Student name: Mokgano Leshalabe
Student No: 29300933
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Supervisor: Prof Yolanda Sadie

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CHAPTER 1

INTRODUCTION, AIM AND SCOPE OF STUDY

1.1. Introduction

Government lobbying by businesses has become an integrated component of democracies across the world. However, interest groups normally target the political space and government processes (Jenkins & Mulcahy 2018).

Further, according to Jenkins & Mulcahy (2018) interest groups and private companies normally develop lobbying strategies to achieve the following three objectives (Jenkins & Mulcahy 2018: 4):

- Achieve their set political interests and goals.
- Respond to the needs of the organisation.
- Respond to matters of public interest and pressure affecting their respective business operations.

Also, businesses continue to influence policy makers, politicians, and senior officials for numerous reasons. These include, acquiring or securing government contracts, new market entrance, and strongly safeguarding their position in a market that already exists. Businesses also lobby to influence laws, regulations and policies developed by government which may have a potential negative impact on their operations (Jenkins & Mulcahy 2018: 4).

Therefore, it is evident that two main arenas exist in which the private sector aims to consolidate political capital and exert influence on political processes. Firstly, when a company engages with government as a regulator and secondly, when government seeks to purchase services. The nature of engagement will obviously differ since the objectives of these engagements are different.

In addition, within the process of lobbying - unethical behaviour by business and other interest groups can occur when they attempt to unduly influence key decision makers for purposes of self-enrichment through financial support either for political campaigns or personal gain in exchange for government contracts. On the other hand,

government officials or public representatives can also be corrupted in their dealings with business by receiving special gifts which might be monetary or vacations.

State capture is considered as a systematic corruption which gives room for narrow interest groups to have ultimate control over public institutions and processes that are utilized to develop public policy, who in turn ensure that public policy doesn't address matters of public interest but shape the policy direction to align with their direct interests (David-Barret 2023: 224).

According to David-Barret (2023), the concept of state capture was initially introduced during the early 1990s and was used to describe the type of behaviour which has been observed during the first decade of transition in Eastern Europe and some parts of the former Soviet Union. It has been defined as improper influence on how law and policies are formulated.

The issue of state capture only surfaced in South Africa following the report by former Public Protector, Advocate Thuli Madonsela, on allegations of state capture by former President Jacob Zuma in 2016. The concept has now become popular in the parlance of not only business, political leaders and the media but also among ordinary South Africans (Martin & Solomon 2016: 21).

According to the Judicial Commission of Inquiry into Allegations of State of Capture Report (2016) (commonly known as the Zondo Report), Jacob Zuma was regarded as the facilitator of state capture because he used his position as a president to remove ministers, board members and senior government officials who were not prepared to work with his close associates, the Guptas. At the centre of state capture was the Gupta family who were able to influence the appointment of cabinet positions and had infiltrated the ruling government, which was politically facilitated by the former president. From 2012, the private companies that were closely affiliated with the former president and the Guptas, were able to benefit from his abuse of power and saw billions of rands that belong to taxpayers being siphoned by close associates.

The above-mentioned prevalence of state capture has set South Africa back by R1,5 trillion during the second term of Zuma's presidency. Economic growth, for example, dropped from 4.6% in 2006 to 0,7% in 2018. Also, during 2017, South Africa was degraded to junk status by three global rating agencies such as Moody's Investor

Services. During 2007 the South African national coffers had R9.5 billion cash available to finance a portion of the R252.5 billion budget provisions. However, when the 2019 budget was announced it reflected a hole of R246 billion which can be supported through loans (Merten, 2019).

In addition, according to Merten (2019), the financial implications emanating from state capture are extensive. Firstly, there is the drop in foreign direct investment (FDI). In 2017 the South African FDI was standing at $1.3 billion which was a drastic decrease from $4.5 billion in 2012. Thus, a 41% decline. Furthermore, the Bureau of Economic Research determined that the South African GDP growth could have been between 10% to 30%, which could have led to the creation of between 500 000 to 2.5 million jobs. From 2010 to 2017 the South African Revenue Services (SARS) could have also collected between half a trillion to more than R1 trillion (Merten, 2019).

The South African state capture debacle also had political consequences. It undermined the prospects of building an accountable state where the rule of law and constitutionalism is strongly adhered to, and where all citizens irrespective of their culture, race and social status are equal (Mbaku 2018: 805–809). The former president went against his constitutional obligations and code of ethics to allow ordinary citizens to influence the appointment of ministers, officials and boards of directors. He further ensured that the Guptas received extra-legal benefits (Mbaku 2018: 807).

In addition, state capture was central in weakening key government institutions, which was facilitated by self-serving elites and politicians (Mbaku 2018: 805-809). For example, the capture of SARS negatively impacted on revenue collection and high calibre personnel was recalled and replaced by friends and associates.

Over the years, direct improper influence over legislators by private individuals and business to advance private interests was made possible by the existing patronage and rent seeking system in South Africa (Mbaku 2018: 826-830). Zuma intensified the process by reshuffling his cabinet during 2017 when he removed Minister Gordhan and Mcebisi Jonas from the Finance Ministry to make way for ministers that are favourable to the Guptas and their business interests (Merten 2019).

According to the Zondo Commission Report (2020: 11-147), the foundation of state capture was the conflicting interests between private individuals and companies that

lobbied politicians and technocrats in pursuit of self-benefits by means of influencing government decisions to align with their interests.

Preventative measures are therefore needed to regulate the conflict of interests and the way private individuals or companies can engage with public officials or elected public representatives to eliminate unethical lobbying. South Africa has not attempted to have any regulation introduced to regulate lobbying, nor has expressed its intention to regulate the lobbying profession. However, according to Maimela (2021), there are two issues with lobbying in South Africa - the status quo unregulated lobbying that is untenable and the fact that the influence of lobbyist on public policy remains unquestioned and not openly evaluated. He therefore calls for lobbying to be regulated and accountable.

In similar vein, Mathekga (2019) argues that South Africa's democracy is maturing and there is a growing usage of money in influencing politics, public policy and government institutions. Therefore, there is an immediate need to recognise lobbying as a profession, which would require the need to regulate the sector and the conduct of recognised lobbyists.

Across the world 18 countries have been reported to have a lobbying transparency framework. Of the 18 countries half of them are Western countries such as the United States of America (USA), Spain and Australia. The quality of the frameworks also differs from country to country. No African state has introduced any regulation that aims to ensure there is transparency and integrity in engagements between politicians, public officials and private individuals or companies (OECD 2021).

In Nigeria an attempt was made to legalise lobbying, but it failed. In October 2016 a National Assembly member, Dino Melaye, attempted to legalise lobbying. He submitted a bill called "An Act for the Regulation and Registration of Lobbyist in Nigeria". Following the second reading it was referred to the Committee on Judiciary, Human Rights and Legal Matters for further legislative actions, which to date has never made it back to the Senate or House of Representative for further considerations.

The opposition leaders together with Melaye, saw this as an attempt to strengthen oversight, transparency, equity and consequently the country's democracy. The bill was to ensure that lobbying practices are determined through codes of ethics and

monitored. It also outlined the consequences of acting against the code (Mudashir 2016). The call to regulate lobbying was also a preventative measure that could assist in curbing corruption within the policy making sphere.

In recognising the problem with unethical lobbying and its consequences, the OECD Council adopted in February 2010 the Principles for Transparency and Integrity in Lobbying Report. The adopted recommendations were the first international guidelines responding to the transparency and integrity risks that are associated with lobbying practices (OECD 2014: 3).

Furthermore, the OECD strongly emphasised the need for an international standard of lobbying since it was determined that even though lobbyists do indeed represent interests that are valid, they also bring important policy issues to the attention of policy makers. However, with the evidence available it has proved that policy making is not always as inclusively perceived, it has been prone to a monopoly of influence particularly by those who are financially strong and politically influential (OECD 2014: 3).

The recommendations by the OECD are applicable to all member countries. To date 18 countries have adhered to the call to regulate lobbying. Furthermore, lobbying has been receiving increased attention. Such efforts have gradually resulted in the implementation of risk awareness and the encouragement of transparent lobbying.

1.2. Aim of the study

It is evident that lobbying is a fact of life in the public decision-making process. On the one hand, as shown above, it can provide decision-makers with valuable insight and data in the development of public policies. However, on the other hand, it can lead to undue influence and unfair competition to the detriment of public interest and effective public policies. It is therefore important to regulate lobbying to curb policy capture by private interests and support a level playing field in public decision-making, thus fostering trust in public decision-making.

This study seeks to address the existing gap in regulating political and business lobbying in South Africa using the prevalence of state capture as a case study. To

provide a framework for regulating lobbying in the country and to support a level playing field in public decision-making, the study aims to establish:

- The reasons for the occurrence of state capture in South Africa in the period 2009 to 2018.
- The general characteristics of ethical lobbying.
- The regulatory measures of lobbying elsewhere in the world.
- Best practice measures that have been identified from case studies in the literature.
- The criteria used to regulate lobbying.

Having established the above, the study attempts to draw on the best practise measures and experiences to provide guidelines and a framework for regulating lobbying in South Africa.

1.3. Literature review

The review of the relevant literature to this study is divided into three categories. Firstly, the literature on the meaning of lobbying and unethical lobbying and the studies on regulating lobbying. Secondly, the existing scholarly contributions on regulating lobbying in South Africa. Thirdly, the nature of state capture in South Africa and the reasons for its occurrence.

1.3.1. Lobbying and unethical lobbying

Over the years, numerous scholars have attempted to focus on describing the act of lobbying and unethical lobbying. In this regard, the contributions by Mollona and Faldetta (2022), Zak (2019), Bunea & Gross (2019), Eckei (2013), Chari, Hogan and Murphy (2010), and Johnson (2006) are important.

The study by Mollona and Faldetta (2022) provides an analysis of the existing ethics of lobbying activities where the prevalence of justice is the central criteria. The study attempted to contribute towards developing a conceptual framework that can be used when assessing the ethical conduct in lobbying activities. It also outlines the issues related to the possible injustice of the political system that paves the way for those who are financially well resourced to voice their specific interests.

According to Mollona and Faldetta (2022), there has been for over 25 years a huge interest from both private companies and NGOs to influence political decisions by lobbying policy makers as well as the key implementors. The study highlights the lobbying activities in the United States and how the country continues to strengthen governance systems that regulate lobbying. The study also shows the growing financial investment in lobbying in the USA. Between 1995 and 2009, the financial investment in lobbying has been substantial.

Mollona and Faldetta emphasise that investments in lobbying multiplied from $1.5 billion to over $3billion. Also, between 2009 and 2020 the average financial expenditure related to lobbying has been approximately $3 billion and has continued to be stable (Mollona and Faldetta 2022: 1246).

From a governance aspect, it has been important to assess the ethical dilemmas associated with political activities that are implemented by businesses, particularly those related to lobbying. It is argued that the private sector has greater resources in terms of financial expenditure and are better or more widely represented compared to other groups with opposing interests. Therefore, this uneven distribution of resources necessitates the development of an ethical framework for corporate political action that will balance the opportunity to influence government policy across all interested parties (Mollona and Faldetta 2022: 1246).

In his contribution, Zak (2019) defines lobbying as a democratic way of trying to promote both public and private interests. He further indicates that the government remains central towards establishing an environment that doesn't dictate on market relations. He further recommends that the government must regulate with reference to three hypothetic scenarios – a society with lobbying, where lobbying exists but transparency is not accommodated, and where lobbying is transparent but has the potential of influencing decision-making.

Zak (2019) also provides a link among the bureaucracy, private organisations, the political market and society through the model of basic relations in the lobbying process. In summary, the bureaucracy determines the rules and makes decision through statistics while business procures services from lobbyist to promote their business goals, and the citizens determine who represents their interests in

government through elections. Furthermore, citizens can influence decision-making through the elections process and allow interest groups to represent their independent interests.

Eckei (2013) defines lobbying in much the same way as Zak. For him lobbying is the ability to influence the government making decisions in a way that can address specific issues raised by groupings that are directly affected by those decisions. He further indicates that the practice of lobbying the public sector globally, is commonly done through written arguments and physical communication (Eckei 2013: 1). Also, that lobbying is part of a democratic system because when done well it encourages public participation. This also grants interest groups the opportunity to engage with all spheres of government (Eckei 2013: 2).

On a different note, Chari, Hogan and Murphy's (2010) contribution examine how the regulating of lobbyist can be achieved. Their study provides insight into what has already been implemented by North America, Australia, Asia and Europe in terms of regulating lobbyists. In addition, the study focuses on understanding what the regulations are and whether the rules are effective, comparing the differences amongst continents, and how the rules have impacted the lobbying profession. The study used qualitative and quantitative analysis to compare regulatory laws that are implemented in countries regulating lobbying.

In his work, Johnson (2006) focuses on the negative side of lobbying. He states that although lobbyists have a constitutional right to lodge appeals to governments and to hire representatives to do so, there are some forms of lobbying that have dire effects on public services, deliberately undermine democratic processes and ensure that the public doesn't have trust in government. He further emphasises the importance of regulating lobbyists in two ways, by means of prohibition and disclosure requirements and by amending existing rules which may seem weak in addressing unethical engagements and the conflict of interests.

Johnson (2006) also expressed concern about the increasing large amounts of funding made available for lobbying to gain influence over public representatives. The lack of regulating lobbying practices has seen unfair and biased approaches by public

representatives and policy makers in addressing socio-economic matters (Johnson 2006: 12-13).

Begovic (2005) on the other hand, focuses on the impact of corruption and lobbying on social welfare. He indicates that corruption is more favourable in terms of the welfare effects when the amount of rent (rent in rent seeking is economic wealth amassed through shrewd or manipulative use of resources) is small and lobbying becomes favourable when the amount of rent is large. However, what the study doesn't address is the type of lobbying that can be regulated to avoid this trend.

1.3.2. Regulating lobbying in South Africa

The contributions on lobbying in South Africa are limited. Only scholars such Mokabane & Du Toit (2022), Mathekga (2019) and Mohlamonyane (2015) address the issue. Most of the literature focuses on state capture, for example, Maimela (2021), Rapanyane (2021), Dassah (2018) and Momokhere (2018).

Scholars that have engaged in regulating lobbying in South Africa, include the contributions by Mokabane and Du Toit (2022), Maimela (2021), Rapanyane (2021), Mathekga (2019), Dassah (2018), Momokhere (2018) and Mohlamonyane (2015).

The essence of Mokabane and du Toit's (2022) study is that the integrated governance reporting by the Kings Code on Corporate Governance on lobbying has the possibility to increase the credibility of companies that are operating in South Africa. It is important for the survival of companies to establish and maintain their legitimacy through operating in an acceptable manner. Society must be the arbiters on the support companies must receive, which illustrates the importance to monitor lobbying activities where integrated reporting must be mandatory to all companies (Mokabane & Du Toit 2022: 2).

It has been historical determined that integrated reporting doesn't ordinarily or automatically constitute accountability. However, the successful implementation of integrated reporting within private and public organizations is dependent on the introduction of reporting guidelines that must be mandatory. Furthermore, it is important to establish transformational governance systems, which can be

instrumental in strengthening stakeholder governance (Mokabane and Du Toit 2022: 4).

Mokabane and Du Toit (2022) directly studied the practice of integrated reporting from a South African perspective but aligned it to international standards or best practices, which require companies to adopt the concept. This has since played a critical role in demonstrating the social and economic impact which are of interest to potential investors. This study also focused on the value brought by the implementation of integrated reporting from an economic point. However, it does not engage in analysing the impact of unethical lobbying or irregular stakeholder engagement on the economy.

According to Maimela (2021), the Zondo Commission in probing the allegations of state capture, has brought the issue of lobbying to the forefront. It does not make sense to leave out state capture, since it has deteriorated public trust and criminalised lobbying. Maimela highlighted two issues with lobbying in South Africa – on the one hand, the status quo of unregulated lobbying that is untenable and, on the other, the fact that the influence of lobbyists on public policy remains unquestioned and not openly evaluated. He therefore calls for lobbying to be regulated and accountable.

The qualitative study of Rapanyane (2021) adopted an Afrocentric approach in exploring the characteristics of state capture. It outlines the events and socio-economic challenges. The study aims to provide a broader analysis of the interlink between state capture, corruption, unaccountability and lack of transparency by Zuma. Rapanyane also (2021) argues that the occurrence of state capture in South Africa is a result of private lobbying aimed at driving influence for economic gains. Also, this phenomenon manifested due to the lack of transparency on relationships among state officials, elected public representatives and businesses.

Furthermore, Rapanyane's (2021) study determines that state capture only became visible during Zuma's tenure, because businesses lobbied the Zuma led government for personal goals and with no effort to protect the public. The businesses that were instrumental in the success of state capture, colluded with politicians to undermine and control government policies and its institutions in accelerating private interests.

Also, the Gupta family through their collusion with former President Zuma were able to influence the state apparatus by determining who must be appointed to ministerial

positions within the executive. Zuma ensured that he protects himself and his acquaintances, instead of putting a stop to the plans to capture the state. Lobbying policies for personal benefits and the abuse of power for personal goals, according to Rapanyane (2021: 261), are birds of the same feather during the Zuma period.

In his contribution, Mathekga (2019) argues that with the South African democracy maturing and the growing usage of money in influencing politics, public policy and government institutions, there is an immediate need to recognise lobbying as a profession. This would require the need to regulate the sector and the conduct of recognised lobbyists. He has been very specific on the need to categorise the work of NGOs in lobbying for policy positions in the South African political system. Moreover, he argues that there is a concern over the abuse of establishing NGOs to drive political mandates by lobbying various industries. The government needs to clarify how these NGOs should be recognised. Organisations that propagate a specific policy position or legislation when receiving funding for purposes achieving specific identified political goals, must be recognised as lobbyists rather than the organisations that drive social change.

Mathekga (2019) further indicates that the word lobby has not fully featured in the South African policy discourse, hence the lack of an attempt to understand the term and practicality relate it to lobbying practices. The lack of categorisation and the absence of regularisation of lobbyists opens the opportunity for anyone to take up that role which, include organisations or institutions from NGOs who disguise as acting in the interest of the public.

Momokhere (2018), produced a study that attempts to evaluate how state capture emerged in South Africa. The paper follows the qualitative approach in the form of document reviews, which determined that the manifestation of state capture from a South African situation, which emerged as an arrangement of private influence and lobbying. He recommends criminal prosecutions and the blacklisting of role players in state capture but does not address the issue of lobbying.

However, Momokhere (2018) provides possible mechanisms which the South African state can adopt in preventing future attempts to capture the state. Amongst other things, he calls for transparency in all government deals with private companies or

individuals. This also includes having mechanisms that will assist in appointing senior officials based on merit and ethical criteria. He also argues that there is a need to establish a Corruption and State Capture Watch non-profit organisation, which will be responsible for gathering and interpreting information related to corrupt activities received from the public.

Also, the proposed organisation should be independent from the state and private individuals so that it can be unbiased when assisting the public in taking a stand against any form of corrupt activities or lobbying. This organisation will assist the already visible political will to strengthen the country's intelligence services, police and judiciary through professionalising these institutions (Momokhere 2018: 5).

Dassah's (2018) contribution focuses on the South African context of state capture. He does not draw a distinction between legitimate political lobbying and unethical lobbying. Although he defines state capture and explains how it manifested, he does draw a link between lobbying and state capture. He further explains the core difference between state capture and corruption. While capturing a state entails irregular attempts towards influencing the way rules, laws and regulation are formulated, corruption is the direct influence to undermine the execution of regulations, rules and laws through the acts of bribery.

Dassah (2018) also illustrates that lobbying focuses on the political discourse that aim to champion the interests of citizens, which is not like clientelism and patronage. He also argues that lobbying targets only the public policy making organs of the state and exclude the bureaucracy when conducted by business. He further regards lobbying as the strategic influence of government policies and its formulation, which is partly aligned to interest groups or an individual. He does not discuss the need to regulate lobbying to pre-empt potential undue influence before it occurs but has identified what is more common when lobbying.

In his study, Mohlamonyane (2015) focuses on the issue of lobbying long before the state capture debacle in South Africa. He focuses on the FIFA World Cup that was held in South Africa and questions the lobbying processes when countries negotiated to host the World Cup. He attempted to understand when do lobbyists draw the line between corruption and lobbying. He further argues that the lobbying processes were

not transparent and lacked accountability on the outcomes. This has compromised the reputation of FIFA and as a result it lost credibility. The contribution, however, falls short of how to address the concerns he raised.

From the above overview, it is evident that several studies are available on the issue of state capture in South Africa while a few studies also call for the regulation of lobbying. However, this study seeks to address the existing gap in regulating political and business lobbying in South Africa using the prevalence of state capture as a case study. It further provides a framework for regulating lobbying in the country and to support a level playing field in public decision-making. Having established the above, the study attempts to draw on the best practise measures and experiences to provide guidelines and a framework for regulating lobbying in South Africa.

1.3.3. South African state capture and the reasons for its occurrence

The academic contributions on South Africa's state capture are abound. However, only scholars such as Buthelezi & Vale (2023), Pillay, Chitunhu & Chivandire (2023), Chipkin (2022), Chipkin & Swilling et al. (2018) and Mtimka (2016) have attempted to provide reason on how state capture occurred in South Africa.

Buthelezi and Vale (2023) wrote a multidisciplinary analysis that provides a background on the events of how state capture was implemented in South Africa. Their analysis, unlike those of other scholars, presents an empirical understanding of how the affairs of the state took a different direction that lacks ethics leadership, and how this also affected regulatory bodies. The scholars also tried to recommend alternative avenues the state can explore to prevent state capture from finding expression in the state again.

Buthelezi and Vale (2023) have compiled and selected a predominant academic context that attempts to clarify how the state capture phenomenon became obvious in South Africa. The authors investigate the heterogeneous characteristics of state capture and discuss in detail the political economy dimensions. They further provide the context of the numerous participants in the process and the upper-class networks that paved the way for capturing the state. They point out that their role in undermining the constitutional democracy of South Africa is clearly explained.

According to Pillay, Chitunhu & Chivamdire (2023) state capture has been imbodied and entrenched in South Africa and through the debates sparked by this subject matter, it has been recommended that the country can either carry on to descent into spoils politics or go back to the basics of enhancing a stronger constitutional democracy.

The contribution by Pillay, Chitunhu & Chivamdire (2023) explores how state capture invaded the South African political, social and economic environments respectively; and further explores the consequences associated with the invasion. The authors, unlike Buthelezi and Vale, come up with recommendations that aim to alleviate the negative impact state capture has on the state, society and the economy at large.

Furthermore, Pillay, Chitunhu & Chivamdire's (2023) study aims to grow the state capture subject matter by providing an overarching description of the phenomenon and issues associated with it. The authors further attempt to ultimately single out essential procedural guidelines and policies that the state can consider or adapt for the purpose of inhibiting the phenomena.

Also, Pillay, Chitunhu & Chivamdire (2023) further outline the forms and types of state capture which interrogates the moral and ethical encompassments of individuals. The pair recommend the resuscitation and recapitalisation of the country's anti-corruption mechanisms.

The lack of ethical conduct, accountability and transparency have been instrumental in accelerating the ideal conditions for state capture in South Africa. Ethics and accountability are spread through every surface of person-to-person relationships and organisational actions from a local, national and global level. The prevalence of state capture is not limited to the linkages between selected senior government officials, the Gupta family and the former president (Pillay, Chitunhu & Chivamdire 2023: 161 -162).

According to Chipkin (2022), the rise of state capture in South Africa was made possible through the deliberate efforts to collapse state institutions. The institutions that were central in the State Capture Commission Report were riddled with internal divisions, frustrating technical support staff and intentionally redirecting resources towards programmes that were not meant for long term developmental benefits, particularly for economic growth.

Chipkin (2022) presents a provocative contention that corruption of a certain kind can facilitate development. He asks why this has not been the case in South Africa, which has shown similar patterns of corruption to those in China – which was his main example. While never encouraging and glorifying corruption, the author then turns to the need to properly professionalise the public service in South Africa.

Chipkin (2022) further indicates that even though the separation of powers exists within the South Africa government, what stood out during the intensive state capture process is the inability to differentiate between administrative and political roles in the legislated government structure. This is seen to provide political representatives with an unbalanced authority over the administration component of the South African government.

The contribution by Chipkin (2022), shows the current gap within the public sector, which lacks professionalism and provides the opportunity for rent-seeking activities. The author directly links this with the Chinese model of recruiting public servants versus that of South Africa. The author further indicates that accountability has been falling short in South Africa.

However, Chipkin & Swilling et al., (2018) have phrased the establishment of state capture during the Zuma presidency as centred around powerful elites. They refer to the nature of the relationship between former President Zuma and the Gupta family as a shadow state, which was central to the formation of informal structures meant to accelerate systems of making profit, capturing power and enhancing protection for those favoured by the orchestrators.

Furthermore, the core requirements for establishing formidable shadow structures are the possibility to have a stable command and control system that can determine the terms on how resources can be accessed, relocated and shared. However, the is more that goes into a shadow state system to be sustainable. The control referred to above, must be able to be adaptable to changes that may occur within an operating environment (Chipkin & Swilling et al., 2018: 19).

Once the sources of extraction are secured, the next step is to establish a network of brokers or middlemen who will be able to distribute the resources gained. Lastly, what Zuma did best which solidifies the system, was to formulate political territories where

support is provided in exchange to access state resources (Chipkin & Swilling et al., 2018: 19).

In addition, Chipkin & Swilling et al. (2018) indicate that the privileged access to Zuma by the Gupta family following his election to the ANC presidency was political capital, which was properly transfigured into a board and influential network that was effective to broker the relevant steps that led to state capture and the reconfiguring of various key state institutions.

According to Mtimka (2016), the South African democratic process permits the lobbying of public representatives or political actors by individuals, groupings and business with the purpose of driving socio-economic results that are favourable to them. However, this process must be implemented within an acceptable scope which does not intend to undermine regulatory prescripts and governance over state institutions.

Mtimka (2016) further indicates that ordinarily lobbying has been categorised as stakeholder engagement and management, which plays a critical role in facilitating technical engagements to influence, collaboration and cooperate. However, the influence of the Guptas in forming a shadow state that determined government appointments, policy consideration and resource allocation, differs from allowed or permissible stakeholder engagements.

1. 4. Method of research and analytical framework

This is a qualitative study using a case study design. The qualitative method is appropriate because it aims to understand processes as well as the social and cultural context that aim to shape behavioural patterns. Furthermore, the method is relevant to the study because it seeks to shape the behavioural patterns of lobbying in a manner that doesn't undermine constitutionalism and democracy of a state (Wagner, Kawulich & Garner 2012: 126).

Also, the qualitative method strives to establish a consistent description of an occurrence as experienced by those directly involved, which is to also understand and represent those experiences in the original form (Wagner, Kawulich & Garner 2012: 126).

According to McGregor (2018), the qualitative method allows researchers to shape their studies to be descriptive, interpretative, investigative, participatory, illuminative (focus on one aspect of the research design), instrumental (create a new system to collect) and build a theory. However, the study doesn't intent to build a theory. It strives to investigate, be descriptive and interpretative (McGregor 2018: 93).

The case in this study is state capture in South Africa and the need to regulate business/public lobbying. A case study design is used in qualitative research that focuses on the study of a single entity, person or country using a large collection of information. The essence of a case study design is the eminent justifiability in various circumstances that include exceptional circumstances and standard situations that can be exposing and collecting information overtime. The case study design is aligned to this study because it aims to collect data over time and reveal the findings of how state capture occurred and why lobbying needs to be regulated in South Africa (Suter 2012: 365-366).

Furthermore, case studies are very informative and have the possibility to duplicate active discoveries and investigate or exclude opposing descriptions. Also, this design allows the use of archived records, documents, structured or open interviews and several forms of observations where the scholar can be a participant or not. The aim is to not generalise the findings that may emanate from this study, but to give a detailed description (Suter 2012: 365-366).

Information for this study is acquired from primary and secondary sources. Primary sources comprise newspaper articles, speeches, planning documents while secondary sources include books, book chapters, policy papers and journal articles.

The analytical framework for this study is developed from scholarly sources and other contributions on the criteria for ethical lobbying and existing forms of regulation elsewhere in the world. As shown in the literature review, several scholarly contributions exist on the practice and methods of regulating lobbying in several countries. Most of the contributions have also focused on the criteria for ethical lobbying.

1.5. Structure of the study

This first chapter introduces the study and includes the aim and justification for the study, a review of the literature and the method of research. Chapter two is devoted to unethical lobbying in South Africa by specifically focusing on the prevalence of state capture in the country in the period 2009-2018. The analytical framework is developed in chapter three. This chapter specifically focuses on the criteria for ethical lobbying and existing forms of regulation elsewhere in the world. Chapter four is devoted to ways of how lobbying can be regulated in South Africa while chapter five concludes the study with a summary of the main findings. This chapter also highlights the fact that the analytical framework as well as the ways in which lobbying can be regulated in South Africa, can be useful in similar studies elsewhere.

CHAPTER 2

UNETHICAL LOBBYING IN SOUTH AFRICA: THE PREVALANCE OF STATE CAPTURE (2009-2018)

2.1. Introduction

More than 20 years since the establishment of a new democratic South Africa, the government under former President Jacob Zuma, endangered the same democracy that prominent leaders such as Nelson Mandela, Chris Hani and Steve Biko fought for. South Africans experienced apartheid rule from 1948 to 1994. The preparation from an apartheid state towards a democratic state began in the 1990s and was promoted under the banner of equality and human rights (Bester and Donovsek 2021: 74).

With the ending of the era of apartheid, the new constitution was drafted in 1994 and marked the first 'born-free generation' in 1995. This was a fresh start for a country that was embattled with deep rooted racial tensions for decades. The new dawn was perceived to be fully respectful of human rights and equality before the law (Bester and Donovsek 2021: 74).

However, over the years the optimism of the 1990s started to wane because of a new evil, i.e. corruption, which surfaced under the rule of the former president. The country has been exposed to corruption in all areas of society and it became systemic and institutionalized. Corruption has been prevalent within the social, economic and political spaces of South Africa as well as in state institutions, including the State-Owned Enterprises (SEOs). All were to a lesser or greater extent implicated in a complicated web of corruption (Bester and Donovsek, 2021: 74).

To address the issue of unethical lobbying and the need for the regulation of lobbying in South Africa discussed in the subsequent chapters, this chapter outlines what is understood under the concept of state capture as well as the contributing factors that laid the foundation for state capture.

2.2. The meaning of state capture and its prevalence across the world

State capture is considered as systematic corruption, which gives room for narrow interest groups to have ultimate control over public institutions and processes that are utilized to develop public policy, which in turn ensure that public policy doesn't address matters of public interest but shape the policy direction to align with their direct interests (David-Barret, 2023: 224).

According to David-Barret (2023), the concept of state capture was initially introduced during the early 1990s to describe the types of behaviour which have been observed during the first decade of transition in the Eastern Europe and some parts of the former Soviet Union. It has been defined as improper influence on the formulation of policies and the way laws and policies are implemented.

Furthermore, with reference to the initial introduction of the concept of state capture it has been determined that the captors of the state are normally businesspeople who were at a later stage known as oligarchs. They influence the public policy making processes through direct kickbacks or favours by making use of their personal relations with those central to political power, which are politicians and political parties. During political transitional processes the separation between business and politics is normally blurred, which opens opportunities of capture or undue influence (David-Barret, 2023: 225).

In the early years of post-Soviet transition to Russia, the country experienced what is called "institutional nomads". This is when individuals strategically change positions between the public and private sector to access first hand intelligence or to have an upper hand in the drafting of regulations. Such individuals would adapt to the rules governing each sector and this puts them in an advantageous position to influence or escape them but at most ensure that they successfully operate outside the set legal frameworks (David-Barret 2023: 225).

However, in the past 20 years the state capture concept has been utilized for describing the activities in other countries, which were once viewed as democracies that were resilient or on the path to democratize. The term has been associated with the description of governance in Hungary under Viktor Orbán, the Rajapaksa family in Sri Lanka, South Africa under Jacob Zuma, Turkey under Recep Tayyib Erdogan,

Serbia under Aleksandar Vucic, the Dos Santos regime in Angola and the close interweave of business-political relations in Brazil and other areas of Latin America (David-Barret 2023: 225).

Furthermore, in the above cases, the process of alleged capture has been led by political elites and not businessmen. With the politically facilitated capture, those who engage in grand corruption are described as kleptocrats because of their willingness to rule through corrupt means or theft. What remains integral to such leaders is the ability to hold power for purposes of accessing opportunities to steal and maintain their privilege of impunity to avoid any attempt to prosecute them or any of their counterparts (David-Barret 2023: 225).

2.2.1. Defining state capture and organised crime

Corruption is mostly explained as the misuse of entrusted power for self-enrichment. This definition further highlights that accountability is required from elected public representatives because they hold public offices (David-Barret 2023: 226).

Furthermore, the office holder can initiate unethical transaction by withholding services to apply pressure on the third party to provide monetary payment for purposes of fast-tracking the required service once payment is confirmed (David-Barret 2023: 226).

When referring to state capture, the central focus is overly on the role played by the third-party involved. Improper influence on the formulation of regulations and policies, centralizes the role of the captor group, even though the public representatives are inappropriately convinced to misuse their office and powers vested in them. State capture has been determined to be a sub-category of corruption – the concept provides an explanation of the direct path in which political power is abused and emphasizes the participation of interest groups in rewarding the abuse, irrespective of avenues available for legitimate lobbying (David-Barret 2023: 227).

State capture is a form of crony capitalism that constitutes high-level political relations, which exacerbates the level of corruption in a country. In addition, it has been argued that state capture is systemic politically related corruption, which is allegedly responsible for undermining governance systems (Breakfast & Madumi 2020: 16).

Capture does not only focus on regulations but extends to the core state responsibilities, which covers determining the rules of the game through legislative processes and facilitating appointments to influential positions or oversight bodies. Also, the patronage associates normally target the state to distribute its properties, access the public purse and its authority to regulate all sectors. Furthermore, it has been determined that state capture flourishes in environments that are riddled with division and abuse of power to influence regulations, appointments and the distribution of state funds to benefit narrow interest groups (David-Barret 2023: 227).

According to David-Barret (2023), there are three examples of state capture. These are: the influence on the formation of law and policy; influencing how policy is being implemented; and lastly, ensuring that the institutions responsible for accountability are disabled and non-functional. In the sequence above, normally those who intend to capture the formation of policy and law, target the elections, the constitution of the country, the security cluster - particularly the military, police and intelligence; key economic assets and oversight institutions such as the legislature.

Capturing the legislature or the legislative processes is a highly effective form of amending the balance of power because laws remain intact over time and are instrumental in shaping how all the citizens conduct themselves. It is also still important for one to understand the difference between proper and improper influence on how laws are developed. Lobbying can play a critical task within the democratic process, because it assists lawmakers to predict unintended consequences emanating from a new policy or regulation, especially when public participation is appreciated (David-Barret 2023: 228).

However, when lobbying is not effectively monitored or protected through regulating the practice, it opens up opportunistic tendencies and can be seen as undue influence when monetary incentives are used by lobbyists to sponsor a policy position rather than evidence based influence or when they engage with policy makers behind closed doors where transparency is not excised, which translates into state capture (David-Barret 2023: 228).

It can also be argued that neither state capture, nor corruption manifests through organized criminal groupings where their overall objective is to generate more wealth

and expand their influence over state power. The phenomenon of state corruption and organized crime has been in practice for centuries, since the beginning of governments (Bester and Donovsek 2021: 77).

State capture has been evident on the African continent where wealth and resources have become a curse to those who live in these countries. Over the years available resources have been exploited by those who hold political power for the purpose of self-enrichment. This is done within the confinement of organized crime (Bester and Donovsek 2021: 77).

According to Bester and Donovsek (2021), considering Rawlinson's levels of corruption, state capture cannot be separated from organized crime. Rawlinson distinguishes four levels of how organized crime is interlinked or penetrates legal structures, which are as follows:

- The first level is known as reactive organized crime. This type of grouping is both economically and politically connected. Hence the need to engage or negotiate with other similar groups is not regarded as necessary.

- The second level is passive assimilation. At this level organized criminals can negotiate with legal structures, and this takes place within influential legal structures where they are able to dictate the terms on how they can collaborate through negotiations.

- The third level is known as active assimilation, this involves groups that penetrate the existing legal structures and the network becomes dangerous.

- The last level is called proactive. At this level the political sphere and its procedures are influenced. This is where those who participate in the process can be intimidated. Relationship building and making contacts is mostly perceived as influencing a people's ability to achieve their goals particularly in the political space. These type of connections among powerful individuals can influence the general aspirations and viewpoints from others, thereby corrupting them.

Considering the above, South African state capture can be linked to the proactive level of corruption because it was a poisonous mixture of politics and business with the objective to abuse state resources made possible through intimidation – the poisonous mixture has left state institutions in disarray, has undermined the legitimacy of the ruling party and underlined the important need for a transparent government.

Also, state capture influenced the set-out rules of the game through enabling those who are chasing illegitimate partners to benefit from the rewards of the system, which they have been influencing. The relationship between the Gupta family and the former president, assisted the Guptas to infiltrate the ruling government because it was politically facilitated (Bester and Donovsek 2021: 80).

2.3. The development of state capture in South Africa

According to Rapanyane (2021) the concept state capture surfaced for the first time during the new millennium, because of its significant threat to the socio-economic standing of the developing countries and irregular governance systems. It became well-known within the South African political sphere from the first quarter of 2016. However, the phenomenon of state capture was nothing extra-ordinary from a South African perspective, because the foundation of the South African economy was established from influencing the political discourse by business individuals with the aim of accessing state resources.

The issue of state capture only surfaced in South Africa following the report by former Public Protector, Adv Thuli Madonsela, on allegations of state capture by former President Jacob Zuma in 2016. The report was informed by complaints which warranted the need to institute an investigation into the alleged improper and unethical conduct by the former president. This included other official responsibilities of the state which related to allegations of improper relationships and interference by the Gupta family in facilitating the removal and appointment of ministers and senior management of state enterprises. This resulted, in undue influence in the awarding of state contracts to directly benefit Gupta linked companies.

Furthermore, these complaints were triggered by media reports that former Deputy Minister Mcebisi Jonas, was offered a ministerial position by the Gupta family prior to the axing of Nhlanhla Nene by Zuma on 9 December 2015. Such an offer was also

extended to Ms Vytjie Mentor who was offered the Public Enterprises ministerial position to deliberately cancel South African Airways (SAA) route to India. It is alleged that this occurred in the presence of Zuma at the Gupta family's premises (Public Protector 2016: 5).

In addition, the media outlets have questioned the close relation of the former president with the Gupta family. The media alleged that the relationship has matured into state capture due to the family's power to influence the appointment of cabinet members and boards of directors of SOEs and ensuring that they capitalize on those relationships to receive preferential treatment when awarding government contracts, accessing the state's business financing facilities and business licenses (Public Protector 2016: 5).

According to Breakfast and Madumi (2020), between 2010 and 2011 government procurements amounting R113 million were awarded to businesses that were linked to friends and relatives of those were working for government institutions. The tendering system has been determined to be prone to opportunities of corrupt practices, where government personnel and politicians easily take bribes in return for favours that will give preferences to business elites.

However, the Zuma administration functioned as a shadow state because it ignored the functioning of the law enforcement agencies. This has provided a perception that the security architecture was captured by the kingpins that led to corrupt activities and who were on a quest to accumulate wealth at the expense of all ordinary South Africans. This created a culture of lawlessness within the state system. Professional ethics was disregarded as well as the control measures that are meant to prevent corrupt activities from occurring (Breakfast and Madumi 2022: 14).

Furthermore, policies such as the Public Finance Management Act (PFMA) and Municipal Finance Management Act (MFMA) were never adhered to by those entrusted with procurement processes because they were closely linked to the direct benefactors of the "shadow state". The normalization of corruption has made unethical conduct to be accepted and has since created the notion of patronage. Patronage is a transactional interaction that occurs among two or more persons who have a

connection whereby the benefactor provides political favours to their associates in substitute for loyalty and political backing (Breakfast and Madumi 2022: 14-15).

Neo-patrimonialism and patronage have been a mode of operation during the Zuma period This mode was meant to ensure that he is able to give his collaborators political benefits such as appointments to serve in the public sector in exchange to provide him with the required political support to remain in power (Breakfast and Madumi 2022: 14-15).

The support meant that selected individuals will be appointed in strategic positions regardless of whether the preferred candidates met the required minimum qualifications to hold those positions. A typical example was when the South African Constitutional Court declared the appointment of the former Director of the National Prosecution Authority (NPA), Mxolisi Nxasana, as unlawful (Breakfast and Madumi 2022: 14-15).

Various authors who wrote about state capture in South Africa have provided insights on how the criminal justice system was captured by criminal elements who were in business with the state and closely linked to politicians and high-level public officials. The strategic capture of the security cluster was mainly to ensure that prosecution of perpetrators was prevented (Break and Madumi 2022: 15).

From 2012, the private companies that were closely affiliated with the former president were able to benefit from his abuse of power and saw billions of rand that belonged to taxpayers being siphoned by close associates (Bester and Donovsek 2021: 80 -81).

South African state capture has been systemic and well organized by senior political leaders. The focus was not on small-scale looting but on high-scale treason. For state capture to be successful in a country, it requires high-level protection from politicians, law enforcement agencies and the public at large. This was the exact scenario that played out under Zuma (Bester and Donovsek 2021: 80-81).

The Zuma presidency was portrayed as crony capitalism because of its direct capture of mainly state-owned enterprises (SEOs), which play a critical role in the economy and are providers and controllers of important resources that drive economic growth in the country (Breakfast & Madumi 2020: 16).

2.4. The Zondo Commission and its report

The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, (generally known as the Zondo Commission as mentioned), which included all state departments and entities, was established due to the recommended remedial action contained in the report of the former Public Protecter, Adv. Thuli Madonsela, which was released on 2 November 2016. On 23 February 2022 following the Zondo Commission report being published, President Cyril Ramaphosa emphasised his intention to implement the recommendations brought forward by the Commission (Presidency 2022: 4).

The Commission's investigation into state capture in South Africa focused on the irregular public appointments, improper conduct by the national executive and the public functionaries, the concerted efforts and activities of the Gupta family in gaining control over governance structures and procurement systems in SOEs and other government agencies. Furthermore, the Commission also focused on general corruption that was related to fraud, money laundering, racketeering and various other illegal activities that occurred in public entities and all spheres of government (Zondo Report Vol. 6 2024: 29).

The final Report of the Commission concluded that "there can be no doubt that state capture happened in South Africa". President Cyril Ramaphosa has accepted the main findings established by the Commission, and took into consideration the existence, nature and extent of state capture in the Republic of South Africa.

Many of the instances of wrongdoing in public procurement processes in the period that was investigated by the Commission have constituted planned offences as part of the patterns of racketeering activities that were implemented by private companies that were strongly aligned to the Gupta family and its associates. The activities of racketeering are a breach of the Prevention of Organised Crime Act (POCA), which is a criminal offence (Zondo Report Vol. 6 2024: 31).

According to volume six of the Zondo report, the final evidence presented to the Commission indicated that state capture had evolved as a project by which a relatively well-organized small group of actors with the assistance of a network of collaborators within and outside the state conspired systematically to redirect public resources from

the state towards enriching themselves. These efforts were deliberately implemented with the intentions to exploit and weaken strategic state institutions and its entities, and this included the intelligence services and law enforcement institutions (Zondo Report Vol. 6 2024: 31-32).

Furthermore, with reference to the above, state capture was specifically made possible through strategic appointments, the dismissal of senior officials at public entities and the rearrangement of the systems responsible for the procurement of goods and services. The steps that were put in place by the perpetrators were meant to undermine the government's oversight mechanisms and to also manipulate the narrative in the public with the effort to favour those who intended to capture the state (Zondo Report Vol. 6 2024: 32).

Moreover, the subversion of the democratic process that led to capturing the state was to secure future political power that will assist the grouping to remain influential and retain control over the country's political order (Zondo Report Vol. 6 2024: 32).

In addition, the evidence that was presented during the proceedings of the inquiry established several elements that were visible and identified within the process of capturing government departments, SOEs and other organs of the state by the Gupta family. These are (Zondo Report Vol. 6 2024: 32):

- The allocation and distribution of state power and resources, directed not for the public good but for private means and advancing corruption.
- A network of persons outside and within government structures who acted unethically and illegally to prove state capture an opportunity to manifest.
- Improper influence of the appointments and removal of senior government officials, board of directors and ministers.
- The manipulation of the rules and procedures of decision-making in the state departments for purposes of facilitating an opportunity to advance corrupt activities.

- Deliberate efforts to undermine oversight bodies and to take advantage of the country's regulatory weaknesses with the main purpose of ensuring that accountability in any form of wrongdoing is avoided.

- Deliberate efforts to weaken law enforcement and intelligence agencies at the highest decision-making level to protect and maintain illicit activities and disempower opponents.

- Support and acquiescence by powerful actors in the political sphere, which included members of the former ruling party.

- Assistance by professional service providers who were operating in the private sector and who specialize in advisory services, auditing, legal and consultancy organisations. This service providers were instrumental in masking the corrupt activities that were associated with project and supporting the illicit benefits.

- Lastly, widespread disinformation and propaganda were used to mislead the public with the intention to divert the focus away from the illicit activities and discredit opponents.

The Commission did not deal with all the state-owned entities in South Africa, however, it looked into what occurred at Eskom, Denel and the South African Revenue Services (SARS), which was enough to reveal that state capture did take place in the mentioned entities. With reference to Eskom, the Gupta family made use of their relationship with Zuma to target and advance the purging of certain senior managers and ensured that their preferred associates are appointed to those positions with the expectation to assist in carrying out their scheme (Zondo Report Vol. 6 2024: 33).

Furthermore, regarding Transnet, the Gupta's used the former president to facilitate the removal of a minister that would potentially refuse to work with them. Subsequently, Zuma appointed their close associate who in return, appointed Brian Molefe who was part of the scheme. Molefe was later appointed to head Eskom and was succeeded by Siyabonga Gama. Also, at Denel the Gupta family advocated for the removal of Riaz Saloojee and two other senior executives in preparation to appoint Ntshepe as the CEO, due to his willingness to cooperate with them (Zondo Report Vol 6 2024: 33).

Lastly, the former president facilitated the capture of SARS and Department of Correctional Services through the promotion of a patronage system where he appointed his acquaintances to high-ranking positions (Zondo Report Vol. 6 2024: 33).

2.5. Consequences of state capture

State capture has a multifaceted impact on a country's social, political and economic institutions. The first visible outcome which state capture contributed towards is the country's political decay. Political decay occurs when the is institutional corruption and the citizens losing confidence in whether the state can execute its functions (Pillay, Chitunhu and Chivandire 2023: 163).

According to Pillay, Chitunhu & Chivandire (2023), the second outcome realized by state capture is the advent of a shadow state which conflicts with a government operating under a constitution. A constitutional government is defined by its jurisdictional and legislative structure that outlines the barriers between a state-owned entity and a government. On the other hand, a shadow state refers to a network of people who cooperate with each other to conceal or deny facts that are opposite to their agreed positions within a constitutional state.

Furthermore, a shadow state encourages direct nepotism and clientelist networks, which opens opportunities for self-enrichment and corrupt activities by those closely linked to politicians or persons of influence. Although the contracting linkages of a shadow state are complex, those who were primarily involved during the Zuma presidency were his family members, the Gupta family and their close associates or friends (Pillay, Chitunhu & Chivandire 2023: 164).

In addition, the shadow state is a threat because it preys on the constitutional state as its mode of survival. The former president acted contrary to the description of being a "quintessential constitutional being" as stipulated in the Constitution of the Republic of South Africa (1996). With the background provided, one cannot dispute the fact that the shadow state was a success, however, civil society and opposition parties advocated for the strengthening of government's checks and balances (Pillay, Chitunhu and Chivandire 2023: 164).

The third consequence of state capture in South Africa was institutional decay. This was proven by the systematic penetration and manipulation of SOEs through patronage employment opportunities and government contracts, which were awarded to close acquaintances. As a result, it manifested in corrupt activities and the capture of state institutions (Pillay, Chitunhu and Chivandire 2023: 164).

Institutions that are weakened are compromised and normally they do not have the capacity to render services and perform policy initiatives and special projects. Weak SOEs perpetuated decay through the loss of experienced personnel, deteriorating service delivery, unreliable water and electricity services, irregular revenue collections and the deteriorating performance of municipalities (Pillay, Chitunhu and Chivandire 2023: 164 -165).

According to the Zondo Commission findings, a significant factor in state capture was the interference by members of the executive, including the former president in government procurement processes, more specifically in SOEs. This was due to the high budget allocations that SOEs normally receive. This capture was evident in the incidents that occurred at Transnet, the South African Airways (SAA), Eskom, the South African Broadcasting Company (SABC) and the Passanger Rail Agency of South Africa (PRASA). This was facilitated by the disregard of procurement rules (Pillay, Chitunhu and Chivandire 2023: 164 -165).

2.6. Implementation of the Zondo Report

President Ramaphosa has implemented measures to remove the individuals who were responsible or were key players in the success of state capture. But whether the efforts by the president are adequate and what in addition can be done to reverse the great suffering cause by state capture. The success of state capture was visible in numerous state institutions due to the compromised implementation of their functions and duties. Also, state capture facilitators undermined law enforcement agencies to evade accountability and being subjected to institutional checks and balances (Pillay, Chitunhu and Chivandire 2023: 164 -165).

Following the handover of the State Capture Commission Report, Ramaphosa established an ad-hoc committee that comprised of ministers and chaired by himself, to provide the necessary political leadership to the development of a response plan.

This was put in place to support the technical steering committee led by the Director General in the Presidency which was instrumental to guide the work of a multi-departmental task teams that would establish the workstreams that will make the plan a reality (Presidency 2022: 18).

As a first step towards a direction that will transform and strengthen government's governance system, the President established the National Anti-Corruption Advisory Council (NACAC) and appointed Prof Firoz Cachalia to spearhead the Council. NACAC was established to serve as an advisory council that will be responsible for monitoring the implementation of the anti-corruption strategy with an intended outcome of reducing the levels of corruption and improve public and investor confidence in South Africa (Presidency 2022:18).

According to the Presidency (2022) the six parts of the Zondo Commission's report put forward various recommendations which are outlined as follows:

Category	**Number of Recommendations**
Criminal or other investigations	202
Asset recovery	27
Referrals to other state bodies	15
Referrals to other bodies	11
Constitutional changes	5
Legislative changes	26
Operational or regulatory changes	64
Establishment of new institutions	2
Establishment of Commission of Inquiry	1
Grand Total	**353**

The largest number of the recommendations brought forward by the Commission's report were referred to law enforcement agencies for further investigations and with potential prosecutions. The law enforcement agencies have been collaborating with various agencies, which include the Financial Intelligence Centre and SARS, Furthermore, a joint task team was developed which include the NPA's Investigating Directorate, the SAPS's Directorate for Priority Crime Investigation, the Asset Forfeiture Unit and all relevant public prosecutors (Presidency 2022: 18-19).

The President referred 202 recommendations that were reported by the Commission for criminal and other investigations (also potential prosecutions), to the relevant law enforcement agencies and regulatory bodies such as the Legal Practices Council. Of the overall recommendations 38 have been implemented to date, where nine cases are before court and two cases have been finalised with guilty verdicts. The two cases involved 47 perpetrators and 21 private companies that were utilized during the criminal proceedings. Furthermore, the remaining 164 criminal recommendations from the Commission are still being investigated (Presidency 2023: 4).

The Commission also established that R57 billion of government resources have been implicated and made 27 recommendations that required the state to recover these funds. Therefore, in fulfilling the recommendations, the Special Investigating Unit (SIU) has instituted civil litigation to the value of R64 billion, prepared civil litigation worth R1,4 billion and cancelled contracts to the value of R130 million. Also, the SIU is currently at an advanced stage of recovering money to the value of R2.9 billion with the possibility of setting aside awarded contracts to the tune of R33 billion (Presidency 2023: 9).

In addition, the NPA managed to freeze R14.18 billion's worth of assets from cases that are directly linked to state capture, with R5.4 billion recovered and returned to the state coffers to accelerate service delivery. SARS has to date acted against implicated individuals whose names were included in the report and collected R4.8 billion in unpaid tax fees during the 2022/2023 financial years due to the explicit evidence that was tabled before the Commission (Presidency 2023:9).

The Zondo Commission has established that the South African Police Services (SAPS) had abused its powers and delayed in investigating the Free State government's Vrede Diary Project. Therefore, the commission has requested the state to institute an independent investigation in the abuse and lack of response by the SAPS. This case is currently being investigated by the Independent Police Investigative Directorate (IPID) whose work has been concurring with the evidence that was presented to the inquiry. Among other things, it included missing evidence, the inability to gather evidence and case dockets being closed without convincing reason. However, the investigation has been underway since September 2022 and is continuing (Presidency 2023: 10).

Still in progress, the Department of Public Enterprises (DPE) has compiled cases for delinquency proceedings against 73 previous directors who served at state-owned enterprises and are implicated in the evidence that was brought before the Commission. These cases were expected to be concluded by the end of 2023; however, this has not been the case at the time of writing. The CIPC has also processed complains against 13 former Eskom directors and these cases were registered with the CIPC by the end of 2023 (Presidency 2023: 10).

According to the Presidency (2023) there has been several individuals who face further legal actions against them. These include the former SAA board member and chairperson of the risk and audit committee, Yakhe Kwinana who was subsequently requested to pay a fine of R6.1 million and was restricted from practicing as a chartered accountant by the profession's regulatory body as of April 2023.

Furthermore, the South African National Treasury instituted restrictions on companies that were implicated in the state capture commission from conducting any form of business with the state for 10 years. The Department of Justice and Constitutional Development (DOJ&CD) has reviewed the current legislative frameworks and reformed the Protected Disclosures Act and Witness Protection Act in line with the recommendation on whistle-blower protection (Presidency 2023: 10).

2.7. Conclusions

This chapter provided perspectives on the meaning of state capture within the South Africa context as well as the efforts that have been taken by the South African

government towards investigating how state capture occurred. Furthermore, the chapter provided an overview of the negative consequences of state capture.

The main elements of state capture in South Africa that stood out are that the allocation and distribution of state power and resources, were not for the public good but for private means and advancing corruption. Also, there was a network of persons outside and within government structures who acted unethically and illegally to provide state capture an opportunity to manifest. This was a collusion between business and government official to redirect state resources for personal gain.

Also, state capture was advanced by the improper influence over appointments and the removal of senior government officials, board of directors and ministers. This was to ensure that the interests of both parties involved in the scheme are well implemented.

Lastly, there has been severe manipulation of the rules and procedures of decision-making within state departments for the purpose of facilitating an opportunity to advance corrupt activities. With the hierarchical reporting in state departments, cooperation was required among those involved in the processes. This showed that state capture was well organised and properly planned.

State capture operated in the form of a shadow state with the main purpose of retaining political power and influence over the ANC. This was made possible by the former president due to the powers vested in him. Also, state capture was a well-organized criminal network, which captured the judiciary and law enforcement agencies with the main objective of delaying any form of prosecution against those who were close to the grouping.

Two detrimental effects of state capture were also identified in this chapter. The first visible consequence brought about by state capture was political decay with state institutions weakened and the rule of law undermined.

The second consequence was the advent of a shadow state which conflicted with the value of a government operating under a constitution. Furthermore, during the fourth and fifth administrations, clientelist networks were promoted, which opened

opportunities for self-enrichment and corrupt activities by those closely linked to the former president.

Furthermore, the Zondo Commission also established that R57 billion of government resources has been implicated and made 27 recommendations that required the state to recover these funds. Therefore, in fulfilling the recommendations the Special Investigate Unit (SIU) has instituted civil litigation to the value of R64 billion, prepared civil litigation worth R1,4 billion and cancelled contracts to the value of R130 million. Also, the SIU is currently at an advanced stage of recovering money to the value of R2.9 billion and with the possibility of so setting aside awarded contracts to the tune of R33 billion.

In addition, the NPA manage to freeze R14.18 billion worth of assets from cases that are directly linked to state capture, with R5.4 billion recovered and returned to the state coffers to accelerate service delivery. SARS has to date acted against implicated individuals whose names were included in the report and collected R4.8 billion in unpaid tax fees during the 2022/2023 financial years due to the explicit evidence that was tabled before the Commission.

As a remedial action the state has banished companies that were involved in state capture from doing business with the state for a period of 10 years. The state has also blacklisted professionals that institutionalised state capture from taking up decision-making positions in government and deregistered them to serve as directors of private companies. The state is also currently prosecuting those who have been involved.

The state is doing its best to implement all recommendations raised by the Commission’s report and the current president has the political will to ensure that the perpetrators are brought to book and held accountable for their actions.

The following chapter proceeds with the existence of lobbying regulations across the world and what these regulations entail.

CHAPTER 3
EXISTING LOBBYING REGULATIONS

3.1. Introduction

Political scientists and legal scholars who focus on lobbying regulations have invested most of their efforts in discussing lobbying registers, which are the critical components of legislation that is dedicated towards regulating lobbying activities. On the other hand, international organisations such as the OECD have invested their resources towards understanding the elements that triggered the need to regulate lobbying; processes that can be undertaken to evaluate the lobbying regulations and how lobbying can be regulated.

Over the years lobbying has evolved and has in recent years been classified as government affairs, public affairs, advocacy and stakeholder management Also, lobbying has never been as sophisticated, complex, and well-funded as it is today (Coen, Latsaitis & Vannoni 2023: 1-4).

In the last three decades, multi-national companies that have been lobbying across the world focused on national government departments and parliaments. Also, these companies have over time increased their financial resources towards enhancing their global government affairs footprint.

Furthermore, interest groups can share valuable information with governments on numerous regulations and public policies that are already being implemented, or which are to be considered. There has also been a rise in the direct use of interest groups by big business in lobbying for policy changes.

However, history has shown that in absence of the necessary preventative measures, the misuse of lobbying practices such as the monopoly of influence by specific interest groups, undue influence through deceptive evidence or misinformation and the manipulation of public opinion, occur (OECD 2023: 88).

Furthermore, in observing existing lobbying regulations, it became evident that there are three specific reasons for various states to regulate lobbying. The first is to limit or prevent any form of corrupt conduct between public officials and lobbyists. Secondly, to ensure that there is fair decision-making and policymaking processes that will promote transparency and encourage the disclosure of lobbying activities. Thirdly,

states intend to ensure that government policies and decisions are based on merit rather than on narrow sectional interest (Ng 2020: 509).

Lastly, regulating lobbying is not only limited to undue influence over public policies, but also extends to the financing of political parties and electoral campaigns, which can be an instrument used for unduly influencing policy and decision-making processes. South Africa has taken the first step towards regulating lobbying through the Political Party Funding regulations. However, these regulations do not require the donors to disclose their interests and what they require in return for their investment.

The purpose of this chapter is to analyse and compare countries that have implemented lobbying regulations to understand the methods they use and how these are put into practice. This chapter will also outline the best practices on regulating lobbying that are available across the world and assess the criteria that is commonly used to determine the need for legal lobbying regulations in a country. The objective is to identify the best practices that South African can align itself with for the purpose of regulating lobbying activities. This is discussed in the next chapter.

3.2. The need for a lobbying register

The purpose of discussing the lobbyist register is because it is commonly the most used tool for monitoring lobbying activities across the world. In some countries, in the absence of lobbying legislation, lobbying registers have been introduced, which requires lobbyists to register before engaging in any form of lobbying activities. However, this method only focuses on parliaments.

A lobbying register is a public database of lobbying activities undertaken by lobbyists within a specific country. These registers include details of individuals and companies that are involved in lobbying and provide information on individuals or state departments which are lobbied and with whom engagements exist. There are three types of registers that can be identified, which are voluntary, mandatory and conditional (Hogan & Bitonti 2022: 4).

Voluntary registers are unrestricted lists which permit organizations or professionals to individually enrol voluntarily. At most, these professionals and organizations have done this for reputational purposes or the exchange for personal benefits. Secondly, mandatory registers are lists that provide a legal basis for those registered to engage

in lobbying activities and such registers further prohibit those who are not registered from engaging in any form of lobbying activity. Mandatory registers are found in countries such as Australia, Canada and Israel but not in the USA, Chile, and Germany.

Lastly, conditional registers are a combination of the previous two because such registers are in its formal setting voluntary but gives public authorities the leeway to request, as a condition, that before any lobbyist meets a policy maker or have access to consultative processes, he/she must be registered. The European Union's Transparency Register after 2014 is a case in point (Hogan & Bitonti 2022: 5).

Furthermore, when evaluating the strictness of the set-out rules, many scholars identified eight indicators that can be used to evaluate the effectiveness of the rules on lobbying activities. The eight indicators are (Laboutková et al. 2020: 82):

- The understanding of what a lobbyist is;
- The classification of targets of lobbying;
- Procedures to be followed when registering;
- Disclosure of financial income and expenditure;
- The use of modern technology for filing disclosures online;
- How transparent and accessible the information is to the public;
- How enforceable the set rules are and how effective they are; and
- Revolving doors provisions.

In addition, scholars have determined the primary categorization of how the lobbying matter can be approached from a regulatory point of view in accordance with criteria that have been applied. The models that are the easiest, are the ones that provide the difference between self and external legal regulations. As summarised in table 1 below, self-regulations are derived from codes of conducts for lobbyist which are non-binding, and it is voluntary for a lobbyist to be registered before engaging in lobbying activities. On the other hand, external legal regulations provide binding codes of conduct and registering as a lobbyist is mandatory (Laboutková et al. 2020: 82 - 83).

Table 1: Summary of the differences between self and external regulation

	Self-Regulation	External Legal Regulation
Voluntary	(a) recommends a non-binding Code of Ethics	(b) law providing privileges only in the case when demands are met.
Mandatory	(c) mandatory Codes of ethics – binding	(d) law introducing mandatory requirements for all subjects in the industry

(Laboutková et al., 2020: 82 – 83)

3.3. Lobbying assessment criteria

According to Laboutková et al., (2020), many countries that have introduced lobbying regulations or legal laws have a different view on who should qualify to be a lobbyist. To perfect the process, basic criteria on lobbyists and regulatory requirements have been developed. However, these continue to be amended based on a country's specific needs. The assessments performed with the use of the set criteria serve as an important factor, particularly in assessing the quality of lobbying rules and keeping up with global standards of lobbying activities.

Table 2 (also see Addendum 1) provides the basic indicators required when establishing transparency standards for lobbyists. This study focuses on registers, the code of ethics, disclosure by lobbyists and oversight authority on lobbying. The table summarises the assessment criteria that can be used by states, which intend to introduce or improve their lobbying regulations (Laboutková et al., 2020: 86 – 96).

The first criterion is the existence of a register for lobbyists and incorporates the following requirements (Laboutková et al., 2020: 86-96):

- The register must cover lobbyists and the activities undertaken by the lobbyist.
- Lobbyists that are recognized should be professional lobbyists/consultants, in-house lobbyists corporations and in-house lobbyists organizations.
- Registers must have the details of the lobbyists (name, address etc) and the details of their clients.

- The lobbying register should be made public with the details of the lobbyists and their clients.

The second criterion pertains to the codes for lobbyists or lobbyist' activities and focuses on the following (Laboutková et al., 2020: 86-96):

- Whether the codes for lobbyists are obligatory and binding.
- Whether the regulations ban those who do not comply and discourages lobbyists from unethical behaviour.
- Whether organizations or companies are permitted to publish any information about its lobbying activities and/or activates of its members in the annual report.
- Whether an organisation exists that is eligible to investigate and check registered lobbyists for unethical behaviour and breaching the code of ethics for registered lobbyists.

The third criterion relates to the lobbyist disclosure requirements, which aim to understand the baseline frequency and timeline for lobbyists to disclose their activities. Also, whether the submitted reports include information on the contacts made by lobbyists (Laboutková et al., 2020: 86-96). Furthermore, this criterion compels lobbyists to disclose their income and expenditure on lobbying activities. This criterion also requires lobbyists to disclose information about their clients. Furthermore, it also requires lobbyists to disclose data on support and gifts (financial and non-financial) provided to the politicians, public office holders, civil servants and political parties. Lastly, whether lobbyists have their diaries publicly accessible (Laboutková et al., 2020: 86-96).

The fourth criterion focuses on the oversight authority established to play an oversight role on the implementation of lobbying regulation. Therefore, it requires states to establish oversight authorities which will monitor or oversee lobbying activities. The criterion requires the oversight authority to have the competency to investigate cases or lobbyists. Furthermore, the oversight authority must be required to publishes its annual lobbying report for transparency purposes (Laboutková et al., 2020: 86-96).

The above requirements are important for a state that intends to evaluate its level of transparency on lobbying activities and develop lobbying regulations. However, this

can be used differently by each country but serves as the available guidelines which are mostly used across the world.

3.4. Regulating lobbying

There are 29 countries that have legalised lobbying regulations in the world. However, the importance to recognize the need to regulate lobbying activities still has a long way to go. Only 15% of the countries in the world are regulating lobbying. In Africa there is no country that has legally introduced lobbying regulations, and the lack of transparency is prevalent in the affairs of government across the board.

Furthermore, 12 of the 29 OECD countries have introduced lobbying registers which are instrumental in enforcing transparency. Lobbying registers are important for encouraging transparent engagements amongst lobbyists and government officials. These registers also provide the state with an understanding of what is being lobbied and for who.

Also, 10 of the 12 countries that have lobbying registers require lobbyist to disclose their identities and type of lobbying activities undertake by the lobbyist. Furthermore, two of the 12 countries that introduced lobbying registers have gone further to require lobbyists to disclose their expenditures on lobbying activities and the legislation or regulation or policy they are targeting (OECD 2023: 90).

Of the 29 countries that are currently regulating lobbying and have lobbying registers in place, this chapter will only focus on the United States of America, Germany, Australia, Chile, Canada and Israel. It will discuss the existing lobbying regulations that have been legalized by these countries and provide a comparison.

3.4.1. Countries regulating lobbying

3.4.1.1. United States of America (USA)

The USA was far ahead in preparing itself for the future. During the 1800s, the government developed its first version of lobbying regulations, which made the USA the first country to regulate lobbying in the world. In 1875, the first ever lobbyist was convicted of bribing members of congress with expensive dinners, wine and conversations that would persuade them. This incidence led to the introduction of lobbying regulations.

The country then amended its lobbying rules in 1946 to align it with the changing trends in lobbying activities, which was instrumental to the formation of a system for lobbyist to be registered and disclose their activities. Lobbying has long been part of US politics, hence the government's attempt to regulate it and ensuring that the processes are transparent.

The Lobbying Regulations Act (LRA) of 1946 requires lobbyists to register immediately after having their first engagement with a potential client whose interest it is to influence government decisions. The Act further compels a lobbyist to disclose the name of their client, the duration of their contract, the monetary value of the contract and anticipated expenses. It also requires disclosure of all print media articles that have been published on the issues being lobbied.

Also, the lobbyists are required to report every three months by updating the names of their clients; the addresses of those who earned anything above $500; expenditure incurred over the value of $10 and the purpose of their lobbying (Laboutkova, Simral & Vymetal 2020: 146).

Furthermore, the Lobbying Registration Act compels lobbyists who intend to have influence over policy making processes in Congress to be registered with the Secretary of the Senate and Clerk of the House of Representatives and file quarterly reports. Also, lobbyists that fail to comply with the Act may receive a fine of up to $5 000 or a one-year direct prison sentence and risk being banned from lobbying for a period of three years. The Act is also applicable to Congress support staff, the executive branch and grassroots lobbying (Laboutkova, Simral & Vymetal 2020:146).

However, after nearly 120 years, Congress enacted the Lobbying Disclosure Act (LDA) of 1995, which formalized lobbying and set out applicable processes required for lobbyist to embark on lobbying activities. The LDA expanded on the definition of a lobbyist and recognizes an in-house lobbyist as an employee that is lobbying for the interest of his/her employer and an external lobbyist as an individual lobbyist representing a third-party client. Also, as mentioned above, the LDA expanded its scope to include not only Members of Congress, but also their supporting staff and those politically appointed in the executive branch. The LDA further regulates any attempts to influence the decision-making process of the executive branch by

compelling lobbyist to disclose who their targets are and for what (Hong, Rosen & Chugh 2023).

In 2007, the Honest Leadership and Open Government Act (HLOGA) was adopted to enhance and support the regulations set out in the LDA. The amendment to the LDA further introduced the need to report on a quarterly basis and permits lobbyists to submit their reports electronically. It also lowered the quarterly financial registration threshold from $10 000 to $5 000. Furthermore, the Act extends the requirements for lobbyist to disclose information about their clients to include government or local governments, agencies, or organizations under their control or influence (Laboutkova, Simral & Vymetal 2020: 146).

In addition, the LDA requires lobbyists to report on any donations made towards elections and campaigns every six months. Where contributions are over $5000, lobbyists must report quarterly. Lobbyists are also required to disclose their previous public sector employment within the last 20 years before registering as a lobbyist. Lastly, the Act increased the set sanctions from $5000 to $200,000 in monetary fines and/or maximum five years direct imprisonment (Laboutkova, Simral & Vymetal 2020: 146).

The USA has deliberately ensured that its operational guidelines as outlined in the Act are simple and implementable. The state provides the way lobbyist must report and the frequency of such reporting. The LDA has adopted to technological trends and moved away from manual reporting by allowing electronic submission of reports.

The Secretary to the Senate and the Clerk of the House of Representatives are jointly responsible for providing guidance and assistance on the registrations and reporting requirements. They also review, verify and inquire to ensure that the reports and registrations are accurate, completed and submitted on time.

3.4.1.2. Germany

The Bundestag adopted the German Lobbying Register Act in April 2021, which came into effect in March 2024. The adoption of the new law by Germany has taken place nearly 79 years since the first set of regulations were introduced by the USA in 1946. This is a significant milestone for Germany because the Act will regulate lobbyists activities in all federal ministries and parliament.

The German LRA is less comprehensive when compared with the USA. Nevertheless, the German version is well structured and can easily be understood by any other interested party. In comparison with the USA, the German Act goes into detail on the content required in the register and outlines the parties that will be responsible for the establishment and maintenance of the lobbyist register. However, the German LRA, like the USA, recognizes the need to adhere to a code of conduct for lobbyists and strongly encourages compliance thereof.

Furthermore, irrespective of Germany's recent adoption of the new law it is the first state in Europe to introduce a register for lobbying in 1972 under the Bundestag Rules of Procedure. Registration with the register for Bundestag lobbyists has been voluntary from 1972 until the adoption of the German LRA that came into effect in 2024.

From 2005 to 2021 the Germans have been locked down in debating transparency, undue influence and conflict of interest in their policy making processes. The lengthy debate resulted in the German coalition government (which was formed by the Social Democrats and Conservatives) passing into law the lobbying register in March 2021. It was anticipated that the lobbying register would come into effect in January 2022, but it was only introduced to the public and made mandatory in March 2024 (Schiffers & Plumer 2024: 2).

For over five decades the German register was never a compelling legal document but rather a general expectation that lobbyists need to register, which resulted in lobbyists not fully disclosing information on their engagements with public officials because it was voluntary. Also, the register that has been adopted by the German government includes a code of conduct but lacks the mechanisms that can be used for monitoring compliance with the regulations. However, in October 2023 the law was amended to include a clause on the reviewal and authority of the Act (Schiffers & Plumer 2024: 2).

3.4.1.3. Australia

Australia is the third country in the world to introduce regulations on lobbying activities using the Lobbyists Registration Scheme (LRS) in 1983. Since the introduction of the LRS in 1983, Australia has never attempted to amend the regulation to align with the changing trends in lobbying across the world.

However, what the Australian government did was to further establish the Lobbying Code of Conduct in December 2007, which was tabled in the Senate in 2008, concurrently with the establishment of the Register of Lobbyists. The Australian regulations are comprehensive when compared with Germany and the USA because they unpack the regulatory frameworks across the Australian jurisdictions, which is not the case with the USA and Germany. Furthermore, the USA and Germany do not have a Lobbyist Code of Conduct in place like Australia.

Paid lobbyists have been operating in Australia for decades, however, their lobbying activities have been subjected to legal regulations from the early 1980s. Prior to that, lobbyists have been self-regulating through their employers. Those who worked independently were not regulated at all. However, as mentioned above, the first ever lobbyist regulatory measures in Australia were adopted by the Hawke Labour government in1983 (Ng 2020: 520-521).

The first lobbyist regulations were in the form of two registers where one was a generic register for domestic lobbyists and the other was a separate register specifically for lobbyists who represented foreign governments or companies. These registers were accompanied by guidelines on how ministers must manage their engagements with lobbyists. The registers require lobbyists to disclose their names, addresses and the clients they represent. They must also disclose a new client as soon as they engage with the client. However, this registration system was a failure due to its inconsistent compliance processes (Ng 2020: 521).

In 1996 the newly elected Howard coalition government rescinded the scheme because the registers were under-utilised. However, a section was introduced, which requires ministers and parliamentary secretaries to ensure that their engagements with lobbyists must not allow any form of conflict between their private interests and public responsibilities. A decade later between 2007 and 2009, the Australian government introduced a new scheme of executive regulations for lobbying (Ng 2020: 522-523).

For the first time since the introduction of lobbying regulations, the Lobbyists Code requires the establishment of a public register for lobbyists. The register determines the rules of engagement between ministers, ministerial staff, parliamentary secretaries and government officials with lobbyists. The Code further established a code of

conduct for lobbyists who show interest to be part of the register for lobbyists (Ng 2020: 523).

In the new Australian regulations, the state introduced an additional register for government affairs directors, which requires them to disclose whether they were previously employed by a political party or the government (Ng 2020: 526).

Queensland was the first jurisdiction in Australia to legislatively regulate lobbying through the introduction of a lobbyist register and code of conduct. The Queensland legislative system strengthened compliance by introducing an Integrity Commissioner who is an independent officer of the Queensland Parliament. The Commissioner maintains the lobbyist register and ensures that there is compliance with the codes and legislative regulations by lobbyists and all spheres of government (Ng 2020: 527).

The Commissioner is an independent oversight functionary of lobbying activities in Australia. Lobbyists are compelled to disclose detailed information on their lobbying activities to the Integrity Commissioner as compared to the other jurisdictions. As much as Australia has made efforts to regulating lobbying, lobbyists are still able to evade compliance with the regulations by restructuring the businesses from direct lobbying to offering consultancy services, which then doesn't compel them to register as lobbyists (Ng 2020: 528).

The 1983 version of the Australian lobbyist regulations were suitable for that period because the level of interest in lobbying was less advanced. The regulations address the non-legislative code of conduct and encourage the state to support the self-regulation system. The Act also requires that contacts with a minister, all members of congress and senators and public servants are regulated.

Furthermore, the regulations outline the requirements in registering as lobbyists by defining who is required to register, how the process of registering must be administered; it also specifies the type of engagements that must be regulated and lastly, sets the standard of information required when a lobbyist is registering.

3.4.1.4. Chile

Chile had its first democratic parliamentary and presidential elections in 1989. In 2014, the country publicly introduced Law Number 20.730, known as the Chilean Lobbying

Act, which contributes towards regulating the linkage between money and lobbying (OECD 2024: 8).

Following the adoption of the Lobbying Act in 2014, Chile became the first Latin American state to legislate lobbying disclosures. The regulations were adopted after 11 years of robust debates and proceedings in parliament. This marked a significant step towards strengthening integrity and transparency in the country's decision-making processes (OECD 2024: 8).

Furthermore, among other measures put in place, the regulations require public authorities and officials to disclose their engagements with lobbyists, particularly when the intention of the lobbyist is to directly influence government decisions. In comparison to other OECD states that regulate lobbying, Chile is considered to have put in place a strong regulatory framework. After 10 years of implementing the Lobbying Act, Chile adopted a National Public Integrity Strategy to cover current lobbying practices and associated risks (OECD 2024: 8).

Chile's approach to lobbying regulations and their lobbying Act has been divided into three areas of focus. The first area of focus is on the definitions and legal distinctions of lobbying, the second develops the procedural requirements or standards of the registers, which provide a platform for the authorities to give information. The third area focuses on outlining the prescribed sanctions for those who do not comply with the second area of focus and those who deliberately provide information that is misleading or that is incomplete (Gonzalez 2015: 9).

The Chilean government defines lobbying as a gainful activity that is implemented by corporations or individuals with the aim of promoting, defending or representing a specific view towards influencing decisions of the state. Such decisions can be changes in policies, initiatives and government plans that are still being deliberated. The Chilean Lobbying Act (CLA) aims to strengthen oversight measures and allow the state to make decision without being interrupted (Gonzalez 2015: 9-10).

The Chilean lobbying regulations (unlike those of the USA) mention national structures and local government officer bearers including officials who are likely to be lobbied. The regulations further consider key individuals who are participants in the commissions that are responsible to evaluate state tenders (OECD 2014: 141).

Furthermore, to elaborate on the second area of focus, the lobbying regulations entail the establishment of one or more registers that will compel lobbyists, clients and authorities to disclose specified information to the public for transparency purposes. The government introduced a total of six different registers. Two of the six registers are for the congress members and the other registers cover the supreme court, central bank, executive power and the general senior managers or accounting officers (Gonzalez 2015: 13).

The specific information that must be disclosed are hearings, consultations and meetings held between the lobbyist and any of the above. The records must reflect the person, organization or entity which participated in the meetings, and must further mention who the lobbyist is representing. They must also disclose if there was any form of remuneration committed for their actions, where and when the meeting was, and the agenda discussed. Those who fail to disclose or falsify the declared information will be punishable to a fine of 10 to 50 Unidad Tributaria Mensual (UTM), which is equivalent to nearly £400 and £1200 respectively (Gonzalez 2015: 13).

Based on international best practices, there are eight criteria which were implemented by the Chilean government when developing their lobbying regulations (Gonzalez 2015). These are:

1. Lobbyist were clearly defined in term of their differences.
2. The responsibility of individual lobbyist to register.
3. The criteria to be followed by lobbyists when disclosing their expenditures on lobbying activities
4. The disclosure of financial expenditure on lobbying by individual companies
5. Consideration of innovative ways of filing electronically,
6. Evaluating how accessible the information is to the public,
7. Analysing the extent to which the regulations are legally enforced
8. Assess the existence of the provision for revolving doors, with a direct attention to cooling off periods.

Like the USA and Canada (discussed below), there was political willingness and consensus to regulate transparency in lobbying activities. What the states have in

common is that they experienced difficultly in clearly defining a lobbyist and outlining the lobbying activities that must regulated. This remains an ongoing process due the ever-changing lobbying techniques and states trying to accommodate the new trends.

The Chilean Lobbying Act is not as comprehensive as those of the USA, Germany and Australia. The Act excludes procedural processes to be followed when a lobbyist requests to have access to congress for engagement purposes. Also, the regulations do not provide details on what is required when declaring information before the National Congress Commission. Furthermore, it excludes how a lobbyist can communicate with state officials on administrative procedures.

However, like the above discussed states, the CLA clearly defines the concept of lobbying and lists the authorities that are most likely to be lobbied. The authorities listed in the Act as most likely to be lobbied, have an obligation to report their meetings with lobbyists, though a timeframe is not provided. Also, the CLA requires the lobbyist to disclose details on the matters to be discussed during their meeting with government authorities and officials. The Act further requires lobbyists to file a form with all the details that can be submitted to the Ministry of the General Secretariat of the Presidency.

3.4.1.5. Canada

The Canadian Lobbyist Registration Act (CLRA) was initially introduced in 1985 by the Mulroney Government following decades of numerous attempts. This was 39 years after the USA introduced their lobbying act. The Canadian government formulated this piece of legislation with the objective of governing and monitoring lobbying activities. Furthermore, after four years of introducing the Lobbying Act, the Canadian state established the Lobbyist Code of Conduct that outlined the rules on lobbying activities (Khan 2024: 4).

The Lobbying Act strongly requires lobbyists to disclose any form of contact or communication with public officials and institutions. The Code of Conduct prohibits lobbying individuals that they have a personal relationship with (such as family and business associates). Also, the Code of Conduct prohibits lobbyists from lobbying those who just resigned from being public office holders, members of parliament and senior government officials. This is normally referred to as a cooling period.

In addition, those being lobbied are required to answer the Commissioner when he/she requests for information around their lobbying activities. However, in terms of the Canadian Lobbyist Registration Act and Lobbyists' Code and Conduct they are not compelled to accede to the request brought forward by the Commissioner.

During 2024 the Office of the Commissioner of Lobbying in Canada reported to have registered 3586 organizations and corporations into their database for lobbyists. Furthermore, there are 8866 individual lobbyists that have been registered in the same year, of whom 1662 are consultants and 7204 are inhouse lobbyists employed by corporations. Also, it has been reported that the most lobbied subject matters in Canada are related to the environment, economic development, industrial, energy and health sectors. The top five government institutions being lobbied are the House of Commons; the Department of Innovation, Science and Economic Development Canada; the Department of Environment and Climate Change Canada and the Department of Natural Resources Canada (Office of the Commissioner of Lobby of Canada 2023: 1-4).

According to Khan (2024), the CLRA has put forward essential provisions such as the formation of a register that is important for tracking any form of lobbying activities and setting the requirements on how a lobbyist can register on the registry. Several amendments have also been made to the CLRA and the most vital one is on section 14.1, which mandates parliament to review the Act every five years.

After the changes made to the Act, the amendments included the need to establish a commissioner that will solely be responsible for administering and implementing the provisions of the Act. The commissioner will also oversee the disclosure of lobbying activities by lobbyists and ensure that five-year cooling period for former public office holders is implemented and monitored. These amendments were introduced for enhancing and improving compliance, enforcement mechanisms, mitigate against concerns on revolving door phenomena and guarding against under disclosures on lobbying activities by lobbyists (Khan 2024: 5-6).

The commissioner's office is engaged in continuous outreach and awareness programmes targeting lobbyists and various other stakeholders such as the public, the media and public office holders. In the period 2023 to 2024, the office has engaged over 4000 stakeholders through 124 events. The office presents the Act and Code of

Conduct for lobbyists with the aim of encouraging transparency and accountability from both the lobbyists and those being lobbied (Khan 2024: 5-6).

The Canadian government has further established the Lobbyists Registrars and Commissioners Network (LRCN), which serves as an information sharing group among regulators tasked with enforcing regulations, policies and lobbying laws at federal, provincial and municipal level in the country. Canadian lobbying regulations continue to serve as an exemplary model on the international arena and aligns with available best practices published by the Organization for Economic Cooperation and Development (Khan 2024: 5-6).

However, as much as there are good wins for the Canadian government, these have been mirrored with challenges around the practical implementation of the Act. There haven't been any consequences faced by those who do not comply with the regulations. Furthermore, the oversight structure is underfunded and lacks the capacity to address all the queries or the breach of codes on time (Khan 2024: 7-8).

Lastly, the Office of the Commissioner of Lobbying (OCL) finds itself faced with restrictions that affect the Office from regulating lobbying practices effectively, which are imposed by the Lobbying Act and parliament. The enforcement of the Act has been affected by the under capacitation of the office and insufficient funding made available. Also, the lack of investigating authority vested in the OCL has made the enforcement of the lobbying regulation difficult. The OCL can only rely on filing a report requesting parliament to investigate any breaches to the Act or Code of Conduct (Khan 2024: 10-15).

Like the USA, the Canadian Lobbying Act is very comprehensive. However, the authority to investigate breaches to the Act lies with parliament not with the established oversight structure. The centralization of the investigating authority undermines the independence of the Commissioner of Lobbying and can compromise transparency, especially when a member of parliament is the transgressor. Also, the Act restricts persons engaged in lobbying when acting in their official capacity on behalf of the state (Khan 2024: 10-15).

The Act provides a comprehensive explanation of the information required when a person intends to register as a lobbyist. The information required is the individual's name and address, which is like the disclosure required by the USA, Germany,

Australia and Chile. In addition, the Canadian Lobbying Act, unlike those in the above discussed states, requires individual lobbyist to disclose their engagements monthly and this should be done no later than 15 days after the end of every month.

Lastly, the Act further indicates that from the day a person ceases to be a designated officer bearer they must wait for a period of five year before they are eligible to engage in lobbying activities. Therefore, unlike the other states, the Canadian state regulates a cooling period for public office bearers and clearly stipulates it in the Act.

3.4.1.6. Israel

Israel's first lobbying regulations were formally introduced in 1994 and later amended during 2008. The amendments made to the Act were meant to include that the registration of lobbyists must be done in the Knesset; lobbyist must be identifiable when in the premises of Knesset; the Knesset is required to establish a database dedicated for lobbyists; and the Act prohibits any form of conduct that is not in line with the regulations (Broyde 2021: 23).

Between 2015 and 2024 the Israeli government spent $378,343 million on lobbying activities while non-governmental agencies operating in the country have invested $2,7 billion towards lobbying activities, which include private corporations. The lobbying activities focused on influencing policy and public opinion in the areas of tourism and the promotion of trade relations.

The Israeli lobbying act defines a lobbyist as an individual who intends to influence a member of Knesset on behalf of a client or third party. It further indicates that lobbying normally occurs over a proposed bill or legislation that is before committees of Knesset (Broyde 2021: 23).

However, according to Broyde (2021), in the Israeli government's definition of a lobbyist they excluded those who (Broyde 2021: 24):

- within their scope of work engage in lobbying activities for their employer.
- are entrusted with statutory responsibilities in the public services particularly in local authority or an entity that is established by law.
- act on behalf an officer or central to the functionality of a quasi-judicial process that is before a committee or Knesset.

Furthermore, the Act restricts lobbyist from enacting pressure, making promises or threats for purposes of influencing a member of the Knesset. Also, lobbyists are prohibited from forcing members of the Knesset from using their conscience when voting or acting in a different manner. The Act also compels the Knesset to publicize the names of lobbyists that have been granted permission to work in the Knesset together with the details of their employers.

With the eagerness to keep up with evolving trends in lobbying and opening new legislative gaps, the Knesset attempted to amend the 2008 laws in 2013 and 2014. The gap that was identified was the limitation the laws had of over government ministries, municipalities, state owned entities and other relevant public offices that were exposed to possible lobbying.

3.5. Comparing the regulating mechanisms in the countries discussed

The USA was the first state to develop laws governing lobbying activities in 1946, followed by Australia in 1983. Countries such as Canada, Israel and Chile followed suite in 1989, 2008 and 2014 respectively. Germany however, introduced procedures for interest groups and representative to register their intentions to engage in lobbying activities in 1972 but has not proclaimed them into legal regulation like the above-mentioned states.

However, the country proclaimed the German Lobbying Register Act in 2021, which came into effect in March 2024, 52 years since it first attempt to formalize lobbying as a recognized activity.

The table below, provides a comparison between the six countries that have been discussed in this chapter. The indicators for comparing the states are whether these states have legalized their lobbying regulations, whether they have a lobbyist code of conduct in place, whether there are system limitations and who has the powers to conduct investigations on potential breaches.

The main similarities are that all the mentioned countries have adopted and introduced legal lobbying regulations. Also, these countries have established oversight authorities, which are all responsible to oversee and monitor lobbying activities in their respective states. On the other hand, the countries that have an existing code of

conduct for lobbyist are Australia, Canada and Israel while the USA, Chile and Germany do not have a code of conduct in place.

Furthermore, countries such as the USA, Germany, Australia, Chile and Australia have empowered their respective parliaments to be responsible for ensuring compliance with the set lobbying regulations. However, the powers to investigate are not vested in their parliaments but established independent state institutions. Also, Canada is the only country that requires lobbyists to disclose their lobbying activities at provincial and local government level, the rest only focus on national spheres, which include parliament and executive branches.

Table 3: Comparing the regulating mechanisms of the countries discussed

Country	Legal Regulations	The existence of a lobbyist code of conduct	The system limitations	Human/technical means of control and powers of investigation.
USA	The Lobbying Act (1946), The Lobbying Disclosure Act (1995), amended in 2007 by the Honest Leadership and Government Act.	No	Registration obligations do not cover all the various lobbyists available. Those with low income and part-time lobbyists are not regulated. Lobbyist are permitted to make financial contributions towards an election campaign of a member of congress.	According to the Act, the Secretary of the Senate and the Clerk of the House of Representatives are responsible to ensure compliance with the Act. The United States Attorney General is required to investigate any non-compliance once notified by the Secretary of the Senate and the Clerk of the House of Representatives.
Germany	German Lobbying Register Act (2021), the Act has come into force in March 2024.	No	Registration is only voluntary. Lobbyists are not compelled to disclose their clients. Members of Parliament who invite lobbyist are responsibility for providing the lobbyist with passes.	The German Bundestag and the Federal Government are responsible for the maintenance of the lobbyist register. Both institutions are jointly able to investigate and sanction any lobbyist that fails to comply with the Act.
Australia	Lobbyist Registration Scheme (1983) Lobbying Code of Conduct (2008)	Yes	Financial expenditures on lobbying activities are not disclosed but law requires the details of meetings and the agendas. Ministerial standards and the code of conduct for members of parliament and lobbyists are not administered independently.	The Parliamentary Secretary and Office of the Attorney General administer the Lobbying Code of Conduct and the Register of Lobbyists.
Chile	Law No. 20,730 regulates lobbying	No	Lobbyists are only required by law to	Office of the Controller

	and actions that represent private interests before the authorities and officials (2014).		disclose information on an activity when an application has been submitted. Lobbying regulation targets the registration on hearings rather than being laws on lobbying.	General of the Republic has been vest with investigating and sanctioning authority over matters affecting regional councillors, Mayors, Municipal Directors and secretaries. However, the Parliamentary Ethics and Transparency Committees are empowered to investigate and sanction National Congress matters related to non-compliance with the Act.
Canada	Lobbyists Registration Act (1989, amended in 1995 and 2003) became the Act on Lobbying in 2008.	Yes	No information	The Commissioner can check the regularity of information that is submitted. The Commissioner's office has 28 permanent employees and an operating budget of around $4 million.
Israel	Amendment no.25 to the Knesset Act, 2008.	Yes, there are rules which have been enshrined into law.	Lobbyists are only restricted to lobbying at national level, particularly parliament.	Control and powers to investigate are vested in a committee chaired by the Knesset Speaker. The committee also has two deputies - one from the coalition and the other from the opposition. The committee is responsible for processing all applications. It has the power to revoke permission granted for a lobbyist to lobby in the Knesset.

(OECD 2014: 37 – 200)

3.5.1. Frequency of disclosures and oversight bodies

Table 4 below, provides a summary of the register for lobbyists and the frequency of submitting information of lobbying activities by registered lobbyists. It further compares the oversight authority together with the mission and enforcements by the below states. It is mandatory for lobbyists to be registered in all six countries; therefore, voluntary or self-regulations are not provided as an option in any of these countries.

Furthermore, the frequency to update and report on lobbying activities differs with each state but varies from reporting changes every month, quarterly and bi-annually. The oversight authority in Germany and Israel lies with the presidents, which also includes investigating potential breaches. However, the USA, Australia, Canada and Chile have

established independent oversight structures, which do not report to their respective presidents.

The USA and Chile are the only countries that have more than one institution to oversee the implementation and enforcement of the lobbying regulations. On the other hand, Australia and Canada have established single independent structures to oversee the enforcement of lobbying regulations.

Table 4: Summary of the frequency of disclosures and oversight bodies

	Initial Registration	**Update and Subsequent Registration**	**Authority**	**Mission and Enforcement**
USA	Registration is mandatory for lobbyist to conduct lobbying activities. A lobbyist must register 45 days after being employed or retained to conduct lobbying engagements on behalf of a client.	Lobbyist are required on a quarterly basis to report their lobbying activities and twice on an annual basis report of their political funding. formulation	Office of the Clerk of the House of Representatives	-All documents filed under the Lobbying Disclosure Act are made public.
			Secretary of the Senate	Refer non-complying lobbyists to the US Attorney General, this follows the failure to address a violation after receiving a notice from Congress.
			Government accountability office	Conducts reviews of lobbyist' compliance with disclosure requirements on an annual basis.
			United States Attorney for the District of Columbia	-Secure compliance For noncompliance the authority must impose criminal or civil penalties.
Germany	Lobbyist' registration is mandatory in conducting lobbying activities. As soon as one of the conditions below is fulfilled, registrations are required when: - Representing interests that are part of a company's activities or on behalf of a third party; - Making over 50 lobbying contacts within three months. - Participating in public hearings of parliament and federal ministerial processes.	Lobbyists are required to update their information once a year. Financial disclosures must be updated following the end of the previous financial year. Changes of information can be disclosed every quarter. When a Lobbyist's identity changes it must be registered.	President of the Bundestag	Maintain and preside over the administration of the lobbying register.

Australia	Lobbyist registration is mandatory to conduct lobbying activities.	Lobbyists are required to ensure they confirm that their information is updated within 10 working days between 31 January and 30 June of each year. In an event of changes, lobbyist must with 10 days of such changes update the register.	Attorney-General's Department	Administer the Lobbying Code of Conduct and the Lobbyist register. Ensure that lobbyists provide accurate information. Receive and evaluate reports with possible breaches. Have the authority to remove a lobbyist form the register.
Chile	For a lobbyist to meet any public official, it is mandatory that they request for the meeting using their online system. On a monthly basis, companies are compelled to make their meeting registers public.	During the first working day of each month, public organizations are required to update their registers.	Transparency Council	Responsible for publicly publishing agendas, lobbyist register and lists and manage interests.
			Accounting Officer	Has the authority to propose sanctions against lobbyists that breach the Code and the Act.
Canada	It is mandatory for all lobbyists to be registered before being engaged in any lobbying activities. The Canadian government recognizes two sets of lobbyists: - Consultant lobbyists who must be registered within 10 working days after signing a binding agreement for lobbying services. - In-house lobbyist must be registered within 60 working days, only if they meet the minimum threshold set out for lobbyists	Lobbyists details are required to be refreshed every six months. A monthly communications report must be filed when a registered lobbyist plans to meet with a designated public office holder.	Office of the Commissioner of Lobbying	- Responsible for the administration of the Register for Lobbyists. - public awareness on the requirements of the Act. - Ensure that registered lobbyists comply with the Lobbyists' Code of Conduct and the Act.
Israel	Lobbyists are required to submit a mandatory application to the Knesset President requesting permission to operate in the Knesset building.	As and when the details of a lobbyist change, Knesset must be informed in writing.	Committee chaired by the President of the Knesset	Has the power to decide whether to grant lobbyists the permission to operate within the Knesset. In case of a violation, the President can prohibit lobbyists from entering the Knesset by revoking their permits.

(OECD 2014: 37 – 200)

The Code of Conduct for lobbyists serves as a tool used to enhance the implementation of lobbying regulations and ensuring that the rules of the game apply equally to registered lobbyists.

Surprisingly, the USA as the first state to regulate lobbying activities has not yet adopted or established a Lobbyist Code of Conduct. The above countries are members of the OECD, which has over decades set international standards on effective lobbying regulations with the aim of fostering transparency and integrity in lobbying activities. However, the implementation of the existing international standards on regulating lobbying is implemented differently within the six countries featured in this research.

The study has determined that the oversight bodies identified in the above countries, are not empowered to independently investigate breaches and sanction penalties. Also, they are all required to seek permission from either the president or parliament before they can investigate or penalize non-compliance with the Lobbying Act.

However, countries such as Australia, Germany and Chile must ensure transparency is visible through compelling registered lobbyists to disclose their intention to lobby, which includes what they intend lobbying for, on behalf of whom and the financial commitment put forward. However, the terms of disclosing financing political campaigns of potential members of parliament in all states are yet to be formulated. The USA, Australia, Germany, Chile and Israel need to expand their scope to include both provincial and local levels (like Canada).

3.6. Conclusions

Unlike African states, Western countries have been instrumental in regulating lobbying activities. There are currently 29 states in the world that have introduced lobbying regulations. However, these regulations differ from state to state, for instance, there are only 12 countries that have enhanced transparency in their lobbying activities by introducing a lobbyist register, which is made public.

Furthermore, the states that have introduced lobbying regulations and are fully implementing them are on the right path in enhancing transparency and integrity in the engagements between lobbyists and officials. The interests of democratic states are to enhance processes with an objective to protect the interests of the electorate, rather than those of elites, businesses and interest groups. Regulating lobbying, attempts to serve as a preventative measure for corrupt activities not to find expression within the policy and decision-making processes.

The assessment criteria outlined above, serve as starting point for states that have the political will to regulate lobbying activities. These criteria empower countries that do not have the experience of regulating lobbying with the key categories that need to be considered before they can start with processes to regulate lobbying activities.

This chapter has shown that all six countries discussed above, have legal lobbying regulations which are binding. However, the USA, Australia, Canada and Germany have the most comprehensive guidelines compared to Chile and Israel. Also, what has been identified, is that the states regulate lobbying differently, particularly in the outline of their registration criteria.

Furthermore, Germany, Chile and Israel have vested the powers of investigating breaches of the lobbying regulations in their presidents. This attempt is to procedurally manage the administrative element of the investigations, which can be prone to undue influence. For the sake of transparency, the powers to investigate breaches of the lobbying regulations must be overseen independently, not by a sitting president. However, those entrusted to independently oversee the implementation of the regulations must on a quarterly basis account to parliament.

In addition, the USA, Australia and Canada manage the authority independently. However, the commissioners have a responsibility to report to parliament and must seek permission from parliament to investigate any breaches. This process is not just vested in one individual but multiple stakeholders, which makes it difficult to unduly influence those overseeing the implementation of the Acts.

Also, the above states and others that have regulated lobbying, have taken conscious and bold decisions in regulating lobbying activities because they do not want to turn a blind eye towards any other effort that intends to undermine the interests of the public. These states envision transparency as a central component required towards setting ethical standards for decision and policy making that will ensure that the public continues to trust the state in putting the interests of the public first.

CHAPTER 4

REGULATING LOBBYING IN SOUTH AFRICA

4.1. Introduction

The consequences of state capture and the intention to promote transparency and integrity in lobbying activities have been evident in South Africa, particularly from the private sector. As demonstrated in the previous chapter, several countries have established lobbying regulations that South Africa can draw lessons from, including the USA and Canada.

The OECD (2024: 7 - 11) recommends four principles of transparency and integrity in lobbying. The four principles serve as measures that are meant to classify lobbying as a tool that is important for policy making. These principles are:

- The difference between lobbying and lobbyist should be clearly defined to remove various interpretations that can be misleading.
- Transparency in lobbying processes should be enhanced.
- The culture of persevering integrity when lobbyists and public officials are engaging should be institutionalised.
- Ensuring that determined rules are implemented accordingly. Those governed by them must comply and such rules should be subject to reviews as and when it is necessary to do so.

Furthermore, there are additional principles that need to be considered by South African law makers who intend to address the recommendations by the Zondo Commission. Below are the principles that South Africa needs to consider when addressing recommendations by the Zondo Commission:

- Building an effective framework for openness, transparency and integrity to promote an equal ground by establishing guidelines and rules that will thoroughly resolve corporate and public concerns related to lobbying. Such a framework must abide by the legal, socio-political and administrative context and must in detail indicate who the actors are and what activities will be covered.

- Enhancing transparency: this means a country or South Africa must develop a disclosure register for lobbyists. The disclosure register will pertain to lobbyists to provide the state with information on their lobbying activities, clients and intended outcome from their lobbying engagements.
- Fostering a culture of integrity: South Africa will achieve this through developing guidelines and rules that will set the tone on the required behavioural conduct expected from both lobbyists and public officials when engaged in lobbying activities.
- Mechanisms for effective implementation and compliance: South African will be required to establish an oversight structure that will monitor lobbying activities, the implementation of the lobbyist register and administer the registration of lobbyists.

The above principles are developed in line with lived experiences from the implementation of lobbying regulations from both OECD members and non-member countries. South Africa is a non-member affiliate of the OECD and has maintained a critical bilateral relation but continues to fall short in living up to the standards of promoting transparency and integrity in lobbying activities in the country.

4.2. Regulating lobbying in other countries

In the previous chapter, the regulation of lobbying in six countries namely the United States of America (USA), Canada, Germany, Australia, Chile and Israel was discussed. It was established that the regulations covered four important elements. The elements are:

1. Legal regulations/register for lobbyists
2. A Code of Conduct for lobbyists
3. Lobbyist disclosure; and
4. An oversight authority.

Regarding the first element, all six countries discussed in chapter three have legal regulations governing lobbying activities. The first country to introduce them was the USA in 1946 and the last was Germany in 2024. However, in instances where legal

regulations do not exist, the government would normally require those who are possible lobbyists to register as and when they enter the parliamentary premises with the intention to engage any member of parliament, political support staff or ministers.

The overall purpose of the first element is to provide parliament and state institutions with information about lobbyists and their activities. The purpose of registering is to ensure that there is a level of transparency and accountability from those entrusted with public offices.

In addition, it was established that most countries that regulate lobbying activities focus on the national sphere of government, neglecting both the provincial and local government structures. However, it must be mentioned, that countries such as the USA, Australia, Germany, Chile and Israel have attempted to regulate at both levels.

The second element outlines the importance of a code of conduct for lobbyists. The lobbyists' code of conduct serves as a tool that can be used to enhance the implementation of lobbying regulations and ensure that the rules of the game apply equally to those who are recognized to part-take in lobbying activities. Such a mechanism exists in countries such as Australia, Canada and Israel. However, the USA, Germany and Chile did not develop a code of conduct for lobbyists.

The third element focuses on the lobbyist disclosure or declaration requirements, which is important for enhancing transparency in all lobbying activities. This element requires lobbyist to declare their intention to engage at both spheres of government, which has been implemented by all six countries discussed in the previous chapter. This, however, is not compulsory and any lobbyists that doesn't declare cannot be legally held accountable because there is no legal law governing lobbying at provincial and local government levels. Both spheres of government need to be investigated because there is still legislation to be developed to govern both levels, which can potentially affect business.

The fourth element focuses on oversight authority which is established as a function that will administer the implementation of the legal lobbying regulations. Even though there are states that do not have legal regulations, the six countries discussed in the previous chapter, have legal regulations in place. Also, there are oversight structures established and provided with the authority to grant lobbyists the opportunity to register and grant them access to public representatives. Where lobbyists do not follow the

set-out rules, the oversight structure can revoke their access and ban them from entering or engaging public representatives within the parliamentary premises.

4.3. Best practices in regulating lobbying

There are basic indicators that need to be considered when implementing transparency standards by lobbyists. As mentioned above, such standards are having in place registers for lobbyists, a code of ethics, disclosure by lobbyists and an oversight authority. This section discusses the best practices that developing countries such as South African can adopt.

The sub-sections below serve as a guide for any country that intend to institutionalize lobbying regulations and want to incorporate them into their governance structures. However, such countries as a starting point need to assess what gap will the regulations address.

4.3.1. Register of lobbyists

The registers form part of the foundational phase for a country towards classifying the category of lobbyists that are participating in lobbying activities within their boundaries. Whether lobbying is direct or indirect, the lobbying register must be statutory for it to be legally binding to all lobbyists and those who are lobbied in South Africa. When the South African government decides to regulate lobbying, they must ensure that the registers must be applicable to all three spheres of government.

Furthermore, lobbyist registers must classify the type of lobbyists that will be expected to register before they can participate in any lobbying activities. The state will then be able to account for registered lobbyists and curb the required number of lobbyists in the country.

With the register in place, South Africa will be able to request lobbyists to provide the state with their personal details such as name, identity number and addresses which can be both their home and work addresses. For transparency and accountability purposes, South Africa must ensure that the database of registered lobbyists is made public to allow the citizens an opportunity to know these individuals.

Furthermore, the lobbyists must also disclose their clients and the contractual agreements between them. The purpose of this exercise is to ensure that government

understands the intentions of all lobbying activities that will occur within their borders throughout all spheres of government.

The South African government must ensure that they introduce a cooling period for former public representatives and senior government officials before registering as lobbyists. Furthermore, it must be ensured that lobbyists are prohibited from lobbying their close friends, family members and former colleagues. The state must put restrictions that will prohibit those who are not registered from being engaged in lobbying activities.

Chapter three outlined three types of registers that have been identified - voluntary, mandatory and conditional. The mandatory register is best suited for South Africa because it provides a legal basis that is binding for those registered as lobbyists and doesn't recognize those who are not registered as lobbyists. The mandatory register is commonly used across the worlds.

The voluntary register is not suitable because it is open ended and promotes lawlessness. Also, this register doesn't promote transparency in lobbying activities because it allows any other person to engage in lobbying activities without being registered and recognized. This type of register will pave the way for South Africa to experience state capture once again.

The conditional register is like the voluntary register but provides public authorities with the opportunity to request any lobbyist to register before engaging in lobbying activities, however, this is not compulsory or binding. Therefore, the conditional register is also not suitable for South Africa, given the conditions of how state capture occurred.

The South African registration for lobbyists must be done within at least 30 days after being employed or retaining a contract to continue conducting lobbying engagements on behalf of client. Also, lobbyists must on a quarterly basis report their lobbying activities and twice in a financial year report on the expenditure incurred on lobbying activities.

The purpose of reporting biannually or quarterly is to ensure that the register remains up to date with all the lobbying activities and government structures can monitor these activities with accurate information. The South African version must further request

lobbyists to update their details as and when they change. But this should be within ten days from the day their details changed because this will assist the government to have accurate information on their database. Canada is one country that requires individual lobbyist to disclose their engagements monthly and this should be done not later than 15 days after the end of every month.

In addition, lobbyists must be required to monthly file a report on their communications or lobbying engagements with a designated public office holder, members of parliament and government officials. When reporting, the lobbyists must ensure that the minutes of every meeting are attached, to understand the reason behind the meetings and the intended outcome or influence.

4.3.2. Codes of conduct for lobbyists/ lobbyist activities

The code of conduct for lobbyists is an important framework that will encourage and foster ethical decision-making and establish the necessary standards for professional conduct by lobbyists. The code will contribute towards promoting accountability and transparency in all lobbying activities led by a registered lobbyist. Also, the code has the powers to establish sanctions against those who violate it, and such sanctions can vary from fines, suspensions, terminations or legal actions.

Furthermore, with reference to chapter three, the code of conduct for lobbyist will serve as a tool that can be used for enhancing the implementation of lobbying regulations and ensuring that the rules of the game apply equally to all registered lobbyists. In relation to the countries discussed in chapter three, Germany, Australia and Canada have established codes of conduct that are legally binding and administered at parliamentary level.

The code of ethics for lobbyists or lobbying activities sets the tone on how lobbyists should conduct themselves when engaged in lobbying activities. The code is also intended to promote transparency and integrity in government processes and ensure that the engagements between lobbyists and government representatives uphold the highest level of ethical consideration and honesty.

Furthermore, a government that intends to develop lobbying regulations needs to establish a code for lobbyists, which must be obligatory and binding to all the registered lobbyists, which is the case in Germany, Canada and Australia. Also, their

code must strongly discourage lobbyists from unethical behaviour to meet the international standards. However, where a code is not established, it does not mean that their lobbying regulations are less effective. Countries such as the USA, Chile and Israel do not have codes in place, but they are implementing their lobbying regulations effectively due to the oversight structure established.

With the state capture debacle in South Africa, the code will be an ideal tool that can support lobbying regulations by ensuring that there is a specific standard of engagement that is required from lobbyists. It will also require the South African government to establish a structure that will administer the code and oversee the registration process for lobbyists.

Furthermore, when the government adopts the code, it must ensure that it prohibits any association or federation from investigating any potential breach, unless instructed by the oversight structure established by parliament. Also, the code must prohibit the associations from creating parallel structures like those of the administrators responsible for overseeing the implementation of the code, such as publishing lobbying activities about its members.

The reason behind the need for South Africa to adopt a code of conduct for lobbyist is to ensure that self-regulation by lobbyists is not an option. Self-regulation is like determining your own rules, which can be distractive and contradictory to the lobbying regulations. Therefore, the code of conduct must be provided by law for it to be mandatory and legally binding to all registered lobbyists.

The code of conduct of lobbyists will complement a lobbying act and will prioritize promoting transparent and ethical lobbying in South Africa. The code of conduct will professionalize the lobbying industry and contribute to enhancing public confidence in the integrity of the country's government institutions and decision-making processes.

The code will be ideal for South Africa due to the reputational damage corruption and state capture has had on the entire state machinery which included the decision-making processes. Therefore, with this code South Africa will be able to redeem itself by rebuilding the broken trust with the country's population by ensuring that all lobbying activities are transparent and made public.

Furthermore, the code of conduct for lobbyist will assist South Africa in avoiding government officials, public office holders, politicians and members of parliament being subjected to apparent conflict of interest situations. It will ensure that it protects those entrusted with the responsibility to protect the state from being unduly influenced to collude with lobbyist or business to defraud it.

4.3.3. Lobbyist disclosure

Lobbyist disclosure is the most important segment in the lobbying regulations and serves as a central tool to encourage transparency in all the engagements between lobbyists and public representatives. It is an important aspect that South Africans must consider when developing their set of lobbying regulations because it will determine the type of information that needs to be disclosed. Such information, which is included, is the name of the lobbyist, clients of the lobbyists, reason for lobbying and intended outcome, expenditure incurred when lobbying and details of the meetings.

The ideal requirements for South Africa are that lobbyists disclose information, outline the frequency in which lobbyists can disclose their activities and that this is done monthly. Furthermore, South Africa must ensure that the lobbyist disclosure section compels lobbyists to provide information on the support and gifts (financial and non-financial) provided to politicians, public office holders and government officials. However, the section will exclude disclosure on financial and non-financial support provided to political parties because the South African government has already adopted the Political Party Funding Act in 2018.

In addition, lobbyists must be required to publicly disclose their diaries which would include the meetings that have been held or still to take place. They must also ensure that the regulation requires the lobbyist to provide a report that incorporates details on the contacts made, place and time of the meetings, the person or institution to be influenced and the reasons behind the contact.

The lobbyist disclosure section is critical towards ensuring that South Africa adopts regulations that would prevent a second state capture by openly assessing and monitoring the state of lobbying activities in the country. Also, it must be ensured that the disclosure is not only limited to national and provincial officer bearers or officials but should be extended to engagements that occur at local government level too.

The ideal form of disclosure for South Africa will be one that requires registered lobbyists to identify the clients that employ them and the purpose of their communications. Also, the form must compel the lobbyists to inform their clients or employers that they have an obligation under the lobbying regulation and code to disclose the activities they perform on their behalf.

Furthermore, the code should also require those who lobby on behalf of their employer to be registered, and the code will also apply to them. Therefore, they have an obligation to act within the lobbying legislation, regulations and the code of conduct. Lobbyists shall be requested to refrain from influencing authorities or administrative government officials who they have once worked with, had a contractual agreement with or with a family member.

Also, the South African code should prohibit lobbyists from employing a person within five years who have been a government official or former government employee. Lobbyists must be required to separate their personal activities or participation in political party activities from their professional work, therefore, lobbyists must be neutral on political matters. Should it happen that they participate in the political party domain and advocate for a specified political agenda, whether domestic or international, the lobbyist must disclose such acts with immediate effect.

4.3.4. Oversight authority

Future lobbying regulations for South Africa must also establish an oversight authority that will oversee the implementation of the regulations and code of ethics for lobbyists. The oversight authority must be independent and not vested in the resident. The independence of such an instrumental structure is to ensure that all breaches of the act are treated equally. Such independence is also required to guard against undue influence. As much as the established oversight structure will be independent, parliament must still play an oversight role over it to ensure that it remains impartial and transparent.

The reason why a president shouldn’t serve as an oversight authority is because of the experience of the South African state capture, where the former president overstepped his fiduciary powers and interfered in administrative processes to protect those who were aligned to them. Therefore, taking it away from the president will avoid the abuse of power and protect the integrity and transparency of this structure.

Furthermore, the ideal oversight authority must be provided with the powers and competent support personnel who will be able to investigate cases reported against lobbyists. Such an authority should also be granted with the powers to request additional information when required. The oversight structure should be required to report to parliament on a quarterly basis on lobbying activities in the country. Also, the overseer must publish an annual report about lobbying and lobbying activities in the country that can be accessible to the larger population.

Also, the oversight structure should be appointed jointly by the six Chapter 9 institutions of South Africa. These institutions have been established to support constitutional democracy by acting independently, impartially, without fear, favour and prejudice. Therefore, the “Lobbying Commission of South Africa” will be expected to act in a manner resembling the Chapter 9 institutions.

In line with best practices in lobbying regulations, the South African Attorney General and the established structure must be responsible to administer a code of conduct for lobbyists and the lobbyist register. Both institutions will jointly be able to investigate and implement sanctions over any registered lobbyist that fails to comply with the lobbying legislation, code of conduct and the requirements of the lobbyist register.

However, irrespective of the powers vested in the above institutions, they would still have to notify parliament of their intention to investigate any breaches or non-compliance and provide the reasons behind the instituted investigations. Also, following the investigations the responsible institution must report back to the parliamentary oversight structures on the outcome and the proposed sanctions to be implemented.

The proposed need to notify parliament, is to ensure that the independent oversight organizations remain accountable to the general population and to avoid overall control, which can lead to impartiality and unfairness in investigating cases determined by the oversight body.

While South Africa already plays an oversight role over political party funding and campaign funding through the Political Party Funding Act, which is implemented by the South African Independent Electoral Commission, the establishment of lobbying regulation will further assist in overseeing the influence of politicians, government officials and public office holders by lobbyists. The investigation over the conduct of

lobbyists should only be done by the oversight structure rather than any other association or federation.

The South African lobbying legislation or regulations should prohibit lobbyists from proposing to an official or public office holder to take any decision or obtain any information in a manner that is improper or dishonest. Also, the lobbyist must refrain from proposing or accepting any form of payment or benefit from a public official with a condition to gain access to certain contacts or confidential information with the intention to influence any kind of decision to be undertaken by the state.

Such an act should be treated as a breach of the code of conduct and must be criminally charged since it amounts to fraud and bribery. Also, the code must ensure that lobbyists are refrained from intruding in the personal lives of those that they are lobbying with the objective of influencing the decisions they take in their capacity as public or government officials.

4.4. How state capture could have been avoided

With reference to the above-mentioned best practices set out in chapter 3, state capture in South African could have been avoided in many ways. However, it thrived in South Africa because there are no regulations, legislation or corporate governance guidelines that govern lobbying activities.

However, if the South African government had established regulations and a register for lobbyists, the Guptas or those lobbying on their behalf would have been required to be registered and recognized. Therefore, they could have been required to disclose who they are lobbying, why they are targeting the specific public office holder and their intended outcome. Such information could have guided the government on the level of engagements between Zuma and the Guptas resident Zuma was engaged in with the Guptas.

Furthermore, the South Africa regulations would have required the oversight authority to report all the meetings between the lobbyists and public office holders and reveal the details of such meetings to parliament. The regulations would have striven to encourage transparency, accountability and integrity in all engagements.

Furthermore, the regulations would have compelled the Guptas to disclose and provide information regarding the support and gifts (financial and non-financial)

provided to politicians, public office holders, members of parliament, members of provincial legislatures, councillors and government officials at all three spheres of government. Such information would have been made public. It would then have been possible to detect the undue influence over those tasked with the responsibility to protect state resources and act in the best interest of South Africans.

Also, with the regulations and register in place, a code of conduct for lobbyists, could have been instrumental in setting the rules of engagement for lobbying activities. This means in the absence of the government being directly involved in all engagements, the code could have fostered transparency in all the engagements between lobbyists (Guptas) and public office holders (Zuma).

State capture in South Africa occurred when resources were acquired by politicians for private means and not for the public good, thus advancing corruption. Also, there was a network of persons outside and within government structures who acted unethically and illegally resulting in state capture. In short, state capture was a conspiracy between business and government official to redirect state resources for personal gain.

Also, state capture was advanced by the improper influence over appointments and removal of senior government officials, board of directors and ministers. This was to ensure that the interests of both parties involved in the scheme were well implemented and all forms of accountability could be avoided.

Lastly, there has been severe manipulation of the rules and procedures of decision-making within state departments for the purpose of facilitating opportunities to advance corrupt activities. With the hierarchical reporting in state departments, it required cooperation amongst those involved in the processes to manipulate the processes. State capture was therefore well organized and properly planned.

Furthermore, if lobbying regulations existed in South Africa during the state capture period, an oversight structure would have been established, which could have been instrumental in monitoring lobbying activities in the country. Also, the oversight structure would have been able to pick up the suspicious engagements initiated by the Guptas with the intention to lobby ministers, senior government officials and the former president. Therefore, the oversight structure if implemented as suggested above, would not have waited to receive a formal complaint for it to start looking into the

alleged undue influence by the Guptas over the South African government. The oversight structure could have intercepted it beforehand.

In addition, with the oversight structure being independent it could have separately investigated the matter without seeking the president to establish a commission of inquiry into state capture. This could have also preserved integrity in the investigation by ensuring that there is no political pressure or influence over the investigating processes. This could have also compelled the former president to be legally compelled and subjected to the investigation on an equal basis to everyone else implicated in the state capture debacle.

With lobbying legislation and a code of conduct for lobbyists, the country could have prevented losing R57 billions worth of government resources, which is unlikely to be fully recovered.

4.5. The need for lobbying legislation in South Africa

Legislation is important in protecting the rights of citizens and structuring how society must behave. Also, it serves as a key instrument to be used by governments towards establishing the responsibilities and rights of authorities and citizens. South African state capture has highlighted the need to introduce legislation on lobbying activities because its foundation was laid by lobbyists.

The South African state capture has rather been systemic and well organized by senior political leaders; the focus was not small-scale looting but high scale subversion. To prevent state capture in a country, requires high-level protection from politicians, law enforcement agencies and the public at large.

The evidence presented to the Zondo revealed several elements that were visible within the process of capturing government departments, SOEs and other organs of state by the Gupta family. These elements are (Zondo Report Vol. 6 2024: 32):

- The allocation and distribution of state power and resources, directed not for the public good but for private means and advancing corruption.
- A network of persons outside and within government structures who acted unethically and illegally to provide state capture an opportunity to manifest.

- Improper influence in the appointment and removal of senior government officials, board of directors and ministers.
- The manipulation of the rules and procedures of decision-making in the state departments for the purpose of facilitating an opportunity to advance corrupt activities.
- Deliberate efforts to undermine oversight bodies and to take advantage of the country's regulatory weaknesses with the main purpose of ensuring that accountability in any form of wrongdoing is avoided.
- Deliberate efforts to weaken law enforcement and intelligence agencies at the highest decision-making level to protect and maintain illicit activities and disempower opponents.
- Support and acquiescence by powerful actors in the political sphere, which included members of the former ruling party.
- Assistance by professional service providers who were operating in the private sector and who specialize in advisory services, auditing, legal and consultancy organisations. These service providers were instrumental in masking the corrupt activities that were associated with projects. They thus supported the illicit benefits.
- Lastly, there was widespread disinformation and propaganda that were used to mislead the public with the intention to divert focus away from the illicit activities and to discredit any opponents.

Amid all the legal regulations introduced in South Africa in responding to the endemic corruption, a gap remains as lobbying activities are not regulated. State capture is a direct example of the impact of lobbying over governance processes. State resources were siphoned from service delivery to benefit those with political ties to the politicians.

Therefore, for the future of South Africa and protecting its constitutional democracy, the government needs to introduce lobbying regulations, which will determine the rules of engagement between government and lobbyists at all the three levels of government.

4.6. Conclusions

The aftermath of state capture and the willingness to instil transparency and integrity around lobbying activities has been evident in South Africa from certain corners of the private sector (see for example, the South African anti-corruption policy adopted by for example, Business Leadership South Africa and Anglo-American South Africa). As has been discussed in the previous chapter, the regulation of lobbying has been implemented in several countries, which include the USA, France and Canada from which the best practices have been discussed in this chapter.

Legislation is important for South Africa to foster transparency and accountability from those entrusted with the responsibility to act in the best interests of the state and its citizens. Therefore, introducing lobbying legislation will be the first step towards strengthening the country's governance processes and ensuring that it is protected from undue influence or corrupt activities.

Furthermore, the South Africa legislation must cover a register for lobbyists, a code of conduct for lobbyists, lobbyist disclosure and an oversight authority. To be more specific, the register of lobbyists must require those intending to lobby the administration and executive of the state to be registered before doing so. Also, the South African register like those of the USA and Canada, must require lobbyists to provide their personal details (name, identity numbers and addresses). For transparency and accountability purposes, it must be ensured that the database of registered lobbyists is made public.

With reference to the code of conduct, South Africa should adopt a code that ensures that self-regulation by lobbyists is not an option. Therefore, the code must be contained in legislation to be mandatory and legally binding.

The code of conduct for lobbyists will complement the lobbying legislation by requesting lobbyist to be registered and this will prioritize promoting transparent and ethical lobbying in South Africa. The code of conduct will result in professionalizing the lobbying industry and contribute to enhancing public confidence in the integrity of the country's government institutions and decision-making processes.

Furthermore, the South African legislation must include a process for lobbyists to disclose their lobbying activities and disclose revenues generated, donations made to

politicians, government officials and political campaigns. Such disclose must at least be done quarterly in each financial year.

The legislation must further require lobbyists to disclose their clients and contractual agreements. Also, lobbyist must publish the minutes of each engagement they had with politicians, officials and law makers. The legislation (like in Canada) must require lobbyists to disclose their engagements monthly to ensure that the information made public remains accurate and up to date.

Lastly, the legislation must ensure that it provides a process to establish an oversight authority, which is independent and not appointed by the president. The oversight authority will monitor the implementation and compliance of the legislation by lobbyists. It must also be provided with the powers to investigate any reported and identified breaches of the lobbying regulations.

It is important to have an oversight authority that is independent but reports to parliament on its affairs and provide a regular update to the country on the lobbying activities that occur. Furthermore, this body must assist in administering the registration of lobbyists and ensure that it can be held accountable for its actions. Borrowing from Canada and Chile, the oversight authority must not only oversee the disclosure of lobbying activities by lobbyists but also oversee that a five-year cooling period for former public office holders is implemented and monitored.

CHAPTER 5

CONCLUDING REMARKS

5.1. Introduction

State capture in South Africa is characterized by two major aspects. Firstly, the allocation and distribution of state power and resources, which were not for the public good but for private means and advancing corruption. A network of persons outside and within government structures existed who acted unethically and illegally to provide state capture an opportunity to manifest. It was a collusion between business and government officials to redirect state resources for personal gain.

Secondly, state capture was advanced by the improper influence over appointments and the removal of senior government officials, board of directors and ministers. This was to ensure that the interests of both parties involved in the scheme are well implemented. There has been severe manipulation of the rules and procedures of decision-making within state departments for the purpose of facilitating an opportunity to advance corrupt activities.

Also, state capture was a well-organized criminal network, which captured the judiciary and law enforcement agencies with the main objective of delaying any form of prosecution against those who were close to the grouping.

The consequences of state capture were political decay where state institutions were weakened, and the rule of law undermined. State capture also resulted in the loss of large amounts of money. The Zondo Commission, which had to investigate the prevalence of state capture established that government resources to the amount of R57 billion were implicated. It made 27 recommendations that required the state to recover these funds.

Based on the above brief background, the aim of the study was to address the existing gap in regulating political and business lobbying in South Africa using the prevalence of state capture as a case study. Furthermore, to provide a framework for regulating lobbying in the country, the study drew on lobbying regulations elsewhere in the world to provide a best practice framework for lobbying in South Africa. This is therefore a qualitative study based on a literature analysis of the lobbying regulations in different countries.

For this study, lobbying is understood as a democratic way of trying to promote both public and private interests.

5.2. A framework for lobbying

Several countries have lobbying regulations but for the purpose of this study six countries were selected for analysis. These are the USA and Canada (North America), Australia, Chile (South America), Israel (Middle East) and Germany (Europe). The study focused on these countries due to their geographical spread and taking into consideration when these countries introduced lobbying regulations. Also, the USA was the first country to regulate lobbying in 1946 which was followed by Australia in 1983, Canda in 1985, Chile in 1989, Israel in 1994 and lastly, Germany, the most recent in 2021.

The lobbying regulations in the above mentioned six countries covered four important elements. These are:

1. Legal regulations / register for lobbyists
2. Code of Conduct for lobbyists
3. Lobbyist disclosure; and
4. Oversight authority.

It was established that the USA, Australia, Canada and Germany have the most comprehensive guidelines as compared to those in Chile and Israel. Also, the states regulate lobbying differently, particularly in outlining their registration criteria. The USA and Canada require lobbyists to be registered at all three levels of government, unlike Germany, Chile, Israel and Australia which only focus on lobbying at national level.

Furthermore, Germany, Chile and Israel have vested the powers of investigating breaches of lobbying regulations in their presidents while the USA, Australia and Canada have an independent authority.

In setting out the lobbying framework for South Africa the above elements will be suitable when introducing lobbying regulations. Firstly, a legalised register for lobbyists should be established. This register must be compulsory for all lobbyists, government affairs practitioners, public policy professionals and in-house practitioners or independent consultants.

Included in the legislation, provision should be made for a code of conduct for lobbyists and a disclosure requirement. The code will serve to encourage ethical conduct in all engagements between lobbyists and public representatives or government officials. The lobbyist disclosure form will require lobbyists to disclose their clients, income and financial or none-financial donations made to public representatives.

A final requirement to be included in the legislation is the provision for an oversight authority, which must be an independent body monitoring and overseeing lobbying activities. As shown in chapter 4, state capture in South Africa would not have occurred if lobbying was regulated according to the above-mentioned guidelines. Therefore, to avoid a repetition of state capture in the country, the government should seriously consider regulating lobbying as has been the case in an increasing number of countries across the world.

ADDENDUM

Table 2: Lobbying assessment criteria used by OECD countries

	Indicator	Values
1. Register of Lobbyist		
1.1	Is there any statutory register	Yes/No
1.2	The register covers mainly	Lobbyists Activities of Lobbyists
1.3	Is there any other register of interest and pressure groups and/or lobbyist	Yes/No
1.4	Types of registered lobbyists	Professional Lobbyists/consultants In-house lobbyists corporations In-house lobbyists organizations
1.5	Number of registered lobbyists:	Number
1.6	Estimation of the number of lobbyists in the country, including those non-registered	Number
1.7	Register contains a basic data on lobbyists (name, address…)	Yes / No
1.8	Is basic data of the register publicly accessible without any registration?	Yes / No
1.9	Is possible to search and filter data in the register?	Yes / No
1.10	Does the register contain data on lobbyist's clients?	Yes / No
1.11	Is data on clients publicly available?	Yes / No
1.12	Is there any time limit for updating the basic data on lobbyists (name, address, clients etc.)	Yes / No (if yes, what is the time limit in days)
1.13	Is lobbyist obliged to report quitting lobbying business?	Yes / No (if yes, what is the time limit in days)
1.14	Are there any exemptions of who is not supposed to be a lobbyists/lobbying contact?	Yes / No (if yes, what is the time limit in days)
2. Codes of Lobbyists/ Lobbyists' activities		

2.1	Are there any obligatory and bidding codes for lobbyists?	Yes / No
2.2	Is there a voluntary code for lobbyists?	Yes / No
2.3	Are there any regulations banning and discouraging lobbyists from unethical behaviour?	Yes / No
2.4	Do lobbyists have any association/federation?	Yes / No
2.5	Membership in association is obligatory.	Yes / No
2.6	Does association publish any information about its lobbying activities and/or activates of its members in the annual report?	Yes / No
2.7	Are lobbyists associated in other associations (PR, PA etc.)?	Yes / No
2.8	Can association investigate and check its members for unethical behaviour and breaching the Codes?	Yes / No
3. Lobbyist Disclosure		
3.1	Do lobbyists provide regular disclosure on their activities?	Yes / No
3.2	What is the time for submission?	Days after the end of period (year, quarter)
3.3	How much time per year are disclosures required?	Number
3.4	Do reports include information on lobbyists' contacts made, place, time, persons and institution influenced and the matter of the contact?	Yes / No
3.5	Do disclosure include data on income and spending of lobbyists?	Yes / No
3.6	Do disclosure include information on clients represented?	Yes / No
3.7	Do lobbyists disclose data on support and gifts (financial and non-financial) provided to the politicians, public office holders, civil servants and political parties?	Yes / No

3.8	Do lobbyists have publicly accessible webpages?	Yes / No
3.9	Do lobbyists have publicly available open diaries with their meetings?	Yes / No
4. Oversight Authority		
4.1	Is there any oversight authority dealing with monitoring and oversight over lobbyists' activities?	yes - indicate which ones please / no
4.2	Has the authority competence to investigate cases/lobbyists and to require additional information if needed?	Yes / No
4.3	Does the oversight authority publish any annual report about lobbying and lobbying activities in the country?	Yes / No
4.4	Does the oversight authority publish list of investigated subjects and/or subjects breaching the rules?	Yes / No
4.5	Are there any special bodies of oversight over conflicting interest and/or revolving doors?	yes - indicate which ones please / no
4.6	Is there anybody of oversight over political parties funding and campaign financing?	yes - indicate which ones please / no
4.7	Can the "association of lobbyists" investigate and check its members in terms of breaching the ethical standards?	Yes / No

(Laboutková et al 2020: 86 – 96).

Bibliography

Adegbite, T. 2020. The Business of Lobbying in Nigeria. *Business Outsider*, 1 November. Available at: https://www.thisdaylive.com/index.php/2020/11/01/the-business-of-lobbying-in-nigeria/

Begovic, B. 2005. *Corruption, Lobbying and State Capture*. CLDS Working Paper No. 0106. Accessed 13 October. Available at: 2023:http://pdc.ceu.hu/archive/00003104/01/corruption,_lobbying_and_state_capture.pdf

Bester, D. & Dovosek, B. 2021. State Capture: Case of South Africa. *Journal of Criminalistics and Law*, Vol 26 (1), pp. 73 -87.

Bitonti, A. & Hogan, J. 2022. *Lobbying Regulation*. The Palgrave Encyclopedia of Interest Groups, Lobbying and Public Affairs. Basingstoke: Palgrave.

Breakfast, N. & Madumi, P. 2020. Social and Political Capital: Crony Capitalism in Post-Apartheid South Africa. *Journal of Nation Building & Policy Studies*, Vol. 2020 (1), pp. 5 -182.

Broyde, R.I. 2021. *Lobbying in Israel: Analysis of Third Sector Lobbying in Israel*. The Herbrew University of Jerusalem: Jerusalem. Available at: https://public-policy.huji.ac.il/sites/default/files/public-policy/files/updated_final_draft_rachel_broyde.pdf

Buthelezi, M & Vale, P. 2023. *State Capture in South Africa: How and Why it Happened*. South Africa: Wits University Press.

Campo, N.F. & Giovannoni, F. 2006. *Lobbying, Corruption And Political Influence*. IZA Discussion Paper No. 2313. Available at: http://ftp.iza.org/dp2313.pdf.

Chari, R., Hogan, J. & Murphy, G. 2010. R*egulating Lobbying: A Global Comparison*. Manchester University Press: United Kingdom.

Chipkin, I. 2022. Why has SA State Capture?. *South African Journal of Social and Economic Policy*, Vol. 2022 (86), pp. 12 -19.

Chipkin, I., Swilling, M., Bhorat, H., Buthelezi, M., Duma, S., Prins N., et al., 2018. *Shadow State: The Politics of State Capture*. South Africa: Wits University Press. Available at:

https://www.researchgate.net/publication/327194783_Shadow_State_The_Politic_of_State_Capture

Coen, D., Katsaitis, A., & Vannoni, M. 2023. *Regulating Government Affairs: Integrating Lobbying Research and Policy Concerns.* John Wiley & Sons, Australia. Available at: https://www.diva-portal.org/smash/get/diva2:1743589/FULLTEXT01.pdf

Dassah, M.O. 2018. Theoretical Analysis of State Capture and Its Manifestation as a Governance Problem in South Africa. *The Journal for Transdisciplinary Research in Southern Africa*, Vol. 14 (1), pp. 1-10. Available at: https://td-sa.net/index.php/td/article/view/473

David-Barret, E. 2023. State Capture and Development: A Conceptual Framework. *Journal of International Relations and Development*, Vol. 26, pp. 224 -240.

Eckei, J. 2013. *Lobbying: An Indicator for Democratic Governance*. Open Publishing GmbH.

February, J. 2019. *State Capture: An Entirely New Type of Corruption*. Institute for Security Studies. Vol. 2019(25), pp. 1-16.

Gonzalez, R.G. 2015. *The Chilean Lobbying Act: Legal Analysis and Criticism*. University of Oxford.

Hogan, J. & Bitonti, A. 2022. Lobbying Regulations. *The Palgrave Encyclopedia of Interest Groups, Lobbying and Public Affairs*. Basingstoke: Palgrave.

Hong, K., Rosen, T. & Chugh, A. 2023. Lobbying Regulation: A Global Phenomenon. Reuters, 6 November. Available at:

https://www.reuters.com/legal/legalindustry/lobbying-regulation-global-phenomenon-2023-11-06/

Jenkins, M. & Mulcahy, S. 2018. *Transparency International Anti-Corruption Helpdesk Answer: Business' Lobbying Practices*. Transparency International. Available at: https://knowledgehub.transparency.org/assets/uploads/helpdesk/Businesses-Lobbying-Practices_2018.pdf

Johnson, V. R. 2006. Regulating Lobbyists: Law, Ethics, and Public Policy. *Cornell Journal of Law and Public Policy*, Vol. 16 (1), pp. 1-56. Available at: http://scholarship.law.cornell.edu/cjlpp/vol16/iss1/1

Khan, Z. 2024. *The Efficacy and Challenges of Lobbying Regulation in Canada: A Comprehensive Analysis*. University of Windsor: Major Papers, 307.

Kilbride, I. 2023. The Dirty or Democratic Business of Lobbying. IOL, 26 June 2023. Available at: https://www.iol.co.za/business-report/economy/the-dirty-or-democratic-business-of-lobbying-862c03cf-2ca5-478a-911d-46aa680d86e4

Laboutkova, S., Simral, V., & Vymetal. 2020. *Transparent Lobbying and Democracy*. Springer International Publishing.

Maimela, D. 2021. State Capture and Its Discontents: What Lies Ahead for South Africa. Eyewitness News (ENW), 4 May.

Martin, M.E. & Solomon, H. 2016. Understanding the Phenomenon of "State Capture" in South Africa. *Southern African Peace and Security Studies: South Africa*, Vol. 5(1), pp. 21-34. Available at:

https://www.saccps.org/pdf/5-1/5-1_DRMartin_DrSolomon_2.pdf

Mathekga, R. 2019. The Rise of Political Lobbying in South Africa. *News 24,* 5 November. Available at:

https://www.news24.com/news24/opinions/columnists/ralph_mathekga/ralph-mathekga-the-rise-of-political-lobbying-in-sa-are-we-ready-for-it-20191105

Mbaku, J. 2018. Rule of Law, State Capture, and Human Development in Africa. *American University International Law Review*, Vol. 33 (4), pp. 1-67. Available at: https://digitalcommons.wcl.american.edu/auilr/vol33/iss4/4

McGregor, S.L.T. 2018. *Understanding and Evaluating Research: A Critical Guide*. Thousand Oaks, London & New Delhi: Sage Publications.

Merten, M. 2019. State Capture Wipes out Third of SA'S R4.9 Trillion GDP – Never Mind Lost Trust, Confidence, Opportunity. *Daily Maverick*, 1 March. Available at: https://www.dailymaverick.co.za/article/2019-03-01-state-capture-wipes-out-third-of-sas-r4-9-trillion-gdp-never-mind-lost-trust-confidence-opportunity/

Mohlamonyane, J. 2015. Lobbying, Bribery or Pure Politics: Corruption Law. *Without Prejudice*, Vol. 15 (7), pp. 1-2. Available at: https://hdlhandlenet.uplib.idm.oclc.org/10520/EJC177383

Mokabane, M. & Du Toit, E. 2022. The Value of Integrated Reporting in South Africa. *South African Journal of Economic and Management Sciences*, Vol. 25 (1), pp. 1-8.

Mollona, E & Faldetta, G. 2022. Ethics in Corporate Political Action: Can Lobbying be Just. *Journal of Management and Governance*, Vol 26(4), pp. 1245 – 1276.

Momokhere, J. 2018. *Understanding the Phenomenon of State Capture and its Manifestation in South Africa*. University of South Africa Press, Vol.16 (2), pp. 1-7.

Mtimka,O. 2016. Why State Capture is a Regressive step of any Society. *The Conversation*, 08 April. Available at: https://theconversation.com/why-state-capture-is-a-regressive-step-for-any-society-56837

Mudashir, I. 2016. Moves to Legalize Lobbying. *Daily Trust*, 13 October. Available at: https://dailytrust.com/moves-to-legalize-lobbying/

Ng, Y. 2020. Regularing the Influencers: The Evolution of Lobbying Regulation in Australia. *Adeliade Law Review*, 41. (2), pp. 507-544. Available at: https://law.adelaide.edu.au/ua/media/1773/Regulating%20the%20Influencers%20The%20Evolution%20of%20Lobbying%20Regulation%20in%20Australia.pdf

OECD. 2009. *Principles for Transparency and Integrity in Lobbying*. Public Governance Committee. Available at: https://www.thegoodlobby.eu/wp-content/uploads/2024/12/TGL-Scorecard-OECD-Principles.pdf

OECD. 2014. Lobbyists, Government and Public Trust: Implementing the OECD Principles for Transparency and Integrity in Lobbying. OECD Publishing. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2014/11/lobbyists-governments-and-public-trust-volume-3_g1g43c3b/9789264214224-en.pdf

OECD. 2014. Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying. OECD Publishing, Paris. Available at: https://dx.doi.org/10.1787/9789264214224-en.

OECD. 2020. *OECD Public Integrity Handbook*. OECD Publishing, Paris. Available at: https://doi.org/10.1787/ac8ed8e8-en

OECD. 2021. Lobbying in the 21st Century: Transparency, Integrity and Access, OECD Publishing, Paris. Available at: https://doi.org/10.1787/c6d8eff8-en.

OECD. 2022. Lobbyists, Government and Public Trust: Implementing the OECD Principles for Transparency and Integrity in Lobbying. OECD Publishing. Available at: https://www.oecd.org/en/publications/lobbyists-governments-and-public-trust-volume-3_9789264214224-en.html

OECD. 2022. The Regulation of Lobbying in Quebec, Canada: Strengthening a Culture of Transparency and Integrity, OECD Public Governance Reviews, OECD Publishing, Paris. Available at: https://doi.org/10.1787/ec0cfef3-en

OECD. 2023. Government at a Glance 2023. OECD Publishing, Paris. Available at: https://doi.org/10.1787/3d5c5d31-en

OECD. 2024. Recommendation of the Council on Transparency and Integrity in Lobbying and Influence. OECD Legal Instruments. Available at: https://legalinstruments.oecd.org/public/doc/256/256.en.pdf

OECD. 2024. The Regulation of Lobbying and Influence in Chile: Recommendations for Strengthening Transparency and Integrity in Decision-making. OECD Public Governance Reviews, OECD Publishing, Paris. Available at: https://doi.org/10.1787/e84a846f-en.

Office of the Commissioner of Lobbying of Canada. 2024. Annual Report 2023-24. Available at: https://lobbycanada.gc.ca/en/reports-and-publications/annual-report-2023-24/.

Pillay, P., Chitunhu, K., & Chivandire, L. 2023. State Capture in South Africa: Going Back to Basics. *African Journal of Public Affairs*, Vol. 14 (1), pp. 153 – 173. Available at: https://journals.co.za/doi/pdf/10.10520/ejc-ajpa_v14_n1_a9

Presidency. 2022. Response By President Cyril Ramaphosa To The Recommendations Of The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud. Republic of South Africa. Available at: https://www.gov.za/news/speeches/president-cyril-ramaphosa-response-commission-inquiry-allegations-state-capture

Presidency. 2023. The Tide Is Turning: Progress Report on Implementation of President Ramaphosa's Response to the Judicial State Capture Commission. Republic of South Africa. Available at: https://www.thepresidency.gov.za/progress-report-implementation-presidents-response-state-capture-commission

Public Protector. 2016. *State of Capture*. Available at: https://www.gov.za/sites/default/files/gcis_document/201611/stateofcapturereport14october2016_1.pdf

Rapanyane, M.B. 2021. Seizure of State Organs, Corruption and Unaccountability Promotion in South Africa: Case Study of Jacob Zuma Administration. *African Journal of Development Studies*, Vol. 11 (3), pp. 251-270. Available at: https://www.proquest.com/docview/2766782654?sourcetype=Scholarly%20Journals

Schiffers, M. & Plumer, S. 2024. *Explaining the German Lobbying Register Law and its Reform: Combining Insights from the Multiple Streams Framework and Punctuated Equilibrium Theory*. University of Bielefeld. Available at: https://doi.org/10.1057/s41309-024-00214-w

Suter, W.N. 2012. *Qualitative Data, Analysis and Design*. Sage Publications In. Available at: https://doi.org/10.4135/9781483384443

Wagner, C., Kawulich N., & Garner,M. 2012. *Doing Social Research: A Global Context.* McGraw-Hill Education.

Zak, M. 2019. Democracy, Lobbying and Economics. *Review of Economic Perspectives*, Vol. 19 (3), pp. 193 -210.

Zondo, R. 2024. *Judicial Commission of Inquiry into State Capture Report: State Capture Established, President Ramaphosa's Evidence and the Role of the ANC and Parliamentary Oversight*, Vol. 6(2), pp. 1- 481.