



REPUBLIC OF SOUTH AFRICA

PROGRESS REPORT

(As at 26 June 2023)

**Judicial Commission of Inquiry into Allegations of State Capture,
Corruption and Fraud in the Public Sector**
including Organs of State and their implications
for parliamentary procedure

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SUMMARY OF TABLE: 19 recommendations relate to Parliament's processes (including processing of legislation specific to Parliament); several recommendations containing various elements, but grouped into 27, for referral purposes relate to other entities including government departments.

Addressed	
Ongoing, of which 27 are related to overseeing implementation of recommendations directed at other entities/offices	
Outstanding	

NO.	RECOMMENDATION	UPDATE / FEEDBACK
1	Parliament should consider amending section 6(1) of the Intelligence Services Oversight Act 40 of 1994, to ensure that, before an election, the outgoing Joint Standing Committee on Intelligence is required to report to Parliament on as much as possible of the period preceding the election. It was noted that all Committees of Parliament are required to prepare a Legacy Report at the end of a five-year term of Parliament, which is handed over to the next Parliament for consideration, and follow through, mainly on the work of committees of the previous term of Parliament.	The JSCI has considered the recommendation of amending section 6(1) of the Oversight Act and resolved that there was no need to amend section 6(1) as section 6(2) already made provision for reporting. Joint rule 1(2)(l) read with joint rule 8(5) in Schedule B of the Rules of the JSCI provide for special reporting of the JSCI. It defines the "special report" as a report that is prepared by the Committee at the request of Parliament, the President or the Minister responsible for each Service, or when the Committee deems it necessary, and tabled or submitted as provided for in section 6(2) of the Act. In terms of this defined special report, the Committee may report to Parliament, through the special report mechanism, at any given time as and when the Committee deems it necessary.
2	Parliament should consider whether it would be desirable to enact legislation which protects Members of Parliament from losing their party membership (and therefore their seats in Parliament) merely for exercising their oversight duties reasonably and in good faith.	<p>The constitutional oath of office for all Members of Parliament should serve as a guideline for executing Members' constitutionally mandated functions.</p> <p>Sections 58 and 71 of the Constitution, 1996 which deal with privilege. and which provide that Cabinet members, Deputy Ministers, members of the National Assembly, delegates to the National Council of Provinces and local government representatives participating in the Council, have freedom of speech in the Assembly and the Council and in its committees, subject to its rules and orders and are not liable to civil or criminal proceedings, arrest, imprisonment or damages for anything that they have said in, produced before or submitted to the Assembly, the Council or any of its committees, or anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly, the Council or any of its committees.</p> <p>Section 6 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 already provides for the protection of members for the exercise of their constitutional responsibilities. The Section provides for the privileges, immunities, independence and protection of members and Parliament.</p>

NO.	RECOMMENDATION	UPDATE / FEEDBACK	
3	Subject to budgetary restraints, the scale and skills of the research and technical assistance made available to the portfolio committees be enhanced	<p>In the last 12 months, 10 content advisers supporting 10 committees have been appointed, 3 in the process of being appointed; 4 legal advisers to increase drafting and related capacity have since been appointed, 3 more are in the process of being appointed. 5 researchers have been appointed, recruitment for 11 researchers is underway.</p> <p>All critical appointments aimed at addressing capacity constraints are being made.</p>	
4	Parliament needs to make it clear that the practice of late submissions to portfolio committees will not be tolerated.	Committees already have powers in the Rules and legislation (Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act) to obtain information they need.	
5	Parliament should consider whether there is a need to legislate on the issue of reports by representatives of the Executive to Parliament.	The Rules Committee determined that there is no need for legislation in this regard. Instead, it agreed on parameters for guidelines on managing this exercise.	
6	Parliament needs to make clear that non-attendance by ministers and others scheduled to attend portfolio committee meetings will not be tolerated and to ensure that consequences are visited on those who offend without adequate cause. (Parliament should consider whether there is a need to legislate on this issue.	The Rules Committee concluded that there was no need for additional legislation or rules. The Committee also noted that the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act already made it an offence for persons to refuse to appear before Parliament. As an example, in the past 12 months a Minister was summoned for not appearing before the Committee on Tourism.	
7	Parliament should consider whether it supports the principle of "amendatory accountability" and, if it does, whether it would be desirable to give detailed substance to this principle in an Act of Parliament, along the lines suggested in the Corder report.	Parliament undertook research on international practices and specifically whether other countries had comparable laws. The research found that, from the 12 countries surveyed, none had statutes. The Rules Committee agreed that, as a general point, legislation would not necessarily serve to address all the challenges identified by the State Capture Commission.	
8	Consideration should be given by Parliament to amendments to its own rules, with a view to addressing the problem of ministers who fail to report back to Parliament on what if anything has been done in respect of remedial measures proposed by Parliament or on alternative methods preferred by them to address defective performance highlighted by Parliament.	The Rules Committee acknowledged that the Sixth Parliament had taken steps to facilitate co-operation between Parliament and the Executive. The Committee concluded that there was no need for additional legislation or rules.	
9	The Commission supports the recommendation that, with the support of a majority of members of a portfolio committee, a portfolio committee could put a minister to terms in respect of remedial action, and could thereafter, through the Speaker intercede with the President, as head of the national executive, in the event of non-compliance. The Leader of Government Business could also play a role in such a process.	The Rules Committee acknowledged that the Sixth Parliament had taken steps to facilitate co-operation between Parliament and the Executive. The Committee concluded that there was no need for additional legislation or rules.	

NO.	RECOMMENDATION	UPDATE / FEEDBACK	
10	Parliament should consider whether more representatives of opposition parties should be appointed as chairs of portfolio committees.	The Rules Committee did not agree with the view expressed by the State Capture Commission that parliamentary oversight may be better served if more chairpersons were elected from minority parties but reiterated that Section 57 of the Constitution (1996), empowered the Assembly to determine its internal arrangements, proceedings and procedures.	
11	Parliament to consider whether it is desirable to amend its rules to give effect to the proposals by Corruption Watch on appointments by Parliament	The Rules Committee noted that the option of legislative review may not resolve the challenges alluded to by the State Capture Commission. Moreover, there were already laws and best practices concerning the selection of certain office-bearers and that all appointments must be based on merit. Best practices already developed by Parliament should be maintained.	
12	Parliament should consider whether it would be desirable for it to establish a committee whose function is or includes oversight over acts or omissions by the President and Presidency, which are not overseen by existing portfolio committees.	The Rules Committee resolved that the matter be considered as work in progress. The Committee further agreed that the desk-top research conducted by the Parliamentary Budget Office should be complemented with a fact-finding visit (scheduled for 17 to 20 July 2023) with a view to exploring international best practice in respect of the matter. In so doing, a firm foundation could be laid for the Seventh Parliament.	
13	Political Party Funding Act 6 of 2018 to be amended to criminalise the making of donations to political parties in the expectation of or with a view to the granting of procurement tenders or contracts as a reward for or in recognition of such grants having been made	The Act is part of legislation being reviewed in the wake of the Electoral Amendment Act, 2023 which provides for independents. Section 10 of the Act already makes it an offence to give or receive a donation for any reason other than party political reasons, and members receiving a donation that is not on behalf of a party. Section 8 also makes it an offence to receive donation from a prohibited source.	
14	Parliament should consider whether introducing a constituency-based (but still proportionally representative) electoral system would enhance the capacity of Members of Parliament to hold the Executive accountable. If Parliament considers that introducing a constituency-based system has this advantage, it is recommended that it should consider whether, when weighed against any possible disadvantages, this advantage justifies amending the existing electoral system.	The Electoral Amendment Act, 2023 recently passed by Parliament makes provision in section 23 for an Electoral Reform Consultation Panel, which the Minister must establish. The functions of the Panel inter alia are to independently investigate, consult on, report on and make recommendations in respect of potential reforms of the electoral system for the election of the National Assembly and Provincial Legislatures.	
15	Parliament to ensure that adequate funds are allocated, particularly to portfolio committees, to enable effective parliamentary oversight	Parliament is in ongoing consultations with National Treasury for more resources in fulfilment of its constitutional mandate.	
16	Parliament to implement a system to “track and monitor” implementation (or non-implementation) by the Executive of corrective action proposed in reports adopted by Parliament	At present, most committees have a “recommendation tracking tool” in place to follow up on actions to be taken by the Executive. The Houses too have manual systems in place and an e-system is being piloted. This matter is also part of the Annual Performance Plan of the institution.	

NO.	RECOMMENDATION	UPDATE / FEEDBACK	
17	Parliament to establish an Oversight and Advisory Section to provide advice, technical support, co-ordination, and tracking and monitoring mechanisms on issues arising from oversight and accountability activities of Members of Parliament and the committees to which they belong	The matter of oversight monitoring, tracking and advisory is currently receiving attention, with the focus being on capacity more than on establishing new structures.	
18	Interactions between the National Executive and Parliament	There are ongoing interactions between Parliament and the Leader of Government Business on parliamentary processes. Parliament and National Treasury are also engaging with a view to giving appropriate ways to give effect to the State Capture Commission's recommendations on the resourcing of Parliament, specifically with respect to its capacity to hold the Executive to account.	
19	Matters concerning implicated members	12 cases were referred to the Joint Committee on Ethics and Members Interests, and 8 have been concluded.	

Executive Implementation Plan on which Committees are exercising oversight, with requirement to submit quarterly reports

NO.	RECOMMENDATION	UPDATE / FEEDBACK as received from executive at submission of the state capture report	OVERSIGHT STRUCTURE (to give quarterly reports)	
1	Recommendations on criminal investigations and prosecutions are currently receiving attention from law enforcement agencies, through a Joint Task Force, working in collaboration with other agencies, including SARS and FIC.	Investigating Directorate of the NPA has: <ul style="list-style-type: none"> • Enrolled 26 cases • Declared 89 investigations • Charged 165 persons for alleged state capture-related offences. 	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice	
2	27 recommendations regarding the recovery of proceeds of crime are receiving priority attention from the NPA's Asset Forfeiture Unit (AFU), the Special Investigating Unit (SIU) and the South African Revenue Service (SARS).	Freezing or preservation orders to the value of R12.9 billion have been granted. A total of R2.9 billion has been recovered by the AFU and returned to the affected entities. The SIU has instituted four High Court cases in relation to contracts worth R62.1 billion. SARS investigations arising from the State Capture Commission's findings and evidence have resulted in collections of R4.8 billion in unpaid taxes.	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice Standing Committee on Public Accounts	

NO.	RECOMMENDATION	UPDATE / FEEDBACK as received from executive at submission of the state capture report	OVERSIGHT STRUCTURE (to give quarterly reports)	
3	The Commission made 15 recommendations with respect to further investigation of and possible action against individuals and entities for disciplinary offences, tax offences, delinquency of directors and other activities.	<p>SARS actioned all recommendations for tax related investigations.</p> <p>The Reserve Bank has actioned investigations against officials and other persons identified as transferring illegally-acquired funds to overseas jurisdictions.</p> <p>The Department of Public Enterprises is working to identify and launch delinquency proceedings against former board members of SOEs which fall under its mandate, including Eskom, Transnet, Denel and Alexkor.</p>	Standing Committee on Finance Select Committee on Finance Standing Committee on Public Accounts Portfolio Committee on Police Select Committee on Security and Justice Portfolio Committee on Public Enterprises Select Committee on Public Enterprises and Communications	
4	11 recommendations with respect to further investigation of and possible action against individuals and entities for alleged violation of relevant statutory or professional prescripts	<p>The recommendations were directed to the following bodies:</p> <p>SA Institute of Tax Practitioners (SAIT) Legal Practice Council (LPC)</p> <p>South African Institute of Chartered Accountants (SAICA)</p> <p>Independent Regulatory Board for Auditors (IRBA)</p> <p>South African Diamond and Precious Metals Regulator (SADMR)</p>	Standing Committee on Finance Select Committee on Finance Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice Portfolio Committee on Mineral Resources and Energy Select Committee on Land Reform, Environment, Mineral Resources and Energy	
5	Three recommendations into the Vrede Dairy Project in the Free State have been referred to the Independent Police Investigative Directorate (IPID).	IPID has assigned a team of investigators to deal with the allegations.	Portfolio Committee on Police Select Committee on Security and Justice	
6	The Commission also made broader adverse findings with respect to the conduct of a number of private entities.	<p>The Companies and Intellectual Property Commission (CIPC) has begun reviewing the compliance of such companies with CIPC requirements.</p> <p>The National Treasury has imposed a 10- year ban on Bain & Co doing business with the South African state. Similar action against other companies implicated in the Commission's report is also being considered.</p>	Portfolio Committee on Trade and Industry Portfolio Committee on Small Business Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour Standing Committee on Finance	

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7	Government has, since 2018, embarked on far-reaching measures to restore the integrity and rebuild the capability of the country's law enforcement agencies and criminal justice system more broadly.	This includes: <ul style="list-style-type: none"> • building the capacity of the NPA • establishment of the NPA Investigating Directorate • establishment of a dedicated Task Force to investigate and prosecute state capture matters • consideration of specialised courts and dedicated court rolls; and tracking disciplinary cases across government spheres and public enterprises 	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice Standing Committee on Public Accounts	
8	These recommendations need further consideration to review and redesign South Africa's anti-corruption architecture, including by the National Anti-Corruption Advisory Council (NACAC) and the Department of Justice.	Processes underway	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice Standing Committee on Public Accounts	
9	To further strengthen the current anti- corruption capabilities, the Investigating Directorate will be established as a permanent entity within the NPA.	Processes underway	Portfolio Committee on Justice and Correctional Services Standing Committee on Public Accounts Select Committee on Security and Justice	
10	Legislative amendments will introduce greater transparency and consultation in the process for selection and appointment of the NDPP, drawing on the process adopted for the selection of the current NDPP.	Processes underway	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice	
11	Reform Procurement processes	State Capture Commission's proposals are already reflected to varying degrees in the draft Public Procurement Bill, which has been consulted on with the social partners at NEDLAC.	Portfolio Committee on Public Enterprises Select Committee on Public Enterprises and Communications	

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12	Implementation of lifestyle audits for members of the National Executive.	To be undertaken by an independent external service provider and will be managed by the Office of the Director-General in the Presidency	Portfolio Committee on Public Service and Administration Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure	
13	Recommendations on the need for a process for the appointment of SOE boards that is not open to manipulation, including the involvement of independent panels with appropriate technical expertise to recommend suitable candidates to the relevant executive authority.	No board member will be allowed to be operationally involved in procurement processes beyond playing an oversight role. Ministers will be prohibited from playing any role in procurement within SOEs. Provision will be made in the final 'Guide for the Appointment of Persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions' for independent panels of relevant stakeholders and experts to play a role in nominating suitable candidates to the relevant minister.	Portfolio Committee on Public Enterprises Select Committee on Public Enterprises and Communications	
14	Amend the Companies Act so as to permit applications for a director to be declared delinquent to be brought even two years after the end of their directorship.	To form part of a broad review of the Companies Act, which is currently underway	Portfolio Committee on Trade and Industry Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour	
15	Amend the Prevention and Combating of Corrupt Activities Act on the failure of persons or entities to prevent bribery.	To be included in the Judicial Matters Amendment Bill which was submitted to Cabinet in the latter half of 2022	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice	
16	Recommendations on deferred prosecution agreements	South African Law Reform Commission (SALRC) is considering the recommendation as part of its review of the criminal justice system	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice	

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17	Recommendation on the protection and incentives for whistle-blowers	Department of Justice has commenced a review of the Protected Disclosures Act and Witness Protection Act to: <ul style="list-style-type: none"> • Ensure whistle-blowers receive the protections afforded by section 32(2) of the UN Convention Against Corruption. • Grant the possible award of a proportion of funds recovered to the whistle-blower provided that the information disclosed has been material in recovering funds. • Afford whistle-blowers be afforded immunity from criminal or civil action arising from honest disclosures. 	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice	
18	Restoring SARS	National Treasury has initiated the process to amend the SARS Act to implement the recommendations of the Nugent Commission	Standing Committee on Finance Select Committee on Finance	
19	Recommendations on improving measures to combat money laundering	The matter of statutory frameworks for financial information-sharing partnerships has been included in the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill. The Financial Intelligence Centre (FIC) has appointed attorneys to conduct an urgent independent review of the effectiveness of the current regulatory reporting regime under the FICA.	Standing Committee on Finance Select Committee on Finance	
20	Reform of the electoral system	Electoral Amendment Act of 2023 was passed by Parliament on 23 February 2023	Portfolio Committee on Home Affairs Select Committee on Security and Justice	
21	Direct election of the President	The matter would require a constitutional amendment, among other things.	Joint Constitutional Review Committee Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice	

NO.	RECOMMENDATION	UPDATE / FEEDBACK as received from executive at submission of the state capture report	OVERSIGHT STRUCTURE (to give quarterly reports)	
22	Creation of a criminal offence of abuse of power.	The Department of Justice and Constitutional Development will research possible legislative provisions for the creation of a statutory offence for the abuse of public power. This work will be finalised by December 2023.	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice	
23	Creation of a criminal offence of constitutional or political malpractice.	The Department of Justice and Constitutional Development has been directed to undertake research of the creation of an offence of political or constitutional malpractice. It will be completed by December 2023.	Portfolio Committee on Justice and Correctional Services Select Committee on Security and Justice	
24	Strengthening the auditing system	The AGSA has developed a detailed response plan to the work of the State Capture Commission.	Standing Committee on the Auditor-General	
25	Professionalisation of the public administration	<p>All public sector legislation governing professionalisation will be reviewed and, where necessary, amended to align with the National Framework towards the Implementation of Professionalisation of the Public Sector.</p> <p>To clarify the relationship between political authority and the institutions they oversee, the induction for new Ministers will be revisited.</p> <p>Relevant sections of the Ministerial Handbook will be reformulated; and a code of conduct for special advisers will be developed.</p>	Portfolio Committee on Public Service and Administration Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure	

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26	Reform State intelligence agencies	<p>A new General Intelligence Laws Amendment Bill has been drafted to disestablish the SSA and establish a domestic intelligence service and foreign intelligence service and strengthen oversight by the Inspector-General of Intelligence, the Joint Standing Committee on Intelligence and the Auditor-General of South Africa.</p> <p>The review of the Intelligence Services Oversight Act currently underway will give practical effect to the principle that no member of the Executive responsible for intelligence may be involved in the operational matters of the SSA.</p>	Joint Standing Committee on Intelligence	
27	Responsibility of President and Premiers for actions of Ministers and MECs.	The President will undertake a review of the positions of those members of his Executive implicated in wrongdoing in the report and determine, on a case-by-case basis, in line with his discretion in this regard and his obligation to observe the principle of legality and to act rationally, whether any action ought to be taken.	Joint Rules Committee (on matters within its jurisdiction)	