



**OPENING STATEMENT BY PRESIDENT CYRIL RAMAPHOSA
BEFORE THE JUDICIAL COMMISSION OF INQUIRY
INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD
IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

11 AUGUST 2021

Chairperson,

I welcome this opportunity to address you as I appear before the Commission in my capacity as the former Deputy President of the Republic of South Africa from May 2014 to February 2018.

In the statement that I have submitted to the Commission I outline the roles and responsibilities of the Deputy President and my knowledge of the matters under consideration by the Commission.

I am also here in my capacity as the President of the Republic of South Africa since February 2018, having taken office soon after the establishment of the Commission.

While the Commission is tasked to investigate and report on events that took place before I assumed the office of President, I describe in my statement some of the measures taken to right the wrongs of the state capture period in the hope that it may be of value to the Commission.

My approach is informed by an understanding that the Commission is meant to focus on establishing the veracity of specific instances of alleged state capture and identify the systemic weaknesses in State institutions that allowed state capture to occur.

In my statement, I outline when I became aware of the nature and extent of state capture.

It is important to note that few people, even at the best of times, have had line of sight of everything taking place in the State. And that happens to be the case even today.

This applies even to members of Cabinet and the Deputy President, particularly with respect to activities that were deliberately hidden from view.

Many of the incidents of corruption that would in time be described as 'state capture' became known to me as they did to the general public through the work of journalists, civil society organisations, and institutions such as the Public Protector and Auditor General.

Reports of court cases and disciplinary proceedings, together with the commendable work of investigative journalists and whistle-blowers, did help to give insight into corruption in both government and the private sector.

As it became increasingly clearer – through the so-called Gupta Leaks and other revelations – that a network of individuals was seemingly colluding with a number of people in

government to occupy key positions and 'capture' key institutions, the question that arose was how best one should respond to all this.

This was a question that not only I had to grapple with, but also other members of the Executive who were deeply concerned about these developments as they saw them unfolding.

In my case, I would say that I had five options: resign; speak out; acquiesce and abet; keep quiet and remain silent; or remain and resist, hoping that we could turn things around.

The first option available to me was to resign from the Executive.

While I would have earned praise from many quarters, this action would have significantly impaired my ability to contribute to bring about an end to state capture.

It would have caught the big headlines, but that would have been the end of it.

Had I and like-minded individuals resigned from the Executive, we would have had no ability to resist some of the excesses that were taking place – and there was a clear danger that without some measure of resistance, there would have been even fewer impediments to the unfettered expansion of the state capture project.

It was also important to pursue and sustain the many government programmes that were vital to the transformation of our society and the improvement of people's lives.

The second option was to be more confrontational; to speak out publicly against certain decisions or actions of the government.

While there were instances where I did make public statements, there was a limit to how confrontational I could be in the position I held.

A more confrontational approach would most likely have led to my removal from office, with the same consequences as a resignation, in that my ability to effect change would have been greatly constrained, if not brought to an end.

The third option was to acquiesce and thereby abet the committing of misdeeds.

This I would not and could not, do. It would have been a violation of my principles and a profound betrayal of my responsibility to the government, my own organisation and the people of South Africa.

The fourth option available to me was to remain in my position as Deputy President and keep silent. This may have been the easier path, but it was, in my view, not much different to acquiescing.

The final option, which was what I chose, was to remain in my position as Deputy President – not to resign, not acquiesce and not to be confrontational – but to work with others in the Executive to resist abuses and bring about change where we could and to sustain the work of social and economic transformation.

This meant 'staying in the arena', with the challenges, limitations and frustrations inherent in doing so, but it was the course of action that had the greatest likelihood of bringing state capture to an end, restoring the institutions of State and defending our democracy.

It needs to be remembered that governance is not merely a technical function.

It is an inherently political function, which is influenced by the dynamics and the exercise of political power.

My ability and the ability of others to resist and ultimately to bring about changes that would end state capture relied to a large measure on the political balance of forces within the Executive, within the governing party and within society more broadly.

That was among the reasons why I chose to remain in the position of Deputy President, why I worked with others through the democratic process to shift the balance of forces, and why, ultimately, I agreed to make myself available for the position of President of the African National Congress at its 54th National Conference in December 2017.

With the benefit of hindsight, I am certain that this was the necessary and correct course of action.

Others may not agree, but for me, this was the best course of action I could take.

Fundamentally, this approach enabled the far-reaching changes the country has gone through over the last three years, including the disruption of the state capture project and the rebuilding of damaged institutions.

It was also possible, through this approach, to resist some of the more egregious and obvious abuses of power.

The replacement of Mr Nhlanhla Nene as Minister of Finance with Mr Des van Rooyen provides a useful illustration of this.

On the evening of 9 December 2015, former President Zuma announced the removal of Mr Nene and the appointment of Mr Van Rooyen.

This had an immediate impact on the financial markets. Shortly after Mr van Rooyen was sworn in, then Director-General of National Treasury, Mr Lungisa Fuzile, asked to meet me urgently. He expressed grave concern, based on his interaction with the new Minister and his advisors, about the impact this development would have on the ability of National Treasury to properly exercise its functions.

Concerned by what I considered the 'capture' of National Treasury, I contacted ANC Deputy Secretary General Ms Jessie Duarte and indicated that I would resign my position as Deputy President of the Republic. I believe that that message was conveyed to the then-President.

There was a flurry of consultations that involved some of the ANC officials expressing disquiet about the appointment of Mr Des van Rooyen. The then ANC Secretary General Mr Gwede Mantashe, Ms Duarte and I urged the President to appoint Mr Pravin Gordhan as Minister of Finance instead, as this would be in the best interests of the country and would help to calm the financial markets.

I believe the decision by President Zuma to replace Mr van Rooyen with Mr Gordhan was critical in preventing further damage to the economy and safeguarding the integrity of National Treasury.

There were other instances, which I detail in my statement, where it was necessary to make public statements on decisions which I considered contrary to the national interests.

One such instance was the removal of Mr Gordhan and Mr Mcebisi Jonas as Minister and Deputy Minister of Finance respectively on 30 March 2017.

At the meeting when former President Zuma informed the ANC Officials of his decision, I raised my concern that the Minister and the Deputy Minister were being removed based on an unsubstantiated intelligence report.

I told the former President that I disagreed with his reasons and that when asked I would publicly state my objection. I said that to him upfront, as did other officials. While I reiterated that the President has the constitutional prerogative to appoint and dismiss members of the Cabinet, I felt it necessary to speak out, especially because of the serious consequences this decision would have on our economy and our country.

Since assuming the office of President in February 2018, the government that I lead has undertaken several measures to end state capture, to rebuild damaged institutions and to foster a culture of ethical public service and accountability.

In the main the measures have aimed at changing the way in which the Cabinet functions, strengthening institutions that had been 'captured', starting with changes in leadership of some of these institutions, changing the way in which SOEs were managed and overseen by government as shareholder, and making necessary policy decisions to address shortcomings and reinforce oversight.

One of the critical projects currently underway to strengthen the state involves the professionalisation of the public service. This aims to ensure that the public service is shorn of political partisanship and that the most qualified individuals enter its ranks.

As this Commission has heard, law enforcement agencies were deliberately weakened to limit their ability to act against those involved in corruption and state capture.

It has therefore been a priority – and remains an ongoing task – of the administration I lead to rebuild and restore the integrity of these institutions.

I therefore decided that the appointment of the new National Director of Public Prosecutions should be undertaken through a public and transparent process.

This was the first time an NDPP was appointed in such a manner, which did much to restore the confidence of South Africans in the institution.

We have established the Investigating Directorate in the office of the NDPP to work on high profile complex cases of corruption and fraud.

Its members have unique expertise in this field and it has shown the capacity to speed up investigations and see prosecutions do take place.

The NPA has started to make significant strides in combatting corruption and I am confident that it will continue to do so.

In May 2018, I established the Nugent Commission of Inquiry to investigate governance failures at SARS and to propose ways to restore the confidence of taxpayers.

Its recommendations are now being implemented to redress the wrongs of the past and ensure that SARS never again falls prey to the improper motives of a privileged few. The impact of this work is already evident at SARS.

Other areas of progress include the work that the NPA's Asset Forfeiture Unit has done recovering the proceeds of economic crimes, recapacitating the NPA with more qualified personnel, and changes in leadership of entities such the Public Investment Corporation.

This has been supplemented by the work of the Fusion Centre, where all relevant law enforcement entities share information and support each other in investigating these kinds of corruption. Discussions of how to institutionalise this form of cooperation are now under way.

The SIU Tribunal started its work in October 2019 and since it started its work has shown its value in recouping monies wrongfully taken from state coffers.

As has been made plain in this Commission, our Intelligence Services are in dire need of attention.

To this end the implementation of the recommendations of the High Level Review Panel chaired by Dr Sydney Mufamadi is at an advanced stage.

I am assured by the leadership of the relevant agencies that illegal operations identified both in the Panel Report and the investigations conducted by the State Security Agency leadership are being identified and terminated.

Investigations continue on these and other wrongs within the SSA and in collaboration with law enforcement agencies.

Covert activities are now subject to scrutiny by the Auditor-General.

Late in December 2019, I also reconstituted the National Security Council, which is chaired by the President, to ensure better coordination of the intelligence and security-related functions of the State.

Political responsibility for the State Security Agency now resides in the Presidency and deliberations continue on the Panel's recommendation to split up the SSA into distinct domestic and foreign intelligence services.

Government envisages a fundamental overhaul of the state-owned enterprises model that addresses not only the deficiencies that permitted widespread corruption, but that also enables these companies to effectively fulfil their social and economic mandates in a sustainable manner.

To this end, Cabinet has established the Presidential State-Owned Enterprises Council to reposition SOEs as effective instruments of economic development through stronger oversight and strategic management.

Government is working towards an SOE ownership model that clearly separates the responsibilities of ownership, policy development and regulation.

Effective ownership will become more centralised to enable greater transparency, accountability and oversight, and subject all strategic SOEs to more rigorous requirements for financial and operational performance.

We are implementing standard guidelines on the appointment and remuneration of SOE boards and executives that prioritise the recruitment and retention of appropriate skills, experience and competencies.

This includes a clear delineation of authority and responsibility between elected public

officials, non-executive directors and executive leadership.

We are working to ensure the rigorous implementation of controls over the use of public money as the best way to protect the abuse of those funds.

The National Anti-Corruption Strategy, which was developed together with representatives from business, trade unions, academia and civil society, including religious organisations, was approved by Cabinet in November 2020.

The Health Sector Anti-Corruption Forum, which was launched in September 2019, is a critical element of our fight against corruption.

Legislative changes have been made, and others are underway, to fight corruption and reduce the likelihood of a recurrence of state capture.

The amendment to the Public Audit Act as a good demonstration of this has granted the Auditor-General significant powers to secure consequence management where public funds are misused.

This is a significant step in the fight against state capture as it targets the perpetrators of fraud and theft.

Another set of powerful measures to prevent corruption and state capture include changes to the way in which the public service is managed.

Critical sections of the Public Administration Management Act of 2014 have now commenced.

These include the prohibition on all public service employees conducting business with the state, the development of norms and standards of integrity, ethics and discipline in the public service, and the establishment of the Office of Standards and Compliance. Further sections will be commencing this year.

Legislation meant to entrench greater checks and balances in public procurement is in the pipeline and will be finalised as soon as possible.

Chairperson,

The Commission has asked me to address several other matters, including allegations made by witnesses against me before the Commission.

These are addressed in detail in the statement that I have submitted to the Commission.

There is one particular issue on which I wish to comment now since it has received widespread attention and can easily be disposed of.

This relates to allegations made by Mr Brian Molefe and Mr Matshela Koko in relation to the stake that I held in the Optimum Mine prior to my entry into government and my later responsibilities with respect to the Eskom war room.

While I was in business, I participated in a commercial consortium with Glencore in the acquisition of Optimum Holding, which acquisition was concluded in June 2012.

I acquired an effective 9.64% shareholding in Optimum Holdings and became non-executive chairperson of Optimum Holdings.

In that role, I had no operational involvement in Optimum Holdings or Optimum Mine.

Following my election as ANC Deputy President in December 2012, I initiated a review of my business interests to avoid potential conflicts.

As part of this process, on 6 June 2013, I resigned as a director of Optimum Holdings, and on 22 May 2014, I disposed of my shareholding in Optimum Holdings ahead of my appointment as Deputy President of the Republic.

I had no further involvement or interest in Optimum after that point.

In December 2014, President Zuma assigned me responsibility to oversee efforts to turnaround several SOEs that were in dire straits.

I was asked to give guidance and direction to existing governance structures, focusing on the unique challenges of each structure.

As is apparent now, this work required collective commitment by all governance structures, and was a long term endeavour.

Only recently have we started to truly make progress on the challenges that SAA, Eskom and other SOEs face.

As part of this responsibility, I chaired an Inter-Ministerial Committee on resolving the country's severe energy challenges.

This IMC exercised political responsibility for the Eskom technical war room, which was set up to support the implementation of the Five-Point Action Plan adopted by Cabinet to address the electricity constraints.

The Technical War Room was under the day-to-day direction of Deputy Ministers of relevant departments and comprised representatives of Eskom and relevant departments.

I was not a member of the Technical War Room.

In response to the allegations made on this matter, it is necessary to make the following points:

First, my acquisition of shares in Optimum Holdings was a straightforward commercial transaction, done in accordance with regulations of the JSE.

Second, as non-executive chairperson of Optimum Holdings, I was not involved in operational matters of subsidiary companies, including contractual matters between, for instance, Eskom and Optimum Mine.

Third, by the time President Zuma assigned certain Eskom-related matters to me in December 2014, I had disposed of my shareholding in Optimum Holdings and had no other business interests in mining or energy.

Fourth, as is evident from the documents provided to the Commission with my statement, the Eskom technical war room was not involved in Eskom management or operational issues.

I had no interest in, nor any opportunity to, influence Eskom's decision-making process in matters pertaining to Optimum.

Finally, I turn to Mr Koko's allegation, which was also widely publicised, that I improperly interfered to procure his dismissal from Eskom in January 2018.

As I detail in my statement to the Commission, Eskom was in a severe crisis at the time.

Its domestic and international lenders were threatening to call on their loans, in part because of concerns about Eskom's leadership and its reaction to allegations of corruption.

Eskom's predicament threatened its very existence as a going concern. It also threatened the country's sovereign rating and the country's ability to access much needed lines of credit.

An urgent meeting was held at the President's official residence on 19 January 2018, attended by President Zuma, Ministers Brown and Gigaba, and myself.

The meeting resolved that urgent action was necessary to avert a national disaster, to restore Eskom's credibility, and instil confidence in Eskom.

This would require changes to Eskom's Board and its leadership. The Board would further be directed to remove all Eskom Executives facing allegations of corruption and other acts of impropriety, including Mr Koko.

Mr Koko contends that his removal was an instance of unlawful interference in Eskom's affairs, executive overreach and state capture.

The suggestion that government cannot lawfully intervene in Eskom's affairs — even to avert a crisis — is completely incorrect.

Government is Eskom's sole shareholder, and Eskom's Memorandum of Incorporation states that: "*The Shareholder may direct the Company to take any action specified by the Shareholder if the Company is... in financial difficulty or is being mismanaged...*"

The remedial measures thus fell substantively within the shareholders powers as contemplated in Eskom's Memorandum of Incorporation.

The mere fact that Mr Koko was removed does not mean that his removal was intended to achieve corrupt ends or to somehow capture Eskom.

Chairperson,

Many people sacrificed their lives in the fight to end apartheid and bring us to the new Constitutional dispensation.

When we dishonour the Constitution, its principles and values, we dishonour those who lost their lives as well.

Since state capture is an assault on the democratic process, it is necessary that the process of extricating the State from a position of 'capture' is inclusive, democratic and involves the broad range of interests in society.

This is addressed in part by the public nature of this Commission's work.

But the hard work will begin after this Commission has finalised its hearings and submitted its report.

There will be a need for a partnership between citizens and all branches of the State to ensure faith is restored in our institutions and our democracy.

Putting an end to state capture will enable the State to focus its efforts and resources more effectively on the provision of public services, which is critical to the transformation and development of our society.

It is worth highlighting that many of our critical institutions continued to work as they needed to and as provided for in the Constitution throughout this period.

Despite the damage done by state capture to public institutions during this time, and the resulting impact on the provision of services, the reality is that the work of government did continue, and progress has been achieved in a number of areas.

This was due in large part to the efforts of committed, capable and ethical public servants and public representatives.

The road from the period of state capture will be long.

Every measure we have instituted has taken time and has led to a lot of frustration. It has required effort and consideration.

Through the work of this commission, we need to restore the credibility of the institutions of our democracy and rebuild our country.

I thank you.