
Implementing the Zondo Commission recommendations: taking stock of progress and charting a way forward

Overview

The Zondo Commission provided strong evidence of state capture and detailed insight into how state capture was organised and facilitated by persons in both the public and private sectors. However, the Commission — and commissions in general — was established to investigate a matter of public concern and to report to the President; is not a direct accountability mechanism. It has no power to implement any of its recommendations or to act on any of its findings. Ultimately, the implementation of the Commission's recommendations — and, indeed, any response to the Commission's findings at all — is dependent on the will and capacity of those in power to act, and on organised civil society's ability to mobilise for change.

This document sets out the progress made on commitments made in the President's response and implementation plan concerning the Zondo Commission recommendations. It is intended to support discussion at the upcoming [PARI-CASAC joint conference](#). Most of the Commission's recommendations (205 all together) — and, therefore, a large portion of the President's response — concern further investigations and prosecutions of implicated parties. This conference, however, is primarily concerned with the institutional, systemic and structural reforms needed to combat corruption and state capture.

While there has been substantial progress in some areas, many of the promises made in the President's response were vague and noncommittal— that the Executive would 'consider', 'review', 'explore' or 'research' certain recommendations made by the Commission. Many of these pledges have not yet been turned into tangible commitments or actions.

The recommendations contained in the Zondo report are not above critique, and we do not argue that they should simply be implemented by the executive wholesale. Indeed, they should be subject to careful consideration and robust debate, which was the aim of the 2022 PARI-CASAC conference. What is crucial is that the Commission has exposed clear, critical weaknesses in the state which need to be actively and effectively addressed by government — whether through investigating and prosecuting corrupt actors, reforming state institutions or making legislative changes.

This document offers a brief snapshot of progress — or lack thereof — in key areas of reform. It is intended as a resource to aid discussion and accountability. It is critical that we examine the reforms currently on the table and consider whether they appropriately and sufficiently respond to the problems exposed by the Zondo Commission. More in-depth monitoring, assessment and evaluation will be needed to ensure a successful response to state capture as we move forward.

The Commission's investigations and recommendations were limited; they addressed only a few state institutions and key policy issues, and did not investigate all aspects of corruption and state capture. The recommendations contained in the report should not prevent us from exploring other ways of strengthening the state and the legal framework.

Parliamentary oversight

The report of the Zondo Commission was harshly critical of Parliament's failure to intervene in corruption and state capture, finding that the legislature had [failed to fulfil its oversight and accountability obligations](#) because the governing party was determined to protect those of its leaders implicated in state capture and was unwilling to expose the allegations of malfeasance to

transparent public scrutiny. The report found that Parliament's oversight powers and the tools available to it were sufficient for it to fulfil its Constitutional obligation to hold the executive accountable, but that these were not generally used effectively. The report issued a number of concrete recommendations on Parliamentary oversight, including ensuring oversight is properly resourced, establishing a committee to oversee the Presidency, considering appointing committee chairs from opposition parties, reforming the process of making appointments to state institutions, and monitoring, tracking and enforcing Parliamentary resolutions.

Parliament published an implementation plan for dealing with the Zondo recommendations in November 2022 but has been [slow to act](#). More than a year after the submission of the final Zondo Commission reports, Parliament has implemented virtually none of these recommendations. Most of them — such as appointing opposition committee chairs — have been rejected outright, with Parliament declaring there is no need for change. Other recommendations are still being considered or are 'in progress' and have been for some time. While the Zondo Commission's reports have officially been referred to committees, they have yet to be dealt with meaningfully by any of them.

Parliament's ethics committee has processed allegations against MPs implicated in the Zondo report. A number of MPs were cleared (some on technical grounds, and some with no reasons given at all) while only four have been held accountable following the Zondo report and subjected to limited and tepid consequences.

Some progress has been made in Key resources the research and technical capacity of committees, in terms of developing a system to track and monitor the implementation of resolutions.

In June 2023, Chief Justice Zondo remarked that Parliament would still not be able to stop state capture, 'because I have seen nothing that has changed'. Parliament subsequently issued an [update on its progress](#). This update mentions 'new interventions' to strengthen oversight but did not provide further detail — nor did Parliament show how these interventions will effectively address the structural weaknesses exposed in the Zondo Commission.

Ensuring that Parliament can [effectively and meaningfully hold the executive to account](#), beyond procedural compliance with oversight routines, will ultimately require a culture of oversight that emerges from a conducive political environment: achieving this would require addressing a set of much deeper challenges in our body politic and political economy.

KEY RESOURCES

- PARI's 8-page summary of the Zondo report, [The Zondo Commission: a bite-sized summary](#).
- [Report of the 2022 PARI-CASAC conference on the Zondo Commission and its recommendations](#), summarising the speeches and panel discussions held at our previous conference.
- The [full report of the Zondo Commission](#).
- The President's [response to the Zondo Commission recommendations](#) and the President's [update on progress](#) as of August 2023.
- The [National Anti-Corruption Strategy \(NACS\)](#).

The criminal justice system and intelligence

The Commission made virtually no recommendations on the criminal justice system, despite its own finding that state capture was facilitated by ‘a deliberate effort to subvert and weaken law enforcement and intelligence agencies at the commanding levels so as to shield and sustain illicit activities, avoid accountability and to disempower opponents’. Nevertheless, the evidence contained in the report — and in the Commission’s body of evidence more generally — clearly shows that these institutions are not, and have not been, fit for purpose and need substantial reforms.

The most alarming revelations about the justice system at the Commission were about independence. The evidence presented at the Commission showed that [law enforcement agencies were highly politicised and compromised at the highest levels](#). The weakening and hollowing out of these institutions, through undue influence over appointment and removal processes within them, has further helped to de-professionalise them while enabling further patronage. There is a need to re-establish the legitimacy, impartiality and independence of key criminal justice system institutions such as the National Prosecuting Authority (NPA), Directorate for Priority Crimes Investigation (DPCI) and the SA Police Service (SAPS).

The President’s response plan promised that legislative changes would be made to introduce greater transparency and consultation in the process for selection and appointment of the NDPP, drawing on the process adopted for the selection of the current NDPP. This is an important step — although whether it does effectively enhance transparency and independence will depend on the details of that legislation and the prescribed appointment procedure.

In August 2023, the [NPA Amendment Bill](#) was tabled in Parliament. The Bill establishes the Investigating Directorate Against Corruption (IDAC) as a permanent entity within the NPA but has been criticized for not giving the body sufficient independence. Despite the commitment made in the President’s response plan, the bill does not address appointment processes for the NDPP and other senior roles at all, nor does it strengthen the operational independence of the NPA — it still accounts to Parliament through the Director-General in the DOJ.

The issue of statutorily protected independence of key law enforcement institutions is not adequately tackled in the President’s response. The plan promised that ‘work will be undertaken to clarify the Minister’s “final responsibility” over the NPA ... and settling aspects related to the NPA’s financial and administrative independence’. The NPA Amendment Bill does not address these issues either and no other reforms have been forthcoming.

While the [commitments to reforming the NPA are welcome](#), they do not go far enough and have yet to be implemented. It is concerning that no other law enforcement institutions are included in this reform agenda. The SAPS in particular — including the DPCI — should receive similar attention, particularly where [appointment procedures are concerned](#). There appears to be no strategy for ensuring that these institutions are properly capacitated, for ensuring proper oversight or for addressing internal corruption. These issues have been deferred to the National Anti-Corruption Advisory Council (NACAC), which has been charged with advising the President on the country’s anti-corruption institutional architecture, as well as supporting implementation of the NACS. The NACAC is expected to issue a report in 2024.

In May 2023, Cabinet released the [draft General Intelligence Laws Amendment Bill of 2023](#). This Bill will implement one of the Commission’s most significant recommendations concerning intelligence: the disestablishment of the State Security Agency and the establishment of two intelligence agencies, one domestic, one foreign. However, the Bill is seriously flawed and may be subject to Constitutional challenge. Civil society has sounded alarms over provisions in the Bill which would dramatically expand the scope of intelligence and surveillance, while weakening oversight and neglecting necessary safeguards. Parliament has also decided that no new amendments to legislation would be enacted regarding overseeing the intelligence services, despite the Zondo Commission’s recommendations to the contrary.

Private sector accountability

The Commission exposed the [central role that private sector actors played in state capture](#), both through direct involvement in procurement corruption, fraud and money laundering, but also in weakening institutions that stood in the way of state capture. These perpetrators included management consultants, advisors, accountants, auditors, lawyers, bankers as well as providers of goods and services, including large multinational firms. Unfortunately, the Commission did not make many findings or recommendations for addressing corruption in the private sector.

The President endorsed the Commission's recommendation to amend the Companies Act to give companies more time to hold delinquent directors accountable. This has been included in the [Companies Second Amendment Bill](#), which is currently before Parliament.

At the end of the 2022, Parliament passed the [General Laws \(Anti-Money Laundering and Combating Terrorism Financing\) Amendment Act 2022](#), which was enacted in an effort to avoid the 'greylisting' of South Africa by the Financial Action Task Force (FATF). This provided for the creation of a beneficial ownership register maintained by the Companies and Intellectual Property Commission (CIPC), a positive step forward, although government should commit to making this information more readily transparent and accessible.

Very few private sector actors have faced consequences for their involvement in state capture. Bain & Co. have been banned from government work, and the NPA has brought charges against McKinsey. Some professional bodies, like IRBA, have taken actions against members implicated in the Commission. Some money has been recouped from corporates involved in state capture. But overall, there has been very little meaningful accountability for private sector actors — either firms or the individual 'bad apples' they tend to blame for their misconduct. Most implicated private-sector players have emerged completely unscathed.

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Procurement reforms

The Commission found that the public procurement system was the primary site for the ‘redirection’ of state resources and made numerous recommendations for enhancing the integrity of the public procurement system in South Africa. It recognised that fragmentation of the procurement legislation has aided in abuse and poor oversight of the system and called on government to address this.

The President acknowledged the urgency of procurement reform, noting that abuse of the procurement system is one of the principal vehicles through which taxpayer funds are illicitly diverted to private interests instead of providing value to the public. The President’s response plan indicated that many of the Commission’s recommendations on procurement would be addressed by the [Public Procurement Bill](#), which has now been tabled in Parliament.

The President also cited other commitments made in Pillar 4 of the National Anti-Corruption Strategy (NACS), including commitments to greater professionalisation of the procurement functions and enhanced transparency in procurement. This is positive, although there were no clear policy commitments in the implementation plan. The President’s response also noted that, ‘National Treasury has initiated a modernisation and automation of supply chain management systems that will significantly contribute to effective data management and allow for information analysis across government and public entities’, but provides no further detail.

So far, the Public Procurement Bill remains the only real procurement reform initiative. But while the introduction of the Bill is a good step forward, PARI and other civil society organisations in the Procurement Reform Working Group (PRWG) have [highlighted critical concerns](#) about the Bill’s ability to address the failures exposed in the Zondo report. Our [main critiques](#) concern the misalignment of the Bill to S217 of the Constitution, the Bill’s excessive recourse to subordinate legislation, and matters of integrity, transparency, and access.

1. The Bill fails to clear up confusion around essential definitions arising from section 217 of the Constitution and the Bill itself. Crucially, the Bill’s definition of preferential procurement in section 17 is not consistent with the global understanding of ‘preference’ in procurement, which will create challenges of interpretation later. It must provide clear, unambiguous, accurate and consistent definitions of these and other core concepts.
2. The Bill gives the National Treasury, the Public Procurement Office and organs of state excessive legislative power, instead of providing concrete rules that are then implemented by the various departments and offices. Most of the rules that must be followed or applied will be contained in various pieces of subordinate legislation. This could very likely lead to a situation that is not much different to the current state of affairs and defeats the purpose of the Bill, which is to provide a consolidated legal framework containing the core rules, principles and methods for public procurement in South Africa. The key legal requirements for all procurement systems should be contained in the Bill and not left to subordinate laws, where these requirements may be subject to watering down, softer interpretation, regular reform and so on — nor should they be left to the discretion of the Minister.
3. The integrity, transparency and access provisions of the Bill introduce important advances, but there remain significant gaps. The Bill wisely automatically excludes persons who exercise public powers, and other similar categories, from participation as suppliers in procurement, but it could go further. The Bill also does not consider the Zondo Commission’s recommendation to incentivise whistleblowing in exposing procurement irregularities specifically. Lastly, the Bill is vague and limiting in terms of transparency and access to information.

Appointment and dismissal processes in the public administration

The Commission found that the ability to ‘strategically position’ political associates in key posts within the public administration was the ‘essential mechanism’ of state capture. Corrupt politicians and officials used appointment and disciplinary processes to remove law-abiding public servants and replace them with those who were willing to be complicit in corruption. Broad executive powers of appointment and removal, without effective checks and balances, have allowed patronage considerations to pervade public administrative personnel practices, blurring lines in the political-administrative interface.

The Commission has provided a strong set of recommendations for reform in appointment and dismissal processes. It recommended specific reforms to personnel practices in the case of SARS, the intelligence services, the SOEs and certain proposed bodies like the Public Procurement Anti-Corruption Agency. In other cases, such as the public service and municipalities, the report doesn’t make specific proposals. However, the underlying principles are strong and should be used to support an agenda for reform.

In 2022, Cabinet adopted the [National Framework towards the Implementation of Professionalisation of the Public Sector](#). The President’s response to the Zondo Commission recommendations notes that the Professionalisation Framework is an important instrument for addressing state capture, and the Framework is a central instrument in the President’s implementation plan. The Framework sets out an agenda for reforming appointment and dismissal processes for senior public servants, as well as providing proposals for the broader professionalisation of the administration. The President’s response moots an ‘enhanced role for the Public Service Commission (PSC), working with a new Head of Public Administration, in the appointment of top officials’. The plan makes a number of detailed recommendations for more clearly delineating the role and function of executive authorities and administrative heads. Government has also committed to the professionalisation agenda under pillars 2 and 3 of the NACS.

To this end, the [Public Service Amendment Bill](#) and the [Public Administration and Management Amendment Bill](#) were tabled in Parliament in 2023. A draft Public Service Commission Bill was also published for public comment. The Public Service Amendment Bill includes some important and positive provisions for better delineating the powers and responsibilities of political leaders vis-à-vis senior administrators. It also includes important prohibitions on senior public servants holding political office. The Public Administration and Management Bill includes important provisions prohibiting public sector employees conducting business with the state.

However, [PARI and other civil society organisations](#) argue that the proposed amendments do not go far enough to bring into reality the vision of the NDP and the Professionalisation Framework with regard to stabilising the political-administrative interface and better insulating the public administration from patronage politics. This vision includes robust checks and balances in the appointment and dismissal process for senior administrators and a role for the PSC in supporting the appointment of senior officials, working with a Head of the Public Administration. The currently tabled bills do not provide for these key reforms. They also do not sufficiently establish the role of the Head of the Public Administration in supporting appointment processes and career progression of senior public servants, nor do they implement various other commitments contained in the Professionalisation Framework, such as delinking the tenures of heads of department with the terms of political heads.

[Stronger checks and balances](#) in appointment and dismissal processes for senior public servants must be a central strategic thrust of the professionalisation agenda, and mechanisms should be built into this process to ensure transparency to the public for the very senior levels of the public service.

State-owned entities

Having identified improper appointments and dismissals as a key mechanism of state capture in SOEs, the Commission's report provides a substantial and detailed proposal for a 'Standing Appointment and Oversight Committee'. It envisages inter alia that the Chief Justice, the Legal Practice Council, and the Independent Regulatory Board of Auditors play a role in constituting a committee to govern recommendations for appointment to the boards and senior posts of SOEs.

The President's response raised reasonable concerns with this proposal, while acknowledging the need for reforming SOE governance. The President's response notes that ministers will be prohibited from playing any role in procurement within SOEs. It also refers to work undertaken by the Presidential SOE Council to develop a Shareholder Ownership Model, which would supposedly introduce more objectivity and transparency to appointments. The SOE Council has also been tasked with developing a framework for appointment processes for SOE boards and executives. It is not clear if this work has been completed.

In August 2023, the President stated that the [draft National State-Owned Enterprises Bill](#) would align the process for the appointment of SOE boards and executive management with the recommendations of the Commission, and that this new law would improve oversight, transparency and accountability of SOEs.

The draft National State Enterprises Bill was published for public comment in September 2023. The bill introduces the single shareholder model by establishing the State Asset Management SOC as a holding company to supervise identified state enterprises. The draft legislation also envisages the disbandment of the department of public enterprises, which was set up in the 1990s to exercise political and legislative control over SOEs.

Unfortunately, the draft bill [does not meaningfully address the governance challenges facing SOEs](#) that were so clearly exposed by the Zondo Commission. The bill does not specify how the boards and executives of subsidiary SOEs will be appointed, but the board of the holding company will be appointed by the President with no clear appointment process or criteria, and no checks and balances. It is not clear how this bill will meaningfully improve the oversight, transparency and accountability of SOEs.

This bill, if passed in its current form, would only affect extant SOEs when the shareholder (i.e. the President) deems that they should be transferred to the holding company. This process would likely take a long time, given just how many SOEs are currently established. Most SOEs will continue operating as they have been and will not be affected by these reforms — and no other reforms concerning SOE governance have been forthcoming, despite the exhaustive evidence uncovered by Zondo Commission that SOE governance is in crisis. [There is a clear need for a single, primary piece of legislation regulating the governance of state-owned entities](#), which this Bill unfortunately does not provide.

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Whistleblowing

The Commission made three key recommendations concerning whistleblowers.

1. Legislation to ensure that whistleblowers are accorded the protections stipulated in the UN Convention Against Corruption;
2. Legislation to allow whistleblowers to be offered immunity in certain cases; and
3. Incentivizing whistleblowers by awarding a fixed percentage of monies recovered if the information disclosed by the whistleblower has been material in the recovery of funds.

The President acknowledged the important role played by whistleblowers in the fight against corruption. The plan emphasises the need to protect whistleblowers from victimisation and retaliation. To this end, the Department of Justice (DOJ) undertook a review of the Protected Disclosures Act (PDA) and the Witness Protection Act (WPA) to consider the recommendations made by the Zondo Commission and produced a [discussion document](#) on proposed reforms for the whistleblower protection regime in July 2023. This document proposes strengthening the existing legal regime by amending the PDA and WPA.

The DOJ discussion document contains many commendable proposals in line with the Zondo recommendations and proposals made by civil society groups. However, it does not simplify or consolidate the current complicated and inconsistent legal framework, which poses a significant challenge to whistleblowers. The document also rejects the idea of incentivising whistleblowers. Advocates for whistleblower protection reform have argued that the proposed changes [do not go far enough](#).

It is not clear what is to come out of the discussion document process. No concrete policy commitments have been made concerning protecting and [incentivising whistleblowers](#), and no timelines have been presented by the DOJ or the Presidency for the drafting and passing of the necessary legislative amendments.

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Further information and analysis relevant to the Zondo Commission
can be found on PARI's website: www.pari.org.za

<https://pari.org.za/category/zondo/>
