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Overview of South Africa's Anti-Corruption Landscape, State Capture, and Recent Civil Unrest

Introduction

South Africa is widely regarded as Africa's leading liberal democracy and most industrialized country,¹ and it was the only African nation invited to the 2021 G7 summit in the United Kingdom.² However, despite its global reputation, recent riots following the arrest of former president Jacob Zuma in July 2021 have resulted in the worst unrest since apartheid.³ Zuma was arrested for refusing to appear before the Judicial Commission of Inquiry into Allegations of State Capture (the "**State Capture Inquiry**"), a corruption inquiry probing Zuma's alleged sale of influence over the government.⁴ Corruption has been in the spotlight in South Africa for several years, particularly since the launch of the State Capture Inquiry in 2018.⁵ The COVID-19 pandemic, combined with deep divisions in the ruling party, the African National Congress (ANC), have only exacerbated the social and financial hardships of the population.

Attorneys

[Sarah Lambert-Porter](#)
[Christopher R. Capecci](#)

[Sean Seelinger](#)

[Genieva A. DePass](#)

[Thanithia Billings](#)

Overview of the Political and Anti-Corruption Landscape

The ANC has been the ruling party since 1994, when President Nelson Mandela led a government of national unity after decades of apartheid. In 1996, the country adopted a constitution that enshrined progressive political, economic, and human rights, further strengthening South Africa's democratic credentials.⁶

Zuma served as Deputy President under President Thabo Mbeki from 1999 until Mbeki dismissed him in 2005 in connection with corruption charges.⁷ Zuma mobilized a faction within the party to usurp Mbeki's leadership of the ANC, which he succeeded in doing in December 2007.⁸ The party leadership forced Mbeki to resign as President of the country in September 2008.⁹ Zuma was elected President in 2009 and maintained this position until 2018.¹⁰

During the decade of Zuma's presidency, levels of corruption within the ANC government increased significantly, with Zuma being personally implicated in a number of corrupt dealings.¹¹ Zuma began losing electoral support in 2016, and current President Cyril Ramaphosa seized the opportunity to launch a campaign for the party leadership premised on cleaning up corruption within its ranks and reviving foreign and domestic investment.¹² Ramaphosa had been a trusted associate of Nelson Mandela during the transition from apartheid and was Zuma's Deputy President.¹³

In February 2018, Ramaphosa assumed leadership of the ANC and the country after narrowly winning enough support to force Zuma to stand down under threat of a Parliamentary vote of no confidence.¹⁴ Zuma nevertheless retains considerable influence within the party.¹⁵ Those events led to a widening schism within the ANC and created opposing factions loyal to Zuma or to Ramaphosa.

The Zuma and Ramaphosa factions are loosely aligned along ideological lines, but ethnic or tribal affiliation and cronyism are significant factors.¹⁶ The Zuma faction is often associated with the Zulu ethnic group (to which Zuma belongs, and which accounts for almost a quarter of the population), and it takes a conservative stance on social issues, whereas the Ramaphosa faction has tended to downplay ethnic identities.¹⁷ The Ramaphosa faction considers itself to be more progressive on social and economic issues: it sees poverty as best addressed through the diversification of the economy, and considers corruption to be a significant barrier to domestic and foreign investment, and economic growth.¹⁸

Ramaphosa has positioned himself as an anti-corruption activist for many years, and in 2020, he took a number of key anti-corruption steps that have heightened tensions between ANC factions.¹⁹ In August 2020, at the height of the COVID-19 pandemic and amid allegations of corruption involving the government’s COVID-19 relief fund and the procurement of personal protective equipment (PPE), Ramaphosa took decisive steps to confront corruption within the ANC.²⁰ He also tasked the party’s decision-making body, the National Executive Committee (NEC), with invoking anti-corruption measures including the ‘step aside’ rule, an ANC resolution requiring all members charged with corruption or other crimes to vacate their posts or face suspension.²¹ In an August 2020 letter to ANC members, Ramaphosa listed certain anti-corruption steps taken since 2017, but noted that the 2020 NEC had recognized “the justifiable public outrage cause by recent reports of corruption.” He went on to write that the party needed to “have the political courage and the honesty to acknowledge that ANC leaders, public representatives and members have on numerous occasions been implicated in such forms of corruption.”²² The ‘step aside’ rule led to the suspension of, amongst others, the ANC’s Secretary General, Elias ‘Ace’ Magashule, in May 2021 in connection with his arrest in late 2020 on 74 charges of fraud, corruption, and money laundering.²³

Other notable anti-corruption efforts and policies under Ramaphosa have included:

- Enhancing the functions of the Special Investigating Unit (SIU), the country’s dedicated anti-corruption agency focusing on the recovery of misappropriated state resources, by establishing a Special Tribunal to speed up the recovery of state funds and civil claims.²⁴
- Establishing a new multi-disciplinary anti-corruption investigating directorate within the National Prosecuting Authority (NPA) to investigate and prosecute high-level corruption.²⁵
- Replacing leadership at key institutional bodies, including: the NPA; the South African Revenue Service; the State Security Agency (SSA); and the Directorate for Priority Crime Investigation (DPCI, also known as the ‘Hawks’), which targets organized crime, economic crime, corruption, and other serious crime.²⁶

State Capture Inquiry and Recent Civil Unrest

The State Capture Inquiry is a public inquiry led by Deputy Chief Justice Raymond Zondo, which was launched a month before Zuma’s ouster from the presidency in 2018²⁷ and mandated to “investigate allegations of state capture, corruption, fraud, and other allegations in the public sector including organs of state.”²⁸ The Inquiry was commissioned as a result of a 2016 report on unethical conduct in the appointment of certain Cabinet ministers by the Public Protector, an independent government watchdog established under South Africa’s Constitution.²⁹ The Public Protector’s report stopped short of asserting criminal behavior, but called for an investigation into whether Zuma, some of his Cabinet members, and certain state-owned enterprises (SOEs) had acted improperly. The State Capture Inquiry has received several extensions, with its current mandate set to expire in September 2021.³⁰

The State Capture Inquiry’s mandate has three prominent areas of focus. First, ‘state capture’—a type of systemic political corruption through which private interests influence a state’s decision-making processes to their own advantage.³¹ Second, Zuma’s relationship with members of the Gupta family, a wealthy Indian-born family of businessmen with significant and extensive business ties in South Africa.³² Third, Zuma’s personal misappropriation of public funds and abuse of power over the State Security Agency (SSA) in order to shield himself from scrutiny and prosecution during his presidency.³³

The State Capture Inquiry has heard evidence in support of allegations that, throughout his presidency, Zuma engaged in corrupt dealings with the Gupta family and others, selling them influence over SOEs and awarding multiple government contracts to Gupta-associated businesses, which embezzled public funds as illicit payments to themselves, Zuma, and his associates.³⁴ The family’s influence over Zuma and various SOEs was so pervasive that they were allegedly able to

control the appointment and removal of key government ministers and influence South African politics to their advantage.³⁵ Government contracts worth billions of South African Rand were awarded to companies that performed no work.³⁶ During the course of Zuma's presidency, and for some time afterwards, many SOEs (notably those involved in power distribution and the railways) were plundered under the influence of the Guptas, rendering them dysfunctional and in a state of near-bankruptcy.³⁷ Several multinational consulting and auditing companies have also become entangled in allegations related to state capture.³⁸

The Guptas fled to the United Arab Emirates (UAE) to avoid potential criminal charges shortly after Zuma was ousted and the Inquiry was launched in 2018.³⁹ In 2019, the United States imposed economic sanctions on the Gupta brothers in recognition of their role in widespread bribery and corruption in South Africa under the Global Magnitsky Human Rights Accountability Act.⁴⁰ In 2021, the United Kingdom followed suit, imposing economic sanctions on the Guptas and associates in the first use of its new 'Magnitsky-style' sanctions regime to target international corruption.⁴¹ In July 2021, South Africa and the UAE signed an extradition treaty, and Interpol 'red notices' for certain members of the Gupta family are currently under consideration by the Commission for the Control of Interpol's Files (CCF), an independent entity responsible for ensuring personal data processed through Interpol complies with its constitution.⁴²

In his capacity as the head of the ANC, Ramaphosa testified before the State Capture Inquiry in April 2021 that the ANC had waited too long to recognize rampant corruption during that period and said that he would not try to "make excuses or to defend the indefensible."⁴³ He also admitted that "[d]ifferences on whether indeed state capture existed, its extent and form, and what should be done about it [had] contributed to divisions within the [ANC's] national executive committee [sic] and other ANC structures."⁴⁴

In July 2019, Zuma abandoned his testimony to the State Capture Inquiry, after claiming that two foreign intelligence agencies had recruited spies within the ANC as part of a scheme to control South Africa, and that the Inquiry was designed to smear him.⁴⁵ Zuma defied orders to return to testify, and was ultimately held in contempt of court in June 2021.⁴⁶ South Africa's Constitutional Court upheld and enforced that order on June 29, 2021, sentencing him to 15 months in prison.⁴⁷

In the days that followed, hundreds of supporters gathered outside Zuma's family compound in KwaZulu-Natal to prevent his arrest—a site which is itself the subject of corruption inquiries, since Zuma poured millions of public funds into its development.⁴⁸ Zuma ultimately turned himself in to police on July 7, just under an hour before the midnight deadline.⁴⁹ Zuma's imprisonment sparked several days of protests, looting, and riots, predominantly in his home province of KwaZulu-Natal, although there were also outbreaks in Gauteng Province, which included large townships in the cities of Johannesburg and Pretoria.⁵⁰ The civil unrest did not spread to the country's seven other provinces.⁵¹ The South African Army was deployed to help contain the unrest, which led to more than 300 deaths and 3,000 arrests.⁵²

Zuma's surrender and the ensuing protests and violence are widely reported to have been orchestrated and planned by the pro-Zuma faction, and many key figures—including the suspended Secretary General of the ANC, Elias 'Ace' Magashule, who is seen as leading the faction—openly encouraged and incited the unrest, including on social media.⁵³ While much of the initial protesting and violence was driven by the political clash playing out in the ruling party's leadership, the unrest's spiral into looting was also fueled by economic factors caused by the successive governments' failed economic and service delivery policies, which have not changed the lives of its poor, unemployed, and hungry citizens.⁵⁴ Ramaphosa denounced the riots as part of a coordinated and pre-planned attempt to hijack South Africa's democracy in an address to the nation on July 16: "Using the pretext of a political grievance, those behind these acts have sought to provoke a popular insurrection . . . to exploit the social and economic conditions under which many South Africans live – conditions that have worsened since the onset of the coronavirus pandemic – and to provoke ordinary citizens and criminal networks to engage in opportunistic acts of looting."⁵⁵

Conclusion

South Africa is in the midst of an anti-corruption reckoning as it deals with various corruption-related scandals involving its political and business leadership. Since the start of 2020, Ramaphosa has taken unprecedented action to address and eradicate historic and COVID-related procurement corruption. Although strong anti-corruption measures and an independent judiciary exist, political influence has impacted their efficacy, and significant risks remain for local and international businesses as Ramaphosa attempts to right the ship.

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