



civil society

Defeating State Capture
and Rebuilding the State

REPORT



CONFERENCE 23 OCTOBER 2019 JOHANNESBURG

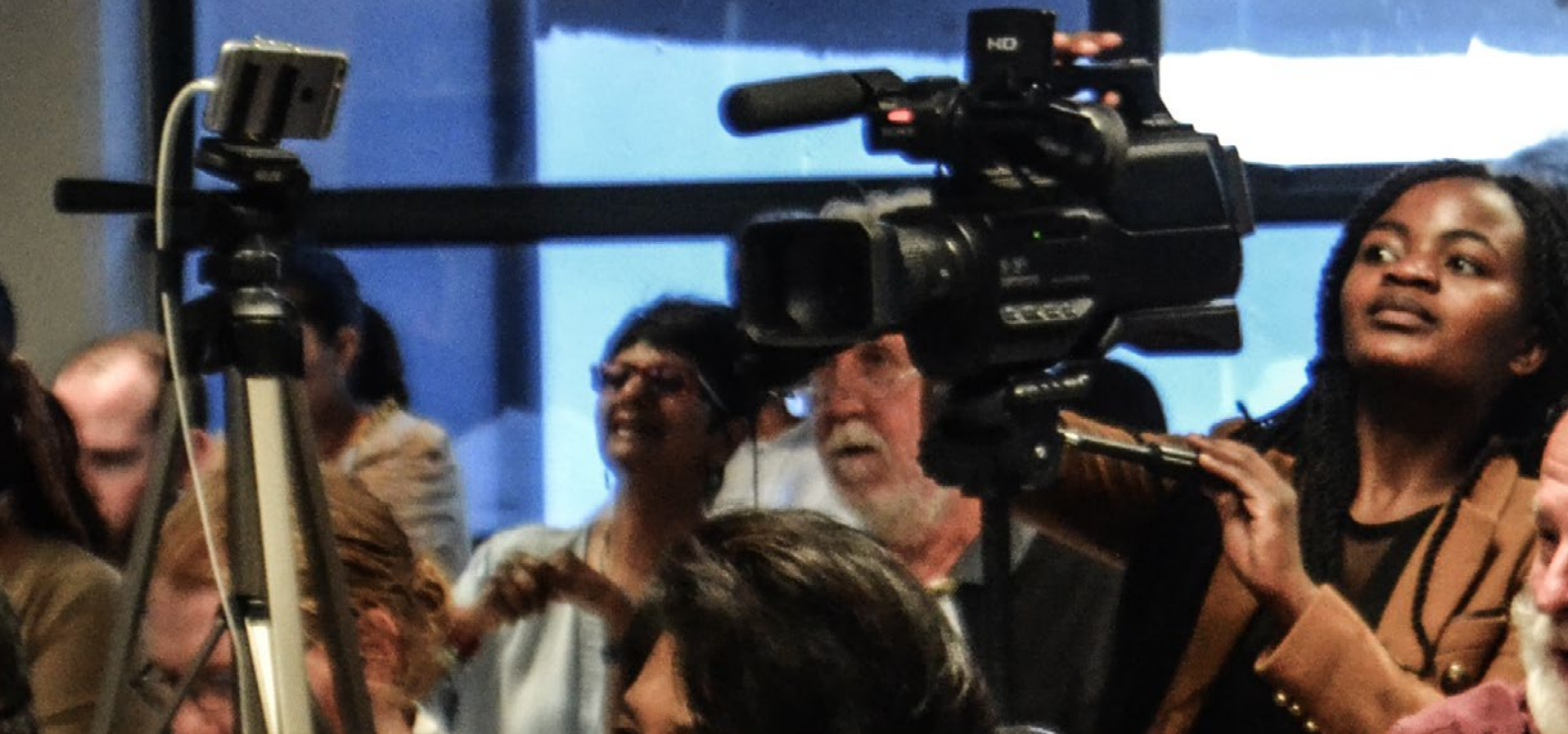


PARI Public Affairs
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Introduction

The Ahmed Kathrada Foundation and the Public Affairs Research Institute (PARI) hosted a conference entitled: Civil Society – Defeating State Capture and Rebuilding the State on 23 October 2019.

The conference was held at Mancosa Campus, Johannesburg and was attended by civil society representatives, academics, and individuals interested in the issues.

The conference built on activities undertaken by both the Foundation and PARI to analyse and understand the effects of state capture and patronage, to bring together a range of organisations to take action against state capture, as well as to rebuild state institutions through proposals for reform.

Over the past two years, various initiatives have been undertaken by organisations, both individually and collectively, to tackle state capture.

This included a civil society conference against state capture hosted by the Foundation in 2017, and a 2018 conference by PARI.



Several commissions of inquiry have been established to probe and unravel the network propping up the shadow state, various investigative media reports have revealed the depth of capture and research and analysis has been conducted into its impact on our political and economic stability.

While there has been a renewed energy within the civil society space to contribute towards rebuilding a state severely decimated by years of capture, there are worrying signs that there are attempts to 'fightback' against initiatives which aim to address the problems.

We have seen a concerted attack against members of the media, the judiciary, political leaders, organisations, public servants and others who have taken a decisive stance against state capture.

The 'tug of war' between those implicated in state capture and those who aim to eradicate it is evident within state owned institutions, in all tiers of government, in various cases brought to court and in attempts to mobilise popular support.

The 2019 conference allowed for civil society to take stock of where it is in the fight against state capture and map out what needs to be done do to confront the current 'fightback'.

It also assessed progress on mechanisms put in place to address the effects of state capture on different state institutions, and presented proposals in several areas of state reform in order to insulate the public service from improper political interference.

Topics under discussion included:

- How state capture continues to erode Constitutional democracy;
- Where to from the Commission of Inquiry into Allegations of Impropriety regarding the Public Investment Corporation (PIC Commission) and the Commission of Inquiry into Tax Administration and Governance by SARS (Nugent Commission); and how to act on evidence emerging from the Commission of Inquiry into Allegations of State Capture (Zondo Commission);
- The on-going role of civil society in protecting state institutions from state capture and patronage;
- Presentation of civil society proposals on key areas of state reform to minimise the possibilities of improper political interference in state institutions, the public service and public procurement processes; and,
- Strengthening forms of civil society activism against state capture: public advocacy, Parliamentary oversight and lawfare.

This report captures the key points from the various discussions that occurred at the conference.

It also includes a Civil Society Charter that emerged from the conference, outlining the key principles that civil society should be advocating for, and objectives it should be putting energy into in the process of defeating state capture and rebuilding the state. We hope that the Charter can provide a broad framework for the type of niche area efforts, and wide scope of work that society should be undertaking over the next few years.

The Foundation and PARI hope that this booklet will be a valuable source of information for any organisation taking a stance against state capture.



Justice Johann Kriegler speaking at the conference.

Section one:

“Kom ons werk”

The civil society conference against state capture was opened by former Constitutional Court judge, Johann Kriegler. Regarding himself not as an expert on any of the Conference topics, Kriegler introduced himself as a well-meaning amateur on lawfare, and an experienced administrator on the fringes of South African politics.

"We've come to the end of the beginning," Justice Johann Kriegler told the auditorium full of leading NGOs in the field.

"This is the stage where we can settle down, roll up our sleeves and say, "Kom ons werk.""

Noting that the Conference did not occur in an emotional or political vacuum, Kriegler reiterated the groundswell of concern across the political spectrum, as well as that of diverse social, ethnic and political interests.

He reflected on the spirit that prevailed in 1994 – a mad rush to run the elections that would bring about transformation and liberation. Recognising the challenges that faced South Africans even in 1994, Kriegler reminded the audience of the unity of purpose of the national spirit. "The same spirit is alive and well, and will carry us all through the period into which we are about to enter."

State capture, as Kriegler described it, is characterised as a decade in which "our President went rogue, our Cabinet went walk-about, our Parliament went to sleep, our judiciary went to ground, and civil society stood by". All of us were aware of what was happening, and each one of us failed in our duty, whether as a member of cabinet, a parliamentarian, a judge or an ordinary citizen.

Kriegler stated that people trusted that we had a model Constitution, an intact judiciary, active civil society, free and competent media, and a functioning multi-party democracy. We trusted that we were safe. However, he indicated, the country must learn from this experience that notwithstanding all of these safeguards and supports, one's liberty depends on oneself – not upon state institutions and other people. In short, we failed ourselves during that decade. "Safeguards cannot safeguard the country – only citizens, actively participating, can," Kriegler said.

He acknowledged that we had not been fully aware of what was happening, only vaguely. The State of Capture Report by then Public Protector Advocate Thuli Madonsela ensured that the term 'state capture' was firmly embedded in our vocabulary. The #GuptaLeaks made us aware of the miasma of corruption, influence-peddling and the perversion of state institutions and outright capture that had taken place.

Unfortunately, he noted, much of that still remains: we have now determined many locations of perversion, and have become aware of instances of fraud.

It must be noted that the treatment of a particular area of corruption is extremely difficult, multi-faceted and protean. Thus, approaches to fighting corruption in particular areas must similarly be multi-faceted and subject-specific. A unilateral approach will not be effective. In dealing with this feature that has many different characteristics, the approach needs to be subtle and flexible.

State capture, as Kriegler described it, is characterised as a decade in which "our President went rogue, our Cabinet went walk-about, our Parliament went to sleep, our judiciary went to ground, and civil society stood by".

Even when a locus of concern, corruption, dishonesty and/or fraud is identified, and one or two key figures responsible are removed, we are nowhere near solving the problem.

But, it is not for us to conduct an examination of the facts afresh; instead, we should try to give a different perspective of what needs to be done.

Kriegler postulated that, in trying to navigate ourselves forward in the fight against state capture, we need to be cognisant of the following:

1) It is dangerous to see the concept of state capture as merely relating to Zuma/Gupta evidence, and to certain parts of the country. We must understand that state capture is much more pervasive than this and that its miasma has extended much further than these individuals or places. An example is Nelson Mandela Bay and the capture of that metropolitan government, over which there was no influence by the Gupta family and (to the best of his knowledge) no direct influence from the President either.

2) State capture is not something we are dealing with at only a national level – while the Zondo Commission is mainly concerned with political interference with mechanisms at a national level, it must be recognised that capture permeates all the way down to local authorities. The manifestation of capture is three-dimensional, as it operates at national, provincial and local levels. Therefore, the discovery of an area of rot does not signify even the beginning of addressing the problem.

The rehabilitation of institutions dilapidated by these offending elements is the difficult, long-term work that remains, and is accompanied by its own administrative and legal problems. The pervasive presence of corruption and its lingering effects are significantly complicated by the fact that “the state institutions that were designed to prevent and prosecute these manifestations of dishonesty have themselves been destroyed”.

Therefore, Kriegler predicted that in Nelson Mandela Bay, the number of people convicted would be the same as the number that has been successfully prosecuted in Limpopo or the Free State. The current batting average of prosecutions versus the number of corrupt acts carried out is 0 to 1 million.

This is because, he reflected, “The state capture plan at the beginning was devilish in its genius. An acupuncturist could not have identified the key pressure points of the body politic more exactly. Each pressure point of protection for civil society and the integrity of our state was identified, penetrated and captured.”

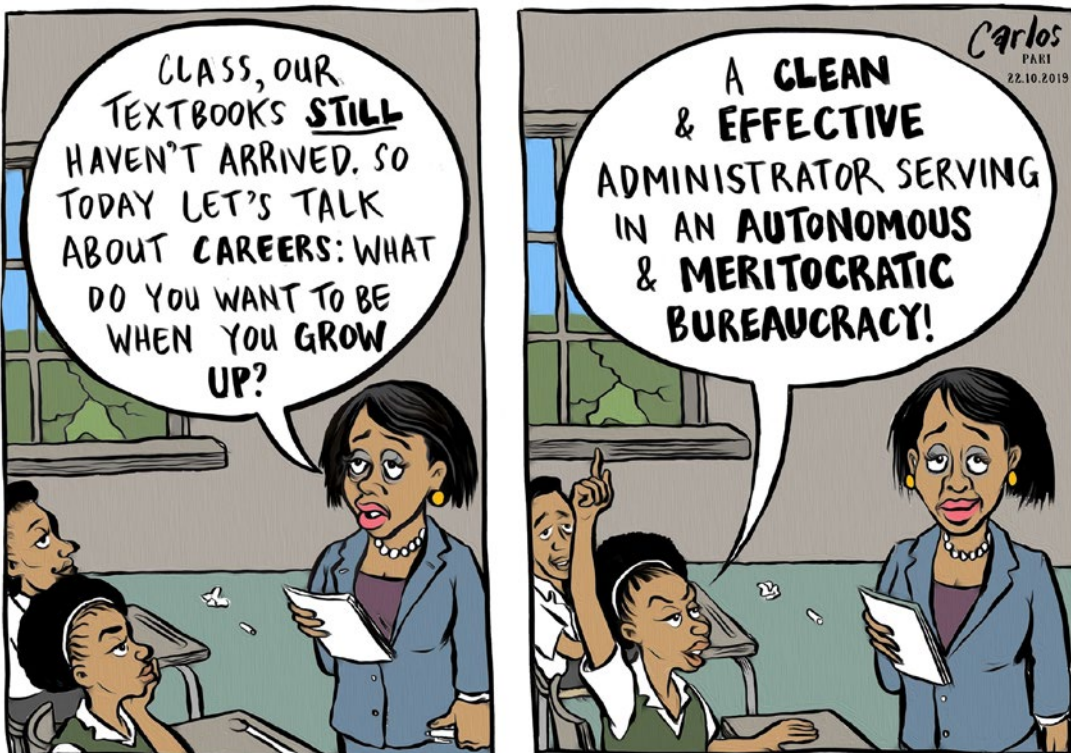
In institutions such as Eskom, the Hawks, the NPA and SARS, the case of successful capture is clear. An appointment like Tom Moyane into SARS, was only one needle prick; around which more points than that single puncture were infected. The manipulation of appointments at these institutions created a distrust between people working together, both in terms of professional skill and integrity. In short, everyone is at sea. It is as difficult to suck out the poison introduced into these institutions by appointees of state capture as it is to ‘re-moralise’ those honest workers in the same institutions. What is left is a lack of both, integrity and professional capacity, at these levels.

Kriegler acknowledged that the prosecutorial status at the moment is concerning: "We want to see people in orange uniforms."

Practically, however, he reminded the Conference that there is a large gap between an investigative journalist finding sufficient facts to reveal criminal conduct on the part of a public official, and the NPA having enough material to launch a successful prosecution. Conscientiously, a prosecutor must be sure of being able to make allegations of criminality based on evidence that can be taken before Court. This is impossible when witnesses interviewed by journalists subsequently disappear. In addition, a vast body of investigators in SAPS and the NPA have given up, left, retired, or moved into the private domain.

Having been involved in training prosecutors in the NPA, Kriegler was able to say that many skills and a general working ethos have been lost in the institution, which he is sure applies to other institutions which have similarly been hollowed out.

The rehabilitation of these systems at the top level is weakened by the failure to rehabilitate at the purely local, administrative level – and this can't be solved in the short-term by removing dishonest people or adopting new codes of conduct.



'Dreams of an Effective State' by Carlos Amato for PARI, October 2019.

We are dealing with a 'hydra-headed monster' and cutting off one, or even all of its heads, isn't good enough: its sown seeds grow.

In conclusion, he noted certain salient points:

- The skilled workforce at key institutions has been severely weakened. Honest people have been replaced and decent associates have left: "The pervasive poison lingers on."
- Corruption and its agents are well-entrenched, well-funded, disguised, impregnable, unscrupulous and very skilled. The 'counter-lawfare' by the current Public Protector is evidence of a great deal of skill (intellectual and financial) of 'counter-forces'.
- We are dealing with a 'hydra-headed monster' and cutting off one, or even all of its heads, isn't good enough: its sown seeds grow.
- There is a great deal at stake for perpetrators of state capture and they will fight to the death to preserve their interests and protect their takings.

He thus issued three warnings:

- 1) In pursuit of ill-doers, we must be careful to not judicialise the process too much. The judiciary is not the only mechanism we can use. The involvement of judges in political work has the potential to undermine the integrity of the judiciary.
- 2) There is a natural tendency of colleagues to gather together and this is commendable. However, there is also a counter-tendency on the part of comrades to close ranks about those who are being attacked. Thus, it must be clear that we are not attacking people, for any other reason, other than that they have harmed their comrades as well.
- 3) Proposals for policy and state reform can generally be divided into two broad categories:
 - a) Moral platitudes, and
 - b) Institutional tinkering.

Amendments to statutes and regulations must be deeper than institutional tinkering. We must ensure that changing appointment processes away from 'x to y' is actually changing something. We should not be tempted to reach a technical solution to a deep and complex issue.

This prompted a number of questions posed to Justice Kriegler in the Q & A session; questions were recognised by the speaker as sharing a common thread: a sense of frustration, a lack of vision regarding where we are going, and a lack of assertiveness in the current debate about the ills we intend to address. In responding to this, Justice Kriegler noted that we are yet to find a programme of action which civil society can all adopt to indicate that we are 'on our way'. He also doubted a new political party would solve the crisis.

With reference to both our current and past government administrations, Kriegler said our body politic "was sick in the old regime and many of those diseases have persisted in this regime". Because of this diseased condition, the situation in our country is one of immeasurable poverty, and the difference between the haves and have-nots is stark and increasing. "We are looking at an elephant through a keyhole, but at least we are looking."

Calling on the lay-person to propagate the rule of law and good values in social and other everyday circles, Kriegler did not disregard the fact that for all of us, the horizon is too far away to be seen – and the obstacles between 'here and there', too vast. However, he concluded, it is what we can do now that matters, and this is what we should keep our focus on:

"Let's do what we can do today and pull out a couple of weeds in our own little patch, and leave the large farming for other people in the longer term."

Watch the introduction to the conference by Ahmed Kathrada Foundation Board Chairperson, Derek Hanekom, and PARI Board Chairperson, Prof Mucha Musemwa, as well as Justice Johann Kriegler's full speech here <https://bit.ly/3aNm5F> and here <https://bit.ly/37Ack1p>.



Justice Kriegler and Betty Welz in a discussion on lawfare at the conference.

Section two:

Where to from the Nugent, PIC and Zondo Commissions?

This session was chaired by Director of Open Secrets, Hennie van Vuuren, and the panel included SARS Commissioner, Edward Kieswetter, financial journalist Warren Thompson and Mail & Guardian journalist, Sarah Smit. The panelists spoke about the Commission of Inquiry into Tax Administration and Governance by SARS (Nugent Commission), the Commission of Inquiry into Allegations of Impropriety at the Public Investment Corporation (PIC Commission), and the Commission of Inquiry into Allegations of State Capture (Zondo Commission).



Hennie van Vuuren, Edward Kieswetter, Warren Thompson and Sarah Smit during the panel discussion.

Hennie van Vuuren began the session by noting the urgency of the situation which faces us as society, apparent by the large number of people in the conference room. He iterated how seriously issues of inequality, poverty, state capture and the legacy of corruption affect our South African society and emphasised the need for systemic change.

van Vuuren highlighted the invaluable work done by civil society and brave journalists, who exposed much of the rot now being explored by the various Commissions. Importantly, he noted that institutional commissions are not the only solution to solving problems of state capture; however, he acknowledged their importance as opportunities to air evidence, make public that which has been hidden and create a process toward potential accountability.

To the panelists, he posed two questions:

- 1) How do we reshape our imagination of the state in the context of these Commissions; and
- 2) How do the panelists see the role of civil society in supporting the reform process?



The discussion underway at the conference.

Edward Kieswetter

Kieswetter began the panel discussion by emphasising that state capture is real and that the capture of SARS is real. "However badly the Nugent Report framed what had happened at SARS," he said, "the actual reality is significantly worse." He described SARS as a broken organisation, destroyed from the core, from human fibre, morale and trust, through to capabilities vested in people. "The organisational arrangements that held it together to execute with integrity, good governance and effectiveness have been destroyed and dismantled."

Kieswetter reiterated his call for the truth to be sounded always, noting that the voices of denialists, in government, civil society, business, and SARS itself are often much louder than a silent majority who, by their silence, form part of those complicit in state capture. Quoting political philosopher Edmund Burke, Kieswetter emphasised the need for good people to not stay silent.

And silent he was not, as he presented to the conference the work that has been undertaken at SARS, since his arrival in May 2019:

- 1) A review of the governance structure of SARS is being conducted. This is being done in conjunction with Treasury; a paper will be released early in 2020.
- 2) There is also a reviewing of governance within SARS. This entails reviewing previously dismantled units (such as the High Court Litigation Unit), changes in terms of reference and leadership. With regard to leadership, a number of senior executives have been placed on precautionary suspension. Some cases have been settled, a number are still in process and some not in the public domain yet.
- 3) SARS is launching the re-opening of the Large Business Centre in Woodmead, which begins a journey of addressing 'big' tax-payers and individuals who make up a significant percentage both on opportunity and risk.
- 4) Kieswetter has met with 90% of SARS staff and visited most offices. In this process of engagement, he described the human cost and effect of state capture, evidenced by the trauma suffered by honest public servants in the institution. He has also reached out to senior workers who had left, and re-hired three strong technical people – this will continue on a case-by-case basis.
- 5) Kieswetter has maintained a presence on TV and in the news, in a conscious effort to engage the public and rebuild public confidence in SARS. He has done this by being disarmingly frank about the rot at SARS and the challenges faced, as well as the realistic timelines needed to rebuild the institution.
- 6) SARS has created six revenue recovery opportunity projects, with the additional intention to change the morale of workers and encourage them to "start winning again".
- 7) SARS has begun immediate projects to address issues regarding the organisation, including disciplinary and prosecutorial action.

"However badly the Nugent Report framed what had happened at SARS, the actual reality is significantly worse."

“It is a game of inches, and inches will turn into feet, feet into miles and miles into yards.”

- 8) SARS has initiated an internal conversation to take place over the next five years to re-imagine what SARS can be and make clear its strategic intent. In this regard, it has identified nine objectives and has thus begun the long-term work of rebuilding the institution and making it an ‘organisation of choice’, able to execute its work with unquestionable integrity.

Kieswetter also noted a number of achievements:

- SARS has risk-profiled 35 cases raised at various Commissions of Inquiry,
- It is currently busy with in-depth investigative orders on a number of cases,
- It has completed several specific tax enquiries and has a few more in process,
- It has parted ways with key executives for alleged complicity in state capture,
- It has instated 21 cases against SARS staff for collusive behaviour – the institution has successfully prosecuted five of them and has instituted several other disciplinary processes,
- It has an active relationship with the PIC and Zondo Commissions, as well as the Asset Forfeiture Unit
- It has recently handed over a file to the NPA which relates to four connected entities.

Kieswetter concluded by highlighting that because SARS is a revenue service which works within the provisions of the law, confidentiality is required. He, however, encouraged participants that, despite the fact that there is a significant amount of work to do, it is slowly getting done.

“It is a game of inches,” he said, “and inches will turn into feet, feet into miles and miles into yards.”

van Vuuren posed two more questions to Kieswetter:

- 1) Was SARS planning to ‘go after Bain,’ in terms of civil liability?
- 2) Is it on top of SARS’s agenda to deal with the private sector and tax fraud, evasion and illicit financial flows?

Kieswetter responded as follows:

- 1) Bain has been engaged by SARS, which has a civil claim against them. SARS also has an indirect claim against Bain, because of what Kieswetter calls a “fake operating model review”, which rendered SARS incapable of operating and administering its mandate; as a result, SARS has been unable to collect revenues due. SARS has also referred the Bain matter for criminal investigation.
- 2) Because of the weakening of the institution, there has been a proliferation of tax fraud. However, honest tax-payers will be refunded. Also, the number of fraudulent practices are open-ended and SARS is aware of it. With its current capability, SARS is working at managing non-compliance and taking cases through to recovering money and prosecuting offenders.

Kieswetter concluded that if capability was doubled at SARS, their impact would be exponentially improved.

Sarah Smit

Sarah Smit delivered a thought-provoking presentation on the Zondo Commission. With reference to the magnanimity of the task at hand, Smit noted that out of the 700 notified that they had in some way been implicated in the state capture project, only about 100 witnesses have appeared before the Commission.

Sarah attributed the growing public frustration with the slow pace of the Commission to the fact that the majority of the witnesses who have testified have not delivered “bomb-shell” testimonies. For the most part, testimonies have dealt with the mundane, unassuming work of public servants. The work of the Zondo Commission has been to identify these very small cracks which have eroded our system so completely. The public, she says, can count on two hands the number of people we want to see behind bars. But, she emphasised, the Commission is not about this – instead, it is about the small cracks that have eroded the fabric of our society so completely.

She questioned the need to focus, beyond this period, on ‘Justice with a capital J’. “Thinking of our ambitions for justice in the future,” she said, “it seems almost impossible to imagine a South Africa without these protagonists of state capture being held to account.” She noted, however, that it is the most unassuming characters who have been brought into the state capture project, and have thus become co-conspirators. These co-conspirators, she highlighted, were not necessarily motivated by greed – but by survival.

Using the Bosasa matter as an example, Smit reminded the conference that one of the key refrains at the Zondo Commission was, “I was afraid to lose my job.” In the current context of employment insecurity, Smit said this is an additional factor to be considered when deliberating how to tackle state capture. She questioned not how society is going to fix state capture; but how we are going to fix it now, “in this economy, and under capitalism; when it is this very thing that is ruining our society altogether”. van Vuuren then asked Smit to comment on public participation in the process of tackling state capture, and in the Zondo Commission in particular. Referring to the People’s Hearing Against State Capture hosted earlier in October by Open Secrets, and supported by the AKF, PARI and some 20 other organisations, van Vuuren highlighted the need for public education on issues of state capture, as well as the need to build broader societal support for processes like the Zondo Commission.

In response, Smit agreed that there is dwindling public support for the Zondo Commission – not necessarily because of a lack of concern – more because of a lack of understanding. She emphasised the importance of educating the public about where the Zondo Commission is going. Smit observed that on Twitter, the general public sentiment is that the Zondo Commission is a waste of time and money, which, she noted, is a valid point considering the current economic context.

The question, she highlighted, is what do we need to focus on to figure out what has gone wrong over the past decade? The answer, she reiterated, is precisely that: the need to trace the small details and cracks; to show the minute intricacies of state capture – in order to fix these cracks first. The answer is to walk before we can run.

Smit reminded the conference that one of the key refrains at the Zondo Commission was, “I was afraid to lose my job.”

Warren Thompson

Warren Thompson began his presentation by providing context of the Public Investment Corporation. Noting that it is a critical player in the South African economy, Thompson detailed the role of the PIC in administering and investing the funds from the Government Employees Pension Fund (GEPPF). The PIC's responsibility to invest funds on behalf of the GEPPF is significant, even by world standards, he noted. As such, the PIC is an invaluable cog in the functioning of the South African economy.

Fortunately, he acknowledged, the PIC has not been as badly eroded and broken down as SARS. However, he added, it has been misdirected and abused – which has occurred mainly at the hands of politicians.

Emerging from the PIC Commission, which was established in October 2018 by President Cyril Ramaphosa, has been testimony from the former CEO, Dr. Matjila, who detailed how dealing with requisitions from politicians was one of the most stressful aspects of his time at the PIC.

The problem, Thompson noted, is that the organisational structure of the PIC had shortcomings, which included the lack of a clear policy on how to deal with politically exposed persons. The organisation has, however, seen the appointment of new chair, Reuel Khoza, as well as a reconstituted board. Thompson highlighted the need for renewal at the top of the organisation, which includes a number of senior executive positions. This, Thompson noted, should be one of the first tasks that needs to take place at the PIC. Because of the allegations that have surfaced at the PIC Commission, the PIC's ability to attract talented and competent people has been compromised.

These allegations have come through a substantial number of testimonies heard at the PIC Commission, which, according to Thompson, was notably influenced by the testimony of former PIC employee Victor Siyane. This, Thompson believes, encouraged others to come before the Commission and provide testimonies as well. As a result, because of the snowballing effect of witnesses coming forward, the Commission's deadline was extended from April 2019 to December 2019.

Thompson at the time surmised that the report by the Commission should include findings of irregularities between transactions and potential referrals to the NPA for criminal investigation.

Q & A session

During the Q & A session, Kieswetter responded to two questions posed to him. The first questioned the ability of SARS to convince Treasury that more money is needed in 2021 for the administration of the tax revenue service; the second spoke to rebuilding the institution and culture of SARS.

In responding to the first, Kieswetter noted the challenge that in order to allocate more money to SARS, it has to be taken from somewhere else. In the current economic context, there is no spare money to be allocated. However, Kieswetter also acknowledged SARS's engagements with the budget office, senior officials within Treasury and the Minister of Finance. He was certain that the Minister understood the problem and would respond favourably. Importantly, he acknowledged that before asking for additional money, he would have to be convinced that SARS is using its current money and resources well. At the moment, he said, he would not be able to say that the institution is smart enough in the way in which it has organised itself and allocated resources.

The inefficient allocation and use of resources can be attributed to the organisational culture at SARS. Kieswetter noted that he still comes across people doing meaningless work. This, he postulated, is partly as a result of a culture of fear and intimidation vested in the organisation. "People do the minimum to stay out of trouble, rather than the most in order to yield the best results," he said. The institutional aspects, he noted, were most difficult to fix. However, if executed correctly, this would bring about sustainable change. His short-term plan to fix the institutional culture at SARS includes creating a level of believability in the leadership. He believes this will be done through many small acts, as opposed to one grand act. These small acts include meeting and earnestly engaging with members of staff; being honest and direct about the condition of the organisation; making clear what behaviour warrants reward and what behaviour warrants sanction; and taking no sides, except the side of truth.

In the longer term, reform of the institutional culture includes reevaluating policies and procedures, including the initiation of a significant platform within the organisation to address gender-based violence; the creation of a stream of work to reevaluate the entire employee-value proposition, which includes more regular engagement with unions; rebuilding the leadership team; and re-launching an employee engagement programme.

In conclusion, Kieswetter highlighted that there must be clarity regarding organisational culture. Internally, they have launched an Employee Rights Charter, setting out what employees can hold SARS accountable to. These range from creating a conducive working environment, to helping employees understand the impact and meaning of their work. Clarity and directness is necessary in rebuilding the institutional culture at SARS.



Scene from the conference.

Warren Thompson was asked a question regarding the role of the financial sector in participating in acts of state capture, and about accountancy and regulatory bodies who may have failed to hold members accountable. In response, he noted the role of multinationals (such as reports on Bain, McKinsey, KPMG etc.) in the state capture project. In addition, he highlighted that the finance sector as a whole has to be held accountable for the unchecked siphoning of funds within and outside of the country. Banks, he surmised, should be credited for acting well and closing bank accounts when the "scale of what was going on was being seen".

With regard to the South African Institute of Chartered Accountants (SAICA) in particular, Thompson iterated his own opinion that the body was slow off the mark in confronting its members' alleged involvement in extreme criminal conduct. He noted his belief that it was pressure by other members which prompted SAICA to move, albeit not fast enough, using the examples of the suspension of Steinhof's Markus Jooste and former Eskom and Transnet CFO, Anoj Singh, which should have happened more quickly.

Responding to a question regarding lessons that one can learn from the PIC, Thompson noted that even though the PIC has not been as severely broken, there have been many testimonies before the Commission, which revealed a culture of fear and reprisal at the organisation. According to Thompson, a preventative measure employed at the PIC was the hiring of extremely skilled individuals. Further, the institutional mandate to invest money into listed instruments that trade on exchanges also served as a preventative measure, curbing the corrupt use of capital in more non-transparent markets.

In conclusion, van Vuuren asked Smit whether we are captured by the politics of 'big men'; in particular with regard to the Zondo Commission, the control of its narratives, media reporting and role of public actors and politicians in the Commission itself. Smit agreed, referring to what she called the "circus of state capture palaver," which booms when big players are in the room. In contrast, she cited the example of the Estina Dairy Farm matter, with its clear links to the effects of state capture on the lives of poor farm-workers in South Africa – which received far less attention than former President Jacob Zuma's appearance before the Commission.

Smit reiterated that the lack of care and concern can be attributed to the system of capitalism; and emphasised that we have to take account of how capitalism has enabled the state capture project and hurt small-scale workers and labourers. "Our system continues to worship at the mantle of capitalism and it's difficult to say what's beyond this," she said. "If capitalism is all we have, then we're stopped in our tracks."

Watch the panel discussion here: <https://bit.ly/2RRSrwj>.

Thompson highlighted that the finance sector as a whole has to be held accountable for the unchecked siphoning of funds within and outside of the country.

Section three:

Proposals on key areas of state reform

This session provided an overview of the Public Affairs Research Institute's (PARI) proposal papers on state reform. It was followed up by a conversation with Deputy Minister of Justice and Constitutional Development, John Jeffery and South African Local Government Association (SALGA) CEO, Xolile George.



Dr Thokozani Chilenga-Butao, John Jeffery and Xolile George.

The plenary session started with brief presentations by Tracy Ledger, Florencia Belvedere and Jonathan Klaaren from the Public Affairs Research Institute on the process of appointment and dismissals in the public service and municipalities; appointment and dismissals in key criminal justice system institutions; and public procurement reform, respectively. The aim of the presentations was to set the scene for the engagement with the Deputy Minister of Justice and SALGA CEO, and to provide a summarised version of the proposals contained in the position papers. The position papers represent the collective product of work undertaken with a number of civil society organisations, as well as consultations with key government officials throughout 2019. The papers can be accessed on PARI's website: www.pari.org.za.

After the presentations, Dr Thokozani Chilenga-Butao posed a number of questions to the panelists emanating from the position papers and moderated the panel discussion.



'The Long String of the Law' by Carlos Amato for PARI, July 2019.

Input by John Jeffery

Deputy Minister of Justice and Constitutional Development John Jeffery indicated that, within government, there are not many structured discussions on appointments to the criminal justice system (CJS); however, this is a matter that needs to be debated, as it is complex. Speaking on the process of appointment of the National Director of Public Prosecutions (NDPP), Jeffery indicated that the law (National Prosecuting Authority (NPA) Act) is quite open and authorises the President to appoint, in broad terms, a 'fit and proper' person without any process, as it was done with all previous NDPPs, except the current one.

Furthermore, previous NDPPs, with the exclusion of Advocate Shaun Abrahams, were not NPA members.

With the recent process, which resulted in the appointment of Advocate Shamila Batohi, all people interviewed were either in the NPA or had been in NPA. The process for the appointment of the NDPP has turned out to be a model of best practice. The one change that was not envisaged was publicising the interviews. Civil society organisation Right to Know (R2K) brought an application in this regard, which was a useful element that resulted in general national consensus on the five people who were interviewed.

A similar process was followed for the appointment of the SARS Commissioner, except that the public could not watch the interviews. This resulted in certain political parties claiming that there was a conspiracy or 'cabal' involved in the appointment, whereas nothing untoward was said about Adv Batohi's appointment. It was therefore important for the public to be able to see the interviews. A drawback is that there might be more sensitive questions that one wants to ask the SARS Commissioner in terms of methods to catch tax dodgers that one does not want the public/tax dodgers to hear, but it has nonetheless turned out to be a model of good practice.

The Deputy Minister brought up the appointment of the Public Protector, which is not covered in the proposal papers and which was a very transparent process. At the time of the conference, the position of Deputy Public Protector was not yet filled. Jeffery noted that there was useful engagement between Parliament and civil society on the process. The Justice Portfolio Committee was also considering one of the points made by civil society about having clear selection criteria for the post, which was a complaint that arose from the previous appointment process. The appointment of the Deputy Public Protector would go to the National Assembly. In this regard, he highlighted the importance of examining the role of the National Assembly or Parliament because, while it represents the elected representatives of the people of South Africa, parliamentary roles in appointment and removals tend to get politicised. He noted that the issue of the removal of the current Public Protector is before Parliament. Parliament was at the time looking at rules to appoint a panel to evaluate the issues factually, a factor that was welcomed by the Deputy Minister, because if the matter were left up to the Committee, he indicated that it could degenerate into infighting between political parties. As it was noted, Parliament has its limits, even though it is the one institution that can speak legitimately on behalf of the people of South Africa.

In relation to how to deal with officials who remain within the criminal justice system (middle and senior management) and who are possibly implicated in state capture or participated in state capture, the Deputy Minister noted that due process will need to be followed to remove anyone in terms of the Labour Relations Act. If there are allegations against a person, there would need to be a disciplinary hearing. Jeffery referred to two removals that at the time had not been completed (involving Adv Jiba – who was Deputy Public Prosecutor and Adv Mrwebi – who was Special Director of Public Prosecutions) due to a legal challenge by Jiba. He noted that the NPA Act sets out a similar process for the removal of the NDPP. The President must set up an enquiry and after considering the results of the enquiry, can take a decision. Then the National Assembly can vote to decide to restore that person to office. The paper proposes

that Parliament should approve the removal, which is not the case at present; Parliament can restore someone to their office. Effectively, since the President took the decision to remove them, the two advocates have been out of a job, and have not been paid. However, if it were that Parliament had to confirm the removal, they would probably have stayed in office and would have continued to be paid for a longer period. Thus, it must be kept in mind that the more complicated the process of removal becomes, the more difficult it is to remove someone from office.

Jeffery made a number of additional points related to appointment and removal processes. For instance, he commented that the appointment of the Head of the Investigative Directorate within the NPA was carried out by the NDPP. There was no panel that was set up, but rather, it was left up to the NDPP to determine who should lead the Directorate. One must therefore ask whether setting up a panel to effect such appointments would not delay the process unnecessarily, and also whether it would allow the NDPP to have a say on who to work with. The Deputy Minister also noted that, the papers do not cover the process of appointments of state owned entity (SOE) boards, and linked to this, the issue of ministerial responsibility versus ministerial accountability. In relation to the latter, Jeffery noted that in the public service, a person is appointed as Minister by the President, and that person has to account to the President, Parliament and the public. However, if Ministers do not have a proper role in the appointment of senior officials, can they be held to account for such persons? In this regard, SOE boards are accountable to Parliament. If Parliament appoints board members and not the Ministers, is it fair to hold the Ministers accountable?

Lastly, he suggested that the papers should address who appoints panel/committee members. In the appointment of the NDPP, which is a good practice scenario, all panellists were male. The President did not appoint all men; different professional bodies were asked to nominate a representative, but they all sent men and they were unwilling to change when requested to balance the representation. Similarly, in terms of the appointment of the Police Commissioner, reference is made to the role of a retired general in the police of good integrity, but who will select that person? The Deputy Minister noted that it is important to continue the debate, but he also cautioned against over-regulation.



'Public Procurement' by Carlos Amato for PARI, May 2019.

Input by Xolile George

The CEO of SALGA, Xolile George, indicated that he commended all the proposals contained in the paper to strengthen recruitment and management processes and on how the political leadership interfaces with the administration.

He was of the view, however, that there is no absence of measures similar to those that are contained in the papers, but that what is perhaps lacking is strengthening the area of professionalisation of the institutions in terms of municipalities, processes and the recruitment of people (who is intended to be appointed vs who comes into the organisation). In this regard, there are many challenges at municipal level.

To illustrate the point, he referred to the comprehensive review of the state of local government in 2010 and the production of a report called *Local Government Turn Around Strategy*, which covered a number of areas that complicate governance and government at municipal level. Such reports proposed reforms around legislation that governs how municipalities are run, namely the Municipal Systems Act. Flowing from this, there was a comprehensive 2011 amendment focused on the minimum requirements for anyone to be employed as managers, the disciplinary processes to be executed, who must be involved, how processes of recruitment must be carried out, oversight over these areas, and remuneration and performance systems. In 2012-2014, a number of regulations were introduced. However, even though this legislation and regulations were implemented, a number of challenges were experienced, namely:

- 1) Inordinate number of delays on those who were entrusted with oversight;
- 2) Unevenness in implementation and blatant disregard of the rules with limited consequences;
- 3) Legislation being struck off by the Constitutional Court on 9 March 2019. This effectively meant that the above measures have not been implemented, even though they included measures stating that holders of political office cannot be in the administration of municipalities.

While there are measures to reintroduce this legislation, George emphasised the importance of giving effect to the values/attributes of a developmental state for the purposes of professionalisation. The values contained in Section 195 of the Constitution need to be reaffirmed in terms of the type of ethos required at local level, and minimum competencies required.

Moreover, George noted the importance of community involvement. He stated that the White Paper on Local Government introduced the notion of developmental local government and defined its attributes. One of the key features of local government is that it is defined as involving the community, the administration and the political arm.

The CEO noted that local government needs to involve communities in the affairs of municipalities. While legislation has been passed to affirm aspects of participatory democracy (i.e. choosing of leaders and consultation on Integrated Development Plans) after the White Paper, he noted that we have not effectively maximised the involvement of communities in municipal affairs.

The CEO suggested that when looking at issues of recruitment, perhaps it is necessary to go far beyond emphasising the government part and deal more with the governance part of it, which goes far beyond how these institutions are managed.

In processes of recruitment, communities are a critical stakeholder. However, current provisions are not conducive to communities joining these processes. This would go a long way in creating a level of transparency and accountability and monitoring by communities. Communities are therefore disengaged and they only react on the basis of service delivery.

The CEO also noted that communities need to be fully involved in procurement processes. Further, he called for a rethinking of procurement across local government that provides for the granting of strategic contracts on a multi-year basis, since managing such contracts on a short-term basis allows more room for malfeasance.

In addressing questions about the proliferation of 'golden handshakes', abuse in appointment processes and the use of precautionary suspensions, the SALGA CEO noted that there is a glaring absence of consequence management and accountability. In particular, the last Auditor General report indicated that less than half (48%) of municipalities implement consequence management. The CEO noted that there should be measures to enforce consequence management at multiple levels, since such mechanisms exist.

At municipal level, there are a number of oversight structures, such as public accounts committees, and performance committees to assess annual reports and performance. However, one does not see greater numbers of people being held accountable. There are measures in terms of provincial MECs and Treasury only at the level of receiving reports. One requires a Council that provides leadership; and there are measures that can be used to incentivise good behaviour.

The CEO also highlighted that recruitment standards at local government need to be tightened, particularly for Section 56 managers. He emphasised the critical role of the Auditor General in investigating irregularities in relation to the improper use of funds, as well as in cases where the wrong person is appointed. This could be seen as a material irregularity, especially if such a person is at the centre of decision-making and funds are expended. Linked to this, George emphasised the need to rethink the concept of remuneration in local government, which is dependent on the budget size of a municipality and incentivises bad conduct. Regardless of the performance of municipalities, managers get higher salaries if the municipality that they control is graded higher. Instead, remuneration should be based on implementation in relation to key performance areas, provision of leadership, oversight over service delivery, community engagement and addressing audit matters.

The CEO made a number of comments on various issues related to local government. When asked about the idea of a single public service, he noted that this principle has been extended to local government. While this is not the case for the Public Service Commission's mandate, there are nonetheless standardised norms that give effect to this idea and mobility of officials is also allowed.

On the issue of over-regulation, the CEO noted that in local government there are currently 76 laws and regulations directed at local government and therefore, there is merit for rationalisation and streamlining in some of those areas. When asked about the tendency to recycle 'delinquent' councillors, the CEO noted that this is a purely political matter that political parties need to address; SALGA does not have the power to remove delinquent councillors. At municipal level, when a councillor has transgressed a code of conduct, there is a role for the city Speaker to take action and investigate such cases.

In relation to the prevalence of outsourcing, the CEO indicated that this is linked to the problem of capacity, which is severe at local level, especially amongst small municipalities. He noted that there are about 160 municipalities with budgets below R200 million; 60% of these with budgets below R60 million against substantial service delivery backlogs to be managed. There is also an increased scope for malfeasance when a municipality is the main employer in an area – the competition for resources is very real and therefore the challenge becomes how to insulate the local state.

Lastly, the SALGA CEO suggested that the paper should address in more detail the protection of employees. In this regard, it should consider the introduction of a municipal ombudsman – one municipality has introduced this – to ensure that there is an independent body that investigates and has mechanisms to protect people in government, but also people who complain or blow the whistle on poor management, malfeasance or corruption. The latter is important because there needs to be oversight if a municipality does not operate or is non-responsive.



'Survival Kit for Political Appointees' by Carlos Amato for PARI, November 2019.

Section four:

Lawfare

'Lawfare' as a strategy by civil society in the fight against state capture – this was one of the discussions that took place during a breakaway session at the conference. The session was chaired by Muhammad Cajee (ASRI) and included inputs from Nicole Fritz (Freedom Under Law), David Lewis (Corruption Watch), Kimera Chetty (Helen Suzman Foundation) and Francesca de Gasparis (Southern African Faith Communities' Environment Institute – SAFCEI).



Francesca de Gasparis, Kimera Chetty, David Lewis, Nicole Fritz and Muhammad Cajee.

Nicole Fritz began the session by warning against 'over-judicialisation' as a means to address and tackle state capture. She emphasised the independence of the judiciary as an organ of state which depends on the perception of the general populace to maintain its credibility. It is no favour to the courts, she noted, to over-burden them with issues that have political backgrounds.

As an example, she cited the SADC Tribunal, which was suspended as a result of being over-burdened and too political in nature. She strongly cautioned against the judiciary and executive becoming antagonistic towards each other. Citing the example of the Nugent Commission trying to stop prosecutions against Gordhan and other members of the SARS 'Rogue Unit', Nicole emphasised the fact that litigation may not be as nuanced a tool as is necessary to regain the functionality of the state. "There is a place for the Court," she said, "but we need to be wary of thinking that the Court should lie with this entire burden." "What we are trying to do at this juncture, she acknowledged, is to save the promise of the Constitution – to ensure the delivery of other Constitutional promises."

David Lewis started his presentation by reminding the audience of the sweet taste of victory that comes with winning a case in court; however, this was supplemented by the reminder that the Courts will not always rule in one's favour – and that our own respect for the judiciary should not lie in the 'favourable decisions'.

He outlined the use of law in making inroads into organisational freedom and capacity. Because of the apartheid and pre-1948 methods of manipulating legal systems, which resulted in an exploitation of the law, lawfare became a concept that was adhered to then to counter this, and continues to remain today. In many ways, lawfare has become a substitute for the popular building of social norms.

Fritz began the session by warning against 'over-judicialisation' as a means to address and tackle state capture... "There is a place for the Court, but we need to be wary of thinking that the Court should lie with this entire burden."

The state capture period, he noted, has seen a creative use of the law. This was in recognition that former institutions of accountability were not doing what they were supposed to be doing, which caused us to think creatively about how to impose sanctions and hold those complicit in capture to account. However, he warned, we must not only use unchartered areas of law to sanction individuals, and employ legal mechanisms only to forge legal victories; victories must be consolidated by popular organisation and mobilisation. Furthermore, the communication of legal decisions so that they can be properly implemented, reconciled to, and be part of the development of legal principles is most valuable. This is good lawfare.

The role of civil society in the state capture period, he added, has been invaluable. However, civil society can fall prey to the accusation of becoming unelected elites countering the represented will of the people. As such, civil society lawfare becomes more 'vulnerable' in a sense.

Kimera Chetty similarly commented on the role of civil society organisations in lawfare. Strategic litigation, she noted, is important; something must fail in order for civil society organisations to opt for litigation as a strategy.

The Courts, she reminded the audience, are necessary as an intervention mechanism to hold the other organs of state to account. However, she reiterated, we must be careful to not burden Courts with issues that are political in nature. In being specific about what we are asking the Courts to do, we are exercising responsible lawfare.

In addition, civil society must not become antagonists of the state; instead, we should partner with and support it when necessary and possible. Chetty also noted the benefits of litigating in criminal justice institutions – highlighting that through jurisprudence, the Courts have been helpful in providing a new understanding of difficult concepts. As such, concepts like "fitness to hold office" are being informed and can thus be enforced responsibly.

Therefore, when litigation furthers the independence of criminal justice systems; and aids in the development of the law, it is a necessary and beneficial option.

In conclusion, she reiterated that lawfare is necessary when other interventions have failed, but also advocated that civil society should continue to step in, partner and collaborate where possible.

de Gasparis' succinct presentation outlined the court case that SAFCEI became involved in that halted the controversial nuclear deal. She highlighted, importantly, that the way in which state capture happened within the government meant that illicit flows of money became 'licit', because of the way in which the government made money move. As such, she noted that both public advocacy and parliamentary oversight are, and should be, concurrent with lawfare.

Lawfare, she noted, should be the final frontier in holding government to account, once other methodologies have been tried and tested first.

In summary, the session on lawfare concluded on a number of points:

- 1) Lawfare is not and should not be the only mechanism used in tackling state capture;
- 2) Individuals and organisations should opt for lawfare only when other mechanisms have been exhausted;
- 3) An 'over-judicialisation' of the process of rooting out state capture is disadvantageous to the judiciary, and to our democracy as a whole;
- 4) Good lawfare is supplemented by communication of legal decisions, based on legal principles – it aids in the development of the law and furthers the independence of the judiciary;
- 5) Alternative dispute resolution (ADR) depends on good faith from both parties; bad faith and mendaciousness disallows us from talking about ADR in this phase;
- 6) A TRC-like Commission to tackling issues of state capture may have some merit, but without a robust National Prosecuting Authority securing prosecutions, this won't provide the relief that civil society wants;
- 7) The legal profession and the judiciary deserve more scrutiny than what we've given them;
- 8) Legislation in South Africa dealing with protection of whistleblowers is lacking;
- 9) We should be able to hold private law firms accountable to a legal council; and
- 10) Lawfare can't be relied on to deal alone with hundreds of cases of those implicated in state capture.



Section five:

Parliamentary Oversight

Civil society's usage of parliamentary oversight as a mechanism to ensure accountability was discussed during one of the breakaway sessions. This session started with brief presentations by Fazela Mahomed (Integrity Commissioner at the North West Provincial Legislature), Lawson Naidoo (Council for the Advancement of the South African Constitution – CASAC), Joe Bregman (My Vote Counts – MVC), and Heinrich Volmink (Organisation Undoing Tax Abuse – OUTA). The discussion was moderated by Professor Nick Binedell (Gordon Institute of Business Science – GIBS).



Henrich Volmink, Joel Bregman, Lawson Naidoo and Fazela Mahomed.

Fazela Mahomed emphasised that effective oversight requires political will. Unfortunately, at present, political party loyalty is placed much higher than accountability and oversight by members of Parliament. This is despite the recent 'Nkandla' judgment which reaffirms that MPs must keep to their oath of office.

She noted that one must look at and review how MPs are selected from political parties. Generally, parties retain control in a few hands and it is therefore correct for the public to demand accountability. To enhance oversight, she emphasised the importance of skilful chairpersons of parliamentary committees, the independence of the Speaker, and the institution of tracking systems for accountability purposes. She also questioned whether Parliament in its current form is transparent, accessible and engaging enough, in light of social media tools that could be used, and mentioned the work of Pia Mancini in relation to open source media that facilitates public engagement.

Naidoo echoed the centrality of political will for the exercise of effective oversight. However, he noted that there is a tendency for MPs to be deferential to Cabinet ministers, who do not get the same level of questioning from a Parliamentary Committee. If this were to be done, it could result in 'career limiting' choices. He noted that it might be time to re-look at the electoral system – not from a narrow public representative/mixed system perspective, but focusing on a range of different aspects including how to change the culture of how Parliament functions and how it holds the Executive to account. In this regard, the issue of majoritarianism in Parliament needs to be addressed. Even though the Constitution talks of multi-party democracy, in practice, the system does not operate as such.

Bregman provided background on the work undertaken by MVC to regulate political party funding. There was no movement on this issue by Parliament between 2000 and 2014. In 2014, MVC wrote to all political parties to disclose information on political party funding but there was no political will to address this issue. In 2015, MVC launched an unsuccessful Constitutional Court case to introduce legislation. During 2016, it submitted a number of Promotion of Access to Information Act (PAIA) requests and approached the High Court, which found PAIA to be unconstitutional in relation to party funding information. In 2017, following the court decision, the National Assembly established a committee on private party funding. At that stage, Parliament could no longer ignore the issue; the Eskom crisis was in the public domain and there was increased debate about accountability for politicians and parties.

Between 2017 and January 2019, MVC used every opportunity to make submissions, attend committee hearings, and familiarise themselves with other opinions. The Portfolio Committee on Justice has since amended PAIA to address the provision of this information.

Heinrich Volmink noted that Parliament is in a fragile state of recovery, of re-establishing its legitimacy; there is a resuscitation process where there is an increased recognition of the rights and roles of Parliament by the Executive.

Bregman noted that amongst the challenges faced was that a large proportion of Portfolio Committee members were 'first timers' in Parliament and lacked knowledge on a number of issues, even if such knowledge exists in civil society and Parliamentarians can access it. He also stressed the need for better coordination between interested organisations on campaigning for issues related to funding transparency since it is more difficult to ignore civil society when different organisations speak with one voice. There is also a need to focus not just on passing laws, but actually on implementation through the use of monitoring tools like score cards and social audits.

Heinrich Volmink noted that Parliament is in a fragile state of recovery, of re-establishing its legitimacy; there is a resuscitation process where there is an increased recognition of the rights and roles of Parliament by the Executive. As an example, he explained that recently, Parliament's Standing Committee on Public Accounts (SCOPA) called for deliberation on defaulting municipalities in terms of Eskom payments; it asked a Ministerial Task Team to present on this R25 billion. However, none of the Ministers showed up for the meeting. The SCOPA Chairperson strongly condemned the failure of Ministers to attend and stated that Parliament would not be undermined. It is an optimal time for civil society to be empowered and defend Parliament, to ensure that the new generation of MPs puts the views of people first.

Volmink also explained the work by OUTA in Parliament, which started in 2017 but faced a number of challenges, since this was the height of state capture and receptivity for a civil society organisation was low. It also found Parliament to be under-resourced and over-stretched and requiring support with non-partisan research, which very few entities can do. Since then, OUTA grew and evolved. The 6th Parliament is more receptive to engagement. OUTA has a satellite office with three staff members who, amongst others: monitor the work of parliamentary committees; provide updates in real time; provide support/input into parliamentary processes; provide information on good governance; link up with other civil society organisations in different areas of work; and strengthen campaign work through use of practical tools (i.e. booklet on combatting corruption and maladministration in the public service, which will be publically available through soft copy.)

Collectively, the speakers, together with the audience, identified the possible courses of action below to enhance the oversight and accountability roles of Parliament:

- 1) Have strong, independent committee chairpersons, with substantive knowledge, who can manage debates and discussions and allow all parties to have adequate time to present (without bias);
- 2) Institute tracking systems to account and monitor implementation of resolutions, expenditure of funds allocated to constituency work, as well as government funds in view of limited economic growth and rising levels of poverty;

- 3) Reduce the number of committees in Parliament to reduce the number of endless, and often ineffective, meetings that MPs attend;
- 4) Have an independent Speaker who resigns from his or her political party – at present Speakers do not want to resign from their political party;
- 5) Institute proposals arising from 1999 Report on Accountability and Oversight in Parliament (Hugh Corder) on (a) the adoption of legislation to set out Accountability Standards (outcomes) for MPs and Committees and consequences if not met; and (b) the establishment of a Standing Committee on Constitutional Institutions (Ch9 Institutions) to entrench their independence;
- 6) Revisit the establishment of a Presidential Accountability Committee (Mbeki years) to hold the President accountable for promises made;
- 7) Revisit the debate on electoral reform;
- 8) Review the Executive Members' Ethics Act and Code of Conduct and establish an independent commission on ethical standards (in local government and the public service)
- 9) Give effect to recommendations from the High Level Panel (chaired by Kgalema Motlanthe) on access to information and meaningful public participation in particular;
- 10) Enhance the role of civil society organisations and academic institutions to work with Parliament/Committees and help it 'sharpen its teeth' – in view of the transient role of politicians, civil society could engage with staff on a regular basis on public participation, while also approaching permanent staff in Parliament to anchor many of these processes;
- 11) Civil society organisations to act as interpreters of vast information coming out of Parliament – interpret and package the information in a way that is meaningful to the public;
- 12) Strengthen public participation – the process of engagement should not only be adversarial but also supportive (i.e. MVC; Corruption Watch – trigger adoption of possible SOE Act);
- 13) Celebrate instances of moral courage displayed by MPs;
- 14) Civil society to continue to carry out work on Parliamentary accountability – possibility of forming a comprehensive anti-corruption network around Parliament.

Section six: Breakaway Session

Public advocacy

The breakaway session on public advocacy was addressed by Lynette Maart from Black Sash, Zukiswa Vuka from #UniteBehind, Vuyisa Mbayi from Equal Education and Nkululeko Conco from Section 27.



Vuyisa Mbayi, Nkululeko Conco, Lynette Maart and Zukiswa Vuka.

Lynette Maart

Lynette Maart from Black Sash spoke about the case the organisation had taken to Court involving the South African Social Security Agency (SASSA), and Cash Paymaster Services (CPS), linked to parent company Net1 and bank service provider, Grindrod.

Maart provided background information stating that the CPS contract to provide social grants was declared unlawful in 2014 by the Constitutional Court.

Tender specifications, for instance, she said, were changed days before submissions were required. This included the provision that biometric verification was a 'must have'. Ultimately, the only bidder that could succeed was CPS.

"The procurement process was compromised. The link between SASSA, the Minister, BEE, and the ruling party became a huge area of contestation. And amidst all of that was the lack of project management skills to implement this contract. In fact, CPS was managing SASSA, and not the other way around," said Maart. Black Sash brought it to the attention of the public that there was a lack of administrative justice for grant beneficiaries. The contract allowed for deductions from grant beneficiaries' bank accounts for things like airtime and funeral polices. Third party services being sold to beneficiaries made use of the data obtained by CPS. Maart stated that beneficiaries could not get monies that were being "unlawfully deducted" from their accounts back to them.

Despite the contract being determined unlawful in 2014, SASSA delayed the process of finding an alternative service provider, meaning that millions of beneficiaries would be left without a source of income, if a quick solution was not found. CPS was therefore given an extension of the contract. It eventually ended its services in September 2018.

The second part of the ruling, stated Maart, was the Court's declaration that CPS acted as an "organ of state". This meant that even a private entity could be held accountable for fulfilling a public service. The state could ask a private entity to make its finances publically available if the entity was fulfilling a public service. This could now enable Black Sash to investigate what were CPS' profits.

"The procurement process was compromised. The link between SASSA, the Minister, BEE, and the ruling party became a huge area of contestation. And amidst all of that was the lack of project management skills to implement this contract. In fact, CPS was managing SASSA, and not the other way around."

The Court ruling also found then Social Development Minister Bathabile Dlamini personally liable for 20 percent of the costs for her role in the grant payment crises. Maart said that it raised the issues of lack of governance, oversight and leadership at the entity.

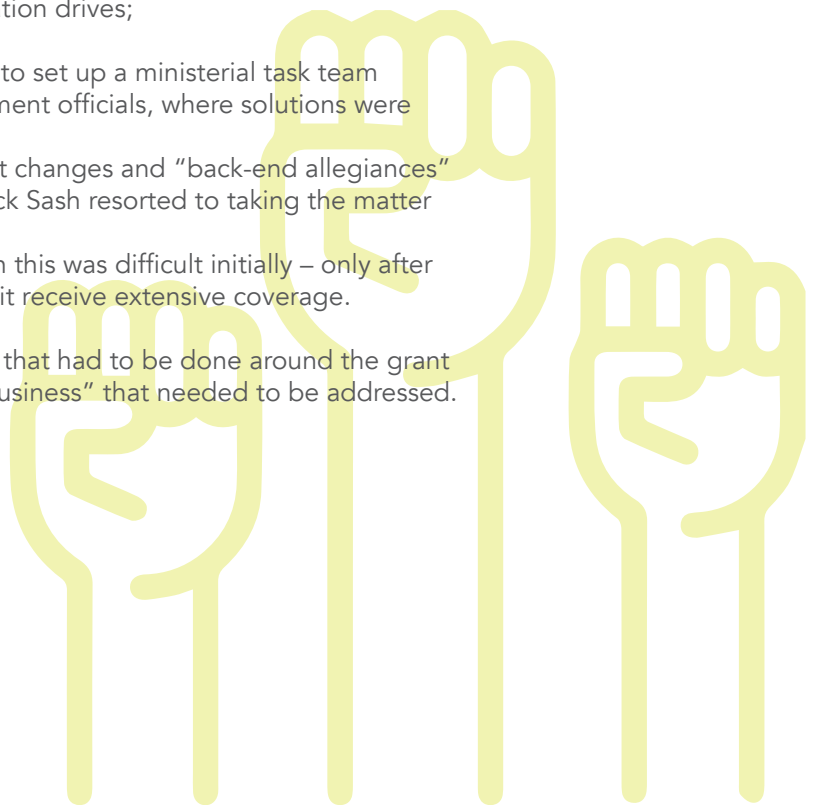
Through the case, Black Sash sought to raise alarm about who would ensure that there was long term vision to solving problems in the grant distribution system. A panel was called on to help the Constitutional Court to enable oversight over the process of transition, which provided valuable reports into the state of SASSA and its capacity to manage the process going forward.

Maart then outlined why Black Sash had undertaken the case in the first place, saying that the principle behind it was to determine the impact of a poorly functioning grant system on beneficiaries. She said that the organisation would get reports of beneficiaries – people who are vulnerable including the aged, illiterate and poverty stricken – going out in the middle of the night in the hope that they could withdraw all their money, while trying to figure out why they were being billed for airtime, electricity or funeral polices.

She outlined the methods used by Black Sash over time to take up the issue. These included:

- Researching the issue, including questions on why there should be a private sector service provider dispersing grants in the first place and whether SASSA had the capacity to do so. The research informed their advocacy approach;
- Acknowledging that there are no quick fix solutions and that long term work was required;
- Beneficiary mobilisation – using the deductions from their accounts as a catalyst for raising awareness and concern;
- Collective action with other civil society organisations;
- Grant monitoring processes and education drives;
- Monitoring Parliament;
- Exerting pressure on the then Minister to set up a ministerial task team comprising of civil society and government officials, where solutions were put forward;
- Due to a lack of “political will” to effect changes and “back-end allegiances” from elements within government, Black Sash resorted to taking the matter to Court; and
- Ensuring media coverage, even though this was difficult initially – only after the matter appeared before Court did it receive extensive coverage.

Maart indicated that there was ongoing work that had to be done around the grant payment system and there was “unfinished business” that needed to be addressed.



“As you might guess, they arrested us,” she said, indicating that #UniteBehind’s members were released the following day.

Zukiswa Vuka

Zukiswa Vuka from #UniteBehind mentioned that their coalition of some 15 organisations is relatively new, being only two years old. #UniteBehind aims to address challenges faced by working class communities.

The forms of activism that they have engaged in includes:

- Litigation;
- Public advocacy and education;
- Mobilisation, organisation and demonstrations; and
- Stakeholder engagement – including engaging government.

All of these are primarily linked to issues related to the state owned entity, Passenger Rail Agency of South Africa (PRASA), although work on other issues has been conducted. Vuka provided an overview of some of the previous activities that #UniteBehind was involved in, including a focus on the reinstated corruption charges against former President Jacob Zuma, and the NPA’s apparent lack of further action thereafter.

The group went to the NPA and demanded that Zuma be arrested, or they would court arrest. “As you might guess, they arrested us,” she said, indicating that #UniteBehind’s members were released the following day.

#UniteBehind also uses engagement as an activism tool. After Advocate Shamila Batohi took up office at the NPA, the group met with her and requested that tackling corruption at PRASA be prioritised. They highlighted that trains served the poorest communities and predominantly black commuters, and questioned whether the lack of ‘hype’ around the issues at the rail agency was because of this.

Vuka said that after engagement with then transport minister Blade Nzimande on different occasions did not yield the desired results, the group hoped that meeting with the new minister Fikile Mbalula would be different. When Mbalula boarded a train in Cape Town, the group’s action committees from three different areas “followed him around”. Mbalula, Vuka stated, committed to meet the group in a week’s time, but at the time of the conference, #UniteBehind was still waiting for the meeting.

When President Cyril Ramaphosa launched new trains in Cape Town ahead of the 2019 elections, the group released a statement wherein they stated that this was done to attract votes. Despite being at the forefront of transport related issues in the Western Cape, #UniteBehind was not invited to the launch of the new trains, but attended anyway, and blockaded the President until a representative of his spoke to them. They however felt that no concrete results emerged from the discussion.

#UniteBehind uses protest strategically. They picketed outside the German Consulate to highlight the involvement of a firm – which was established in Germany – in train tenders.

Like with the NPA office protest, the group has also employed more radical forms of action, including occupying the PRASA offices in the Western Cape. One of the drawbacks though, Vuka noted, was that the regional offices tend to have little power over big decisions, and therefore, management at this level cannot really answer questions, which they tend to refer to the national office.

The group also places emphasis on developing popular education material which converts lengthy documents on state capture and #UniteBehind's campaign messaging into easy and accessible reading material for commuters. This is coupled with catchy hashtags to frame campaign messaging. The pamphleteering is also complemented by activist education forums and commuter engagement.



Attendees part of the public advocacy breakaway session at the conference.

Vuyisa Mbayi

Vuyisa Mbayi from Equal Education (EE) gave an overview of the organisation's establishment in 2008.

Linked to EE is the Equal Education Law Centre (EELC), which offers legal support to communities and individuals in instances where learner rights are prejudiced. EELC also acts as a source of referral for EE members and supporters who encounter prejudicial or unlawful conduct in schools.

EE, EELC and Section 27 made a joint submission to the Zondo Commission into state capture and corruption and its effects on education related services such as school infrastructure and textbooks.

Education is a basic right. Mbayi added that while our basic education system continues to suffer due to apartheid, everything cannot be blamed on apartheid, i.e. there are current administrative weaknesses and challenges that must be addressed.

The national budget, Mbayi said, is critical in ensuring that the right to education as articulated in the Constitution, is realised. "But over the years, there have been numerous reports in the public domain on the loss of state funds through corruption and the capture of state institutions," Mbayi said. He highlighted the importance of the procurement processes and how irregularities deny students their basic right to education.

In the Eastern Cape for instance, Mbayi said that despite there being 'implementing agents', there is a huge backlog in terms of infrastructure. He highlighted the litigation that EE employed in Bisho, where the Courts ruled in EE's favour, declaring aspects of the school infrastructure law that allowed government to indefinitely delay fixing the unsafe and inadequate infrastructure in South African schools, as unconstitutional and invalid.

Mbayi however, spoke about the lack of accountability – for example, in the Limpopo textbook saga, where despite a contract being cancelled due to allegations of irregularities, there were no consequences or arrests that followed.

He also drew attention to the cases of Michael Komape and Lumka Mketwa, who drowned in school pit latrines. EE's national campaign around school infrastructure places emphasis on outlining what are the basic infrastructure requirements that makes "a school a school".

Provincially, different campaigns and cases are underway. This includes a case in KwaZulu Natal for safe scholar transport to prevent students being attacked while walking to school – something which the organisation has noted with increasing concern.

EE's case work is complemented by public action, such as protest marches – an example being a march held in the Western Cape for school safety, which is compromised due to issues such as gang violence.

EE's national campaign around school infrastructure places emphasis on outlining what are the basic infrastructure requirements that makes "a school a school".

Nkululeko Conco

Nkululeko Conco from Section 27 spoke about using “litigation as part of advocacy”.

This is complemented through media output by Section 27’s communications team, and engaging externally, with media houses.

Section 27 works with EE and EELC on education related cases. He said that the Polokwane High Court ruled partially in their favour in the Michael Komape case. The structural parts of the order instructing the Department to implement certain measures was granted, but damages for the Komape family was not. This was later taken to the Supreme Court of Appeal, which awarded damages for emotional shock and grief to each member of the Komape family.

During the case, EE and Section 27 conducted further research into the state of sanitation in Limpopo Province, in addition to what was contained in the Court papers. This was compiled into a publication that was made available in 2018.

It also launched a “sanitation campaign”, which included writing op eds in the media and engaging at universities and with other stakeholders to keep the issue alive on the public agenda.

Section 27’s work has also included an analysis of the budget and budgetary constraints.

The organisation also engages with government. “Just yesterday, colleagues were before the education portfolio committee in Parliament speaking on the state of education and sanitation,” Conco said.

He noted that Section 27 is not a membership organisation, so it has worked closely with other organisations to bolster support for campaigns.

In relation to the organisation’s work in the health sector, Conco spoke about the recently formed Health Sector Anti-Corruption Forum.

He said that it started off initially with *Spotlight*, a publication associated with Section 27 and Treatment Action Campaign, writing articles on procurement of medical equipment and vehicles, as well as the Life Esidimeni tragedy.

Information was thereafter successfully referred to the Special Investigating Unit (SIU) for investigation.

Together with Corruption Watch, state organisations and regulatory bodies, Section 27 now sits on the Health Sector Anti-Corruption Forum which is able to refer matters on an ongoing basis to the SIU, with the SIU reporting back to the forum. "That working relationship, I think, is quite beneficial not only to us, but to the SIU and what they are doing," Conco said.

Section 27 and other organisations interface with people on the ground and are able to train others to recognise corruption and not be drawn into it.

From the inputs, some of the key points on how public advocacy work is conducted, were:

- Media output – both through organisational communication with the public – including through social media, and through engagement with external media;
- Education and training sessions;
- Focussing on how state capture impacts ordinary citizens and drawing day-to-day victims of state capture into processes of holding government to account;
- Developing easily accessible and easy-to-read educational material;
- Litigation;
- Engagement with the state and other actors;
- Budget monitoring;
- Research;
- Pickets, marches and protest action in various forms;
- Highlighting systemic issues;
- Partnering with other civil society organisations to extend reach;
- Developing public and internal organisational consciousness on progressive political values;
- Giving meaning to the idea that there is need for civil society consensus for advocacy, that extends beyond narrow ideological grounds. There is a need to build mass movements and to decry pseudo-radical politics.

Together with Corruption Watch, state organisations and regulatory bodies, Section 27 now sits on the Health Sector Anti-Corruption Forum which is able to refer matters on an ongoing basis to the SIU, with the SIU reporting back to the forum.

Section seven:

Systemic change needed to tackle state capture

Professor Mark Swilling is the co-Director of the Stellenbosch Centre for Complex Systems in Transition. He spoke about the need to strengthen groups of honest public servants and build broad based support around issues, particularly, that of our energy supply.



Mark Swilling, Neeshan Balton, Peggy Pillay, Muhammad Cajee and Florencia Belvedere.

Mark Swilling's inputs at the conference were based on the premise that state capture is a systemic problem, not merely a "deviation from a liberal democratic norm represented by our Constitution".

Swilling argued that this democratic norm was just an idea; what existed in reality was a complex, inherited system that needed to be reformed.

This means that instead of "cutting off" a few 'problematic areas' within the state to revert to the pre-2008 'golden era' of economic growth, we need to look at more systemic solutions to address state capture.

Central to this, Swilling said, is developing a coherent economic plan to carry out the country's programme of transformation and the broadening of democracy. He detailed the type of economic plans that existed pre- and post-1994, highlighting the contradictions they brought about in society, and the space created for state capture. He noted the struggle to develop a new economic consensus, with the post-1994 consensus having "fallen apart".

Swilling stated that our current economic policy is characterised by two words, austerity and privatisation. This is despite economists in other parts of the world realising that this should not be the direction taken. Swilling says these two components are not the answer to our economic woes, especially so in one of the most unequal societies in the world.

Swilling raised the issue of "rackets" – not in the sense of racketeering. He argued that we all have rackets that we enter into or "enroll people into", be they ethnic, religious or political. "These rackets go back a very long way in our political system, way before 1994, and they operate in a certain way. Think of the Broederbond as a group with a racket. Think of 'the comrades' and the racket that this implied. And, think of the gendered nature of these rackets and the networks that reproduced these networks," Swilling explained.

So how do people 'un-enroll' from rackets that persist to loot? What is the personal culpability one should have to break away from these groups? Swilling highlighted the culture of fear that persists within the public service – public servants fear losing their jobs, and in light of this, how do they unsubscribe from 'the racket'?

The public service immediately post-1994, he says, was characterised by "revolutionary zeal" to deal with the "old guard". Today, he argues, we think of all public servants as "potential looters".

We want to construct a complex regulatory system to "penalise, incentivise and micro-manage" public servants so that they "behave" in the manner that we want them to.

If we accept the assumption that there are indeed good public servants as well, who have the desire to innovate, this means that they are often “smacked in the face” with consequence management where they fear making mistakes, or fear the Auditor General more than the people on the street.

What we should be doing is mobilising the collective solidarity of good public servants. In essence, good public servants should enroll in a ‘good racket’, and get those who are afraid of losing their jobs into this racket, instead of them joining the ‘bad racket’ – where the looting occurs.

The stronger the ‘good racket’, the greater the potential to isolate the looters. Swilling emphasised the need for facilitating partnerships between the public and public institutions, and amongst institutions within each sector as well. He highlighted the role played by full time facilitators of such partnerships.

In summary, Swilling indicated that there should be a rethinking of governance based on partnerships, creating space for innovation, working with good public servants and helping them build ‘good rackets’ to isolate the looters.

He also stressed that the “fight against the fightback” needed to be turned into a positive opportunity. He indicated that this should be about developing an “adequate, fit for purpose economic policy” and about broadening the focus to include and challenge the private sector.

Swilling considered which issues have the potential to build a broad based alliance with workers at the centre, inclusive of multi-constituencies that take forward the struggle beyond state capture for the sake of our economy. He noted that that issue has to be about our energy.

People will start asking why we are being confronted with increased load shedding and will not accept that privatisation is the answer to the problem, Swilling said.

We are going to have to accept that we want the lowest cost energy, security of supply and a transformed public supply utility. The next broad based campaign, Swilling stated, is possibly going to be built around the defense of the energy we need to build the democracy that we envision.

What we should be doing is mobilising the collective solidarity of good public servants. In essence, good public servants should enroll in a ‘good racket’, and get those who are afraid of losing their jobs into this racket, instead of them joining the ‘bad racket’ – where the looting occurs.



Mcebisi Jonas, author of *After Dawn – Hope After State Capture*, with Crispian Olver, author of *A House Divided – The Feud that Took Cape Town to the Brink* and *How to Steal a City – The Battle for Nelson Mandela Bay*.

Section eight:

The role of civil society in protecting state institutions from capture

The following pages contain excerpts of a speech delivered by former Deputy Minister of Finance and author of 'After Dawn – Hope After State Capture', Mcebisi Jonas.

I have been asked to talk about the role of civil society in protecting state institutions from capture. I have structured my input around three sections. The first looks at some of the conceptual debates and definitions of civil society. The second looks at the interface between civil society, the state and the market. Here I argue that failure to cohere around an inclusive growth agenda and ensure its execution will leave institutions at risk of recapture. The third section considers the interface between the state and civil society, and how civil society has relinquished the role it played in the pre-1994 era. This changed post-2011 with the state capture project. But post-Nasrec, civil society has again relinquished its space. Opposing forces are driving the politics of polarisation and fear, and civil society needs to step up and drive a new national consensus around inclusive growth and state building. The politics of consensus must prevail.

Conceptual debates and definitions

I will start with some conceptual thoughts on civil society.

Civil society is a highly misunderstood and abused concept. I think it is easy to abuse simply because it is a blurred and shifting concept, and its conceptualisation is itself historically specific and changes in different contexts.

The notion of civil society began in ancient Greece with Socrates and Aristotle who saw it as a partnership of individuals synonymous with what later became known as the state. It was only with the Enlightenment and the work of Adam Smith and David Hume that civil society became conceptualised as distinct from the state.

But civil society was still strongly conceptualised as synonymous with the market. Karl Marx, for example, referred to civil society as bourgeois society, in which class contradictions prevented any potential for revolutionary consciousness. This conceptualisation of civil society as bourgeois society informed Leninism and the school of thought that a vanguard party was required to lead the struggle against class domination. In this conceptualisation, political society was set against civil society. With the advent of state power after 1917 in Russia, the state (through the vanguard party) became the definer and mediator of common good, and as they say, the rest is history. I think you would all agree that some of these tendencies pertain here in SA. I will return to this later, when I discuss the respective roles of the state versus civil society as the architect and custodian of public interest.

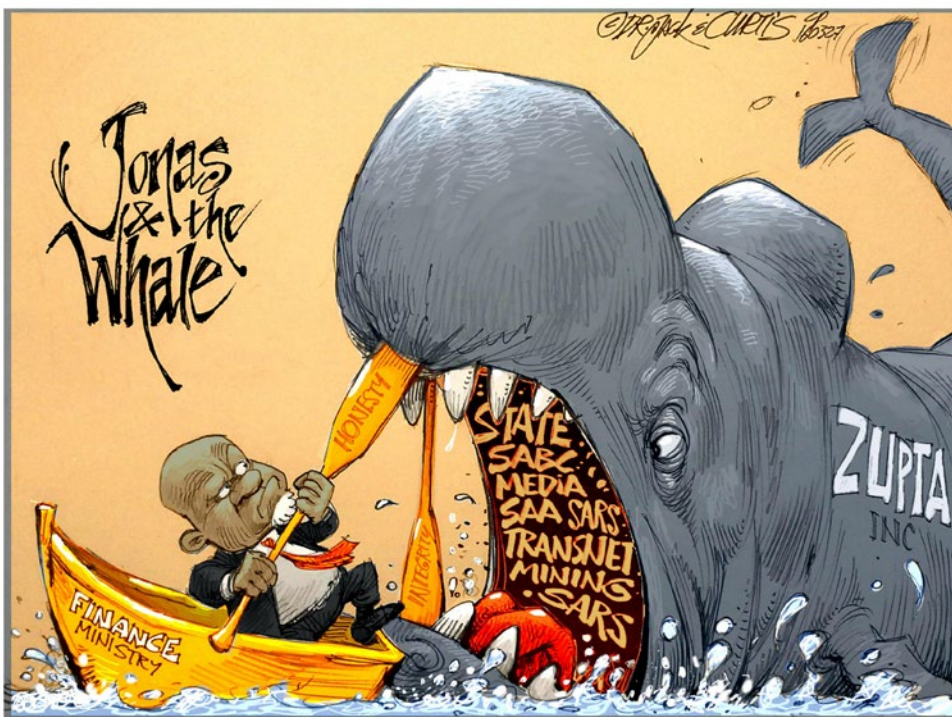
Antonio Gramsci had a much more nuanced view of civil society. In this conceptualisation, civil society was seen as distinct from both the state and market, as the space where common interest is determined, where hegemony is organised and won.

The interface between civil society and the market

Accepting that civil society is a contested space where different class and social forces contest to define the public interest, I will now briefly consider the interface between civil society and the market. Where the economy is driven by rent-seeking, institutions will always be under threat of capture. In such a context, civil society has a key role to play – not only to protect the state and criminal justice system from capture, but also to advocate and mobilise for a new accumulation logic. Our economy must quickly transition towards a logic where innovation, entrepreneurship and productivity are rewarded – not political connectedness. Where rent-seeking and patronage shape accumulation patterns, democratic and inclusive institutions will be undermined and quickly become exclusive institutions serving a narrow elite.

In this sense, civil society must become seized with building an inclusive economy. It is not enough just to protect democratic institutions, while the underlying causes (rooted in the economy) are not addressed. We may have a favourable leadership currently with President Ramaphosa, but we cannot count on individual personalities. Unless we address the underlying determinants, our institutions will forever remain at risk. The solution lies in transforming our highly concentrated economy, and working collectively to build an innovative entrepreneurial class to replace the parasitic class. This is our greatest insurance policy against capture.

Inequality, especially along racial lines, feeds into a politics of polarisation. Currently, the preoccupation of civil society on matters economic focuses mostly on the solidarity economy and social economy. This is important, but should not replace a focus on transforming the real economy and building a new national consensus on inclusive growth. This must be part of the “common interest” around which civil society can mobilise.



Cartoon by Dr Jack and Curtis depicting Mcebisi Jonas tackling the ill-effects of the Zuma administration. A framed version was presented to Jonas by cartoonist John Curtis at the conference.

The interface between civil society and the state

I think with the transition in 1994, civil society gave up some of its responsibility in terms of agenda setting and consensus building.

Defining and serving the common interest was left instead to the political party (the ANC) and the newly formed state. Civil society organisations transitioned to government service delivery agents as donor funding dried up, and sustainability was threatened. This changed post 2009 with the growing realisation that the state building project had failed.

State capture and corruption have significantly weakened the state, repurposing it away from its service delivery mandate. This has eroded legitimacy, and hollowed out its leadership and technical capacity. Services aimed at enabling economic inclusion such as education and training have yielded sub-optimal results. Investor confidence has declined with weak management of the economy and increased policy uncertainty. The economy has stagnated, unemployment grown, and social discontent increased, not only among the unemployed but also among the working and middle classes who saw living standards decline. Sustained low growth resulted in reduced revenue and less space for fiscal stimulation. This discontent fuelled the rise of anti-democratic populism, which under the guise of indigenisation, was used to consolidate state capture and undermine Constitutionally-provided checks and balances. Fortunately, the state capture project did not succeed, but enormous damage has been inflicted on institutions, the economy and broader society.

The experience of state capture is in no small part due to weaknesses and repurposing of the security and intelligence structures. It was perpetrated through the improper use and stealing of covert funds, deliberate use of the intelligence structures to target opponents of capture and creation of a culture of fear of state power.

None of these has yet been undone, despite the extensive and damning findings of the Mufamadi panel (High-Level Review Panel into the State Security Agency). The intelligence community remains with unknown loyalties. This remains a danger to national security and the well-being of the nation. The best example is the perennial outbreak of xenophobia, with suspicion that it is driven by unknown forces. The rule of law is not only about justice and security, but also has implications for how the global community views us. We cannot exist with deeply flawed and compromised security agencies and expect to attract investment, let alone take our place in fighting global security threats.

We are heading in the right direction in terms of appointments of heads of agencies. So for example, the appointment of the National Prosecuting Authority (NPA) head through a public interview process came through the intervention of civil society, as did the removal of the previous head.

Conclusion

Our country is in the crisis it is in because it is completely controlled by the vagaries of the party in power. The only way to counter this is the creation of a strong bureaucracy across all levels of government. This is not only about ending the infestation of corruption, but also about ensuring basic functionality of the state.

Three sets of actions are key to counteract the politics of polarisation.

First, we must become more organised as civil society, building a broad coalition or front around an agreed agenda of democratic protection, anti-corruption, state building and inclusive growth. Here we need to rethink agency, and shift from tent to campsite politics.

Second, we must mount a co-ordinated programme of civic education. Citizens must know and understand their rights and interests, and how these can be protected. This will render citizens less susceptible to populist influence.

Third, we need to fund these activities through a concerted crowd funding campaign. We cannot be held ransom to the fiscal position of the state as to what we can and can't do to tackle capture and accelerate prosecution.



Mcebisi Jonas with whistleblower Cynthia Stimpel and with Prof. Mark Swilling.

Section nine:

Civil Society Charter – Defeat State Capture, Rebuild the State

The conference saw a range of civil society organisations mapping out what should be the focal areas of work in defeating state capture and rebuilding the state. This document was produced as an outcome.



Conference speakers and facilitators, representing a range of organisations, being acknowledged.

As civil society organisations who are at the forefront of championing a progressive agenda within society, we recommit ourselves to upholding the values contained in the Constitution of South Africa.

We affirm that we:

- Will not allow corruption and state capture to continue to hollow out our democratic institutions, to destabilise our economy and to steer off course the project to transform our society into one that is equitable, non-racial, non-sexist and just;
- Will continue advocating for an ethical and efficient Constitutional democracy, in which the interest of the people is put first;
- Will continue challenging corrupt networks operating in our country, and calling for those implicated in state capture to be held legally and politically accountable;
- Will dedicate ourselves to the rebuilding of our state and its institutions decimated by years of capture and poor governance;
- Will honour the legacies of our liberation stalwarts by defending the democracy that they helped establish;
- Will work together with all sectors of society and stakeholders who are committed to defeating state capture and rebuilding the state; and
- In our own organisations, will adhere to the same principles that we advocate for.



Photo: Mems Moosa



We note the effects of state capture and corruption over the years:

- The capacity of government to meet its fundamental role – meeting the needs of all South Africans – has been reduced, and our institutions hollowed out;
- The criminal justice system, particularly in areas of prosecution and specialised policing capacity, was systematically corroded and manipulated for political purposes eroding the rule of law and the administration of justice, which are fundamental foundations for the state and thus also, for social stability;
- Those who should have been paying millions of Rands in taxes were aided by unscrupulous elements within SARS and other institutions to deprive our country of much needed revenue;
- Key state-owned enterprises have been rendered bankrupt or incapable of optimally delivering critical services, and place a massive drain on the fiscus;
- One of the main reasons that government has not been able to deliver basic services such as health, education, utilities and housing is because it was to a great extent repurposed to serve a rent-seeking political and corporate elite;
- State regulatory institutions and processes have in some instances failed spectacularly to prevent conflicts of interest involving state officials by favouring private individuals and firms with connections over competence, and influence over innovation.
- Good, honest public representatives and civil servants, who refused to do the bidding of corrupt masters, were pushed out of their positions; both public and private whistleblowers have been fired, threatened and in some cases killed for speaking truth to power;
- Parliament was disabled from fulfilling its role in holding the Executive to account in instances such as the Nkandla matter under former President Jacob Zuma's administration;
- Our economy has stopped growing – partly because we are unable to attract significant investment, local and foreign;
- The private sector has an important role to play in reviving the economy. Private sector players need to be held accountable for breaches of corporate governance, defrauding of shareholders and catalysing and sustaining corrupt relationships with various arms of the state, as well as politicians and public officials;
- Unemployment is rising and poverty and hunger is commonplace; and
- We face a deepening economic crises if rating agencies further downgrade our economy.

We also note some of the successes in addressing these effects:

- Public pressure that resulted in ending a presidency that saw South Africa deteriorate over nine, largely detrimental, years;
- Increasing public awareness that state capture is systematic, that its roots precede the Jacob Zuma presidency and its branches extend to the current political context, and may well continue to grow in future;
- Civil society litigation that halted the costly nuclear deal, ensured the reversal of unconstitutional appointments (e.g. in the NPA) and ensured the payment of social grants;
- The establishment of commissions of inquiry and investigations related to the abuse of state institutions and state capture. These include, amongst others, the Commission of Inquiry into Allegations of State Capture, the Commission of Inquiry into Tax Administration and Governance by SARS, and the Commission of Inquiry into Allegations of Impropriety at the Public Investment Corporation (PIC);
- We have also seen the beginning of a clean-up process at key institutions of the state in an effort to enable them to effectively implement their Constitutional and legal mandates;
- Sanctions imposed by the United States of America on the Gupta family, who have come to personify state capture, and news that the South African government is working with seven other countries to possibly implement similar measures;
- State money beginning to be recouped from individuals and entities who unduly benefited from irregular deals;
- Investigations, arrests and raids by the Hawks, Asset Forfeiture Unit and the Financial Sector Conduct Authority on those suspected of bribery, corruption and market manipulation, indicating a resurgence of investigative will and desire for the effective enforcement of the of law not seen in years;
- Ongoing grassroots and media exposés of the looting at provincial and municipal levels, including the VBS Bank scandal;
- The National Prosecuting Authority bringing on board some of the country's top legal minds to deal with state capture related cases; and
- Recent successes by civil society around particular areas of work in tackling state capture.

Despite recent victories against state capture and corruption, networks that propped up the shadow state remain active and continue to undermine our democracy.

We recognise that:

- We face a concerted fightback against the renewal of our society by many of those implicated in state capture, in an effort to avoid accountability;
- State establishments, legislative bodies, political parties and private entities continue being used by the networks of the state capture fightback to hamper efforts to clean-up our government and make it work in the interest of all South Africans – not just select, well-connected individuals;
- There remains, in some quarters, a stubborn denialism of the depth, extent and general lack of understanding of state capture, and an unwillingness by some within political parties to recognise the enormity of what state capture has done to our country;
- Ministers, public officials, whistle-blowers, activists and journalists who speak out against state capture continue to be targeted, subdued and defamed by political bullies, individuals and entities who seek to undermine and delegitimise their efforts;
- Chapter 9 institutions are not immune from being drawn into agendas through what comes across as being politically motivated ‘complaints’ and active disinformation campaigns that continue to undermine constitutional institution reformation;
- Many of the lower level shadow network operators are still in place and continue to repurpose government institutions and resist reform efforts;
- Potential footholds for those with a state capture agenda still exist in domains that are ‘out of sight and mind’, and not under media or public scrutiny, such as local municipalities, former homeland areas and rural and mining communities.
- It is the public that has really borne the brunt of the day-to-day consequences of a hollowed-out state. It is the public who has had to put up with Eskom’s electricity cuts; with poor services because of failing municipalities; with infrastructure that is old and unreliable; and with gang wars, drug dealers, rampant crime and attacks on women and children. A significant reason for this is because the criminal justice system has been systematically weakened.
- It is the ordinary person, and in particular the poorest of the poor, who feels the pinch of the crises-ridden economy and linked to it, increasingly tense social relations;
- We are at a crossroads that can either see us rebuilding our country after a decade of capture, or, being drawn backwards to an ethically and morally bankrupt state.

We are therefore calling for:

- Ever higher levels of vigilance and energy in the defence of our democracy;
- Joint action in confronting the ‘fightback’ and putting an end to state capture networks that continue to brazenly operate; and
- Long-term work in rethinking mechanisms and strategies that need to be instated to prevent possible future capture and corruption.

In taking forward the fight against state capture, we commit to:

1. Helping strengthen, resource and guarantee the independence of the criminal justice system and put in place checks and balances to remove opportunity for corruption:

- We call on law enforcement agencies to conduct fitness and lifestyle audits on all senior management to ensure that state capture networks within institutions are dismantled.
- We support efforts at developing processes that are fair, transparent and rigorous that must be put in place for appointments and dismissals of senior leadership within criminal justice institutions.
- We will conduct policy advocacy work aimed at insulating the criminal justice sector from capture and corruption. PARI, Corruption Watch, the Institute for Security Studies and others have already begun work in this regard and their efforts should be supported.
- We call for the state to adequately fund and resource both the Hawks and the NPA so that they can carry out their mandates effectively.
- We will explore options of private funding, using legal mechanisms, in a manner that does not compromise the integrity and independence of the NPA.
- We call for a clear, measurable five-year programme to reform the South African Police Service (SAPS) into a professional and ethical organisation. Adequate resources must be allocated to the Ethics Management Component and internal Anti-Corruption Units in the SAPS. The National Development Plan recommendation for the establishment of an independent, multi-sectoral National Police Board must be given urgent attention so as to drive a programme of police reform.

2. Protecting whistle-blowers, strengthening the hand of honest public servants and rallying behind public representatives who challenge corruption and state capture:

- We recognise the need for wide-ranging support mechanisms for honest public servants and whistleblowers, including legal and psycho-social support, a sense of job security and overall support from the public for their ethical stance against corruption and malfeasance.
- We will invite civil society, former and current public servant networks and professional and legal groups to work more strategically and coherently to provide such support.
- We will publicly afford recognition to the courage of honest public servants, whistleblowers and those working within the state driving a programme of reform to rebuild institutions.

- We recognise that some whistleblowers may well have been part of corrupt networks, but have turned state witness – while we believe that they must face accountability, we must acknowledge the pivotal role they play in bringing down the networks they may have served in the past.
- We will give thought to developing a set of detailed protocols about what it means to be a professional and ethical public servant as outlined in Section 195 of the Constitution.
- We will evaluate what mechanisms are currently in place to encourage whistleblowing and what needs to be further adopted within the public service to ensure that whistleblowers are protected.
- We call for not only the training of public servants on issues related to ethics, but their mobilisation to be the real vanguard against the looting of state resources. This mobilisation should result in breaking the fear of speaking out against state capture and corruption and ensuring that public servants have both the moral fibre and support to withstand pressure to comply with wrongful instructions.

3. Strengthening Parliamentary oversight and addressing Parliament's weaknesses in relation to holding the Executive to account:

- We must ensure that the Nkandla judgement, which emphasises the duty of individual members of Parliament to put the interest of the public above party political interests, is implemented and upheld in Parliament.
- In this regard, we call on political parties to ensure that Parliamentarians understand that their role is to hold the Executive to account and if they fail, we will actively mobilise to highlight their repudiation of their oath of office and failure to fulfil the promise they made to the people who voted them in.
- We will develop ideas on how to hold individual Parliamentarians to account and strengthen existing mechanisms, insisting that they report back to their constituencies.
- We will engage and develop ideas on issues related to electoral reform to improve accountability, including consideration of ideas on how should Parliament operate.
- We will determine what strategies should civil society be adopting to ensure greater participation in Parliamentary committee and public engagement consultations.
- We recognise that the buck stops with the President. As such, Parliament, as well as civil society, must hold the President to account for how the President plans to eradicate corruption and state capture.
- We will consider the idea of lobbying government to establish a Presidential Accountability Committee to ensure accountability for all promises made on the floor of the House and to consider passing an Accountability Standards Act and implementing an Independent Commission of Standards.
- We call for a review of the Executive Members' Act and Code of Conduct for Members of Parliament.
- We call for additional research support for Parliamentary committees.

4. Demanding decisive action against those implicated in state capture and corruption; and those found to have flouted the rule of law:

- We call on the Commission of Inquiry into Allegations of State Capture to issue interim reports on aspects of its terms of reference where it completes investigations. Even though law enforcement agencies are not compelled to wait for the outcomes of the Commission to make arrests, the interim reports will place greater pressure on law enforcement to act swiftly and for appropriate disciplinary or other action to be taken against individuals who are implicated in wrongdoing.
- We call on the state to seize the assets of those who were at the helm of the state capture project and whose failing enterprises are now unable to pay back the money looted from the state.
- We call on the NPA to prosecute cases where sufficient evidence exists and to give regular updates as to when decisions will be taken on cases before it.
- We call on the state to charge and extradite the Guptas and their associates implicated in state capture and hold them accountable in South Africa.
- We call on government to conclude its Mutual Legal Assistance agreements with other countries to facilitate the process of bringing the Guptas to book.
- We emphasise the need to hold directors general, boards, CEOs, and accounting and financial officers at SOEs accountable for irregular expenditure, corruption and capture at these institutions.
- We recognise that there needs to be a focus on the other aspects of accountability that civil society could explore – shareholder activism, confronting private sector actors, regulatory bodies and political parties.
- We call for greater scrutiny on the private sector and how it enabled state capture. Business must be held accountable for its role by law enforcement agencies and censure and sanction from both the public and other businesses could be considered.
- We will critically evaluate the progress being made by law enforcement authorities, government, the private sector and other institutions in holding the corrupt to account.
- We support the idea of societal engagement on the National Anti-Corruption Strategy's roadmap to tackling corruption. This plan should focus on the broader issue of state capture, and reviewing the country's anti-corruption and anti-capture architecture as well. We will actively collaborate with government and other stakeholders in implementing a credible and effective national plan to defeat state capture and rebuild the state.
- At a local level, we call on communities to name and expose corrupt councillors, politicians, public servants, business people and individuals, and to ensure that they are isolated and not given the type of platforms that would allow for them to continue their nefarious activities or to mobilise support for it.



Photo: Mems Moosa



Photo: Mems Moosa



5. Educating the public about state capture and corruption, promoting the idea of an active citizenry and providing factual data that counters fake news and racialised narratives:

- We will promote educating the public at a grassroots level about state capture.
- We will promote an active citizenry that can be empowered to monitor accountability at all levels of government.
- We will draw in the support of fact-checking organisations, researchers and the media to ensure that factual information is conveyed to the public about state capture. This could also take the form of empowering people with tools to discern between fake news and real news.
- We will counter and refute racialised narratives and rhetoric that seek to portray taking a stance against state capture as being anti-transformation.
- We will develop coherent and common messaging on joint campaigns to tackle the state capture ‘fightback’.
- We will mobilise the public against state capture and corruption.
- We will support members of the media who continue to expose corruption and state capture and defend their right to access to information.
- We will explore ways to involve religious institutions, business groupings such as accountants, lawyers, financial services companies, medical associations and unions – all strata of society – to become proactively involved in promoting honesty and anti-corruption measures both internally, and more broadly, in relation to being vocal about the issue of state capture.
- We call for the opening up of the democratic space to allow activists, whistle-blowers, professionals, civil servants and others to speak out against state capture and corruption, without the fear of being harassed, arrested, targeted or victimised.

6. Developing policy proposals around key areas of reform, particularly in relation to appointments and dismissals of public servants and those heading up Chapter 9 Institutions, as well as around public procurement:

- We will support the work being done in this regard by organisations such as PARI, the Council for the Advancement of the South African Constitution, Corruption Watch, the Dullah Omar Institute and others.
- Based on current campaigns related to key appointments, we will develop a ‘template’ that outlines what processes should be in place for senior public servant appointments and dismissals.
- We demand transparency around appointments, tenders and government expenditure, at SOEs and for all state projects. We will support work being done by organisations such as Imali Yethu and others in this regard.

- We will explore ways of exposing wrongdoing and capacitating the public to review and monitor expenditure and tenders.
- All infrastructure projects should have clear timelines and budgets and expenditure details must be made available for public scrutiny.
- We call for the prioritisation of management skills in the procurement process.
- We call for a review of regulations around 'emergency' procurement as this allows for possible loopholes in following proper procedure.
- We will consider how roadmaps for the realisation of socio-economic rights could be proactively litigated or advocated for, and how to enforce the Constitutional obligation on the state to justify aberrations from the progressive realisation of these with the tabling of each annual budget.

7. Focusing attention on lower levels of capture i.e. at provincial and municipal levels and in the jurisdictions of traditional leaders:

- Much attention has been given to state capture at a national level. We will ensure that focus is also directed towards understanding and unravelling state capture at provincial and municipal levels, especially within the context of the 2021 municipal elections.
- We call for further research and reporting on capture at the lower tiers of government.
- We call for specific attention to be given to reports, such as that of the Auditor General, into local maladministration.
- We call for an urgent summit by government that includes all stakeholders, including civil society, to develop a strategy to deal with failing municipalities.
- We will give thought to how to institutionalise processes that allow for greater scrutiny and transparency of municipal and provincial public representatives' financial interests.
- At a municipal level, we recommend that: the process of community consultation on Integrated Development Plans (IDP) be reformed in order to allow for meaningful participation at IDP community consultation sessions; and a clear link should be made between the IDP and the Service Delivery Budget Implementation Plan (SDBIP) in order to enable better community monitoring.
- We call for re-evaluation of legislation that advances particular vested interests (those of traditional leaders and their investment partners) over that of people living in the former homelands.
- In the broader context of the climate crises and linked to it, the economic impact, we highlight the need to support the work of rural citizens in holding traditional and community leaders accountable to their task of promoting participatory democracy and inclusivity.



Photo: Mems Moosa



Photo: Mems Moosa



8. Demanding transparency around political party funding; and full compliance by parties to the Political Party Funding Bill:

- We call for clear timeframes for the regulations of the Political Party Funding Bill to be gazetted and enacted leading up to local government elections in 2021.
- We will support the work being done by My Vote Counts and others in this regard.
- We call for political parties to ensure that funding for campaigns for candidates through internal party contestation is transparent. Legislation needs to be developed for this.
- Parties need to be held to account for funding sought and obtained from illegal proceeds.
- There should be no minimum thresholds for political parties to report donations. A single bank account can be opened for monetary donations and the transactions declared publicly, annually. Other forms of support to political parties must also be declared annually.
- We call for accountability for constituency work funding.

We believe that this work is underpinned by collective action, collaboration and coordination within civil society; and with other stakeholders, including business, labour and political and state entities who are unwavering in their commitment to ethical and clean governance.

Ours is a pledge to the people of this country to join hands, across ideological and other divides, in defeating state capture and rebuilding the state.

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