Tolbert & Zucker, 1996). We submit that it will be difficult to determine the real-life phenomenon without gaining insight on the experiences of different role players. We further suggest that while analysing information from a statistical perspective is important, there is a need to find meaning to the institutional story through the perspective of the actors. This view is premised

from theorists who suggest that there is a need to understand how individuals locate themselves in social relations and have their context interpreted from that perspective, as well as understanding how their daily actions transform organizations (Powell & Colyvas, 2012). From the same viewpoint, the voice of the researcher is often missing on Institutional theory studies, which limits the understanding of the experiences in organizations, and further creates a '*high opportunity for future inquiry*' (Suddaby, 2010). The above viewpoints necessitated the study from a perspective of qualitative research and the choice of a multiple case study which provided an opportunity to find meaning to the theory through engaging with the role-players.

## **RESEARCH DESIGN**

Using South Africa as our empirical setting afforded us the opportunity to access the ultra-elite who are prominent individuals that have been constantly identified with the State Capture notion, inclusive of Ministers, Board Members, Leaders in the governing and opposition Political Parties, Members of Parliament, Investigative journalists, Chief Executives in the State Entities as well as Academia and Analysts on the topic. The planning phase had not anticipated the global novel Covid-19 pandemic and therefore the researcher had to consider some flexibility as posited by Grünbaum, (2007) who cites that, cases "*tolerate some kind of flexibility given the practical reality of data collection*". The advent of the pandemic and the lock-down period created an opportunity on availability of respondents for virtual interviews which were conducted through video conferencing, which allowed the researcher to benefit from the facial expressions of the respondents, trading those from the initially planned contact sessions. To meet the criteria for identification, participants were expected to have the minimum requirements

of having been involved either as an employee executing operational duties in executive or senior management or board level within the State entities, alternatively having done some work within the field as journalists, academia, analysts, experts and authors or any oversight role. Leaders of Political Parties represented in Government who have the responsibility of playing an oversight on State entities were also identified and interviewed. A total of 142 potential respondents were identified and personalised invitations sent to 78 individuals. A total of 47 accepted and indicated willingness to participate. Some could not go through with the interviews and only 34 were interviewed. Considering that most of the respondents would have also been identified to testify at the State Capture Commission, others did not feel comfortable to continue with the interviews prior to first appearing in the Commission. The sensitivity of the phenomenon and the profile of the identified respondents resulted in a few of them not trusting the process and requesting contact sessions rather, which were honoured. Prior preparations in researching and studying each of the respondents before the interviews assisted in understanding their views based on what they would have published or their public comments on the phenomenon, which provided the researcher with insight on how to manage the interview, maintain focus and to reach the study's intended objectives. The nature of the phenomenon created an opportunity of having respondents who have played more than one role, either at a technocrat and later as an overseer in certain instances. Although preparatory work took place before the interviews, as postulated by Yin (2013) and Tellis (1997), the imminent risk of getting respondents telling what they think the inquirer wants to hear remained high, with those implicated in the State Capture using the opportunity to air their views. Due to this risk, Fusch and Ness (2015) "*one time phenomenon*" was managed in situations where passionate respondents would delve into other areas of their interest and the inquirer always had to bring them back to the focus of the study. Another risk was the constant changing of

scheduled interviews considering that the phenomenon was a topical matter in South Africa, which required most of the respondents to honor unscheduled interviews with the media. The State Capture led to the collapse of the State entity responsible for electricity in South Africa which instituted loadshedding<sup>31</sup>. The power cuts which would be unscheduled impacted negatively on the interview schedules.

Secondary data was collated from archives, records and documents of the various state entities as well as affidavits of the individuals who testified during the State Capture Commission, which comprised of high volumes of information. The data was analysed using Atlas-ti in response to the research questions.

The primary data which was triangulated with the secondary data enriched data quality and ensured both internal validation and saturation.

## **RESULTS AND DISCUSSIONS**

The two cases studied are discussed hereunder and a contrast summary deliberated in detail.

### *How Gupta Family-Owned Firms captured the State.*

The Gupta Family, which is not of South African origin, has been in the country since the dawn of democracy. The Gupta Family immigrants from India was preceded by the arrival of one of the brothers, Atul Gupta in 1993, just before Nelson Mandela was to come into power (Hogg, 2015) as the first President of democratic South Africa.

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<sup>31</sup> Rolling blackouts by the Electricity supplier (Eskom) to prevent the collapse of the National grid – adapted from (Alence & Pitcher, 2019b)

The family soon amassed wealth in different areas such as acquiring mines, a newspaper publication, a 24-hour television station and computer businesses amongst others. Their relationship with President Jacob Zuma and subsequent inclusion of his family in their payroll raised eyebrows. Both the Gupta family and President Zuma did not deny the relationship they had with each other. This was a clear systematic abuse of power and State resources (Alence & Pitcher, 2019b). Below narrative details how the Guptas captured the State.

The Gupta's political connections aided their firm's empire to secure contracts from the State (Alence & Pitcher, 2019b) and sustain them. The President outsourced his role of appointing Ministers to the Gupta brothers (Alence & Pitcher, 2019b; Commission of Inquiry into State Capture, 2019b; Public Protector of South Africa, 2016; Shai, 2017). While in 2013, a Gupta plane landed in Waterkloof Air Force base<sup>32</sup> creating a view that their relationship with the President provided a gateway for them to be afforded such priorities of landing on the Air Base. More concerns from the public increased after the revelation of the so called "*Gupta Leaks*", which comprised of documents and emails from the Gupta server, in which sensitive information was revealed to indicate that their relationship was more than just ordinary corruption (Alence & Pitcher, 2019b). Another result of their relationship includes the purchasing of Uranium mines and supplying Eskom with coal (Eberhard & Godinho, 2017; Public Affairs Research Institute, 2017), a state capture action which contributed to "*load shedding*<sup>33</sup>" of electricity which impacted negatively on the South African economy and caused a national crisis.

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<sup>32</sup> Waterkloof Air Force Base is the airbase for the South African Air Force, officially opened in 1938 and upgraded to Air Base during the World War II.

<sup>33</sup> Rolling blackouts by the Electricity supplier (Eskom) to prevent the collapse of the National grid – adapted from (Alence & Pitcher, 2019b)

### *How the Gupta-Firms sustained the Capture?*

In their report, the Public Protector mentioned the offering of cabinet ministers' positions and influencing removal of certain Ministers by the Gupta family, who are reported to have had power to appoint Ministers and board directors of State-Owned Entities (Shoib, 2017), for instance, Mr Nhlanhla Nene was removed as Finance Minister when at the same time Mr Mcebisi Jonas was offered his position. Upon refusing the monetary offer by the Guptas, Mr Jonas was not appointed and Mr Nene was removed and replaced by Mr Des Van Rooyen (Dassah, 2018; Public Protector of South Africa, 2016). The period became known as the "*Nene-Gate*" in South Africa. The newly appointed Minister Van Rooyen was subsequently moved to Cooperative Governance and Traditional Affairs department four (4) days after his appointment, following pressure from stakeholders. Likewise, Ms Vytjie Mentoor was offered a post of Minister of Public Enterprises in exchange for cancelling the South African Airlines (SAA) India route, with conditions for appointment being that they work with the Gupta family (Public Protector of South Africa, 2016). Myburgh in his book, terms this process "*how the Guptas shopped for Ministers*" (Myburgh, 2017).

The same Public Protector's report cites other captured officials as Mr Brian Molefe, CEO of Eskom, who was friends with the Gupta family as well as the sitting President. Another example that can be given in the Gupta shadow State is the capturing of Eskom. Relations with key people in the higher echelons of the government enabled the Guptas to sustain the capture for an extended period.

## *Impact of the capture on the State Institutions*

The Capture by the Gupta Family resulted in deinstitutionalization of the targeted State entities. Their systemic approach was to target individuals in powerful positions to influence their objectives. An individual (Mark Pamensky) serving in Gupta firm (Oakbay) as a director, joined the Eskom board within three months of the Guptas having secured a coal contract with Eskom (Mail & Guardian, 2016). By serving in the two boards, Pamensky used his position in Eskom to influence decisions at board level to the benefit of Gupta companies (Outa, 2017) rendering the Board inept. The Eskom board, was therefore improperly appointed and not in line with widely accepted by corporate South Africa, King's report on good corporate governance (Public Protector of South Africa, 2016; The Institute of Directors in Southern Africa, 2016). Furthermore, the State Capture Commission of Inquiry heard evidence on how the board members of Eskom, the Ministers overseeing the State agency, as well as senior executives, inclusive of the various Group Chief Executive Officers, were having relationships with the Gupta firm, which benefitted them financially (Commission of Inquiry into State Capture, 2018a; Gules & Masondo, 2018; Public Protector of South Africa, 2018; Republic of South Africa, 2018a). We sponsor that President Zuma's relationship, that of his son and the Gupta family evolved into State Capture. The process of capture was aided by what we term "*recycling of resources*" whereby executives or board members loyal to the Guptas or the political principals would be deployed to the different State agencies and recycled in order to provide an opportunity or "gateway" for looting of state resources. The views of the respondents interviewed in the study is that the executive and board members have selected to neglect their fiduciary duties in favour of personal financial benefits, and in other instances, to the benefit of the political party that they are aligned to. Their selection or deployment also would consider those who pay



allegiance to the Political Party or the relevant political principal responsible for oversight of the said State institution.

The establishment of a Broadcasting Station and a newspaper publication by the Gupta's allowed them to control the media publicity – a systematic way of capturing the state. In another instance, the Guptas were able to purchase archive documentation and recordings from the South African Broadcasting Corporation (SABC) for a fraction of the market price as cited by one of the respondents and some of the witnesses to the Zondo Commission. While the capture activities cannot be exhaustive, given how the Guptas amassed wealth, the Gupta takeover is a clear shadow-state systematic takeover of a Constitutional State. The above supports our notion of the deinstitutionalization of State entities by the shadow-states.

#### *How Bosasa Group Firms captured the State*

The State Capture Commission of Inquiry heard how the journalists and high profile politicians were controlled from the Bosasa Shadow-State (Agrizzi, 2019), supporting our submission that State Capture is a phenomenon that commences with the capturing of key persons responsible for major decisions within the institution. The Commission of Inquiry further heard testimonies on the elite who were in the payroll of the Bosasa firms. Others implicated in this include Members of Parliament as well as former President Zuma (Agrizzi, 2019).

In his affidavit deposed before the Commission of Inquiry, the current sitting president, Mr Cyril Ramaphosa indicated that the brief for his appearance by the Chairperson of the Commission required him to indicate whether he or the Members of

his Cabinet (Ministers) had dealings with both the Gupta brothers and the Bosasa directors. Although the sitting President mentioned that his interaction with the Gupta brothers did not include anything of consequence, his affidavit shows however, that there may have been links to the company he previously worked for, with that of the Bosasa companies, although he indicated that he does not have “*any recollection of such, he however could not dismiss that*” (Ramaphosa, 2019).

### *How Bosasa Sustained the Capture?*

The affidavits deposed of by witnesses who appeared before the Commission clearly outlines the contracts awarded by State organs to the Bosasa group and the oversight role or lack thereof, played by the Portfolio Committees in Parliament<sup>34</sup> (Commission of Inquiry into State Capture, 2019c). These affidavits further alleged the tax evasion and bribes offered to the elite by the Bosasa Group (Commission of Inquiry into State Capture, 2019a).

Bosasa created a shadow-state and the Company’s Chief Operation Officer (COO), Mr Angelo Agrizzi outlined details on how they would pay bribes to make the police dockets disappear. He further outlined how they would pay large sums and also pay in kind huge amounts benefiting the elite (Agrizzi, 2019; Business Day, 2019). He further acknowledged that his actions constituted an unlawful act.

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<sup>34</sup> A structure appointed by the National Assembly to provide oversight on the work of state organs. The composition of the structure is selected from elected Public Representatives.

## *Impact of State Capture on the State Institutions*

While the Guptas targeted State owned entities with Board of Directors and overseen by an elected Public Representatives, Bosasa Group would mostly target Government Departments with entry through the appointed officials, although in certain instances Ministers would benefit at their personal level (Agrizzi, 2019; Agrizzi & Commission of Inquiry into State Capture, 2019; Business Day, 2019; Commission of Inquiry into State Capture, 2019a). Similar to that, Gupta firm capture resulted in deinstitutionalization. The level of amassing wealth by Bosasa- was lower than that of the Guptas. Bosasa focussed on gaining and sustaining wealth. We contrast between the two firms.

### **CONTRAST BETWEEN BOSASA AND GUPTA FIRMS**

This section provides detail on the contrast between Bosasa and Gupta groups.

In identifying the two firms, we introduce the groups by providing their background. Bosasa is a company founded by a South African, Mr Gavin Watson in 1981 (Bosasa, n.d.). Mr Watson who was the CEO, was a South African who was a Member of the African National Congress (ANC-the governing party in South Africa since democracy) since pre-democracy. He had been involved with fellow comrades in the struggle and was always sympathetic to the ANC. Whereas the Gupta Family group is not of South African origin, has been in South Africa since the dawn of democracy. The immigrants from India was preceded by the arrival of Atul Gupta in South Africa in 1993, just before Nelson Mandela was to come into power (Hogg, 2015). There is however no knowledge of what their intention was in moving to South Africa, whether they acquired tourist, working or residency visas.

We further analyzed the strategies used by the two firms to capture the state and present our findings. From the Bosasa group, the fact that Mr Watson was known both within the country and the political circles made it easier for him to penetrate the State since no one questioned who they were and where they come from. There doesn't seem to have any plan that can be traced on how they will sustain the capture. The focus was on acquiring tender contracts from the State as their niche market. The Group worked with internal Executives to fill in tender documents to ensure that they stay within the requirements and close-up any possible competition in the area of submission – specifically in the Correctional Services Department as well as in Airport Security. Bosasa was working with officials responsible for law enforcement and would be availed with police dockets on inquests opened against them (Agrizzi, 2019). Unlike Guptas who worked with the Bank of Baroda, Bosasa authenticated the money laundering and huge cash handling (since they paid bribes in cash) through a number of shops and garages that they worked with. They would electronically transfer the funds to these businesses in exchange for cash. It can be concluded that Bosasa was comfortable with the arrangement and had no risk of exit due to the deep-rooted relations with the governing party and loyalists.

While the Guptas arrived in 1993 and observed all systems of operation in the country for an extended period. There is a clear systematic plan that the Guptas conceptualized, and no-one saw it coming. The Gupta's entry point commenced even before President Jacob Zuma was in Public Office (HeraldLive, n.d.). After he was removed as Deputy President, and struggling financially, the Guptas *“took in his children under their wing, when no one was willing to take care of them”* (Timeslive, n.d.). The group identified weaknesses in the system and had foresight and the patience to implement their plan.

There is a systematic plan that is displayed in the form of the types of businesses they formed. They were aware that Media plays a very important role in communication, and when realising that the media is reporting negatively against them, they established both a Newspaper Magazine (The New Age) as well as a Television Broadcasting Channel (African News Network 7 known as ANN7) – both of which were very credible in the initial stages and attracted high profile media anchors as part of their team. Their plan included appointment of their own people in the different Boards of State Owned Entities (Mail & Guardian, 2016). One of the respondents emphasized this point and responded saying:

*“I think managers came under immense pressure, some of them would event get calls from the Minister, interested Ministers, or even from the Gupta family themselves telling them that they have instructions from the President for them to get assistance from those managers. Themba Maseko for instance, reported getting a call from one of the Gupta brothers. So managers came under immense pressure even from the CEOs perhaps and from the Boards, and soon they came to internalise that for you to keep your job, is either to comply or you just leave because these were people who were influential.”*

This was confirmed by another respondent quoted saying:

*“So how is it that in Eskom, the Guptas were able to get to the contracts? It’s because they could pick up the phone and call the CFO, it’s because they could pick up the phone and call the CEO. It’s about the fact that you could allow the CEO and CFO to go and have lunch with them regularly”.*

This kind of relationship assisted the Gupta group in acquiring information to give them competitive advantage when submitting bids for tender contracts.

They had their own computer company (Sahara Computers) which was their first major company and became one of South Africa's leading IT supplier. Gupta group operated through the Bank of Baroda to channel most of the funds amassed from the State. The Guptas appointed the same Auditing firm responsible for auditing some State Owned Entities that they were doing business with to also audit their own financial reports (Eberhard & Godinho, 2017; Ephron, 2021; Public Affairs Research Institute, 2017; Republic of South Africa, 2018a; State Capacity Research Project, 2017; The Financial Times Limited, 2018).

Their systematic plan included influencing the deployment of loyalists and competent individuals in key positions. They observed the competencies of Mr Brian Molefe who was appointed by President Thabo Mbeki to head the Public Investment Corporation (PIC) and during President Zuma's era, they influenced his appointment and teamed up with Mr Arnold Sign to be deployed to Transnet and later Eskom. This led to individuals recycled across state entities which contributed to institutional isomorphic tendencies. They also influenced the appointment of Cabinet Ministers to key positions (Alence & Pitcher, 2019a; Dassah, 2018; Jika et al., 2016; Myburgh, 2017; Nyanda, 2018; Public Protector of South Africa, 2016; Shai, 2017; State Capacity Research Project, 2017). They used the weaknesses of their target individuals to ensure loyalty by these individuals. Different to Bosasa, the Guptas had linkages with law makers and law-enforcement agencies which benefited them.

The entry point for both groups to capture the state was contrasted and the study presents the findings hereunder. Bosasa group worked with specific targeted individuals to secure tender contracts. Their main focus was targeted to specific departments and focussing on public procurement and securing lucrative contracts. The political relationship assisted in easy access to certain individuals. Different tactics were used by

the Gupta group whereupon evidence displayed that Guptas started implementing their systematic plan of State Capture during the term of President Thabo Mbeki and continued in a high momentum during President Jacob Zuma's tenure. This is supported by the responses received during interviews. One respondent when asked about the commencement of state capture said:

*"I think state capture should be seen as bigger than Jacob Zuma, bigger than the Guptas. With money first, even before Zuma stood in power, it simply became an escalated process and it outlasted him when he had left. Because we often make a mistake of saying that state capture is equal to Jacob Zuma..."*

I further assessed whether the two groups had evidence that led to them being exposed. With regard to the Bosasa group, the only evidence available on the financial benefit to individuals and the ANC is only based on the evidence of a single witness in the Commission of Inquiry into State Capture, Angelo Agrizzi who was the Chief Operations Officer of Bosasa (Agrizzi, 2019). Mr Watson did not keep any records, notes, did not even have a Personal Assistant and did not have a computer to store the details. Mr Watson died in a horrific vehicle accident before any prosecution could be recommended, thereby rendering any possibility of cross questioning the tabled evidence impossible. The Gupta group operated quite differently. There is evidence on the emails which became known in South Africa as the "*Gupta Leaks*" that outlines the money laundering process (Fundudzi, 2018; Madonsela, 2019).

Their operations were not without challenges, the study found that the public started complaining about Bosasa being awarded a series of multi-million-rand tenders which led to President Mbeki signing off an investigation to be conducted by the Special Investigation Unit of the State (SIU) which commenced in 2007. The report was only completed in 2009 during President Zuma's era. The initial arrests were only made in

2019 after the testimony by Mr Angelo Agrizzi, the Chief Operations Officer of Bosasa (Smit, 2019). Whereas the public and investigative journalists were keen to follow through on the “Gupta leaks” emails. The group experienced pressure from different stakeholders and individuals for investigation into their activities (Maseko, 2017) and calls by the leader of the Opposition Party in government, Mr Musi Maimane for the Public Protector to investigate the meddling by the group in state affairs and whether they influenced the appointment of Ministers which would have meant that President Zuma had breached the Executive Ethics Code (Thamm, 2016). Their homes were raided and assets seized (Reuters, 2018). They faced challenges in implementing their strategy when the head of state, President Zuma that was their key player was forced to step down (Reuters, 2018) and also when they failed to force the Bank of Baroda to continue to do business in the country after the local banks barred them from doing business with them (Nicolson, 2018). Auditing firms withdrew from doing business with them (The Citizen, 2017). All these challenges led to the Guptas losing their businesses and fleeing the country. They lost citizenship in the country and were faced with criminal charges (The Times of India, 2021; Tlholoe & Tawana, 2019).

In contrasting the two firms, I made pertinent observations. Mr Gavin Watson did not only channel funds to individuals, but also to the ANC as well as invested on social programmes such as commemorative days which celebrates the historical significance of South Africans, sport such as cricket and was able to establish the ANC Election Operation Centre in their premises (Ramaphosa, 2019) during election period. The group was comfortable and thought that as long as the ANC is in government, they will continue to be awarded tender contracts.

Similar to tactics used by the Guptas in enlisting dealings with President Zuma’s son, Bosasa had dealings with President Cyril Ramaphosa’s son Andile. Mr Gavin Watson



attended the wedding of President Cyril Ramaphosa's son in Uganda. Mr Watson was highly sympathetic to the ANC course and his comrades and therefore donated funds towards the betterment of the people. Bosasa intended to financially benefit as much as they can from the State unlike the Guptas who wanted to take over the governing of the State. When Mr Gavin Watson died, the majority of mourners were his comrades from the ANC including President Zuma (Sokutu, 2019), which means they regarded him as one of their own.

Observations made on the Gupta firm varied from those with Bosasa. Although the Guptas met with the ANC Top Officials (Ramaphosa, 2019), there is no evidence of the group investing back to social activities or the ANC as an entity. The Zuma family, the Ministers, Board Members and Executive personally benefitted financially on the Guptas state capture. The group was very quick in the execution of their plan and highly sophisticated as no one could pick up their intentions and were extremely deliberate. They looted as much as they could while they had the opportunity. Similar to Bosasa, the Guptas had relations with President Jacob Zuma's children Duduzane and Duduzile. Signs of their vision and strategy was only picked up in 2010 when Mr Fikile Mbalula let it out in the ANC National Executive Committee meeting that the Guptas are involved in the appointment of Ministers, however no action was taken by the NEC (Manuel, 2018). This was followed by a Cabinet reshuffle which saw Ministers loyal to the Gupta course appointed in key ministries (Myburgh, 2017). The Guptas had an intelligence operation studying the State's systems, weaknesses, identifying competent or loyal individuals whose appointment or deployment would be supported by the governing party.

The New Age (newspaper) introduced breakfast shows which were aired by the South African Broadcasting Association (SABC) for free which collapsed their own breakfast shows such as "Morning Live" and contributed to the collapse of the State Agency.

Different from Bosasa, the Guptas' intention was to take over all the systems of the state in all the three arms of government, law-making through the Parliamentarians/Politicians, the implementers at executive level as well as the law enforcement agencies.

### ***Conclusion on Contrast***

Given that activities of State Capture can be traced across the tenure of three Presidents, we agree with the Statement by the Secretary General of the ANC, that State Capture commenced even before President Zuma's era (HeraldLive, n.d.). We therefore submit that the ANC is the face of State Capture. To substantiate this statement, it can be noted that since the commencement of the Commission on the Inquiry into State Capture, the ANC has been struggling financially and failing to pay the salaries of their employees (Mtshali, 2020). Although this is attributed to the enactment of the Political Party Fund Act (Mbuli, 2021) which regulates donations and funding by private individuals, it is evident that the exiting of both Bosasa and the Guptas had a negative impact on the ANC, which supports the statement that the Political Party is the face of State Capture, since the Act only came into effect in April 2021. Bosasa, was mainly an extension of the ANC since they would assist with printing of promotional materials, catering during political party events as well as availing of venues for the Political Party as confirmed by President Cyril Ramaphosa on the establishment of the ANC Elections Operations Centre in the Bosasa premises (Ramaphosa, 2019).

## CONCLUSIONS

While there is generally an agreement amongst scholars that Institutional theory is matured (Alvesson & Spicer, 2019), our work contributes in the scholarly conversation on the theory which offered a more narrow perspective in testing the theory. Contrary to the notion that institutions are structured, given the governance frameworks and laws, this study provided a view that outlines the existence of opportunities for State Capture to take place and be sustained by firms. State Capture being a systematic process by which the shadow state in the form of private firms take over the governing and financial processes of a Constitutional state (Hellman et al., 2000, 2003; Larmour, 2007; Martin & Solomon, 2017). This practice normally includes the process of misappropriation of funds at the expense of the majority stakeholders. It is a phenomenon which involves powerful individuals, institutions, groups and firms within or outside a country, who target to shape a nation's policies, legal environment and economy for their own interests (Barnard & Pendock, 2013; Martini, 2014).

Our understanding of what makes the State susceptible to State Capture has been enhanced by the study. Different techniques applied by the firms to gain entry into the state were evidenced in the study through firms leveraging on the relationships they had with politicians, board members and executives to get preferential treatment in state contracts and business deals, an entry point that provided them favour from their competitors. Upon gaining entry, the firms were able to influence policies to allow them to sustain such relations as seen in the Eskom contracts. Once there are personal interests by players within the State, very minimal competition is allowed to penetrate the State institutions. We draw conclusions on access points for State Capture approaches as demonstrated by the research (see figure 2 below).

## State Capture Model for Bosasa and Guptas

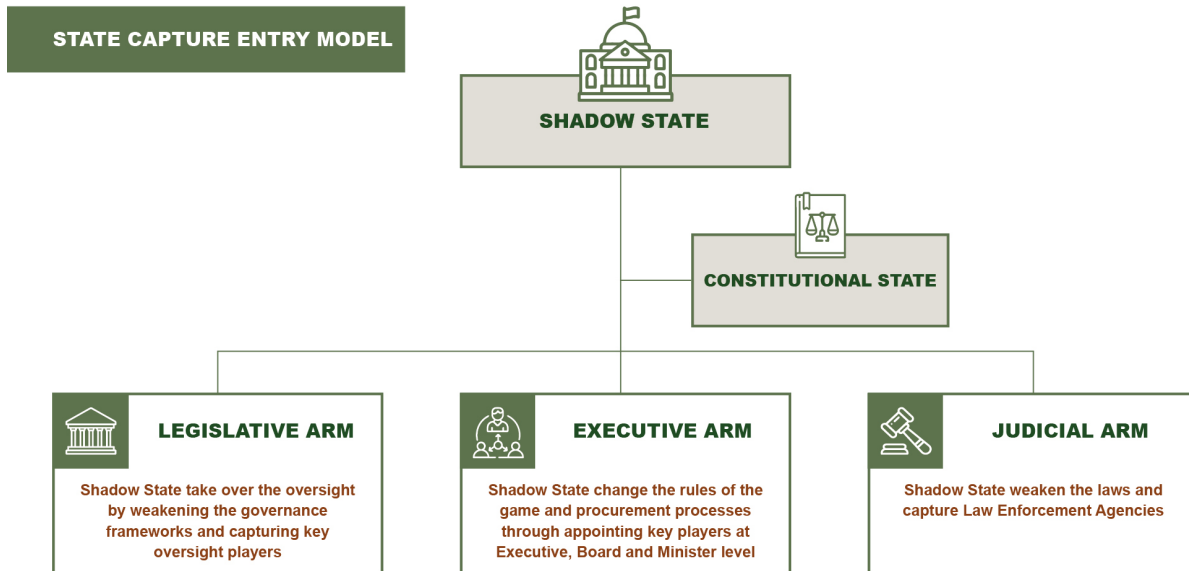


Figure 2: Key entry points for State Capture as observed from the study. Source is the author.

Most of the respondents identified cadre deployment as the gateway that opened entry by private firms to capture the state. One of the respondents unpacked a cadre as a term used in the military which denotes “*a soldier who takes instructions without questioning*”. The capacity, skills and experience of some of the people deployed and assigned the responsibility of execution or oversight in the State entities were questioned by many respondents, mainly at Board level.

The study noted that managing the risk of State Capture and corruption in general is difficult, considering that anti-corruption strategies are prone to corruption themselves (Larmour, 2007). In attempting to be transformative, South Africa encouraged private partnerships with the government, through setting up governance structures such as stakeholder management, a concept which leads to Institutional

theory perceiving institutions as structured and solid due to the rules and governance frameworks. These systems included engagement with private sector in the form of lobbying (Mtimka, 2016) aimed at maximizing service offering within a transformative developmental state. The transformation initiatives introduced by the country provided a gateway, similar to what was observed in Central and Eastern Europe countries, which introduced radical transformation when they transitioned from socialism (Martini, 2014). These powerful interest groups used the opportunity to introduce the formulation of economic policies in their favour (Martini, 2014).

The study noted the existence of shadow-states in South Africa and different or similar techniques where one firm targeted a broader network inclusive of policy influence to amass wealth, while the other focussed on being awarded tenders that would be advertised, while following all supply chain processes. We therefore submit that where there are human elements, the pervasive risk of State Capture will always be imminent. Laws and protocols also become a barrier or may be undermined as evident from the testimonies of several individuals who appeared before the Commission of Inquiry into State Capture in the success of anti-corruption strategies and therefore may render State Capture as entirely legal as argued by Larmour (2007).

Measuring the phenomenon is also proving to be a challenge considering the magnitude of the number of firms engaged in state capture (Hellman et al., 2000; Martini Maira, 2014). Although the study only focussed on two firms, the outcome can be replicated. The challenges and limitations in prosecuting State Capture malefactors suggest that to address this scourge, prevention might be more successful than attempting to investigate and prosecute (Larmour, 2007) *ex-post facto*, a view we share, considering the huge amounts spent on the Commission of Inquiry into State Capture (Zondo Commission) and other forms of inquiries in South Africa, in contrast with the

success rate of the criminal cases prosecuted in relation to corruption in general. When one of the respondents was asked about the prosecution view they responded:

*"I'm saying let's not pre-empt too much but we are disappointed that apparently the evidence that has been brought for the Zondo commission [sic] we are hearing (silence) it's not enough to prosecute"*

Although the Institutional theory perceives institutions as solid and structured, the study contributes to the theory in that it is not only dependent on rules but also on the role-players, as firms were able to infiltrate the South African State which is rated quite strong in governance frameworks by the Natural Resource index (Natural Resource Governance Institute, 2017). The study further notes that the biggest challenge to tackle the State Capture phenomenon lies in ethical and responsible leadership. It is evident through the study that the gateway to State Capture was through both elected Public Representatives and appointed executives. Responsible leadership manifests in organizational outcomes, and complements "*do not harm*" and "*do good*" dimensions (Doh & Quigley, 2014). Until such time that executives are appointed on merit and in an ethical process, the loyalist approach will continue to provide a fertile ground for State capture to occur. It was further revealed by the study that where oversight bodies are weak, this tends to provide an entry point for State capture.

The study provides a basis for further exploration on how recruitment processes can be enhanced to avoid recycling of resources, whereby the same executives who may have been suspended in another State organ are being employed in another one only because they are identified as conduit to looting State resources or are susceptible to being captured by private businesses. The State capture phenomenon, being a topical issue in South Africa, but also having stimulated a lot of debate globally, provides an opportunity for further research to test the typology of State Capture as proposed in

this study for other varied settings and contexts. An opportunity is further created on understanding the ethical considerations required both at bureaucratic and political structures assigned with the role of representing the majority shareholders, for purposes of averting possible State Capture in future. Following recently reported progress on the incarceration of President Zuma and the questions raised regarding the Constitutionality of the imprisonment, the study provides an additional opportunity to assess the cost of criminal cases against the State resources spent on the phenomenon and state funding directed at establishment of various Commissions of Inquiry.

With this debate hereabove, we submit that competitive advantage in firms puts them into a situation of engaging and capturing the State and strive to sustain such. The study observed that the transformation initiatives introduced in South Africa to address the imbalances of the past in the post-apartheid era provided a gateway to State capture, similar to observations made in Central and Eastern countries where radical transformation (Martini, 2014) opened up opportunities for corrupt activities. These countries' powerful interest groups used the transitional opportunity to introduce formulation of economic policies to their own advantage. Whereas South Africa ensured that there are proper and relevant governance structures formulated for purposes of a formal engagement with business in the form of Stakeholder Management frameworks, the introduction of these initiatives may have provided an opportunity for State capture. While the aim of these initiatives such as Public-Private Partnerships and BBBEE - Broad Based Black Economic Empowerment amongst others, were to address the social ills, firms seized the opportunity to enrich themselves and make profits out of these initiatives. We close with a quote from one of the respondents "*the absence of preventative measures in State Capture is deliberate in order to ensure sustenance of the process through creating dependence*".

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## **ANNEXURE A: Media Reports on Corruption**

### **Damage done by State Capture will be felt for many years to come – Ramaphosa (Eyewitness News, 2021)**

State Capture Report – ANC Steadies itself to address allegations against “cadres”. The State Capture Commission is expected to release its report in October this year. (Seeletsa, 2021)

Lucky Montana says State capture is “ideology of the ruling elite” aimed at blocking radical change. Don’t confuse irregular expenditure with corruption – says former Prasa CEO. (AmaShabalala, 2021)

### **Watch: What Angelo Agrizzi’s testimony tells SA about the extent of state capture**

Former Bosasa executive Angelo Agrizzi continued his marathon testimony at the state capture commission this week. (Business Day, 2019)

### **State Capture ‘bigger than we ever imagined’- Ramaphosa.**

President Cyril Ramaphosa has thanked the media for its role in exposing state capture, and also revealed that the extent to which corruption had corroded government was not fully known until the publishing of the so-called #GuptaLeaks emails. (Makinana, 2018)

### **State capture inquiry “looking into” tender allegations.**

CAPE TOWN - The commission of inquiry into state capture in South Africa on Monday said it was "looking into" allegations that it appointed a subsidiary of a company accused of corruption in the public sector to provide security to the commission without proper tender processes being followed. (African News Agency, 2018)

### **ICYMI: SOE looting | Hidden secrets of SA’s wealthy – the best of City Press**

A damning Treasury report sheds light on the scale of the theft of public funds from state owned enterprises; South Africa's super rich revealed and questions on the

integrity of the Zondo commission into state capture. Here's the best from City Press.  
(News24, 2018)

### **Top 10 Corruption scandals in South Africa**

If corruption has a home, it is South Africa. For its plainly impossible to give an adequate description of the corruption, embezzlement and corporate fraud pervading the country. The government parastatals are virtually out of control, bloated and infested with fraud, deceit, corruption and abuse of power just as the masses are increasingly losing the beauty of their souls in exchange for the money that comes with corruption (Nedu, 2020).

*Figure 1: Media reports on corruption in South Africa*

## **5.2 PAPER TWO - Role of Governance Oversight in mitigating against Institutional Disruptions: State Capture of SOEs in South Africa**

The second paper was presented to the 3<sup>rd</sup> Annual International Conference on Social Justice – 2022 submitted for the theme: Public governance, democratic leadership and access to Justice. The paper was published as part of the conference proceedings.

**03<sup>rd</sup> Annual International Conference on Social Justice  
RESTITUTION**

**11-12 October 2022**

**Role of Governance Oversight in mitigating against Institutional Disruptions:  
State Capture of SOEs in South Africa**

Submitted under the theme:

**Public Governance, democratic leadership and access to justice Conference**

Mihloti Masuluke

Prof. Albert Wöcke

## ABSTRACT

The paper studies the oversight role that Governance structures play within the State and whether they adequately mitigate against Institutional Disruptions. Accountability and effective corporate governance are principles necessary for the credibility and sustainability of an institution, which becomes key in attracting foreign investment aimed at building the economy of a country. Systems, processes, and internal controls contribute towards achieving accountability. Noting that different institutions and sectors apply varying regulatory and governance frameworks to enhance accountability.

In studying the governance structures and frameworks within the South African State-owned entities, voids were identified which rendered the frameworks inept in achieving their intended objectives. We selected to study the Institutional theory within this context, due to the institutional disruptions experienced in the form of mismanagement of resources that led to State Capture in South Africa. The study acknowledges that the Institutional Theory perceives institutions as strong, structured and solid based on rules, laws, norms and standards established to guide their existence, operations and management. Additionally, the rationale for selecting this context is that the new democracy (post-apartheid) brought about the need to redress the imbalances the country was facing, which included poverty, inequality, and unemployment in a non-racial democratic manner through the introduction of transformation initiatives as well as new governance structures; key regulatory frameworks and protocols aimed at holding the executive arm of government accountable in the performance of their Ministries. In addition to various governance processes aimed at overseeing internal controls, the board of each of the State-Owned entities<sup>35</sup> ultimately accounts to the Minister, who accounts to Parliament's Portfolio Committee<sup>36</sup> and ultimately to the National Assembly. This is in addition to internal controls and oversight structures which include the Board and its committees, the Auditor-General who audits both the operations and financial

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<sup>35</sup>State-Owned Entities studied include Eskom (the electricity distributor), South African Airways (National airline), Denel (the security arms supplier), South African Broadcasting Corporation (National broadcaster).

<sup>36</sup> The Committee is made up of Public Representative at National Parliament constituted from various Represented Political Parties

management of the entities and the general public who keep an eye on how their taxes are utilized.

Despite the strong frameworks, the investigation established that these state institutions remained susceptible to capturing by shadow networks while operating within the confines of the regulatory prescriptions. While the paper contributes theoretically, methodologically and practically to the scholarly debate on institutional disruptions resulting from the understudied phenomenon of State Capture, it further provides scholars with the understanding of whether a strong governance framework can mitigate against deinstitutionalization of state entities. The paper provides an opportunity for scholars to further explore how accountability can play a role in the sustenance of state entities as well as holding those accountable for the disruptions criminally liable. Additionally, the paper makes recommendations on strategies towards effective oversight by governance structures to bring about efficiencies that can mitigate against institutional disruptions.

In responding to our research question, we were guided by “*Interviewing the Ultra-elite*” to interview our respondents which comprised of Members of Parliament from various RPP<sup>37</sup>, Ministers, board members of the state entities, relevant academia, analysts, investigative journalists and senior executives and labour representatives.

We provoke a global debate on the perceptions related to institutional theory, identify the voids within governance oversight and the complex phenomenon of state capture and propose recommendations to address institutional disruptions in the area of governance.

*Key Words: Accountability, State Capture, Institutional Disruptions*

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<sup>37</sup> Represented Political Parties in the National Assembly – their role is to hold the Executive Accountable

## INTRODUCTION

Good governance can be impacted upon by corruption (Asongu, 2013; Kaufmann et al., 2000; Nguyen & van Dijk, 2012) which ultimately result in institutional disruptions. Public corporate governance is not as broadly researched as private corporate governance (Nguyen & van Dijk, 2012; Thomas, 2012) and this study offers a perspective on the publicly funded entities and identify voids within the governance frameworks. This paper further researches the role of governance in institutional disruptions resulting from State Capture, which is categorised as another form of corruption. Scholars posit that linkages of corruption, corporate and national governance remains unexplored (Kaufmann et al., 2000) which creates a gap in knowledge.

Although South Africa was moderately ranked at 73 out of 180 countries by Transparency International, an institution that ranks the countries on corruption using a scale that is interpreted as zero (0) for highly corrupt and 100 for a clean governance (Transparency International & International, 2012), corruption and State Capture was later to be exposed in the country's state entities, providing a rationale for this study. Furthermore, South Africa is ranked high in accountability, effective governance and enabling environment (Natural Resource Governance Institute, 2017), however, the effectiveness of governance oversight processes and structures remains a question that can be explored by scholars, considering the scourge of corruption and State Capture that infested state entities in the country (Eyewitness News, 2021), which is a phenomenon that continues to be a challenge globally. Corruption and State Capture has been in the South African public domain (Thomas, 2012) resulting in the recommendation by the Public Protector (Public Protector of South Africa, 2016) for the President to set up a special Commission focussing on how the State was captured. A Judicial Commission was constituted, of which the inquiry became known as the Commission of Inquiry into State Capture or the Zondo Commission, taking after the name of Judge Zondo who headed the Commission.

Transgressions within the South African state entities have been widely popularized (Thomas, 2012) with no major effective consequence management steps taken, thus questioning the systems invested on corporate governance as well as the oversight structures. This is displayed through the report from the Auditor-General that outlined the governance failures of state entities (Auditor-General South Africa, 2018b),



which is supported by inputs during the Commission of Inquiry engagements on the State Capture allegations.

While accountability standards which the Institutional theory is premised from, offer a measure against which governance can be assessed (Shen & Snowden, 2014), we identified that entities remain susceptible to disruptions resulting from poor governance.

We study the governance model and structures and their role of holding the Executive accountable and explore the voids within these structures. From the identified weaknesses, we make recommendations and identify potential future research.

### **South Africa: Governance Model**

Evolving from the colonial era to becoming a sovereign and democratic state, South Africa realised the need to enact new laws and protocols aimed at improving corporate governance (Ajam & Aron, 2007; Scott, 2003; Thomas, 2012) as well as shaping managements' behaviours (Croucher & Miles, 2010). Post the apartheid era, investments were made in the form of governance, accountability protocols and reforms aimed at enabling SOE<sup>38</sup> effectiveness. This required a transition from the initial mandate and objectives of the existing entities to that of a developmental agenda (Mangaliso & Nkomo, 2001). The new agenda required capital injection of state funds to drive the initiatives as observed during the budget allocation of national fiscals (Republic of South Africa, 2016). SOEs continuously faced financial distress resulting in a need to inject additional budgets to enable their sustainability. This concept which became known as "*bail-outs*" from the government (Ajam & Aron, 2007; Martini, 2014) provided a gateway to State Capture as these voids were also identified by shadow-networks and loyalists who recognised an opportunity for self-enrichment.

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<sup>38</sup> SOEs – State Owned Entities

The distinctive role and separation of powers of the three arms (Legislators<sup>39</sup>, Executive<sup>40</sup> and the Judiciary<sup>41</sup>) of government is defined in the governance framework. The study further noted that corporate governance in South Africa is mainly based on the fundamental principles, concepts and philosophies from the King's Report (Croucher & Miles, 2010; The Institute of Directors in Southern Africa, 2016; Thomas, 2012). Ethical and effective leadership is regarded as a factor for good governance (The Institute of Directors in Southern Africa, 2016), however ethical leadership becomes paradoxical in an environment where corruption is so entrenched in all institutions that it has become the way of life (Adeleye et al., 2020).

King's Report contributed in institutionalizing ethical business culture in South Africa (Adeleye et al., 2020) and has been a trusted tool across institutions although it is non-binding and follows voluntary principles and leading practices. Although in a survey conducted within the construction industry in 2015, 68.8% of the respondents viewed King Code as an ineffective tool for good corporate governance (Meyer & Luiz, 2018), it however remains a key reference material for good governance practices. King's report further outlines how corruption can be detected and responded to by leaders through monitoring and oversight. In line with statutory reforms, the King Code recommends the disclosure of corrupt activities and other financial losses through audit committees (The Institute of Directors in Southern Africa, 2016). In aligning the study with the principles of the King's report, leaders have a responsibility to carry out their fiduciary duties, by ensuring that there are relevant and effective strategies employed as internal controls within the work environment of state organs. The King's report stipulates the primary role and responsibilities of a governing body as that of:

- Setting and steering of strategic direction.
- Approving policies and planning that give effect to the strategy and set direction.

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<sup>39</sup> Role of the Legislators (Parliament) in South Africa is to make and pass laws and further provide oversight through holding the Executive arm accountable.

<sup>40</sup> This is constituted by the President and Ministers and is referred to as the Cabinet which is responsible for executing the policies and regulations in serving the people of South Africa.

<sup>41</sup> The judiciary (courts) comprises of an independent body of government constituted of judges and magistrates who sit in the courts of South Africa with a responsibility of interpreting and enforcing laws subject only to the Constitution of South Africa and the laws of the country.

- Ensuring accountability for organisational performance through reporting and disclosure.
- Overseeing and monitoring execution and implementation by management.

In addition to Kings guide of strengthening accountability on utilisation of state resources, the Auditor-General is expected to audit both the financial and non-financial operations of the state entities. Parliament amended the Public Audit Act (Public Audit Act, No 25 of 2004, 2005), to give the Auditor-General authority to recoup State funds reported in the audits as unauthorised, irregular, wasteful and fruitless expenditure incurred by state entities. The Act was amended in 2018 and has not yet allowed for the institution mandated with its implementation to set up the relevant structures for its impact to be recorded. This provides an opportunity for future investigation on effectiveness towards curbing institutional disruptions such as State Capture.

The Auditor-General of South Africa identified and classified some of the SOEs as “*significant risk SOEs*”. These category included circumstances where some of these SOEs are audited by private firms, in that case, the Auditor-General maintained close relations with the firms to ensure that the audits are conducted in line with their directives, ensures consistency and continuous guidance on compliance matters (Auditor-General South Africa, 2018b). With all these systems in place, Auditor-General failed to pick up challenges of going concerns within certain SOEs (South African Airways, 2017) until State capture was in full effect. The country observed the capturing of some of these private auditing firms by shadow states instead. KPMG, one of the auditing firms which audited some of the SOEs studied, the same firm responsible for auditing the Auditor-General was implicated in State Capture. This signifies our view that corporate governance is inherently weakened through capturing of key role-players. There is a questionable concept on the role and autonomy of the Auditor-General’s subjective interpretation of the laws considering that they are funded and accountable to the National Treasury, which in turn they also audit. The independence of the body is then questioned.

The prevalence of investigative journalism in South Africa contributed to exposing State Capture cases. The Public Protector recommended the establishment of a Judicial Commission to probe the conduct of the President (Alence & Pitcher, 2019b). Although there were delays, President (Zuma) eventually conceded to set up

a Commission of Inquiry into State Capture. Those who provided evidence ranged from former and sitting Presidents, Members of the Executives (Ministers), Board members, Legislators (politicians) and Executives in Public entities (SOEs). The magnitude of the scope kept the Commission engaged from 2018 until 2021 with the final report presented to the President only in 2022, the outcome effect of which is yet to be observed. This was following the constitution of various other Commissions dedicated to specific state organs set up to investigate corruption and State Capture activities, inclusive of forensic investigations.

South Africa provides a unique and rich context for corruption research due to its complex history of having evolved from the colonial and apartheid era (Meyer & Luiz, 2018). The country's multi-cultural population and historical imbalances in terms of income inequality, poverty and unemployment contributes to the rationale for studying the context. Its unstable political climate as well as the country being classified as having a well-developed institutional framework further provides a fertile ground for studying South Africa (Meyer & Luiz, 2018).

## **INSTITUTIONAL DISRUPTIONS THROUGH STATE CAPTURE**

Contrary to Institutional theory construing institutions as sound entities established to bring solutions to predefined problems (Holm, 1995; Scott, 1987, 2008; Tolbert & Zucker, 1996), we observed that there is generally poor governance in institutions covering all arms of the State (executive, legislative and judiciary) (Asongu, 2013). These challenges are two-fold in that they not only occur when those who are to account fail to perform, but also when the authorising body lacks the will or capacity to perform (Thomas, 2006) their oversight role although many SoEs sought to reform their governance structures for more effectiveness (Chul Ju Kim & Zulfiqar, 2017). The study recognises that legislators are key in effective governance oversight which can combat corruption, however they have instead become impediments to mitigate against the scourge (Wanjala, 2012).

State capture is differentiated from ordinary corruption and bribery due to the involvement of the elite and shadow networks in influencing institutional decisions for their own enrichment. Scholars define it as seizure of laws through linkages with politicians in parliament and government for corporate benefits (Pesic, 2007b). Members of Parliament are politicians deployed by their respective political parties as public

representatives. The study noted developments within the electoral spectrum with the introduction of a new Bill that makes provision for the independent candidates to contest elections at Federal level (Electoral Amendment Bill B1-2022, 2022). These parliamentarians become lawmakers who play an integral role of overseeing the activities of public entities. The Legislators are expected to hold the Executive (Cabinet) accountable while the Judiciary ensures that the law is upheld over the operations. Should the politicians and parliamentarians be captured, this defeats their lawmaking and oversight role Constitutionally mandated to them.

State Capture results in the state losing its legitimacy, which takes place when there is flouting of rules leading to lack of transparency and accountability (Martin & Solomon, 2016). The paper noted the varying definitions of State Capture by scholars (Dong et al., 2011; Hellman et al., 2000; Martini, 2014; Rose-Ackerman, 1996; Venard, 2009) and concluded that the lack of a common definition is due to the complexity of the phenomenon which is not easily defined. We reviewed various definitions, and our submission is as per Robert Klitgaard's formula (Kaufmann, 1997) which summarises State Capture as:

*Corruption = Monopoly + Discretion - Accountability*

A notion agreed to by scholars who posit that the degree of corruption is worsened by the level of discretionary powers and degree of accountability that bureaucrats possess (Kaufmann et al., 2000). With that understanding, we then sponsor to define the concept in order to bring context to the study as follows:

*“State Capture is a process whereby the Shadow-State (private firms) takes over the strategic function of the State through influencing the direction of policies at the point of law-making (legislators), the implementers and the executive as well as the Judiciary (law enforcement agencies) which ultimately negatively impact the economy and the welfare of a country's citizens”. This definition resonates with most of the definitions and relatively captures the sentiments shared by one of the respondents in that the “boards operate within a pre-determined regulatory environment which does not allow for much creativity” however the capturers targeted the voids within institutions and used those for self-enrichment.*

Notably, the study acknowledged that State Capture is both systemic and systematic as cited by Asongu, (2013) with the main actors of systemic corruption being bureaucratic

elites, politicians and also business men who embezzle large scale funds through false procurement of non-existent goods or creation of artificial crisis, whereas systematic is institutionalised and involves actors who are public officials, politicians and businesses through kickbacks, bribery, large scale embezzlement and misappropriation of public tenders as well as large political donations (Asongu, 2013). While the beneficiaries of State Capture are mostly individuals, private business and Political Parties, the major effect is on the economy, social welfare, service delivery and good governance (Asongu, 2013), which ultimately impact the livelihoods of the public who are the major stakeholders of the State.

Institutions operate within an economic environment which requires financial support to exist and thrive. To undo the legacy of apartheid, South Africa had to invest major financial capital into the economy, which did not only put pressure to National Treasury, but also on the institutions that were ordinarily not geared towards that objective (Meyer & Luiz, 2018). Studies have shown that through globalization, foreign direct investors move operations to countries which display good governance and sound ethical conduct (Adeleye et al., 2019; Thomas, 2012). Any developing country requires foreign and direct investments to sustain itself economically (Thomas, 2012), and poor governance has a negative impact on the economy of a country (Kurtz & Schrank, 2007) and thereby impact the institutions and the citizens. Notwithstanding that corruption has a negative effect on foreign direct investments (Adeleye et al., 2019; Clarke & Xu, 2004; Doh, Rodriguez, Uhlenbruck, Collins, & Eden, 2003; Treisman, 2000; Uhlenbruck et al., 2006; Xu & Yano, 2017). Should corruption be left unchallenged, the affected country would have to pay a high price for its remnants.

## **GOVERNANCE OVERSIGHT**

Being accountable implies that institutions are able to openly and transparently explain their actions in a justifiable manner (David, 2017). Where state entities are publicly funded, the need for oversight over these publicly funded institutions become important. Scholars posit that governance structures struggle to mitigate against institutional disruptions despite the governance systems set (Neu et al., 2015). Scholars have further argued that institutions and oversight bodies aid State capture (Grzymala-Busse, 2008), contributing to the rationale for conducting this study. This study found

that the South African government failed to fulfil its oversight role of ensuring good governance in State-owned entities which enabled the sustenance of state capture. The Auditor General of South Africa, in their August 2013 report on Municipal Audit outcomes indicated that: *“a lack of decisive leadership to address the lack of accountability by ensuring consequences against those who flouted basic processes that hampered effective municipal governance. ....it is now five years later, and we are still faced with the same accountability challenges that we flagged throughout these years.”* This substantiates our view that governance remains a leadership challenge in spite of the governance frameworks, rules, norms and standards that the Institutional theory regards as a basis for sound governance. A notion agreed by scholars that very little evidence is visible as a result of all legislative enactments (De Waal, 2010; Thomas, 2012; Thomas, 2006). Various governance frameworks such as oversight, internal audit committees, internal controls aimed at managing the risk of corruption and enhancing effectiveness of management (Wanjala, 2012) have not been able to stop institutional disruptions caused by corruption. The investigation established that boards of institutions play a central role in oversight and accountability (Thomas, 2012), however, where there are notable challenges in addressing accountability, new initiatives get to be introduced (Thomas, 2006; Vaseashta et al., 2010), this is observed in the introduction of interventions by the South African government to address institutional disruptions emanating from corruption.

Where transgressions leading to institutional disruptions are observed, the Judiciary, which forms components of structures established to fight corruption (Wanjala, 2012) should play their role, which Wanjala (2012) cites that they can only do so if they themselves are free from corruption. Corruption has become a way of life acceptable to the majority of the people while those not corrupted yearn to see the next leader in government addressing corruption (Lessig, 2012). The study on corruption in South African Multinationals posit that the accountability and oversight bodies are themselves corrupt (Luiz & Stewart, 2014) which contributes to continuing corruption. The investigation noted that institutional disruptions become fertile in instances where there are institutional voids, leading to weakening of oversight (Luiz & Stewart, 2014) by those assigned the responsibility. The governance oversight and accountability challenges

extends beyond developed countries since some of the BRICS<sup>42</sup> countries were not immune to these challenges (Thomas, 2012).

## INSTITUTIONAL VOIDS

The South African governance framework creates a barrier for the legislatures to hold the Executive accountable (Alence & Pitcher, 2019b), although controls such as auditing of the financial and non-financial performance is part of the protocols that is aimed at enhancing governance and oversight. The study identified several inhibitors and voids to corporate governance which aided the institutional disruptions. These voids impact the value chain of an institution (Luiz & Stewart, 2014). Top on the list is the mismanagement of resources which was activated through the introduction of transformation initiatives (Martini, 2014). These initiatives provided a gateway for mismanagement of resources by the public entities and ultimately resulted in deinstitutionalized entities.

Scholars cite that “*deteriorating public governance may contribute to high levels of corruption*” (Nguyen & van Dijk, 2012) substantiating our submission that there is correlation between governance and institutional disruptions. In addressing the historical imbalances suffered pre-democracy in South Africa, the concept of “*cadre deployment*” was misused to benefit a few (Croucamp, 2019) that were loyal to the governing Political Party or certain individuals occupying key positions within Party structures. We observed similar traits in the Party recruits engaged in Serbia (Pesic, 2007b), some of the individuals would not necessarily possess the right skills for their roles, whether administratively or at oversight level, but managed to secure key positions due to their allegiance.

Additional voids include the need for balance between sustainable profit maximization of entities against transformation agenda, a phenomenon which the governing Party (ANC<sup>43</sup>) contends that it remains a challenge two decades post democracy, as proclaimed by the former President Thabo Mbeki (Al Jazeera, 2022; Eyewitness News, 2022) who publicly acknowledged the poor and ineffective strategies

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<sup>42</sup> BRICS – Brazil, Russia, India, China and South Africa

<sup>43</sup> African National Congress – the Political Party in the governing seat since democracy



employed since democracy. Balancing between the mandate of the entity and addressing the historical challenges of unemployment, inequality and poverty provides a void which further questions the autonomy of the state entities. Scholars posit that the institutional voids contributes to delays in business processes as well as high costs of services (Luiz & Stewart, 2014), although it is further argued that these voids may be used as opportunities (De Waal, 2010) for exploring intervention strategies aimed at minimizing institutional disruptions. Some of the visible negative effects is the continuous rolling electricity blackouts by the electricity supplier aimed at managing the possible collapse of the national grid, the loss of employment and the poor public service offering. These effects affected the economy of the country negatively.

## **METHODOLOGY AND DESIGN**

Scholars generally hold the perspective that Institutional theory is broadly studied (Scott, 1987, 2008; Tolbert & Zucker, 1996), has reached mid-life crisis and has '*gone beyond its purpose*' (Suddaby, 2010), a gap that the study was focussed on is determining how these institutions with strong governance regulatory frameworks have remained susceptible to disruptions of State Capture. We found that a qualitative study would be relevant to determine the real-life phenomenon through gaining insight on the experiences of role players. We established that many scholars based their Institutional theory studies on quantitative research (Suddaby, 2010; Tolbert & Zucker, 1996). We therefore submit that the approach may not necessarily bring about the voice of the researcher in articulating the full meaning to the institutional story, which a qualitative study can bring about through understanding how individuals locate themselves in social relations (Powell & Colyvas, 2012). The above views necessitated the study from a perspective of qualitative research.

Using South Africa as our empirical setting afforded us the opportunity to access the ultra-elite who are prominent individuals that have been operating at political level and top executives, some of whom were synonymous with State Capture phenomena. This category is inclusive of Ministers, Board Members, Leaders in the governing and opposition Political Parties, Members of Parliament, Investigative journalists, Chief Executives in the State Entities as well as Academia and Analysts focusing on State

Capture. A preparatory phase preceded the interviews (Tellis, 1997; Yin, 2013). A thought process went into the planning phase to allow for flexibility as posited by Grünbaum, (2007) who cites that, cases “*tolerate some kind of flexibility given the practical reality of data collection*” (Grünbaum, 2007). Some of the respondents who did not trust the process were unwilling, however once they realised that the objective was to explore varying views, they indicated the desire to contribute to the scholarly subject. The timing of the interview, during a process where the Commission of Inquiry into State Capture was in progress in South Africa, contributed to uncertainties. Other respondents needed to ascertain that the data collection was solely for scholarly use and opted for a contact session rather than a virtual session. All interviews were recorded and securely stored. Challenges of interviewing the elite included working through a personal assistant or diary manager and the constant need to reschedule at short notice, either due to loadshedding<sup>44</sup> disrupting some of the interviews or some of the respondents required for unscheduled urgent media interviews. Considering that most of the respondents were scheduled to testify at the State Capture Commission, others did not feel comfortable to continue with the interviews prior to first appearing in the Commission.

A total of 142 potential respondents were identified and personalised invitations sent to 78 individuals. Forty-seven (47) respondents accepted and indicated their willingness to participate. Some could not go through with the interviews and only thirty-four (34) were interviewed.

## **RESULTS AND DISCUSSIONS**

The investigation noted that despite the strong governance framework, institutions are susceptible to disruptions, specifically State Capture. Shadow states identified voids within the regulatory environment and systematically created artificial crisis to enable capturing of the State.

Whereas, accountability within institutions exists where there is a formal relationship which is governed by processes (Thomas, 2006) as well as systems within an environmental setting. Where institutional disruptions such as State Capture take place,

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<sup>44</sup> Rolling blackouts by the Electricity supplier (Eskom) to prevent the collapse of the National grid.

the State abdicates their Constitutional responsibility which is then taken over by the Shadow state. The study reviewed the accountability and oversight players in the South African state aimed at enhancing accountability, noted the separation of powers, acknowledged the varying roles played by the different arms of the State in the SOEs, and captured the understanding of the oversight model in the following summarized depiction:

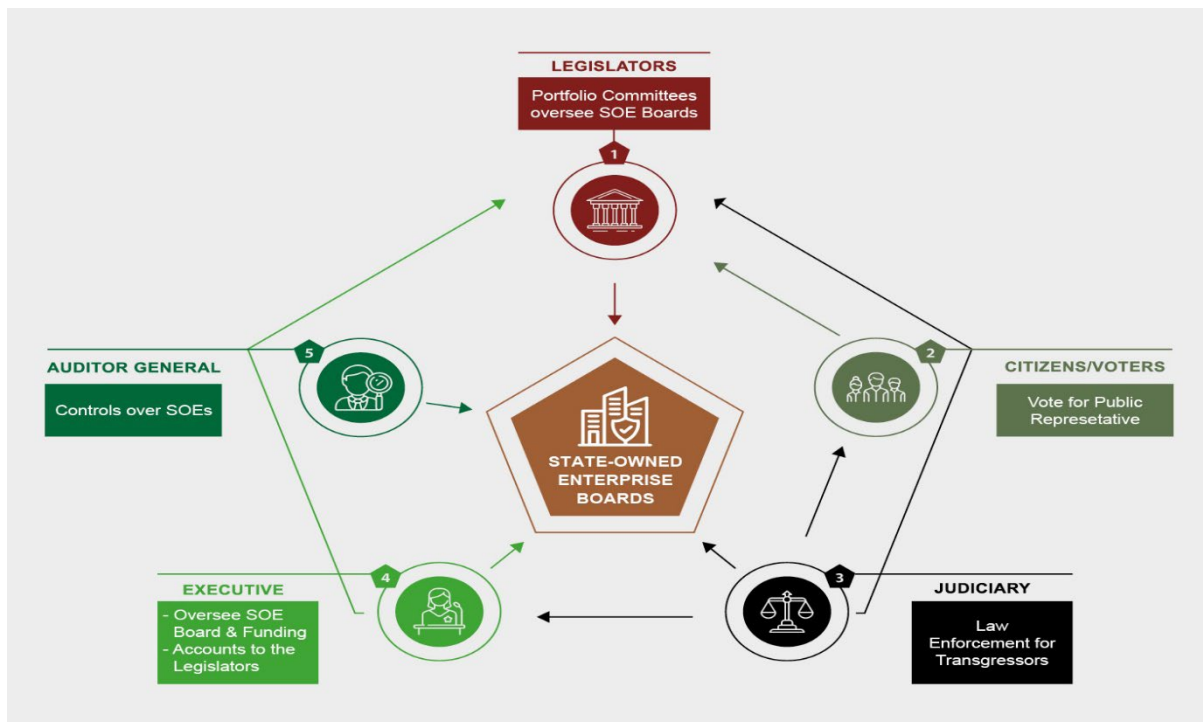


Figure 1: SoEs Oversight Machinery in South Africa – Source is the author.

Accountability and Oversight framework interpreted:

- a) State-owned entities are established with a specific mandate to deliver services to the people in a fair and principled manner. They further have a role to raise enough capital to sustain their operations (profit maximization). Whereas the regulatory environment governing the entities require that the board oversee the operations of the institutions. While on the other hand executives in boards are expected to establish an enabling environment through systems, processes and internal controls. The board accounts to the Executive Authority (Minister) and to the Legislators (Parliament) through the Parliament’s Portfolio Committee.

- b) The Executive arm of State has a responsibility to appoint the board and oversee the operations through the Executive Authority (Minister) who accounts to the Portfolio Committee in Parliament (Legislature). Furthermore, through National Treasury, provision of operational and capital budget to SOEs is done to allow for service offering.
- c) Legislature (Parliament) passes the regulatory framework for SOE operations (laws). They in turn hold the Executive accountable through oversight processes operationalized through reports of the Portfolio Committee which are tabled and debated in the National Assembly.
- d) The Auditor-General audits the financial and non-financial performance of SoEs and further table the reports to Parliament. They assess internal controls instituted to mitigate against risks.
- e) The Judiciary prosecutes on any transgressions based on the laws passed by Parliament.
- f) People/citizens/voters, formations and business become the main shareholders since they vote the government into power and in return expect service delivery from the state. They therefore require those that they elect to power should be accountable to them considering their tax contribution to the public funds.
- g) Ministers (Executive Authority) are Political Party deployees and are ordinarily quite very senior within the Party structures. They are responsible for appointment of the board as well as the Chief Executive (Accounting Officer) as per the regulations. The research established that some of the appointed Executives, an example is Brian Molefe who was deployed to both Transnet<sup>45</sup> and Eskom, were results of *cadre deployment* (a policy of the governing Political Party). Although competent and qualified for the job, he was later connected to the Gupta firm which was key to capturing the State. He was a Party loyalist, and took questionable decisions which led to institutional disruptions (Commission of Inquiry into State Capture, 2018a; Gules & Masondo, 2018; Public Protector of South Africa, 2016; Republic of South Africa, 2018a). One of the Ministers (Gigaba) tasked with the portfolio of overseeing SOEs, signed as witness, certain contracts which were also ratified by the board (Fundudzi, 2018), contrary to the provisions of the law which bars Public Representatives from doing so. Similarly,

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<sup>45</sup>A state-owned entity responsible for South African rail, port and pipeline established on 01 April 1990.

the Minister of Finance unilaterally took decisions impacting on the law during the Covid 19 Pandemic, to extend the submission of 2021/22 Annual Financial Statements with no consultation with the Auditor-General as prescribed. These actions exemplify the abuse of public office as well as the dysfunctional governance system and further substantiates the voids identified by the investigation as well as the sponsored definition of State Capture. The Inquiry report acknowledges that the public entities were captured due to the dysfunctional governance system (Fundudzi, 2018).

To assist in holding the board accountable, the Members of the board enter into an agreement with the Minister through the shareholder's compact and Corporate Plan (Commission of Inquiry into State Capture, 2019e; Thomas, 2012). One of the respondents who happened to be a chairperson of one of the SoEs stated that the contents of the shareholders' compact would be deliberated with the Minister prior to signing and having to solely put the blame of the institutional dysfunction of the SOE on the board without the Minister acknowledging part of the responsibility would be unfair. While another respondent is quoted supporting the submission that board members have little influence in the effective management of the state entities:

*“It is not up to them; they can do very little. Uhmm a [sic] so the politicians again make the appointments, they set the rules. If you appoint a board, then you have great influence, even if the board has great ideas, they operate within a space which is predetermined by government”.*

Ministers are in turn held to account by the Portfolio Committee that is normally chaired by a deployee from the same Political Party, who under normal circumstances is quite junior to the Minister within the Political Party structures. The study noted that the different Political Parties converge in a caucus<sup>46</sup> meeting prior to a session whereby accountability is expected. In this session both the Minister and the Chairperson are expected attendants. It is post this session that the chairperson (junior in Political structures) will preside over a session holding the Minister (senior in political structures) to account.

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<sup>46</sup> A meeting of Political Party representatives meeting independently to deliberate on tactics/strategy to approach a particular matter. This is a pre-meeting in preparation for the bigger meeting.

Regardless of these governance processes, we observed Institutional disruptions caused through State Capture by shadow states. Of concern is that even some of the auditing firms who are mandated to assess the controls such as KPMG, Deloitte and PwC were implicated (Le Roux, 2020; Online Tenders, 2021) in State capture. These firms audited some of the State-owned entities (SAA and Eskom), whilst at the same time were also auditing the Gupta owned companies (Eberhard & Godinho, 2017; Ephron, 2021; Public Affairs Research Institute, 2017; Republic of South Africa, 2018; State Capacity Research Project, 2017; The Financial Times Limited, 2018) which was doing business with the State and has been synonymous with State Capture in South Africa. When asked about these corrupt activities, one of the respondents said:

*“You also have the entities such as the audit firms which ought to be doing their work, they themselves now have become unethical, some of them, you have seen KPMG, you have seen even Deloitte and others being compromised. So you are beginning to see a mutually reinforcing corrupting relationship, wherein all the different control measures were contaminated and sometimes allowed for these entities to pass without holding anybody to account.”*

The financial sector was also implicated in aiding the State Capture process. The Bank of Baroda was associated with the Gupta linked firms (Nicolson, 2018). This symbolizes the systematic approach used by shadow state to create a systematic parallel government aimed to disrupt state institutions. Regarding the weakening of the Constitutional state, one of the respondents said:

*“Because if you are in the leadership of the institutions, you can change the rules and this is the thing about state capture, it’s changing the rules, it’s not just bypassing the existing rules, it’s changing the rules. So, you find rules around procurement being changed internally within the departments, the manner in which decisions are being made, are rationalised differently because the leadership is legitimising it, right. So, from the appointment perspective that is one of the key steps. The second step would be then to look at how do you ensure that these people that you have appointed to keep positions are not harassed by oversight bodies. The strategic and systemic weakening of these oversight bodies then has to take place.”*

The Judicial arm of the State was also identified as a contributor to the poor governance process. As a structure entrusted with the mandate to interpret and enforce

laws through prosecution, the public trust on the Judiciary was questioned in South Africa when transgressors were not brought to face justice despite glaring evidence tabled in various judicial inquiries. One of the respondents had a lengthy deliberation on the matter and is quoted as saying:

*“I’m glad you asked that question because your question, before I answer it, shows us the enormity of the problems we are facing. It shows the enormity of the failure, systemic and otherwise, that we have faced since 1994 and how those failures have led to what is called state capture. But let me give you an answer to your question, but I’ll be short, you can come back to it when you ask a follow up question. The capacity of the state is very important, the post-apartheid state is a weak state and when you have a weak state, and COVID-19 is showing us how weak this state is, it has exposed us to how weak the state is. You have a state, even pre-COVID-19, that struggled to deliver Panado [paracetamol] to patients. And therefore, that same State... we should expect will have the capacity to arrest corruption. So, the weakness of the post-apartheid State is another reason why we have had this level of corruption or what is called State capture. To answer your question directly, between the end of 2006 and January 2009, I was part of a group that was called the parliamentary review committee. Our job was to assess the work of parliament from 1994 to when we finished our work in 2006. You can look for the report because we produced a report based on that assessment. For me what became very clear is that parliament since 1994 had been quite weak when it comes to performing its oversight function. Again, weak because our parliament is loaded with an ANC majority, this party that I’ve already said represents single party dominance. So, the weaknesses I have spoken about in our political system extend to the functioning of parliament because parliament is one of the places where this reality of single party dominance manifests in terms of how parliament is loaded with ANC majorities. Which therefore means that the effective performance of the oversight function cannot happen without the consent of the majority party, if such happens, the performance of the oversight function will compromise the majority party. So that’s my short answer about parliament. You can extrapolate from what I have said to all the other areas you have identified that their inability to the structures that reinforce a culture of accountability is not just an inability, it is a refusal because they, in terms of the deployment strategies of the dominant party, they themselves are loaded.*

*Whether we are talking about the board of Denel or whatever, even if some of the people are not card-carrying members of the ANC. There are two things you can say, that those boards are either loaded with ANC loyalists or are loaded with people who are loyal to the logic of the dominant faction in the ANC and in some cases of course, are members of the ruling party. What all of that does is to create a situation where even at board level, the board is loyal more to the interest of the deploying party than it is to good governance. Now it will be argued that board members are not elected in ANC meetings or at ANC conferences, and my response to that is this, I spoke about hidden hierarchies, hidden hierarchies are transversal in nature, so if you use a ruling party as a starting point, the ANC itself has its own hidden hierarchies and the function of hidden hierarchies is to act outside and to make decisions outside formal or legal structures of government. And therefore, there is an extent to which it is through the political process that even entities such as boards take shape. Worse, the ANC increasingly, if I use let's say 2005 as a cut-off point, I use it as a cut-off point because it was in 2005 that President Jacob Zuma is fired as deputy president of the country. It was from that moment onwards that the rebellion against former president Thabo Mbeki gained momentum, in a way that rebellion delivered what we have today. Both the ruling party and the State[sic] in a way, the factional battles to win control over the ANC has compromised state capacity in a sense and therefore the faction battles in the ANC have delivered the levels of corruption and state capture. And therefore, have contributed to the high levels of institutional uncertainty. And remember the institutional uncertainty extends even to the judiciary, we have the case of Judge Hlope against whom the allegation is made that he tried to influence the outcome of a Constitutional court matter, by influencing a judge of the Constitutional court, Bess Nkabinde if my memory serves me well”.*

The above responses elaborate on the magnitude of the oversight challenge and further questions the public trust on the Judiciary and the contribution of the Judiciary to institutional disruptions. The above quotes representing the voice of the respondents substantiates our sponsored definition of the holistic state capture phenomena. Poor corporate governance in the SOEs has resulted in loss of investor confidence (Thomas, 2012) and public trust. Whereas single party dominance contributes to the poor



governance oversight. The South African example of the ANC<sup>47</sup> “*step-aside concept*”<sup>48</sup> has proven to be ineffective using the example of those implicated in the Commission of Inquiry into State Capture and the allegations against the sitting President on the “*Farm Gate saga*”<sup>49</sup>. Public confidence is lost on the government’s credibility which inherently weakens the governance system. The danger of single party dominance (Boucek, 2012) and as cited in the quote above has resulted in fatalities as could be noticed in the ignorance at oversight level within the Gauteng Province wherein the official opposition party, the Democratic Alliance (DA) raised concerns on the negligence for mental health patients housed in Esidimeni hospital. The matter was suppressed at oversight level resulting in fatalities, major loss of public funds and major institutional disruption (Doh, Rodriguez, Uhlenbruck, Collins, & Eden, 2003; Laws & Mcleod, 2006; Makgoba, 2017). In less than nine months, more than 94 mentally ill patients under the Department of Health died, in contrast to the 36 that the Department had reported. All patients died under unlawful circumstances. The catastrophe is attributed to poor reporting and accounting by the Executive arm of the State and the lack of quality and reliable information. The Commission of inquiry established for investigating the matter presented evidence that the political head (Executive Authority) and top executive were involved in the chaotic decision that led to the catastrophe and also flaunted legislative regulations (Makgoba, 2017).

The study noted that the unstable political climate exacerbated by the envisaged concept of coalition governments<sup>50</sup> as well as the new amendments to the electoral regulations will always render governance and oversight a challenge in State institutions, a phenomenon worthy of scholarly exploration considering the instability and contribution to institutional disruptions.

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<sup>47</sup> The Political Party governing since democracy (1994) in South Africa at federal/National sphere.

<sup>48</sup> A decision taken by the ANC that those charged with corruption or facing criminal charges should voluntarily step aside from holding public office.

<sup>49</sup> In 2020 there were reports of a robbery that took place at PhalaPhala farm which is owned by President Ramaphosa which involved large sums of cash in foreign currency found stashed in a couch. The incident became known as the Farm gate saga.

<sup>50</sup> A concept for alliance of political parties who did not win enough majority seats to form a government resulting in a hung legislature. They combine with other willing political parties and form a coalition government.

## CLOSING

In this paper we explored how the strong governance frameworks of the South African State entities have not translated to good corporate governance and resulted in Institutional disruptions observed in the form of corruption and State Capture, despite the perceptions of Institutional theory. Although Institutional Theory regards institutions as solid entities due to the sound governance and regulatory frameworks, scholars argue that policies become obsolete if there are no proper mechanisms set up to monitor its implementation, mainly where the government is the sole actor (Shen & Snowden, 2014). The regulatory frameworks for governance within the institution can only make an impact if they are enforced, and if not, their influence on social behaviours become limited (Venard, 2009). Significantly, a weak institutional framework becomes a gateway for unethical behaviours to manifest (Venard, 2009). Power can only be effective when the rules and laws set are backed up by the necessary penalties for contravening those rules (Willmott, 2015), which is a mandate of the law enforcement agencies and the Judiciary. South Africa has experienced the enforcement of laws being weakened by the players of the game (institutionally through shadow state), as it is evident in the affidavits deposited in the Zondo Commission of Inquiry into State Capture (Agrizzi, 2019; Agrizzi & Commission of Inquiry into State Capture, 2019; Business Day, 2019). Venard's (2009) view of weak institutional frameworks is supported by other scholars who contends that institutions grow isomorphic when they are under pressure and thereby conform to coercive pressure when managers respond to formal and informal instructions arising from dominant stakeholders (Venard & Hanafi, 2008).

Neu (2015) argues that prevention and detection activities can positively contribute to reduction of corruption, a notion that this study submits remain a scholarly challenge. Scholars postulate that a weak legal system and ineffective strategies may render detection and restitution ineffective (Prabowo et al., 2018). When oversight and governance fail the State, the question for further exploration is to respond on who oversees the overseer? While we note that active citizenry contributes to effective accountability and oversight whereby the citizens hold those in power accountable (Dafydd & Badanjak, 2020), as the study observed the force behind the exposure of State Capture was the pressure by the citizens, however the scholarly question remains

if the public is in a position to make meaningful contribution to effective accountability and oversight, a call also made by a former legislator in his opinion piece (Gana, 2022).

We sponsor that prevention of corruption (Prabowo et al., 2018) can prove to be more beneficial than managing the repercussions, which very few legislatures have been effective in implementing (Wanjala, 2012). There is a need to explore various systems and processes to undo the legacy of apartheid other than to use SOEs as a vehicle for transformation as this has not yielded positive results in almost three decades, instead, it has resulted in institutional disruptions which affect the economy of the country and ultimately negatively impacting the citizens.

The effect of the amendment to the Electoral Act, the ethical conduct and competencies of elected public representatives remains to be explored whether it will improve the quality of oversight and mitigate against institutional disruptions. Single party dominance and the sustenance of cadre deployment policies of the governing party will be tested through the voice of the voters during the election period, and whether this will contribute positively to mitigating against institutional disruptions remains a theory worth testing. Furthermore, policy uncertainty, ambiguities, and contradictions on the role of State-owned entities within the transformation agenda offers an opportunity for scholarly debate. We close by a quote by one of the respondents who summarized state capture In South Africa as:

*“.....but the degrading of these institutions so that they are at a constant chaos and this chaos was not just accidental, it’s planned. Because if you are at constant chaos and you are constantly having to look at how to build an institution, so that’s the chaos theory that is also linked into the systemic repurposing of state institutions. That’s why when you look at state capture in South Africa and places like Brazil, and you see the planned nature of it, you can see not just one bad apple, it was a group of people that would come together and plan what they were going to do and have a long term time frame. They didn’t see it happening over 2-3 years, they saw it happening over 5-10 years, so the planning was long term.”*

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### **5.3 PAPER THREE - Ethical Dilemma of Transformation in South African's State Entities**

The third paper is yet to be submitted to a journal for publication.

## **Ethical Dilemma of Transformation in South African's State Entities**

**Mihloti Masuluke**

**Prof. Albert Wöcke**

## **ABSTRACT**

Corporate Governance embodies systems, processes and internal controls from which entities are directed and held accountable. An effective governance framework can be used as a tool to benefit the country through displaying efficiencies and stability required to attract foreign investment that can result in socio-economic growth. Institutional theory is perceived as broadly studied and matured based on rules and laws. Transformation requires those rules to change to accommodate a reform which creates tensions for institutions. The study noted that changing rules for transformation provides an opportunity for manipulation of business ethics despite the strong governance frameworks and oversight structures institutionalised.

This paper explores these challenges using South Africa as our empirical setting, studying how the state entities struggled with tensions between a legitimate requirement of transformation (addressing historical injustices) and that of expanding the reach not initially designed for. We identify the key transformation initiatives introduced and conclude that those initiatives have not addressed their intended objectives. We considered the investments made towards transformation and arrive at the conclusion that transforming ethically remains a dilemma that the State continues to battle with which leads to the recommendations of the study.

We locate the research within the Institutional theory, which perceives institutions as sound and structured entities which are governed by rules, norms, standards and laws. Although the theory is broadly studied, a gap exists on how institutions change the rules for corrupt activities which eventually resulted in institutional disruptions. We use primary data to validate our secondary data. We interview prominent politicians such as Ministers and Members of Parliament, whistle-blowers, analysts, journalists, board members, academia and executives synonymous with state capture. The qualitative approach selected for the study gained insight on the real-life experiences of the actors associated with the phenomena.

We established that although institutions are perceived as efficient structures designed to provide solutions to predefined problems, transforming ethically remains a far-fetched reality.

*Key Words: Ethics, State Capture, Transformation, state entity*

## INTRODUCTION

At the dawn of democracy, South Africa was faced with the dual challenge of overcoming the racial injustice brought about by apartheid while at the same time expanding the capacity of state entities which were not initially designed for such a massive reach. This called for transformation of state entities in the country's post-apartheid journey towards a more inclusive and equitable society. These challenges and the need to address the legitimate requirements of both transformation and expansion of capacity caused tensions and weaknesses on governance. State entities have been in the centre of turmoil and financial distress which embodies the tensions between transformation and repurposing of entities to cater for a larger populace. State owned entities providing electricity (Eskom) and commercial rail network (Transnet) were recorded respectively by the Council for Scientific and Industrial Research (CSIR), in the year 2022 as a cause for concern, in that South African economy lost R560 billion (29 455 billion \$ USD) with the country having a non-existent plan to end load-shedding<sup>51</sup>. Whilst the collapse of Transnet is set to cost the country R1 billion a day in economic output equivalent to R353 billion (18 575 billion \$ USD) in 2023.

With South Africa ranked very high on governance, the paper seeks to understand if there is a relationship between transformation and corruption. This argument provided a motive for the Institutional theory to be studied within this setting. Institutional theory regards laws and rules to underpin the structure of institutions, however, the study noted that these laws are subject to interpretation (Dacin et al., 2002; Scott, 2008) and can be manipulated. The study is anchored on Institutional theory which perceives institutions as strong and solid based on the rules that provides stability. While the theory refers to set rules, transformation however requires the change in rules.

Using South Africa as a context proves beneficial for the study due to the historical challenges but also due to it being a developing country which require a stable economy to sustain itself. Studying the state-owned entities provided the relevant context in view that SOE<sup>52</sup>s have been at the center of the world's biggest scandals (Gillies et al., 2018).

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<sup>51</sup> Load-shedding -rolling blackouts implemented by the power utility (ESKOM) to avoid the collapse of the electricity grid.

<sup>52</sup> State-Owned Entities

With corruption being such a complex phenomenon to study, contain or prosecute on (Olken, 2009), and having been studied broadly over the years (Tanzi, 1998), any opportunity that provides an entry point for individuals or firms to enrich themselves has a potential to cripple the economy of the state. Corrupt activities and a weaker economy impact foreign direct investments (Adeleye et al., 2019; Clarke & Xu, 2004; Doh, Rodriguez, Uhlenbruck, Collins, & Eden, 2003; Treisman, 2000; Uhlenbruck et al., 2006; Xu & Yano, 2017) and should unethical conduct and corruption be left unmanaged, the affected country would pay a high price for its remnants, which include financial distress.

Strong governance frameworks and enacted legislation are the cornerstones of a solid institution (North, 1998). South Africa is ranked high in accountability, effective government and enabling environment (Natural Resource Governance Institute, 2017). Whereas the mandate and key objectives of the state entities remains profit maximization and provision of quality service delivery (Mangaliso & Nkomo, 2001). A scholarly debate remains whether ethical conduct is based on varying beliefs; as an action may legally be unacceptable but culturally acceptable as displayed in a study on graft and corruption in the Philippines (Cariño, 1979). We base this study on what is legally unacceptable based on the regulatory framework in South Africa. The fundamentals of our study regards ethical leadership as possessing a sense of identity that defines an individual or organisation's core beliefs and values (Reilly, 2006), by doing good and avoiding harm (Orb et al., 2001), wherein an individual "*does what is right when no one is looking*".

Institutional transformation is not an abrupt but subtle process of which its effects can only be observed over a period (Powell & Colyvas, 2012). The objective of transforming in South Africa included "deracializing" the control of the economy (Meyer & Luiz, 2018) through introduction of affirmative action programs. These initiatives became a gateway for powerful interest groups to influence the formulation of policies for their own advantage (Martini, 2014), with buying of such powers leading to the phenomenon of State Capture.

We interview a wide range of respondents including the ultra-elite associated and implicated on state capture some of which were participants in the Zondo Commission – a special commission appointed by the President to investigate the capture of the state. Additional categories of respondents included whistleblowers, journalists, politicians,

executive in state entities and board members of state entities. Through the different types of data collection, we reach data saturation and validity. Data risks were mitigated from the initial stages of data collection considering the sensitivity of the phenomena investigated. Confidentiality of the respondents was of utmost importance since the subject was a topical matter in the context of study. The opportunity provided by using South Africa as our empirical setting assisted with data handling as most information was already in the public domain.

The study established that the interplay between the legitimate and imperative need to transform and that of expanding state institutions' capacity ultimately caused tensions and led to a dysfunctional state. We noted that while implementing corrective measures, the state exposed itself and became susceptible to unethical conduct and corruption at both operational and governance level. In attempting to address the national transformational challenges, the State invested more financial resources towards capital projects (Republic of South Africa; 2016). Noting that graft in Africa constitute the largest financial cost (Hanson, 2009), this initiative by the South African state to inject more financial capital to state entities exposed those assigned to managing the budgets to possible corrupt activities. We noted that the governing party (ANC<sup>53</sup>) in redressing these unique historical, social and political challenges created by the apartheid state, developed protocols and practices for a developmental agenda, some of which remain in place, such as cadre<sup>54</sup> deployment. The process of cadre deployment has been brought to judicial test and found wanting.

## CONTEXT OF STUDY

The socio-economic challenges in South Africa are both structural and systematic (Masipa, 2018). South Africa emerged from the apartheid era into democracy in the 20<sup>th</sup> century, with its first democratic elections held in 1994 (Masipa, 2018). During the pre-democratic era, South Africa was excluded for decades in international economic activities (Minnaar, 1999) due to imposed international sanctions. The introduction of the concept "*radical socio-economic transformation*" came about from the high

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<sup>53</sup> African National Congress – a Political Party in the governing seat since 1994.

<sup>54</sup> One of the respondents defined a cadre as a "*term used in the military denoting a soldier who takes orders without questioning.*"

unemployment rate, poverty and inequality (Masipa, 2018) inherited from the apartheid era. This notion of the governing party became policy of the state.

Considering that institutions are governed by solid rules and frameworks, South Africa developed a number of protocols aimed at the developmental agenda, which formed its basis on transformation aimed at redressing the imbalances of the apartheid era (Mangaliso & Nkomo, 2001; Masipa, 2018). These initiatives included a number of legislative prescriptions (Wanjala, 2012). A few of the examples of such initiatives are deliberated hereunder:

- a) Reconstruction and Development Programme (RDP) which was aimed at building a non-racial, non-sexist democratic country (Masipa, 2018; State Capacity Research Project, 2017);
- b) Growth Employment and Redistribution Strategy (GEAR) which replaced the RDP<sup>55</sup> – Reconstruction and Development Programme (Masipa, 2018; State Capacity Research Project, 2017) with the aim of creating a competitive fast-growing economy that would create sufficient jobs, distribute income to address poverty as well as safe and healthy environment;
- c) Accelerated and Shared Growth Initiative (ASGISA) (Masipa, 2018; Thomas, 2012) with the purpose of introducing policies and interventions which would grow the country's economy to halve poverty and unemployment by 2014;
- d) National Development Plan (Masipa, 2018) an action plan aimed at eradicating poverty and reducing inequality by 2030.
- e) Broad Based Black Economic Empowerment Act- BBBEE<sup>56</sup>, a procurement qualifying criteria that promoted the previously marginalised and fostered inclusivity (Croucamp, 2019; Broad-Based Black Economic Empowerment Act, 2003, 2003; A. Thomas, 2012).
- f) Affirmative Action. The process involved change of policies and practices which favored previously marginalized groupings (Ajam & Aron, 2007;

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<sup>55</sup> A South African socio-economic policy implemented post apartheid in 1994 by the government of President Nelson Mandela. A programme that advances the country's major social problems such as housing, clean running water and sanitation.

<sup>56</sup> BBBEE – Broad Based Black Economic Empowerment Act which prescribed black economic empowerment to assist the transformation process. The Act gave prominence to historically disadvantaged individuals in procurement within the State.



Croucamp, 2019; Hyslop, 2005; Madonsela, 2019; Meyer & Luiz, 2018; Tolbert & Zucker, 1996). This necessitated establishment of formal processes that aimed at promoting the appointment of historically disadvantaged people in positions (Croucamp, 2019; Tolbert & Zucker, 1996) within private and public sector.

Relevant structures were set up to manage and provide oversight on the operationalization of the above policies (Ajam & Aron, 2007; Scott, 2003). While the aim of the above protocols was a noble idea, the process exposed the country to unethical behaviors at different levels. Opportunists and “*shadow states*” used the open window for self-enrichment, while the ruling elite saw an opportunity for cadre deployment (Croucamp, 2019).

Some of these initiatives closed competition from those business and individuals who would ordinarily qualify in terms of expertise and experience, therefore compromising on quality-of-service provision. The implementation of these initiatives which was aimed at uplifting the lives of the poor and previously disadvantaged individuals and firms, creating an equal non-racial society and addressing unemployment, has been highly criticised for creating a platform for entrenching economic inequalities and building an entitlement culture as well as crony bias, which is posited to have a very negative effect on public institutions, and may result in lower tax compliance and high bribery levels (Hellman & Kaufmann, 2003b).

A glaring gap in the set initiatives is the lack of consequence management to transgressors, driving corruption to become an acceptable and desirable way of operation. The weakening of law enforcement agencies (Republic of South Africa, 2018a) and the judiciary became part of the deinstitutionalization of these solid and structured state entities. Anti-corruption units which were effective such as the Scorpions<sup>57</sup> were disbanded (Hanson, 2009), and this created a gap in management of

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<sup>57</sup> The Directorate of Special Operations (DSO), commonly known as the Scorpions, was a specialised unit of the National Prosecuting Authority of South Africa formed in 1999, tasked with investigating and prosecuting high-level and priority crimes including organised crime and corruption. It was an independent and multidisciplinary unit with a unique methodology which combined investigation, forensic intelligence, and prosecution, the Scorpions were known as an elite unit, and were involved in several extremely high-profile investigations. The unit was disbanded in 2009 through a move by the governing party, the ANC.

consequences to malefactors. Despite punitive measures explicitly stipulated in the regulatory framework within the public sector, no recorded successful criminal charges were noted in compliance to legislation.

These processes compromised the quality-of-service provision in the name of transformation, a concept which remains a trial-and-error for the State almost three decades since democracy. The strong governance observed pre-apartheid became weakened. This supports our submission that transformation is a dilemma that if not managed properly can lead to institutional disruptions and further collapse state entities.

## **CONFLICTING PRIORITIES OF TRANSFORMATION**

Transformation has been a subject of study for scholars broadly (Helliker & van der Walt, 2016; Holm, 1995; Keen & Qureshi, 2006; Littlewood & Holt, 2018; Madonsela, 2019; Mangaliso & Nkomo, 2001; Masipa, 2018; Shawtari et al., 2017; Thomas, 2012) dating far back (Cariño, 1979), however scholars are yet to find efficient and effective strategies of transforming ethically and successfully while at the same time meeting the objectives of the institution. Contributing to viable and legitimate transformation initiatives remains the major question to address as most initiatives have opened up opportunities for corruption (Rose-Ackerman, 2002). Institutions embark on transformation for various reasons. Indian Banks embarked on transformation initiatives to enlarge the size of the banks and maximize both the asset and profit base aligned to the global standards (Sahoo et al., 2007). Whereas transformation in South Africa became a process of state construction from a white political domination (1910-1994) to a modern, democratic and constitutional state (Labuschagne, 2017).

South Africa was faced with a challenge of repurposing and reprioritizing state entities that were initially not designed for the capacity and reach that it faced at the dawn of democracy. These State organs remain in competition for State resources to deliver on their mandate while coping with volatile, uncertain, and complex work settings. We submit that balancing between such a legitimate quest, profit maximization as well as sticking to the set rules and standards of delivering on their mandate exposed the State to corruption.

The statement by the former President Mbeki in July 2022 stating that the government does not have a *“National plan to address poverty and unemployment”* strengthens our view that there is a dilemma faced by South Africa in addressing the tension between transformation and expansion of capacity reach while abiding by the set rules, which weakened the state and questioned its capacity to sustain itself economically.

Globally countries struggle with the challenge of mitigating against corrupt and unethical behaviors. The former head of Nigeria's Anti-corruption Commission when making reference to this scourge said: *“if you tackle “corruption, it is the best way to attack poverty”* (Hanson, 2009). Scholars further cites that unaddressed endemic corruption can foster unrests, a move that has noticeably increased in an uncontrollable way in South Africa (S. Hanson, 2009; Kenny & Soreide, 2008; Masipa, 2018), to the extent that the State was forced to use the South African National Defence Force to quell the violence at certain instances.

State entities are established as an extension of government with clear objectives. Eskom<sup>58</sup>, has a mandate of *“providing a stable electricity supply in a sustainable and efficient manner, in order to assist in lowering the cost of doing business in South Africa and enabling economic growth”* (Eskom, 2019). The rolling blackouts (referred to as load-shedding) by the electricity supplier (Eskom) to prevent the collapse of the national grid (Alence & Pitcher, 2019b), is a display of failure by the entity to meet its core mandate. The collapse of the national carrier, South African Airways’ which affected employees and added to the national baggage of unemployment and poverty is another failure of the State. The employees were either offered severance packages in 2019 and those who remained were retrenched in 2020 (News24, 2022). The various corruption investigations into the operations of State entities display the unethical conduct of key players, inclusive of key politicians and executives (Auditor-General South Africa, 2018b; Commission of Inquiry into State Capture, 2019d; Public Protector of South Africa, 2016, 2019; South African Broadcasting Corporation, n.d.).

The former Chairman of Eskom, Mr. Reuel Khoza, when asked about the role of the entity in transformation, he responded that under the apartheid regime a black person was excluded from economic and political decisions and could only contribute as

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<sup>58</sup> Eskom is a state-entity which is South Africa’s primary electricity supplier.

laborers (Mangaliso & Nkomo, 2001). For an entity such as Eskom with its inception dating back to 1923, it initially had a mandate of first transforming from a cooperative to a business entity and later post-apartheid era, the direction changed to that which will compete globally. The focus was to address the barrier for entry by suppliers as well as the surplus capacity, while at the same time addressing the capacity reach of service delivery with the objective of provision of electricity to rural South Africa. Although in terms of capacity development, Eskom identified a need for 20% women to be in management and initiated a program to enroll women into an educational program internationally, who would then be afforded a platform for practical experience within Eskom (Mangaliso & Nkomo, 2001). This project was a great plan to address transformation challenges, however the governing party's developmental policy included "*cadre deployment*" which would deliver loyalists to the party some of whom were not experienced enough nor qualified for the job. These cadres would be appointed in places of competent and experienced employees who were occupying positions during the apartheid era.

Another example is the appointment of Mr. Hlaudi Motsoeneng at SABC<sup>59</sup> (Commission of Inquiry into State Capture, 2019a; South African Broadcasting Corporation, 2013; Tlholoe & Tawana, 2019), who did not possess a senior school leaving certificate, making him underqualified for the job. The Broadcaster collapsed under his leadership and continues to struggle to sustain itself years post his departure. While those who were adequately qualified such as the former Eskom CEO, Mr. Brian Molefe, would later be associated with corruption (Commission of Inquiry into State Capture, n.d.; Fundudzi, 2018; Gules & Masondo, 2018; Outa, 2017; Public Protector of South Africa, 2016; Republic of South Africa, 2018a).

Corruption undermines the transformative objectives, increasing poverty and inequality levels. Furthermore, it has potential to distort the whole economy (Larmour, 2007), a notion that we agree with, given the state that South Africa finds itself in economically post the democratic era. The impact of corruption continues to have negative effects in the ability of State organs to meet their objective.

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<sup>59</sup> South African Broadcasting Corporation

The dawn of democracy brought about the right of the citizens to voice opinions on dissatisfaction regarding service delivery (Eskom, 2013; S. Hanson, 2009; Kenny & Soreide, 2008; Masipa, 2018; SALGA, 2015). In some cases, the unrests have resulted in infrastructure being destroyed, which requires additional financial resources to restore or replace the damaged infrastructure. The pressure directed at the State to deliver on basic services always requires a reaction in the form of further financial investments. Consequently, the revolving need negatively impacts on the economy of a country. Almost three decades into democracy, despite all the initiatives discussed above, the country remains worse-off in addressing unemployment, inequality and poverty using the state-owned entities as a delivery mechanism. By the end of the first quarter (end June) of 2022, South Africa had 7.9 million citizens unemployed with only 14.9 million having the employment status (34.5%), and 49.2% of adult population living in poverty (Republic of South Africa; Statistics South Africa, 2022a, 2022b).

## **STATE SUSCEPTIBILITY TO UNETHICAL CONDUCT**

Notwithstanding that the State is the governing body entrusted with the powers or authority to exercise and control law making (Legislature), law implementation (Executive) and law enforcement (Judiciary), the players contributing to the ethical dilemma are found in all three arms of the State. Additionally, external players (Dassah, 2018) like auditing firms and other businesses play an important role in the operations within the State. The relationship between these firms and the state have been institutionalized through formal structures such as Public-Private partnership initiatives or stakeholder engagements frameworks.

The State is the major consumer of goods and services (Neu et al., 2015), and this is due to the execution of its mandate which is to deliver basic services to its citizens, with its secondary mandate being that of profit maximisation to ensure sustainability. Whereas, public procurement is regarded as one of the “*principal vehicles of rent extractions*” worldwide (Fazekas & Czibik, 2016). Every country has a responsibility to ensure stable and sound economy (Hellman et al., 2003; Thomas, 2012), that would provide job opportunities, safe and healthy environment to its citizens.

Due to poverty and unemployment challenges observed in South Africa, the state required to collaborate with private firms to deliver on this transformative policy. Scholars

posit that these relationships are mostly one-sided (Frye, 2002), benefitting firms than the state, since they have to remain competitive and self-sustainable (Hellman et al., 2000, 2003). These interdependencies were regularised through manipulating the procurement processes and systems. Based on the transformation initiatives outlined earlier in this study, the initiatives prioritised transformation over quality and experience, which in some instances resulted in low-key firms struggling to secure tender awards due to lack of experience. These firms would identify and lobby other well-established firms who may have "*connections*" with key individuals within the state, creating a platform for corruption to manifest and thrive. The rationale for firms to enter into corrupt relations is to create a relationship that will give them an upper hand in receiving favourable inside information, to aid their business deals, bids and awarding of contracts to be more successful (Rose-Ackerman, 2002). These gaps strengthen our view that transformation initiatives contribute to exposing the State to be susceptible to corruption.

In what the ANC termed "*enabling state*", radical economic transformation was introduced and its implementation was met with the project of capturing state power (Helliker & van der Walt, 2016). To achieve the radical economic transformation, wherein the governing party believed that they cannot possess political power without economic power, public procurement was used to channel resources to capturing agents (Commission of Inquiry into State Capture, 2018b; Republic of South Africa, 2018a). Opportunists and malefactors identified these procurement gaps and used them to enrich themselves.

The government's decision referred to by the respondent hereabove would be in reference to the transformation process. The State has repeatedly increased the capital budget (Republic of South Africa, 2016) which exposed its vulnerability and became an enabler for firms to sustain corruption. The above debate supports our preposition that transformation creates a dilemma and disrupt formal institutions and further negatively affect the economy without benefiting the majority of the citizens.

Newly elected governments serve as a conduit for corrupt conduct, similar to the approach that was observed when Serbia elected a new government (Pesic, 2007a). In the case of the Serbian government, Pesic (2007) cites that State Capture was enabled at Ministry level, which included privatisation of banks and other State organs, graft in army procurement and railway cars, which did not follow proper procurement processes. Pesic (2007) further cites that the systematic capture expanded political and financial

power of those in government. The Serbian approach to privatise some of the State organs was attempted in South Africa as well as graft in both the railway provider (Transnet<sup>60</sup>) and the graft related to the “arm’s deal<sup>61</sup>”.

In Serbia, the gateway to State Capture came into being at the point of transforming the country, enabled at a political level. In three years, the country did not subject its finances to a national audit (Pestic, 2007a), which is a major transgression where public funds cannot be accounted for by those holding public office. Pestic (2007) submits that the first capturing agents are political party leadership who prioritises personal gain and second are the firms who finance these political parties. Politicians who become public representatives depend on funding to campaign for their Political Parties (Neu et al., 2015). Firms have an upper hand in providing the well-needed financial resources to enable politicians to run for office. To achieve this, firms must be awarded tenders to remain loyal and pay allegiance to those who aided their campaign process. Although South Africa has enacted into law the requirement for Political Parties to divulge their source of funding (Political Party Funding Act, Act No. 6 of 2018, 2019), this remains a theory worth exploring if it will address the unethical behaviours.

The third aspect that leads to the State being susceptible to corruption is the quality of both elected and appointed individuals assigned the role of transformation both at operational and oversight level.

Upon entry into government, Serbia dismissed key personnel and replaced them with party recruits who had no relevant qualifications for the job (Pestic, 2007a), characteristics which share similarities with the “cadre deployment” policy (Croucamp, 2019) of the ANC. The policy required that party loyalists be placed in key positions (Madonsela, 2019) across state entities. Croucamp (2019) posits that cadre deployment policy differs from other initiatives of the governing party such as Affirmative Action or Broad Based Black Economic Empowerment, since the former’s aim was for the governing party to entrench itself into the governance, political and economic decision-making processes, while the other two were individually focussed on the attempt to redress the historically disadvantaged individuals.

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<sup>60</sup> A state organ responsible for rail transport. The entity was part of those identified by the State Capture Commission due to the corruption in procurement of rail cars.

<sup>61</sup> This is the term referred to the Strategic Defence procurement programme that was aimed to re-equip the Defence force post the apartheid era.

Realising the negative impact resulting from the cadre deployment process, the National Planning Commission, a department within the Presidential office, removed the powers to appoint the Chief Executive Officers of state entities from the Minister responsible to oversee these entities, and placed such powers to the board (Ngwenya & Khumalo, 2012). The study noted that the Minister however continued to play oversight to the same boards, providing the Minister with more powers and potential for interference. The debate on the impact of the discontinuity of the policy remains a possibility for future exploration.

Lastly, the lack of consequence management to malefactors, despite punitive measures clearly stipulated in the regulatory framework, has resulted in corruption being construed as beneficial and desirable further contributing to isomorphic behaviour across institutions. Although transgressions within the state entities have been widely popularized (Thomas, 2012), no major effective consequence management has been recorded. In his speech, the Member of Parliament of the Republic of South Africa (representing the opposition), Tim Brauteseth indicated on the state's position on consequence management that: *"when you promise a reward, go out of your way to deliver. When you promise punishment, make damn sure you deliver, no matter the pain you feel as a loving parent"* (Brauteseth, 2015a). Furthermore, Brauteseth (2015) outlines that the public sector is quick to provide rewards in the form of bonuses and incentives to good performers, however shy away from punishing where necessary. Additionally, Brauteseth (2015) goes on to state that the availability of reforms and legislation passed in the different sectors has not addressed the "habitual offenders". Regarding the latter, we submit that different legislation outlines the punitive measures to be employed to transgressors (Republic of South Africa, 1999; Republic of South Africa, 2003), providing the leadership and executives with adequate measures to ensure that the malefactors face the relevant consequences, however, these policy prescriptions can be manipulated as outlined by Scott (2008). Manipulation of these set rules and laws questions the matured institutional theory which perceives institutions as stable due to the rules set.

The study noted that majority of theoretical foundations for corruption studies have been drawn from criminal activity literature (Asongu, 2013; Billger & Goel, 2009), of which we submit that corrupt activities do justify criminal charges as an institutional intervention.



## METHODOLOGY AND DESIGN

While social psychology is broadly studied, there remains an opportunity to explore the scholarly debate and arguments that characterize institutional theory (Powell & Colyvas, 2012). Scholars hold the perspective that Institutional theory is widely studied (Scott, 1987, 2008; Tolbert & Zucker, 1996), has reached mid-life crisis and is saturated (Suddaby, 2010), however a gap remains on how these well governed institutions have remained susceptible to unethical conduct which ultimately deinstitutionalized them. The gap required a qualitative study that would determine the real-life phenomenon through gaining insight on the experiences of actors. Majority of Institutional theory studies are quantitative (Suddaby, 2010; Tolbert & Zucker, 1996), and scholars suggest that statistics may not necessarily articulate the full meaning to the institutional story which a qualitative study can bring about through understanding how individuals locate themselves in social relations (Powell & Colyvas, 2012). The above view necessitated the study from a perspective of qualitative research.

The rationale for selecting South Africa as the context of the investigation was that the country emerged from the apartheid era (Ellison et al., 1996; Hyslop, 2005; Littlewood & Holt, 2018; Madonsela, 2019; Meyer & Luiz, 2018; Van Vuuren, 2018; Venard, 2009), and continues to battle with the concept of transformation. Using South Africa as our empirical setting afforded us the opportunity to access the key prominent people associated with corruption and state capture. These individuals have been operating at political level and top executives, some of whom were constantly identified with State Capture. This category is inclusive of whistleblowers, Ministers, Board Members, Leaders in the governing and opposition Political Parties, Members of Parliament, Investigative journalists, Chief Executives in the State Entities as well as Academia and Analysts on the topic.

A preparatory phase preceded the interviews (Tellis, 1997; Yin, 2013). Challenges were pre-identified and plans to mitigate such put in place during the planning phase. In incidents where some respondents were sensitive to the subject matter and opted for a contact session contrary to the planned virtual sessions, such were accommodated. This included traveling during a time when traveling was limited due to the Covid-19 protocols. This would also require clearing the other set interviews to accommodate traveling time. Further to that, the timing of the interviews coincided with the period where the Commission of Inquiry into State Capture was in progress in South Africa, and this further

posed a challenge of accessing the identified respondents. Some of the respondents were due to testify at the State Capture Commission and would not feel comfortable to continue with the interviews prior to first appearing in the Commission, which affected the entire planning and scheduling of interviews.

Challenges of interviewing prominent people included having to manage and change scheduled appointments at short notice. The collapse of the national grid of electricity which resulted in rolling electricity blackouts negatively impacted the planning since the virtual platform required a stable internet connection and lighting to ensure that the body language of the respondents is visible throughout the interview. In certain cases, the respondents would receive a media inquiry and urgent need to appear on some television programme to respond to the topical matters, and this would disrupt the interviews requiring rescheduling.

A total of 142 potential respondents were identified and personalised invitations sent to 78 individuals. A total of 47 accepted and indicated willingness to participate. Some could not go through with the interviews. Reasons varied as some would be affected by the pandemic either as infected by the virus or having lost a close family member. Due to these reasons, only thirty-four (34) completed their interviews. All interviews were recorded, data coded and securely stored.

## **FINDINGS**

The investigation concluded that the tensions between two legitimate requests, transformation initiatives inclusive of repurposing the state entities and keeping to the mandate of the institutions is a dilemma for developing countries. Various opportunists took advantage of the change of rules in state entities to enrich themselves through corrupt activities. Despite the expectation from state entities to deliver basic services and respond to unemployment while increasing the capacity reach, all the initiatives led to collapse of well-structured, solid and self-sustainable entities. There was a high increase of “*financial bailouts*” by the state to these entities who could not sustain their going concern. The country has very high level of poverty, unemployment and inequity, which the initiatives implemented post-apartheid aimed at addressing. The economy of the country has weakened in that there is a forecast that in less than a year the country will not have money, a statement made by the Minister of Finance when he delivered his

budget speech in November 2023. Balancing transformation initiatives with executing the mandate and objectives of the entity remains a dilemma that state entities are grappling with. Transforming ethically and successfully remains a theory as it has taken almost thirty (30) years for the governing party to successfully reverse the remnants of “*racial decolonization*”.

The study established that the governing party’s policy of “*cadre deployment*” compromised quality of the technocrats being deployed or appointed in key positions in the state entities as well as the Board members tasked with playing oversight to the operations of the entities. This challenge extended to the Ministry level in terms of the public representatives that are deployed to Parliament. These cadres took instructions without considerations for the negative implications of their actions. The deployment policy further allowed for “*recycling*” of officials across state entities which enabled institutional isomorphism. An example of one key person who was recycled between state entities and played key oversight roles is Brian Molefe (see below figure 1), a very competent public official who was hailed for his performance with his turnaround strategy to Transnet. He was found by the Public Protector’s report to be implicated in corruption. Evidence showed that this tactic was used to identify certain individuals and target them for possible recycling. Below is a sample of some of Molefe’s recycled positions:

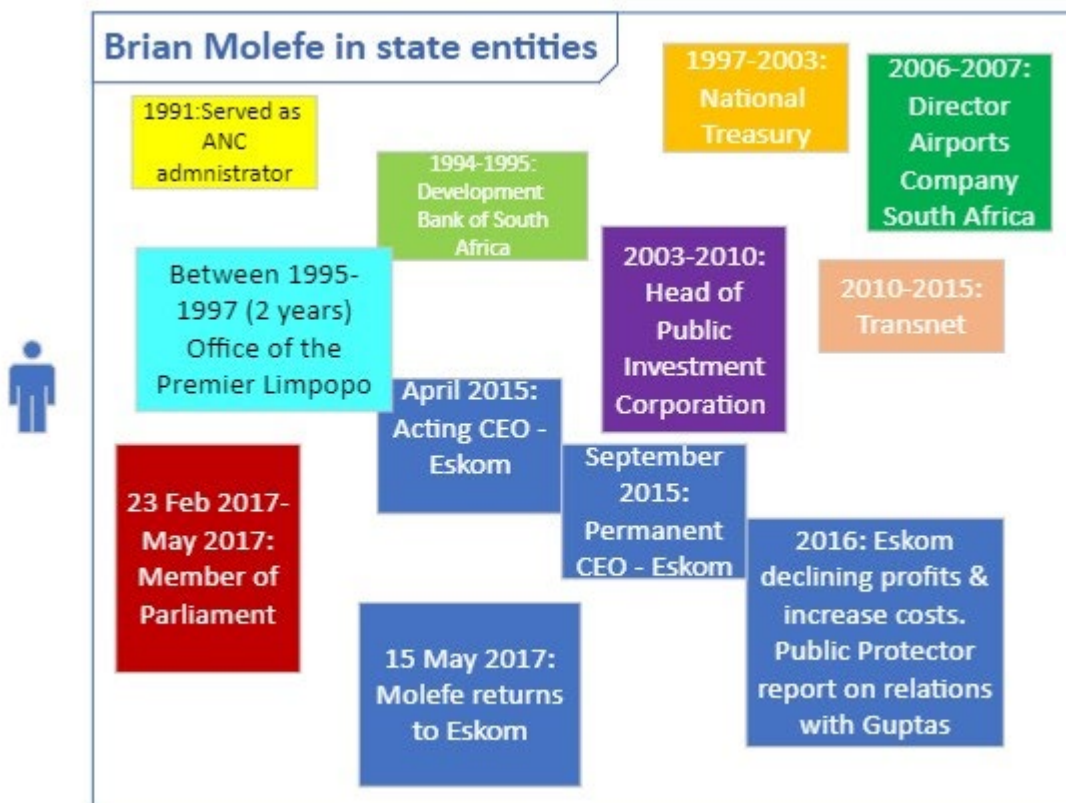


Figure 12 : Recycling of cadres (Brian Molefe)-source author

The recycling process creates opportunities for corruption to be integrated into the operations of the entity which resulted in institutional isomorphism as can be seen with some of the entities that Mr Molefe was deployed to, for example, Limpopo government was put under administration, although Transnet was hailed by Economists under his helm, it is currently facing financial distress and on the verge of collapse; Eskom going concern remains. These confirms our submission that the impact of institutional disruptions and corruption is a subtle process which can be observed over a period. This is a risk that even standard rating agencies such as Moody's or Standard and Poor failed to detect State Capture by 2011. Normal corruption theory could also not pick it up until it erupted.

The paper further established that based on the failure of the transformation initiatives and the negative exposure to the state, the quality-of-service delivery was compromised due to appointment of firms which would not ordinarily possess the expertise required aligned to transformation agenda. This led to collapsed entities with high wage bills and incompetent officials which negatively impacted the economy of the

country as well as direct foreign investment. The failure of the transformative initiatives reversed the objectives of the transformation agenda.

The paper concluded that governance was weakened to create opportunities for self-enrichment. The law enforcement was captured to favour the malefactors. Further, the dilemma of ethically transforming can be resolved through a number of initiatives such as meritocracy when recruiting for employees including executives, as well as the Board members.

## **DISCUSSION**

### *Conflicting Priorities of Transformation*

The study noted that within the empirical setting, the country continues to have a dilemma when addressing key and legitimate drivers of transformation. While Eskom was repurposed to increase its reach while staying within its legal mandate of provision of cheap electricity, the entity failed dismally three decades after the initiative commenced. South Africa remains high on unemployment and poverty (Republic of South Africa; Statistics South Africa, 2022b, 2022a), as well as food insecurity. The objective of the protocols and initiatives introduced to address transformation remains unachievable. The loss of skills due to the economic state of the country exacerbates the situation as skilled professionals opt to leave the country.

Whereas the mandate and key objectives of State entities is provision of quality service to the people, and profit maximization which should sustain the state-owned entities. The research established that State entities struggled to balance between meeting their mandate and transformation of the state institutions and the country. While the expectation was to deliver services, the transformation agenda required that job opportunities be created, which led to loss of existing skills to make way for inexperienced employees. This contributed to the collapse of some of the major entities. In responding to the unfortunate collapse of the national airline, one respondent said:

*“The SAA one is difficult for me you know, because I was involved in it you know, and there are things that maybe we could have done better. But again, I think it goes back to basics, right? The basics are, what did we want to achieve*

*and what was our understanding of the situation at SAA. So, the poor analysis of what SAA is about and what we wanted to achieve landed us where we are at.”*

We submit that if those who were closely involved in the process had no understanding of the mandate, it would have been difficult to conceptualise and bring balance to strategies for effective transformation. This exposed the entity to external forces directing the agenda of what should be done and has also led to our findings on meritocracy and the quality of leaders.

The rolling electricity blackouts implemented goes against what Eskom’s objective is, that of *“providing a stable electricity supply in a sustainable and efficient manner, in order to assist in lowering the cost of doing business in South Africa and enabling economic growth”* (Eskom, 2019). Retrenchment of staff in State entities such as Denel<sup>62</sup>, SAA and SABC add to the reversal of all attempts to address poverty and unemployment. Notwithstanding the initiatives conceptualized and implemented to address these challenges, the country remains in an ethical dilemma as citizens regularly revolt against poor or lack of service delivery (Hanson, 2009; Kenny & Soreide, 2008; Masipa, 2018).

### *Susceptibility of State to unethical conduct*

Reprioritization of funding to entities’ capital projects (Republic of South Africa, 2016) has not contributed towards transformation, however increased the exposure of the State to unethical conduct which is attributed to non-compliance with the regulatory framework as well as using public office for personal gain. The interdependencies between the State and business (Rose-Ackerman, 2002) provides a platform for corrupt activities to thrive. The investigation concluded that within this process, there are willing players within the Constitutional state, in this case the State entities and firms who assume the role of capturing agents. They both participate in the symbiotic relationship by changing the rules of the game and legitimise breaking them for personal gain. The study notes that emergency procurement allows for deviation from the regulatory framework (Commission of Inquiry into State Capture, 2018b), a concept shared by

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<sup>62</sup> The South African state entity responsible for defence equipment supplier on aerospace and military technology.

many of the respondents who cited the “intentional” rolling blackouts of electricity and the procurement of protective equipment during the Covid-19 Pandemic which provides an opportunity for corruption. When asked about the challenges on public procurement, one of the respondents said:

*“My own view having been closer to the process, is that the institutions that had a large share of budgets became more vulnerable, ..... Because of the government’s decision to expand infrastructure, that became one of the things that made them vulnerable.*

We sponsor that key individuals used artificial crisis as a key to enrich themselves, by creating emergency procurement which will not follow proper supply chain procurement processes. This became isomorphic across the entities. Similar traits were observed during the Covid 19 Pandemic procurement. On asked about these corrupt activities, one of the respondents said:

*“I personally believe that a governing party at any given point when it comes into power or when it is in power, it allows itself to be captured by its sponsors and funders and in most cases people who fund a party that gets into power are the ones who dictate partly on how the country should be run, on how resources are deployed or redistributed, they also dictate on how generally the mood the political economy and the social development ..... during election time, during campaigning you find that already people will choose which party they are going to fund or which party they will fund more hoping that if that party comes into power, they will get something in return from that specific ruling party”. This is a notion that became known as “javeline” a phrase that refers to engaging in corrupt activities that will pay off at a later stage. This concept is posited by Hyslop (2005) who submits that Minister Mac Maharaj who was heading the Department of Transport, serving under President Mbeki awarded a multi-million-rand contract to a consortium that included “Schabir Shaik who then commenced personal payments to Maharaj. When Maharaj left office in 1999, he became a board member of FirstRand Bank whom he had awarded contracts during his term as a Minister. Corruption has large adverse effects on social welfare”.*

The subject of ethical leadership remains a challenge for scholars and practitioners. Corruption has become a way of life acceptable to the majority of the people while those not corrupted yearn to see the next leader in government addressing corruption (Lessig, 2012). One of the respondents who believed that the government does not care about the quality of leadership they put in government, when asked about the quality of leadership, responded in reference to the governing party (ANC) that:

*“.....because the quality of the managerial and quality of leadership it must provide to the State does not matter. It is in this context that I have argued that in a competitive system, there is no way that the ANC would have risked, fielding Jacob Zuma as a State presidential candidate in the 2009 presidential elections. Because he could have lost that election, because it did not run the risk of losing that 2009 election, it could field Jacob Zuma as a presidential candidate, twice 2009 and 2014.....”.*

The study established that there is a desire even from the governing party to phase out the “cadre deployment” policy, wherein some of the respondents cited that adequate time had lapsed for Historically Disadvantaged Individuals (HDIs) to have acquired the necessary skills for them to compete in the job market based on merit.

On “cadre-deployment”, one respondent cited that a “cadre” is a term ordinarily used in the military which denotes:

*“a soldier who takes instructions without questioning”.*

The concept describes “loyalists” who would carry instructions of the deploying party. The qualifications, capacity, skills and experience of some of the people deployed and assigned the responsibility of execution or oversight in the State entities were questioned by many respondents. Examples were given on State entities whose boards were incapacitated through cadre deployment of individuals with no relevant expertise which was reflected on the poor performing institutions which ended up being deinstitutionalized and collapsed.

Notwithstanding the outcome of the Inquiry on State Capture, implementation of consequence management remains theory. The governing party (ANC) through its policies exposed the State to unethical behaviours creating a dilemma in transformation. Respondents raised “*single party dominance*” as a direct contributor to corruption in state entities. Frye (2002) refers to State Capture as elite exchange, in that it takes place at



the highest echelons of the institution. The ethical conduct of the President(s) in South Africa was put to question during the Zondo Commission on State capture. The sitting President, Mr. Cyril Ramaphosa's conduct is questionable following allegations of unethical conduct (Timeslive, 2022) regarding large sums of foreign currency notes found in his property.

The state remains susceptible to corruption and requires developing an approach that is not a "quick-fix" but one that will address this dilemma created by transformation. Furthermore, the lack of clearly defined corruption charges leads to failure to prosecute effectively. One of the respondents is quoted while responding on consequence management as saying:

*".....the fact that people have the courage to do so is because there are no consequence management. Now having not followed the procurement process, which is charge number one, they then inflate the costs, that for me is charge number two. So, you didn't follow the process, you inflated the cost, number three, you do not deliver, if you do, you deliver a defective product. In economics that is economic sabotage....."*

## **RECOMMENDATIONS**

Transformation of South African state entities poses significant ethical dilemmas that require careful consideration and decision-making at all levels which includes execution and oversight. We sponsor the following recommendations to address the tensions of transformation in an ethical conduct:

*Balancing employment equity and meritocracy:* the study noted the need to address the historical injustices and promotion of employment equity. Given the period since democracy (three decades) and that adequate time has lapsed for historically disadvantaged people to have acquired the relevant skills, it is important to balance merit-based hiring and succession planning practices based on skills and qualifications. This is essential for effective governance and optimal performance of state entities.

*Combating corruption:* entities and individuals are caught in tensions on combating and exposing corrupt activities, mainly if this happens at the highest echelons of the institution. The prevalence of exposing corrupt activities which the state entities are infested with creates an opportunity to explore possible solutions. Appointment of merit

based ethical leadership will create a strong force of those individuals willing to take a strong stance against corruption. Similar isomorphic strategies to be used to ensure that this is recycled across all state entities which will reverse the current unethical isomorphism.

*Accountability and consequence management:* the weakening of the governance framework affects accountability. The study noted that although most studies on corruption are drawn from criminal activity literature (Asongu, 2013; Billger & Goel, 2009), there are not many who were implicated in corrupt activities faced consequence management or brought to the courts. Enforceable charges where corruption is included as an offence should be instituted and be reported quarterly to governance structures with clear actions taken.

*Balancing between transformation and mandate execution:* while it is imperative to address the historical challenges, there need to be a clear balance on what constitutes short to medium term goals of transformation and the long-term goals of sustainability of the state entity. Reforms should be more comprehensive and self-sustainable over a period. Clear strategies on how to balance stakeholder interests considering that the state depends on firms to provide services to the citizens. This will minimise the risk of *shadow-states* taking over the constitutional state.

*Single Party dominance:* the extension of the governing party policies to be the state policies has created opportunities for unethical conduct to creep into the state entities. The changes in the political landscape in the country with the prevalence of coalition governments will address the single-party dominance and possibly scrap policies such as cadre deployment amongst others. The enactment into law of an Act that seeks to expose funding of Political Parties to be monitored if it will make a positive impact in the future. The amendment to the Electoral Act remains to be seen.

In promoting ethical leadership, the study recommends that the recruitment processes be enhanced to conduct ethical checks and design qualifying criteria for holding public office. One of the respondents said:

*“I do not understand how that can be difficult because unless you are appointing a new-born baby then you would not know anything about that person but because those people have a track records, you can do background checks, where they worked, what did they do, what are the state of their books, if a former*

*DG [Director General<sup>63</sup>] are the books/audits qualified or unqualified, so it is easy- it is not difficult. The people leave a trail of records, what are the issues, they abuse the credit cards, do they harass people – it is not difficult to get good people. It is very easy”.*

The study submits that qualified and ethical individuals do exist.

## **CONCLUSION**

In this investigation we explored the transformation initiatives introduced post democracy in South Africa. We identified voids resulting from these initiatives which led to the deinstitutionalization of state entities as they attracted parallel networks who used these voids to conduct unethical actions aimed at self-enrichment. We unpacked the conflicting priorities that state entities have to address, which are the attainment of their mandate and delivering on the transformation agenda aimed at redressing the imbalances of the colonial era. We further identified weaknesses which makes the state susceptible to this unethical conduct. We observed the ramifications of the “cadre deployment” policy of the ANC which is the Political party in the governing seat since democracy. We noted the negative impact that the effect of these failed transformation initiatives has had in the economy of the country due to job losses and major capital injections by the government to the financially distressed entities.

We submit that state entities’ primary focus should be on their mandate of service delivery and any reform should be premised by a proper analysis and implications thereof. We further contend that the transitional period for historically disadvantaged individuals to acquire the relevant skills, knowledge and experienced has lapsed and state entities should make appointments based on merit with the objective of both effectiveness and efficiencies in executing the mandate of the entity. We submit that since the secondary function of these entities is profit maximization, this should be explicit in the performance targets of each entity for self-sustenance. We conclude that while the institutional theory perceives institutions as sound based on their strong governance frameworks, the dilemma created by transformation agenda has

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<sup>63</sup> The highest administrative position in the state departments

successfully disrupted state entities and failed to meet the intended set objectives. The lack of consequence management and desire by role players to personally gain from public funds has constituted the institutional isomorphism observed across the state entities.

We submit that transformation remains a far-fetched theory, which offers an opportunity for further exploration on varying empirical settings.

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## **6. CHAPTER SIX - CONCLUSION**

### **6.1 OVERALL MAIN FINDINGS OF THE STUDY**

Contrary to the view that Institutional theory is saturated and has passed its lifespan, the study managed to bring back a scholarly debate through questioning the perception that Institutions are solid and impenetrable structures with sound governance frameworks as they are governed by laws, rules, norms and standards, the investigation found that shadow networks managed to infiltrate and deinstitutionalised entities within a Constitutional state. In spite of the strong governance framework in South Africa, private firms systematically captured the state which abdicated its Constitutional responsibility and surrender it to the shadow networks. Theoretically, the study contributes to the body of knowledge by modifying a broadly studied theory using a more modern and under theorized state capture phenomenon. This has therefore problematized the scholarly view of institutional theorists.

The methodological gap that was identified by the study and ultimate approach of using a case study to modify a theory which is commonly and broadly studied from a quantitative approach enriched the study through bringing forth the experiences of the those role players directly linked with the State Capture phenomenon. The massive volumes of data on the subject aided the process of triangulation and data saturation. The characteristics of the respondents which included whistleblowers, those implicated in state capture, senior executives, board members, academia, investigative journalist and politicians distinguished the study from previous studies.

Furthermore, the lack of a common definition by scholars to define state capture displays the complexity of the phenomenon. The study established that State capture and deinstitutionalization evolve together since both individuals in positions of power at operational, executive and oversight level were key enablers to state capture. The transformation initiatives as well as regular capital injection serving to rescue financially distressed entities provided an institutional environment for state capture to be sustained.

Practically, the investigation established that South Africa continues to struggle with the tensions caused by the legitimate requirement of reform which requires that they repurpose institutions to service a vast majority which they were not initially set out for



while at the same time address the historical challenges brought about by pre-democracy era. Furthermore, the study established the impact of parallel governing of the State by the governing Political Party, African National Congress (ANC) and Single party dominance which created an opportunity for entry by “shadow states”. The absence of meritocracy during hiring of employees in the public entities robs a country of competent and capable employees and expose the country to potential unethical conduct as the employees are bound to be loyal to those who put them in office. The uncertainty for political leadership’s term of office led to the “*javelin*” concept, a concept allowing for politicians to secure resources for enrichment to be enjoyed later should they prematurely exit public office. These findings question whether the historical liberation movement was able to effectively transform into government at the point of gaining democracy and winning elections.

Although most corruption studies are based within the criminal theories, I established that South Africa is yet to enact explicit laws clearly categorising corruption charges for ease of prosecution. State capture evolved into an institution of its own with a well-orchestrated systematic and systemic process whereby shadow states capture the Constitutional state. Willing role-players within the Constitutional state participate in symbiotic relations with capturing agents to manipulate rules and break them for personal gains.

Although the study established that active stakeholders and the public are becoming more involved on how their taxes are being spent by the State, which exposed state capture activities in South Africa, there is however dependence by Political Parties on private firms for funding of their election campaigns, which contributes to either flaunting of procurement processes or compromising the quality of services rendered which are key characteristics of state capture. The newly enacted regulatory framework in South Africa aimed at curbing corrupt and unethical behaviour is yet to be tested if these will mitigate against the identified institutional disruptions.

The study concluded that the professionals who are knowledgeable on the rules, norms and standards grant access to the shadow networks. Other executives within the public entities observe these and replicate the actions to result in institutional isomorphism. The actions lead to deinstitutionalized entities which are weakened by those that want to enrich themselves. I propose a formula which summarizes the voids that lead to institutional isomorphism to manifest which describes that where the risk of punitive

measures is low and the potential for personal gains is high, individuals will participate in the state capture activities. This normally takes place in a setting where there are no successful prosecution for malefactors and where employees enjoy the protection of key individuals at oversight level. The formula is as follows:

$$\frac{\text{High Personal Gains}}{\text{Low risk of Penalties}} + \begin{array}{l} \text{Protection by} \\ \text{Key Oversight} \\ \text{Individual} \end{array} = \text{State Capture}$$

## 6.2 CONCLUSION ON FINDINGS

The first paper provided an understanding on how firms cultivate relations with the state aimed at self-enrichment. The investigation established the systemic and systematic approach used to capture the state by two firms, one being of South African origin and the other owned by foreign nationals. Although these firms may have utilised varied strategies to capture the state, the outcome is similar in that they led to deinstitutionalized state entities. The study further displayed how these corrupt relations were sustained over time. The investigation also explored Institutional theory on how governance and financial management within the Constitutional state was taken over by shadow states. The study displayed the factors that served as enablers to these relations, outlining interdependencies of the state on firms to deliver on public services as the main enabler. The study contributed to the body of knowledge towards the understudied State Capture phenomenon. The regular “*bailouts*” offered by the state to the entities provided basis for sustainability of the capture. The response to the artificial crisis created in the state ensured continuous financial resources to fund the corrupt activities.

While the second paper provided insight on the key role-players who create conducive environments for unethical conduct and corruption to thrive. Despite establishing strong governance frameworks and South Africa rated highly on governance index, the state institutions remained susceptible to disruptions of State Capture. Additionally, the investigation exposed the inefficiencies in provision of oversight over publicly funded entities. Gaps regarding deployment of loyalists and individuals who

would pay allegiance to key players within the governing party led to poor oversight which enabled deinstitutionalization of well-established and structured entities. Flaunting of rules and laws was observed with no consequence management effectively recorded, creating isomorphism across entities, and encouraging a culture of unethical conduct amongst malefactors. The paper observed the weak oversight structures which was by design to render the state entities ineffective, with the example of how senior politicians cannot be held accountable in a parliamentary setting by a junior politician post a caucus meeting which dictates what line of questioning should be followed. The paper further displayed the weaknesses in both the appointment and monitoring of Boards of state entities as well as the Executives. Lastly, the paper questioned why the failure of the state to provide services such as security, health, electricity amongst others has not managed to get the elite and middle class who pay taxes to be interested in public affairs and accountability by those they put in Public Office.

The third paper discussed the background and tensions between two legitimate requirements of Transformation in South Africa and how the initiatives with good intent ended up creating a passageway to institutional disruptions and state capture. It further indicated how the culture of unethical conduct barred the transformation reform from being a success. Additionally, the paper established the voids and opportunities created by the transformation initiatives and how these attracted unethical conduct by both internal role-players and shadow networks. The study displayed that almost three decades since the dawn of democracy, the country is still in a dilemma of transforming from the remnants of the apartheid era, with the governing party acceding that they have no plan nor strategy to address the historical challenges.

The study makes three major contributions, theoretically in terms of providing an opportunity for bringing back into the scholarly debate a theory which is perceived to be widely studied and having surpassed its purpose as argued by Alvesson (2019); methodologically since the institutional theory is mostly studied from a quantitative approach missing on the experiences of actors (Suddaby, 2010). The identification of the elite which became synonymous with state capture as respondents for the study enriched the scholarly debate on a modern phenomenon of state capture. Lastly the study contributed practically through the creation of a model for state capture and proposing mechanisms to be considered in mitigating against a recurrence of state

capture. The three papers all outlined various potential future studies which scholars can explore in building and testing the findings from varied settings.

### **6.3 LIMITATIONS OF THE STUDY**

The hearings held by the Commission of Inquiry into allegations of state capture in South Africa took place simultaneous to the period of primary data collection for the study. This provided a limitation as some of the respondents for the study were also appearing at the Commission. This led to some identified respondents withdrawing from the process. Unwillingness and withdrawals by these individuals who were due to appear in the State Capture Commission was mitigated upon during the planning phase which identified more potential respondents and a database created. Some of the respondents used the study to provide an alternate perspective against what would be in the public domain as heard in the Commission of Inquiry. This limitation was managed through requesting the respondents to provide supporting evidence to refute what would be in the public domain.

As postulated by Yin (2013) and Tellis (1997), the imminent risk of getting respondents telling the researcher what they think the inquirer wants to hear remained high, with those implicated using the opportunity to air their views. The researcher had to remain focussed and use the research questions and guide to the interview session. Prior preparations in researching and studying each of the respondents before the interviews assisted in understanding their views based on what they have published or their public comments on the phenomenon, which provided the researcher with insight on how to manage the interview, maintain focus and to reach the study's intended objectives as postulated by scholars (Polkinghorne, 2005b). Fusch and Ness (2015) "*one time phenomenon*" was managed in situations where passionate respondents would delve into other areas of their interest and the inquirer always had to bring them back to the focus of the study.

Although this was not much of a limitation, the electricity rolling blackouts (loadshedding) provided a challenge in changing of interview schedule due to other priorities given the seniority and profile of the respondents. These became a premise of

the interviews as it affected respondents directly and became proof of the deinstitutionalization of state entities. The lockdown period due to the Covid Pandemic allowed for patience to be practiced and rescheduling of interviews to happen for a later date.

State Capture was a topical matter during the period of investigation in the country of study (Abdel-Kader & Wadongo, 2011; Bass et al., 2018; Boesch et al., 2013; Bryman, 2007; Cousin, 2005; Creswell & Poth, 2018; Fusch & Ness, 2015; Gilgun, 1994; Hinostroza & Mellar, n.d.; Hutchinson, 2004; Jick, 1979; Kourtit & Waal, 2008; Lampreia & Major, 2017; Maggs-Rapport, 2000; Motshwane, 2018; Patton & Appelbaum, 2003; Polkinghorne, 2005b; Saunders et al., 2016; Shen & Snowden, 2014; Shenton, 2004; Tellis, 1997; Tolbert & Zucker, 1996), with ongoing Commission of Inquiry hearings. This resulted in high volumes of secondary data available with new evidence resurfacing on an ongoing basis. The researcher selected to first collect secondary data and utilize the primary data collection for validation as well as a tool to reach data saturation. The choice of multiple data sources contributed towards data quality (R. Scholz & Tietje, 2012; Yin, 2013). Interviews contributed to triangulation of the data collected, considering that most responses to the research questions came from the available secondary data sources.

Lack of trust by a few respondents resulting in them preferring a face-to-face interaction over a virtual engagement. Considering the nature and profile of the identified respondents, trust was critical for them to ascertain that data was collated for school research and nothing else. These were accommodated, although travelling between provinces during the Covid Pandemic would be time consuming and result in slowing down the number of interviews for that day to accommodate travel time.

The planning phase had not anticipated the novel Covid-19 Pandemic and therefore had to consider some flexibility as posited by Grünbaum, (2007) who cites that cases *“tolerate some kind of flexibility given the practical reality of data collection”*.

## **6.4 AVENUES FOR FUTURE RESEARCH**

While cases were used to test and extend the institutional theory in this study, an opportunity was created to test the theory in more varied settings. The study identified

Single Party dominance as key in weakening oversight and ultimately resulting in deinstitutionalization, the impact of coalition governments on governance, oversight and accountability is a possible area for future investigation. In acknowledging the dilemma faced in transforming the country, an avenue for future research exists on assessing whether state entities should be focussing on transformation or solely on their mandate to deliver services, alternatively bring about balance between the two spectrums. The failure of the state to effectively account to shareholders resulted in the failure of the state. The elite and working class have opted to procure alternate services from private service providers due to the failure of the state to deliver those services such as security, health amongst others, the study therefore presents scholars with an opportunity to explore the role and involvement of middle class and the elite in public affairs and holding Public Representatives accountable.

Another opportunity for future research is the exploration of the impact of whether new regulations will provide effective response strategies to potential state capture, these include the Political Party Fund Act, Act 06 of 2018 which came into full effect in 2021 as well as the Electoral Act, Act 73 of 1998 as amended in 2023 to accommodate independent candidates in the National and Provincial elections and whether these will address Single Party dominance. An opportunity for scholars to study how accountability play a role in the sustenance of state entities exists. Social science can benefit in future research on holding those responsible for institutional disruptions criminally liable and whether that can eliminate corruption and state capture similar to other countries such as Singapore.

In contributing to bringing back research on institutional theory, future research can explore the possibility of cultivating relations between firms and the state which will not disrupt the operations of the institutions. The question of whether strong governance frameworks in public governance which forms a basis for accountability and oversight can be safeguarded from manipulation by the players remains to be responded to by future research.

## 6.5 CONCLUSION OF THE STUDY

The study noted that the criminal elements as well as the illegality of the corruption phenomenon, together with the need to be discrete, make researching on state capture quite complex (Shleifer & Vishny, 1993). It further noted the challenges scholars face in arriving at a common definition for state capture. There is still paucity in literature on the concept, although corruption in general has been widely studied. This therefore created a basis for social science research on the under theorized state capture concept. South Africa, being a developing state has been used to contextualise the study. The opportunities for social science exist on the basis of the evolution from a colonial era and capital investments that had to be injected to address the imbalances of the past.

The governance framework which is regarded as very solid was brought to test using a widely studied theory. The investigation is anchored on the broadly studied Institutional theory which is mainly focussed on quantitative research. This theory which is purported to have reached adolescent stage and fully matured was found to be lacking on the qualitative aspect thereby missing on the views and perspective of role-players being considered. The theory perceives institutions to be solid due to the norms, standards, rules and laws that govern them. The study used the Institutional theory to investigate how state entities in South Africa resorted to institutional isomorphism which led to deinstitutionalization of structured entities.

The methodological approach for this study was conducted through a qualitative approach due to its ability to better understand people and behavioural aspects (Grewal & Dharwadkar, 2002; Tolbert & Zucker, 1996; Willmott, 2015). In the study targeted at senior managers in New Zealand public sector, the qualitative research was found to be a highly effective inquiry for extracting their personal narratives (Birchall, 2014). This research shares similar objectives with the study by Birchall (2004), noting that institutions comprise of the human factor, which makes it relevant for the study. The choice of respondents which include whistleblowers, individuals implicated in state capture, oversight structures such as boards and members of Parliament, academia and investigative journalists distinguishes this study due to the enriching data collected in the primary data phase which provided triangulation, validity and data saturation.

Data was collated from both secondary and primary sources. The complexity of the phenomenon posed a number of data limitations, risks and ethical considerations which were mitigated against from project planning phase as well as during the investigation, data storage and final report writing. To ensure validity of data, which is important for the investigation, primary data was used to triangulate the secondary data. The study also presented a section on how data was analysed for the three papers. Computer assisted tools were used to code the themes created based on the research questions. Due to the high volume of data collected during the investigation, it was realised that submission of a three-paper article thesis would be beneficial for the study and its intended objectives in contrast to a conventional thesis.



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## ANNEXURE A: Interview Request and Guide



Enq: Mihloti Masuluke

Thursday, June 11, 2020

Attention: \_\_\_\_\_

### REQUEST FOR A VIRTUAL INTERVIEW – DOCTORAL STUDIES

My name is Mihloti Masuluke employed in the Gauteng Provincial Legislature currently studying towards a Doctoral degree with the Gordon Institute of Business Science – University of Pretoria. Key to the finalization of the degree is data collection towards the thesis write-up. The focus of my study is on the concept of State Capture and how this has led to deinstitutionalization of State-Owned Enterprises, with specific focus on Eskom, SAA, SABC and Denel.

Considering that a lot of information is already in the public domain, I have been able to gather some data from documents and records, however I still need to confirm and follow up on some of the gaps identified from the information. I have therefore identified you as key in assisting me with this process. Should you agree to this request, I will be asking you a few questions that will contribute to completing my research report. Please note that the interview will be recorded, and I will also be taking notes. Prior to the interview, I will require you to also sign a consent form that confirms that the information gathered during the interview shall be used solely for this research. While I assure you of maintaining your anonymity throughout the interview and during the report writing, the contents of our discussions will contribute towards the final report writeup. The interview is estimated to take at least between 30-45 minutes.

Interviewer : Mihloti Masuluke

Contact : [mmasuluke@gpl.gov.za](mailto:mmasuluke@gpl.gov.za) or 0027 60 682 2074

Supervisor : Professor Albert Wöcke or 0027 82 411

6526 Contact : [wockea@gibs.co.za](mailto:wockea@gibs.co.za)

Role played: operational  oversight  academia  other

### Guiding Questions


1. What have you observed as a fertile ground for State Capture to thrive in the country?
2. What in your view led to State Capture in the SOEs, looking at both internal processes and external factors?
3. From your observation, what are the consequences of State Capture?
4. In your thinking what could have been done to avoid or minimize the effect of State Capture in the SOE?
5. What advice can you offer to those tasked with both executive and oversight roles in SOEs as alternative approaches to address the risk of State Capture?

Participant's signature : \_\_\_\_\_ Date: \_\_\_\_\_

Researcher's signature

:  \_\_\_\_\_ Date: 11/06/2020

Supervisor's signature

:  \_\_\_\_\_ Date: 11/06/2020



## **ANNEXURE B – Transcriber’s Consent Form**

### **Transcription Consent Form**

Thank you for agreeing to assist in transcribing the recordings of my interviews. As indicated in my request, I am currently studying towards a Doctoral degree with GIBS – University of Pretoria. Key to the finalization of the degree is data collection towards the thesis write-up. My study is on the concept of State Capture and how this has led to institutional changes in State Owned Enterprises. Due to the sensitivity of the subject of my investigation and in complying with the Ethical requirements of the University of Pretoria - GIBS, I need to ensure that anonymity is maintained throughout the interview as well as the transcription process. As much as the respondents to the interviews give consent to recording the engagements, I have made an undertaking to them to maintain their anonymity throughout the entire process, although their contributions will be part of the final writeup. I, therefore, will require you to also consent that the information in the recordings as well as the transcriptions shall be used solely for this research. You shall not use the information fully or part thereof for any other reason and you shall not divulge the content of the discussions in the recordings to any party. Your consent will be binding.

Date :  
Name :  
Signature :  
Interviewer : Mihloti Masuluke  
Contact : [mmasuluke@gpl.gov.za](mailto:mmasuluke@gpl.gov.za) or 0027 60 682 2074  
Supervisor : Professor Albert Wöcke or 0027 82 411 6526  
Contact : [wockea@gibs.co.za](mailto:wockea@gibs.co.za)

# ANNEXURE C – Programme of the 3<sup>rd</sup> Annual International Conference on Social Justice



Programme - Social  
Justice Summit and C - Full detailed Programme



3<sup>rd</sup> International Conference on Social Justice  
and the 4<sup>th</sup> Social Justice Summit  
11 - 12 October 2022

<b>14:30 – 16:00</b>	<p><b>Dr Adeoye O. Akinola</b> <i>Head of Research and Teaching at the Institute for Pan-African Thought and Conversation (IPATC) at the University of Johannesburg.</i></p> <p><b>Dr Quatro Mgogo</b> <i>Senior Lecturer in the Faculty of Humanities at the North-West University School of Communication.</i></p> <p><b>Rapporteur: Rochelle Barrish</b> <i>Journalist and copywriter.</i> <i>Questions and Answers</i></p> <p><b>5. Public governance, democratic leadership, and access to justice.</b> <b>Facilitator: Prof Geo Quinot</b> <i>Professor of Law in the Department of Public Law and the School of Public Leadership at Stellenbosch University.</i></p> <p><b>Resource Person: Leon Wessels</b> <i>Lawyer, politician and activist. Member of the Constitution Hill Trust and the Council for the Advancement of the South African Constitution.</i></p> <p><b>Sibusiso Ngubane</b> <i>Author, speaker and leadership coach, served in different capacities as government executive.</i></p> <p><b>Paper: Overcoming constraints to access justice by the 'missing middle population' in South Africa.</b></p> <p><b>Mihloti Masuluke</b> <i>PhD student Gordon Institute of Business Science, University of Pretoria</i></p> <p><b>Paper: Role of Governance Oversight in mitigating against Institutional Disruptions: SOEs in South Africa.</b></p> <p><b>Adv Jackie Nagtegaal</b> <i>CEO of LAW FOR ALL, PhD Candidate at USB Business School and futurist.</i></p> <p><b>Paper: Legal Expense Insurance: A Sustainable Pathway to Access to Justice?</b></p> <p><b>Joint presentation:</b></p> <p><b>Prof Ercüment Çelik</b> <i>Sociologist at the University of Freiburg, Germany</i></p> <p><b>Melina Hanhart</b> <i>Graduate from the Global Studies Programme in Social Sciences (M.A.), University of Freiburg, Germany</i></p> <p><b>Paper: Drafting a New Constitution and the Hope for Restitution and Social Justice in Contemporary Chile.</b></p> <p><b>Rapporteur: Kopano Lebele</b> <i>Office of the Law Trust Chair in Social Justice, Stellenbosch University. Ambassador for the Social Justice M-Plan.</i> <i>Questions and Answers</i></p>
<b>16:00 – 16:15</b>	<b>TEA AND COFFEE BREAK</b>
<b>16:15 – 17:15</b>	<b>FEEDBACK FROM PARALLEL PANELS</b> <b>Facilitator: Cathy Mohlahlana</b>
<b>17:15 – 17:30</b>	<b>CONFERENCE OUTCOMES STATEMENT: Prof Thuli Madonsela</b>
<b>17:30 – 17:35</b>	<b>VOTE OF THANKS: Cathy Mohlahlana</b>

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*A project of the Law Trust Chair in Social Justice, Law Faculty, Stellenbosch University*

## ANNEXURE D – Letter of Gratitude for Presenting at 3<sup>rd</sup> Annual Conference on Social Justice



Letter of Appreciation  
from Prof Thuli Mado

11 October  
3<sup>rd</sup> Annual International  
Conference on Social Justice

2022  
Conference Theme:  
**RESTITUTION**

12 October  
4<sup>th</sup> Annual  
Social Justice Summit

Stellenbosch  
UNIVERSITY  
UNIVERSITHI  
UNIVERSITEIT

Prof. Thuli Madonsela  
Law Trust Chair in Social Justice

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socialjustice M-Plan  
socialjustice Chair @CPJL\_MPlan  
CISJ social Justice Hub  
@socialjusticechairsu

19 October 2022

### Letter of Gratitude

Dear Participant,

I trust that you are well.

On behalf of the University of Stellenbosch, the Social Justice Chair, and the Council of Social Justice Champions, I would like to express our heartfelt gratitude to you for taking part in our Annual Social Justice Summit and International Conference whose theme was Restitution.

We are honoured to have brought together a formidable group of experts and stakeholders on 11 and 12 October to collectively unpack the many layers of this complex issue. Through your invaluable contribution and others, vital conversations unfolded, bringing us closer to an understanding of the challenges and possible pathways to meaningful restitution.

Through intense deliberations which benefited from personal testimonies, speeches, and research papers, we have reached fresh insights into how inequalities and poverty challenges in South Africa, the African continent, and the world, are rooted in unremedied past injustices that can be traced to odious human rights violations such as slavery, human trafficking, colonialism, apartheid, and patriarchy.

With a new understanding of how what happened in the past still shapes the present, we can now utilize research and policy insights to catalyze progress on closing the economic and psycho-social gaps that continue to exist between beneficiaries of past human rights violations and the victims of such injustices plus descendants of both.

The Social Justice Summit and Conference culminated in outcomes documents that outline a hope-inspiring agenda for change. We appreciate the time, expertise, and effort you made to contribute to the positive outcomes. We hope you have found the experience of participating in the event informative, transformative and rewarding.

We look forward to engaging further with you as we traverse the road ahead in the hope of making accelerated progress and getting more stakeholders to opt-in or partner with us in the pursuit of social justice and the Musa Plan for Social Justice (Musa Plan).

As Margaret Mead once said: *"Never underestimate the power of a small group of committed people to change the world. In fact, it is the only thing that ever has."*

Best wishes,

**Prof Thuli Madonsela**  
Law Trust Chair in Social Justice and  
Director of the Centre for Social Justice