

Press statement
8 December 2023

Government not turning the tide against the growing tsunami of corruption

The Defend our Democracy Movement and supporting civil society organisations believe that the South Africa is not winning the war against corruption and state capture.

As the country marks International Anti-Corruption Day (9 December), we are being told by the government that it is 'turning the tide against corruption'.

While we acknowledge the work that has been done to try and change policy, and investigate and uncover corruption, the efforts being made do not meet the scale of the problem.

A year after the handover of the Zondo Commission report into allegations of state capture and corruption, South Africans are yet to see the many who were implicated in it pages being brought to book.

The Gupta brothers for instance, remain free, with their extradition from the UAE failing.

The first state capture related case to be taken to trial by the National Prosecuting Authority, the Nulane case, ended with the judge acquitting the accused because of a lack of evidence.

More recently, the Middelburg Regional Court struck from the roll the case against former Eskom boss, Matshela Koko, and 18 others. It found the case has been unreasonably delayed a year after the first arrests were made.

Yet it is not only before the courts that there have been setbacks. Parliament's ethics committee cleared several MPs (some on mere technical grounds) while only a few have been held accountable following the Zondo Commission report and subjected to limited and tepid consequences.

Others implicated in the report seem to have actually been rewarded. In October this year, South Africans woke up to the news that state capture-accused, Des van Rooyen and Papa Leshabane, had been hired by the Gauteng government! Van Rooyen and Leshabane were announced as members of the Gauteng Enterprise Propellor and Tourism Authority boards.

By contrast, whistleblowers and honest public servants, such as PRASA'S Martha Ngoye, continue to be victimised.

We must remember, that when Tembisa Hospital whistleblower, Babita Deokaran, was assassinated in 2021, the plight of whistleblowers had already been raised on numerous platforms, yet there was no protection for her. Similarly, the Zondo Commission report had already long been filed when Hawks investigator Lieutenant Colonel Frans Mathipa was assassinated by a sharpshooter earlier this year. All of this has been happening as government continues paying lip service to protecting whistleblowers and public servants who simply want to carry out their duties.

While it is implied that state capture was part of a particular 'era' in the country, the continued lack of accountability in the private and public sector, the scale of the Covid 19 corruption, the allegations of water tender corruption worth billions of Rands in Limpopo,

and reports of construction mafia operations in KwaZulu Natal and the Western Cape, ‘water-tank mafia’, and ‘city capture’ in Johannesburg, amongst other cases, indicates that state capture is alive and well. If anything, it has permeated from a national level to a provincial and local level.

Beyond the individual cases, state capture and corruption continues because systemic weaknesses have not been addressed. Following the recent conference by the Public Affairs Research Institute and the Council for the Advancement of the South African Constitution on the Zondo Commission recommendations, some of these issues have been flagged. These, amongst a range of others, include:

- The Zondo Commission report was harshly critical of Parliament’s failure to intervene in corruption and state capture. The report issued a number of concrete recommendations on Parliamentary oversight, including ensuring oversight is properly resourced, establishing a committee to oversee the Presidency, considering appointing committee chairs from opposition parties, reforming the process of making appointments to state institutions, and monitoring, tracking and enforcing Parliamentary resolutions. Parliament published an implementation plan for dealing with the Zondo recommendations in November 2022, but has been slow to act. More than a year after the submission of the final Zondo Commission reports, Parliament has implemented very little. Some recommendations, such as appointing opposition committee chairs — have been rejected outright, with Parliament declaring there is no need for change!
- While there has been some development in considering new whistleblower legislation, proposed changes do not simplify or consolidate the current complicated and inconsistent legal framework, which poses a significant challenge to whistleblowers. The proposals also do not go far enough, with for instance, a rejection of the idea of incentivising whistleblowers.
- Government’s anti-corruption progress report refers to increasing the budget of the NPA and strengthening capacity through the tabling of the NPA Amendment Bill, which made the Independent Directorate permanent, yet the NPA is still under-resourced. Despite the commitment made in President Cyril Ramaphosa’s response plan, the Bill also does not address appointment processes for the NDPP and other senior roles at all, nor does it strengthen the operational independence of the NPA.
- Over 30% of the Zondo Commission’s report deals with public procurement. The Commission found that the public procurement system was the primary site for the ‘redirection’ of state resources. The Public Procurement Bill does not however, sufficiently address the concerns raised by the Commission. It is being rushed through Parliament after an inadequate public consultation period and is vulnerable to legal challenge. The main critiques concern the misalignment of the Bill to Section 217 of the Constitution, the Bill’s excessive recourse to subordinate legislation, and matters of integrity, transparency, and access.
- The General Intelligence Laws Amendment Bill of 2023 will implement one of the Zondo Commission’s most significant recommendations concerning intelligence: the disestablishment of the State Security Agency and the establishment of two intelligence agencies, one domestic, one foreign. However, the Bill is seriously flawed and may be subject to Constitutional challenge. Civil society has sounded alarms over provisions in the Bill which would dramatically expand the scope of intelligence and surveillance, while weakening oversight and neglecting necessary safeguards.

- In August 2023, the President stated that the draft National State-Owned Enterprises Bill would align the process for the appointment of SOE boards and executive management with the recommendations of the Zondo Commission, and that this new law would improve oversight, transparency and accountability of SOEs. The draft bill instead introduces a single shareholder model by establishing the State Asset Management SOC as a holding company to supervise identified state enterprises. The Bill does not specify how the boards and executives of subsidiary SOEs will be appointed, but the board of the holding company will be appointed by the President with no clear process or criteria, and no checks and balances. It is not clear how this Bill will meaningfully improve the oversight, transparency and accountability of SOEs.

We recognise that the South African government has made some gains against corruption and state capture, but it cannot say that it is winning this war. To do so, the political will to truly fix the state, put in place measures to prevent future corruption, and importantly, hold accountable those implicated in the Zondo Commission report, is necessary.

Furthermore, as we head to the 2024 elections next year, it will require putting the country's interests first and not protecting those implicated in corruption and state capture simply because it serves party political interests.

As the country marks 30 years of democracy next year, we will continue holding government accountable to its commitments to turning the tide against corruption and state capture.

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