



ASSOCIATION OF FORMER DIRECTORS-GENERAL

# Dialogue Series on the Capacity of the State

The Association of Former Directors-General (AfDG) brings together former DGs who adhere to the values of integrity, honesty and transparency and who are committed to contributing to the professionalisation of the public service, broader public sector reform and building the capabilities of a developmental state.

The AfDG convened a series of dialogues, in partnership with the Public Affairs Research Institute (PARI), to provide an impartial and independent forum in which frank discussion on the capability of the state and measures to enhance it can take place.



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# Dialogue Series on the Capacity of the State

## THE AFDG DIALOGUE SERIES

The AfDG is public benefit organisation that comprises former Directors-General who have been concerned about the environment of state capture in South Africa and the deterioration of the capacity of many state institutions. The Association wishes to actively contribute to the accelerated emergence of a capable, ethical and developmental state. The AfDG is a professional network, comprising a significant repository of institutional memory and experience that can be used as a resource for serving accounting officers and senior executives in the public sector, for sharing, support, guidance and professional growth.

Since 2016, former DGs held a series of meetings with the President of the Republic and made written submissions to him on what would be important touch points and considerations to help efforts to build a capable developmental state and public service. During the latter half of 2021, former DGs held consultations with Ministers Mchunu and Dlodlo in their capacities as responsible Minister for Public Service and Administration. Such engagements were constructive and affirmed the AfDG's potential contribution to supporting efforts to build a capable state and public administration.

At a meeting with former DGs in March 2020, the President spoke of the urgent need to build a capable 'developmental' state machinery, free from political interference yet empowered with the authority, support and skills to effectively deliver on the mandate of government. The AfDG aims to play a meaningful participatory and catalytic role in this process of rebuilding a capable, ethical and professional public sector; to advise on policy and reforms that can advance the professionalisation of the civil service and to advocate for this vision; and to mentor, support, "think with" senior public servants regarding the challenges facing the state. They do so mindful of the fact that they are no longer in office and that a new generation of leaders in the public service are leading efforts to manage and turnaround the state.

In 2022 and 2023, the AfDG convened a series of dialogues, in partnership with the Public Affairs Research Institute (PARI), to provide an impartial and independent forum in which frank discussion on the capability of the state and measures to enhance could take place. In these roundtable discussions, the AfDG acted as conveners and thinking partners. Attendees included former and current DGs and senior civil servants, former and current SOE executives and board members, city and municipal managers, academics engaged in the field, and other partners in building the capacity of the state. We aimed to create a deep and meaningful debate on topical capability issues with critical players, in order to develop a nuanced understanding of these challenges and to develop innovative and fresh solutions.

Five dialogues were held, on the following topics:

- Energy and the just transition
- Freight and public transport
- Policing, security cluster and wider criminal justice system
- Water security and urban governance
- A final synthesis discussion, on building state capacity and professionalising the public administration.

The dialogues followed a roundtable format. A facilitator, usually a former DG, posed questions to the panellists and moderated the discussion with participants. We were fortunate that many sectoral experts and leaders attended the dialogues, which made for lively and constructive discussions based on a variety of experience and expertise.

The attached reports are summaries of each dialogue. They have been anonymised to respect the Chatham House rule, which was employed to ensure open and frank engagement at the events. These documents highlight the key debates at each dialogue and draw out the major points that emerged from the discussions. The summaries reflect a multiplicity of viewpoints; readers will discern some active debate and disagreement on some points of discussion. They are therefore not meant to be taken as positions adopted or proposals made by the AfDG. Rather, they present critical material to engage with, which can assist in developing our understanding of the challenges facing the state, and inspire creative solutions. The dialogues were held last year, and thus some circumstances may have changed since the discussions. Indeed, some of the ideas discussed at these events have been taken forward. Nevertheless, the insights and analyses generated at these discussions remains relevant and important.

In 2020, the Association was invited by the President to develop a discussion document focused on building state capacity. Presented to President Ramaphosa in April 2020, the document contained a number of proposals for professionalising the public administration and modernising government.

From the AfDG dialogues, discussions, we have identified key themes that resonate with and build upon the 2020 discussion document:

- The issue of stabilising the public administration is urgent. Factionalism and the rise of messy coalition politics has generated enormous instability. The public service is one place where we have the chance to move fast and implement substantial reform. The environment is ripe for this agenda.
- The professionalisation of the public sector is a critical part of state reform. If implemented carefully, it will stabilise the political-administrative interface and insulate the public service from improper political interference, as well as improve the functioning of state institutions and help capacitate them with the needed skills and human resources.
- The creation of a single administration is key to professionalising the public service. Parliamentary staff, local governments, state-owned entities etc. all have their own regimes and systems. This fragmentation and lack of standardisation is a major challenge.
- Public sector reform must also involve improving or rethinking the inter-governmental relations framework, to ensure that the spheres of government can effectively address problems together.

- State capture, and corruption more widely, was a backdrop to all discussions. State capture has impacted the sustainability of our state entities and put enormous strain on the fiscus. The Zondo Commission highlighted that appointment and procurement processes need to be reformed.
- The mandate and governance of our SOEs and state institutions needs to be addressed. We heard in the dialogues of positive results from the appointment of new boards, and new management, but there is a deeper crisis to address, and new leaders are having to grapple with significant institutional legacies from the height of state capture. We need to provide SOEs with a clear – and not overburdened – policy mandate and a clear outline of how the state best exercises its policy imperative in relation to the strategic direction of our SOEs.
- There is an urgent need to address the growing impact of organised crime on our communities, businesses, and on our public infrastructure. Building law enforcement capacity (crime intelligence, police reform including to appointment processes, etc) is critical. The dialogues also highlighted successful efforts to re-build institutional capabilities in the CJS.
- Major investments in, and capabilities for, public infrastructure are needed: in transport and energy sectors, for example, the need to recapitalise our local government infrastructure is critical. An enhanced and professionalised procurement system could support this, as could innovative models of local government financing for public infrastructure and maintenance.
- Implicit in much of the discussion was an understanding that state capability is not simply reducible to administrative-bureaucratic attributes, but is about a state that can get things done. What was envisioned in these discussions is a state that can ‘reach into society’ – coordinate, support, and incentivize economic and social actors around a common set of goals.
- A key theme running through all dialogues was the need to support senior public sector managers to make bold decisions – to broker complex procurement projects, for example, to plan and develop ambitious socio-economic programmes. Our planning, budgeting, and procurement regimes may not adequately support this more strategic orientation.
- If government’s plans to develop a cadre of stable, professional senior state leaders succeeds, in part through reforms to appointment processes for senior officials, and other initiatives under the Professionalisation Framework – there is a depth of knowledge and commitment from which this cadre can draw. It may demand new ways of working from senior officials – ways not unfamiliar to an earlier post-apartheid generation of state officials who worked in often collaborative ways – in which the state was pivoted outwards towards stakeholders and citizens.

We hope that these reports will prove useful for the 30 years of democracy reflection process being led by the DPME, and that they will be a valuable resource for government more generally. We remain committed to supporting the work of current DGs and state reformers.

**Association of Former Directors General**  
**October 2023 (this foreword updated April 2024)**



# Managing the energy crisis and energy transition

**T**he first AfDG dialogue was held in Johannesburg on 29 October 2022 on the topic “Managing the energy crisis and energy transition”. It discussed the capabilities that are required to manage the overall energy planning system, maintain the existing fleet of power stations, and coordinate state and private sector actions around the energy crisis, all the while proactively managing the energy transition.

The panel comprised the following speakers:

- **Jacob Mbele**, Director-General of the Department of Mineral Resources & Energy (DMRE)
- **Calib Cassim**, CFO of Eskom
- **Rudi Dicks**, Head of the Project Management Office in the Presidency
- **Joanne Yawitch**, CEO of the National Business Initiative (NBI) and Head of the Just Energy Transition Partnership (JETP) Secretariat
- **Mark Swilling**, Chair of the DBSA, Professor of Sustainable Development at the University of Stellenbosch

Around 30 people attended the dialogue in person, with ten more joining online. The discussion was facilitated by the AfDG's Dipak Patel.

## HIGHLIGHTS FROM THE DISCUSSION

- The role of the state in the energy sector is the key question to be answered. The electricity sector needs to be restructured to create a competitive environment which will ensure a secure and cheap electricity supply. This includes setting up the national transmission company and creating a central purchasing agency.
- Justice and equity must be central to the energy transition. The just transition (i.e., meeting our decarbonisation goals whilst we undertake a comprehensive system change in our industrial and minerals sectors to achieve growth, development and new jobs) carries the risk of creating winners and losers. The workers and communities in the coal belt and in coal fired power stations face the risk of further vulnerability if specific attention is not given to skills development, alternative local economic development plans and social support.

- We need to mobilize greater implementation capacity and partnerships both within and across business and government and other sectors of society. We need broad mobilisation in support of net zero by 2050.
- The energy transition will require an investment through to 2050 of about \$250 billion. The mobilization of investments within our own domestic financial sector and institutions is critical.
- The energy transition must maximize job creation and upstream industrialization.
- It is imperative to “keep the lights on” given the enormous economic and social costs of loadshedding. Eskom, and in particular, the envisaged independent and market neutral transmission company / operator should be given the freedom to procure the energy they need from the market.
- New capacity needs to be added to the grid as quickly as possible. This is hampered by excessive red tape delaying the connection of IPPs to the grid. The transmission and distribution infrastructure are critical to ensuring that new capacity can be utilized. More attention should be paid to energy storage to ensure renewable sources can be used effectively and that generation potential is maximised for electricity availability. A demand-side (encouraging energy saving and efficiency) approach could help ameliorate loadshedding for the next few years, while additional capacity may be ramped up through new projects, adding supply to the grid. Making economically sensible decisions around gas infrastructure (to avoid stranded assets) and resolving the capacity requirements for gas as an interim energy source for electricity generation is urgently needed.
- The lack of transparency and openness is a major obstacle. The government has failed to take the public into its confidence.
- Stability is critical going forward. Multiple leadership changes in leadership will not solve the root problems faced by Eskom.
- Government insists on localization prescripts beyond the capacity that is locally available. These policies should be balanced with the urgency that is required to ensure a stable supply of additional electricity to end loadshedding; this includes the urgent need to expand and strengthen the national grid to facilitate independent power producers getting their renewable energy projects implemented.
- Eskom needs to be able to recover its costs in the price of electricity. Municipal accounts must be addressed. However, tariffs must be rationally calculated, and we must bear in mind that most municipalities are dependent on generating income from electricity supply.
- The municipal distribution infrastructure (and maintenance backlogs) are a critical vulnerability, and the resolution of national infrastructure and electricity supply will not result in energy security if the distribution networks and municipal networks are not attended to. Metros need access to funding, empowerment to enter into public private partnerships (PPPs) and be able to generate their own local supply of electricity. The funding for maintenance and upgrade projects must be enabled.
- We must, as a country, make rational and integrated policy decisions and allow the strategic planning and implementation to take place in the appropriate sphere of the state, and by the private sector where that is the rational choice (especially in the context of a constrained fiscal reality and implementation incapacity in the state and public system.
- Political contestation (even within the Cabinet) sends confused signals and subverts the process of developing a national social consensus that is so necessary to undertake the deep and complex system change that is required in the energy sector generally, and the electricity sector more specifically.

## SUMMARY OF DISCUSSIONS

### On building a transition capable state

We have an immediate crisis. The future with respect to our socio-economic development and our position internationally is going to be premised on having an energy system that in fact works, both for the economy and the people and in the context of climate change, to make sure that we don't get shut out of the global economy.

The dialogue discussed the importance of carefully conceptualizing the problem that is to be solved. Is the energy transition intended to solve industrialization or is it intended to be a transition to an equitable and sustainable energy system for an equitable economy? Once we have decided the core problem, we need to consider: how do we build the institutional capability so that we are able to implement all of the plans adopted by government and across the sector?

Capability can be defined as everything that is necessary to get something done. Conceptualizing this as 'capability' rather than 'capacity' renders endogenous many things that are usually considered exogenous to the system – such as politics. If we look at an institution or an organization and we think about what it is currently able to do and what it needs to do, we can think of that as the 'capability gap'. Key questions on the capability of the state include:

- What are the medium- and long-term priorities for the state in the energy sector in South Africa?
- What are the key outcomes the state needs to facilitate or deliver?
- What is the current state of the state to deliver on these?
- What kinds of capabilities does the state need to develop to support these outcomes?

### On funding the energy transition

The evidence indicates that the energy transition will require an investment through to 2050 of about \$250 billion. This is important to remember when considering the new JetP \$8.5 billion that has been announced. The mobilization of investments within our financial sector and our own institutions is a fundamentally important task. We are starting to see collaboration between public sector financial institutions.

### On the perspective of business

From the perspective of business, the long-term implications of the energy deficit are beginning to hit companies extremely hard, in terms of their ability to maintain their operation's consistency, to be able to plan, to be able to ensure output, and to manage their supply chain. It is starting to close down some of the biggest labour absorbing sectors in the economy in both the formal and the informal sector.

There is a big trade and economic issue that sits at the bottom of the business response to climate change. Businesses are also facing transitional risks from a world that is increasingly moving in a low-carbon direction, including measures put in place by our biggest trade partners to ensure that they aren't prejudiced by taking on carbon intensive imports from countries such as South African, when they are prevented from producing those in their own countries.

The justice element is also central. This has to be done in a way that spreads benefits fairly across the country so that we don't end up with a situation where only big business and the rich have access to power.



The energy transition requires the mobilization of greater implementation capacity and a bigger/deeper partnership both within and across business and government and other sectors of society. Renewable energy needs to be rolled out extremely rapidly, and the transmission and distribution grids need to be made fit for purpose. This requires the relevant institutions to have people in place who can implement this huge rollout program and do the work necessary to construct, maintain and operate a very different kind of grid. We need partnerships – a coming together, strong planning, and broad mobilisation in support of net zero by 2050 (or 2060). We will need to get back a lot of the mining and power capacity that has left the country and is not doing big infrastructure developments elsewhere in Africa and Asia. We need to draw on that capacity, because without it our available “capacity” for infrastructure needs is very limited.

### **On evidence-based policymaking**

The role of evidence in decision making was raised as a key issue. Several critical missteps in energy policy (which have contributed to the energy crisis today) since 1998 were due to government refusing to accept the evidence. Even today, based on the evidence, the new target of 75% energy availability factor is arguably technically impossible. If we can maintain 60 percent EAF for the next two years while we build generation capacity to create the space so that we can then take machines off the grid to repair them, we will be able to move forward.

### **On increasing the capacity of the grid**

In order to properly fix Eskom’s underperforming power stations, they will need to be taken offline for six to eight months, but this will reduce energy capacity to below the capacity currently required. New capacity thus needs to be added to the grid as quickly as possible.

There is significant red tape delaying the connection of Independent Power Producers (IPPs) to the grid, meaning that these new plants aren’t actually delivering spare capacity to the grid. It may be necessary to delay some of the decommissioning of power plants in order to get additional megawatts onto the grid and to allow for long term maintenance.

Particular attention needs to be paid to the transmission grid so that new capacity can be connected to the system. The national transmission company is being established, but it is critical that it is not overburdened with an upward guarantee. Eskom is currently building 400km of transmission a year, with the aim to increase that to 1500km a year. The maximum we have ever built was in the 70s and 80s which was 1200km, so this massive ramp-up needs to be carefully managed.

The distribution aspect also requires attention. It is currently being unbundled from Eskom in order to be truly independent. If Eskom can fix two of the three elements of the value chain and get the network working, then supply can be addressed by the IPPs and Eskom generation.

It is important to note that our system was never designed for multiple points of input onto the grid from many smaller renewable plants. The Eskom grid connection team was comprised of only four or five people because they only worked on one power plant at a time. Due to the liberalization of energy generation, hundreds of different projects are now coming on stream. Eskom has had to rapidly increase the size of the grid connection team.

Furthermore, there has not been enough focus on the storage of energy that will be required in order for renewables to be used effectively.

### **On the governance ecosystem and regulation of the sector**

There is a complicated ecosystem within government responsible for the energy crisis. The team within the Presidency was brought in for two main reasons: to improve financial stability, and to carry through the restructuring and unbundling of Eskom. However, maintenance and generation have been neglected overall.

As expensive as burning diesel is, the cost of load shedding to the economy as a whole is significantly higher. Eskom should be given the freedom to procure the energy they need from the market. It is imperative to keep the lights on.

The role of the state in the energy space is the key question to be answered. That will determine whether we need an IRP and what form it should take. The role of the state in the energy sector will always be central because when markets fail and businesses are not making a profit, business will make the decision to cut themselves from that environment and it will become the government's problem to ensure that we maintain security of supply.

The electricity sector needs to be completely restructured. It was previously designed and conceptualized with Eskom at its centre. Fundamental changes need to be made to create a competitive environment which will ensure secure, cheap electricity. This includes setting up the national transmission company and creating a central purchasing agency.

There was some discussion about the urgency of the crisis and calls for the President to declare a state of emergency. It appears that such a state of emergency would not be legally permissible. There are certain legislative changes that can be made, but they will take a long time to go through the legislative process. This is also hampered by significant political contestation and the threat of legal challenges.

The lack of transparency and openness was also raised as a serious problem. The government has not attempted to take the public into its confidence, and much of the work being done to address the crisis is not being communicated.

Stability is critical going forward. Multiple leadership changes in leadership will not solve the root problems faced by Eskom.

### **On demand- vs. supply-side solutions**

Government has taken an overwhelmingly supply-side approach to the crisis. Given the extraordinary impact of loadshedding on the economy, a proper demand-side approach could help ameliorate loadshedding for the next few years, while additional capacity is still to be added to the grid. Government should be promoting energy efficiency and providing incentives for investment in renewables. While it may seem easier to plan a build programme than to change people's behaviour, it is cheaper to address demand than supply given the resource constraints that we have. Therefore a balanced approach is required.

While business has taken some steps to reduce demand, there is no financing system in place that allows from medium to small companies to put these plans in place and support their implementation. Government puts over R200 million per year into energy efficiency through municipalities, but the impact of those interventions is unclear.

### **Upstream industrialisation**

Generation capacity and grid extensions must be built in a way that maximizes job creation and upstream industrialization. If the investment in renewable energy infrastructure through to 2050 results in 5GW per annum, that can drive the biggest industrialisation program since 1994. But that can only happen if the prices are right. That means we can't simply leave pricing

to the market. We must ensure that the cheapest way to build a renewable energy power plant is not by importing it but by making it here.

If we are interested in a just transition, we must think of jobs. The best jobs are in industrialisation, so we should be linking investment and renewables to upstream industrialisation.

### **On localisation**

Localisation policy was also raised as an obstacle. It costs Eskom 40% more to build transmission infrastructure than Namibia due to local content prescripts. It was suggested that localisation and other transformation policies should be only be implemented after the crisis is addressed and Eskom can ensure a stable supply of electricity. A big problem is that the DTIC insists on localization prescripts beyond the capacity that is locally available. For example, only one local company manufactures insulators required for transmission infrastructure, and their capacity is far below what is currently required. But these insulators cannot be sourced from abroad without an exemption from the localization regulations – which the DTIC won't approve.

### **On Eskom's finances and the cost of electricity**

Has anything actually changed in terms of the key root causes of Eskom's current state? The utility faces debt service costs of R80 billion every year, and its finances are irrevocably linked to South Africa's. Eskom executives are in the same conversations with ratings agencies they were five years ago and Eskom is still at risk of defaulting.

Even if Eskom weren't in significant debt, it would not be able to recover its costs going forward in the price of electricity. It was suggested that Eskom should be able to recover the full cost of electricity in its pricing, and that government should implement other mechanisms to protect the vulnerable sectors of society. Municipal current accounts must also be addressed; they need to pay at least some of what they owe in order to keep Eskom operational. However, the income streams of municipalities are largely dependent on how they generate income from electricity supply. This complicates the issue of cost recovery from municipalities.

The issue of cost recovery was debated. Tariffs need to be cost-reflective, but that does depend on what is included in those costs. There is a need to think very carefully about governance and oversight structures around how to manage those costs and create a situation where unjustifiably large costs are simply passed down the line.

The municipal distribution infrastructure may be a bigger problem than Eskom's. The maintenance backlog in municipalities is somewhere between R100-R200 billion. The total budget for local government for repairs and maintenance across all asset classes is currently 27 billion rand a year. There is a huge funding shortfall there, as well as a critical lack of capability within municipalities. The Municipal Infrastructure Grant administered by Treasury doesn't cover electricity. The Integrated National Electrification Programme grant for electrification of metros is underspent by approximately R1.5 billion each year. DMRE could look at how the unspent portion of that grant can be used to give metros access to additional cash for maintenance spending.

### **On the energy mix**

One of the critical questions raised was whether the IRP is outdated and what the South Africa's energy mix will look like going forward. Any long-term planning is based on assumptions, and assumptions change. The energy mix stipulated by the IRP is still relevant as the technologies that are available to deploy have not changed significantly. However, it is clear that many of the initiatives raised by government need to be accelerated given the energy crisis.

There was some debate about the impact of environmental advocacy. One participant criticized 'magical green thinking' which emphasizes solar and wind energy, and may have locked South Africa out of options that other countries have adopted, such as fracking, regional hydropower opportunities and gas development. However, other countries' refocus on coal, gas and nuclear may be short term due to the war in Ukraine, and that there is still a rapid roll out of clean energy across the world. There are 53 countries (and 280 subnational governments) with 100% renewable targets, that are not partial on renewables. Many of the previous technical and financial problems with certain renewables (such as intermittency) have been resolved.

The issue of gas is complex. There has been chaos and contestation internal to government that has complicated the issue. The Department of Mineral Resources and Energy, the Department of Forestry, Fisheries and the Environment, and Eskom have all made contradictory statements on gas interventions, which has left government vulnerable to litigation. However, there is a 3GW gas plant that has been approved, and more gas will need to be brought to the grid in terms of the IRP. The JetP won't fund gas, so these big infrastructure projects will require significant investment.

It may be that we need gas as a transition fuel, where it is important for peaking and system stability. But investing in gas has a significant risk of stranded assets in the long term as we move towards renewables. It is also important to note that our gas sources are running out and if we don't find a solution quickly, we are going to end up by 2026 without gas at all. Resolving how much and what kind of infrastructure and processes we need for gas is urgent.

What really matters is what is affordable for South Africa. The 90% drop in prices of renewables makes them financially attractive for investors. The extra generation capacity provided by renewables, according to many different models, will create the wriggle room that Eskom needs to take machines off the grid to properly repair them

### **Politics could derail the progress made: bringing people into the just transition**

While many of the correct policy decisions (including setting up the national transmission company and getting additional gigawatts onto the grid) have now been taken, the biggest threat we face is that these decisions may get subverted.

The role of politics is seriously under-discussed. Opinions have been shifting against the energy transition in society and mainly in political institutions like trade unions. The ruling party has been able to stymie critical decisions like the restructuring of Eskom, and decisions made by the party at its next elective conference may derail many of the plans being made. Tensions and contestations at the political level – which result in mixed signals to the public – will undermine our ability to manage the energy crisis. A broad-based political settlement within the state and beyond is absolutely critical going forward.

It was noted that we are talking about a three- or four-decade long process, and that if we try to concertina that time frame, we will create fear and anxiety which will cause people to attempt to maintain the status quo. In the long run, that will destroy livelihoods in a far more fundamental way than anything else. It is critical that we execute a well ordered, well managed transition that takes care of people in the process.

## QUESTIONS TO GUIDE FUTURE DELIBERATION

### *Dialogue series: framing questions*

- What are the medium and long term priorities for the state in the energy sector in South Africa? What are the key outcomes the state needs to facilitate or deliver?
- What is the current state of the state to deliver on these?
- What kinds of capabilities does the state need to develop to support these outcomes?
- How could these capabilities be developed or enhanced?

### *Questions for the Executive*

- What are the big state capabilities needed for a just transition to a green economy? What is the current state of the state in this regard?
- What is limiting the clear and strategic regulation of the energy sector for public and private providers alike?
- Does the presidency have the capability to support coordination for the energy transition and the imperatives of Operation Vulindlela? In what areas/ways would it like to build this capability?
- Arguably now more than ever the key capability required of the state is the ability to coordinate policy, planning, implementation – between levels and organisations within the state – and between state and private sectors. What limits coordination? How might we begin to improve coordination capability?
- What capabilities will local government need to manage the impact of climate change, and to benefit from shifts in the generation and distribution of electricity?

### *Questions for the energy sector*

- What lessons can South Africa draw from other countries or regions in this regard?
- The generation of renewable energy has the potential to be driver of local economic development. What is needed to ensure local municipalities and economies can indeed benefit?
- How can the South African state get better at supporting innovation in the energy sector – to enable the economy to transition more quickly, and to develop more affordable clean energy?
- What kinds of capabilities will partners in the JETP need in supporting a just transition (especially in terms of mitigating the impacts of economic changes on jobs and livelihoods)?
- How should the sector address the dual imperative of appropriate climate response and meeting socio-economic development goals in South Africa?

### *Questions for Eskom*

- There is a central challenge facing Eskom: at a time when Eskom needs to focus on improved capacity for maintenance of an aging or poorly built coal power fleet, and rebuilding Eskom after damage under state capture; it needs to develop new capabilities for transition to a low carbon-based economy. Do these pull Eskom in different directions and how can this challenge be managed?

- Regarding the independent transmission company that Eskom is tasked with building – what is causing the delays in establishing this? And what new capabilities will this require of Eskom?
- What capabilities does Eskom need to develop to play its role in generation, transmission, distribution for a greener, pro-poor economy?
- What capabilities does the DMRE (or others with a role in energy or procurement regulation) need to develop to support Eskom's role in the energy transition?

#### *Questions for the DMRE*

- Does the DMRE currently have the capacity to support the procurement of power from independent power producers of renewable energy, and to incentivise investment in green energy? What is limiting this capability currently, and how could it be improved?
- How is the DMRE building the capabilities of relevant sections of the department critical for the energy transition – such as the IPP unit and the Just Transition Unit?
- How is the DMRE dealing with the inevitable tension between the department's role in supporting and regulating mining and its role in regulation and support for the just transition?
- How can we ensure that energy becomes more affordable for South Africans? And what issues or capacities do we need to prioritise to ensure it is more affordable?
- How should the sector address the dual imperative of appropriate climate response and meeting socio economic development goals in South Africa?



# Freight rail and public transport

The second AfDG dialogue was held in Johannesburg on 26 November 2022 on the topic “Freight rail and public transport”. The discussion focused on focus on capacity issues around freight, passenger rail and regulation of the transport sector.

The panel comprised the following speakers:

- **Siza Mzimela**, CEO of Transnet Freight Rail
- **Mesela Nhlapo**, CEO of the African Rail Industry Association
- **Lisa Seftel**, CEO of Nedlac and former head of transport for the City of Johannesburg
- **Jack van der Merwe**, CEO of the Transport Authority of Gauteng

Around 30 people attended the dialogue in person, with ten more joining online. The discussion was facilitated by the AfDG’s Crispian Olver.

## HIGHLIGHTS FROM THE DISCUSSION

- There has been a mass exodus from passenger rail as it is not convenient, reliable or safe. Commuters have had to adopt other, more expensive modes of transport, which has dramatically increased the costs to the poorest sections of society.
- Freight rail has seen a massive drop in business and freight volumes and is currently moving less than half of the tonnage the system should be able to run. The move by major sections of the importing and exporting sectors of the economy (both general cargo and bulk commodities) to higher usage of road freight points to the severe deterioration of service quality, reliability and general performance of Transnet Freight Rail.
- Managing private sector project development, financing and implementation in this environment requires strong political will and determination, as well as political and project conception and contract management skill – as evidenced by the Gautrain and Rea Vaya projects. Transactions have to be designed and structured to accommodate obstructive political interests. Vested interests are impossible to ignore or remove, but may be aligned around a particular development trajectory. This is where political leadership needs to show both the will and capability to navigate the complex issues related to stakeholder consensus (for example, worker and Union buy-in and support). Across the board, where major investments are required for infrastructure and operations upgrades, new capacity and projects as well as operational performance improvement, in the context of non- or low-performing SOEs and limited fiscal capacity, the role of the private sector is becoming more and more critical.

- The political-administrative interface is an impediment to the effective governance and management of transport. Administrators need to be insulated from political pressure, and there needs to be stability in leadership positions to allow long-term, specialist knowledge and institutional memory to be established.
- The planning and budgeting regime is often counter-productive, especially for long term infrastructure projects with long life cycles that cannot be easily fit into three-to-five year plans and require guaranteed budgets for many years.
- The procurement regime is not focused on long term strategic procurement but on goods and services acquisition at the lowest cost possible. Procurement under this regime cannot ensure that the technical assets purchased are best, fit for purpose, and can be maintained over their life cycle. Part of the problem is that technical acquisitions are often managed by procurement specialists without the involvement of technical experts.
- Compliance concerns often dominate over performance, resulting in public servants feeling overburdened, paralysed and unable to take important decisions.
- The formal planning and budgeting regime intersects with a highly politicised bureaucracy in which there is a high churn-rate in leadership, and also intersects with this procurement regime. These three intersect, making it very difficult for senior members of the state to lay out a plan, envision it and develop the necessary resources.
- The rail sector is suffering from many years of government dis- and under-investment in rail infrastructure. They do not have the resources or capacity to maintain the assets and infrastructure they do have, let alone to invest in order to meet demand.
- Transnet has a critical under supply of locomotives and spare parts, as a direct consequence of state capture and the termination of contracts found to be corrupt.
- However, Transnet itself has been beset by corruption, mismanagement and general underperformance, as a result of, among other things: incapable, inexperienced and unqualified senior and executive management, loss of deep experience in the operating divisions, and financial underperformance (resulting from wasteful expenditure as well as large business customers fleeing from transnet-provided freight services)
- Both passenger and freight rail are beset by security issues, including the destruction and theft of assets and critical infrastructure. They can never 'catch up' the time and business lost due to repairs.
- Transnet needs to bring in private sector infrastructure investors as well as freight system (rail and port) operators to deal with the inefficiencies, improve performance and provide much-needed investment, all of which the business operating divisions of Transnet are not able to undertake themselves.
- The role of large corporate customers in important sectors of the economy must be fully explored as potential partners in upgrading of, re-investing in and improvement of operations (cost, reliability and safety) cannot be underestimated as a powerful mechanism to align interests which will result in overall economic benefit.
- There is a serious risk of Transnet performance further deteriorating to the point where it becomes the binding constraint on economic growth and competitiveness.



## SUMMARY OF DISCUSSION

### On the exodus from passenger rail

There has been a mass exodus from rail to other modes of transport. In 2009, there were 700 million passengers per year on rail in South Africa. That was whittled down to 126 million, so we have lost 500 million passengers. Public transport needs to be available and punctual – if people cannot reliably get to where they need to be on time, they will switch to other transport options. Prasa cannot meet these needs. Before Covid, metro rail ran on an availability of 60%, so you had a 40% chance that the train wouldn't come – and if the train came, it had an average delay of 42 minutes. Many commuters need to switch to taxis to get to work, or wherever they need to be. But a metro rail ticket is only R581 per month, compared to an average taxi cost of R960 per month. So we have increased the poorest of the poor's contribution towards transport by 67%.

It is not clear whether passenger rail can regain its lost customer base. Taxis have an advantage in that they are extremely accessible and can transport commuters basically door-to-door. So Prasa will need to seriously consider the needs of commuters, including convenience and safety, if it is to attract them back to rail. 'Soft' issues are just as important as 'hard' issues. Rail has lost the hearts and the minds of the people. As a consequence, the public feels no ownership over critical infrastructure and assets, which are extremely vulnerable to destruction and theft.

### On competing interests

There are significant binding constraints in transport and public transport, which even the best intentions may not necessarily overcome. A critical capability required by anybody in the public service is to understand the sector they are working in – in particular the (vested) interests involved. Transport is a sector with large budgets and capital expenditure, which attracts various interests who want to access those budgets. So it is vital to understand not only the customers, but also the political interests, private operators (in particular the taxi and trucking industries), and other interests such as the so-called 'business forums' which make significant demands on companies operating in their areas.

One of the biggest threats to freight and passenger rail, and to public transport, is that, in a declining economy, there are too many people whose livelihoods depend on an oversupply of taxis, on freight trucking etc (and parallels in other sectors: the 'oversupply' of coal). For example, if PRASA gets its act together, it is going to have to do it with significant popular support behind it, otherwise the taxis are going to burn the trains; Transnet has the same struggle with freight trucking. These SOEs need strong political and popular support, otherwise these interests will destroy key assets and infrastructure in order to protect their incomes. Mitigating these risks requires not only a security strategy, but an activist strategy.

Managing a project in this environment requires strong political will and determination, as well as political skill – as evinced by the Gautrain and Rea Vaya projects. Deals have to be made to accommodate obstructive political interests. Vested interests are impossible to ignore or remove, but may be aligned around a particular development trajectory. This is where political leadership needs to step up to the plate, because that kind of brokering in pursuit of a long term development objective that creates maximum benefit for the society and for its development, is what political leadership needs to deliver.

### On competing objectives

SOEs are belaboured with many objectives – not only do they have to provide transport (or electricity, or water etc.), but they also have to support transformation, industrialisation, localisation and so on. This process has to be managed carefully and strategically, or it will be vulnerable to rent-seeking and state capture, which is what happened to some extent at

Transnet and Prasa. There is always rent-seeking, but it is not impossible to manage these various objectives. It is important to be very clear about what the primary mandate of the SOE is, and then see how to achieve the secondary objectives within that frame. Otherwise, the secondary objectives become aligned to political interests and end up dominating the SOE's primary purpose.

### **On the political-administrative interface**

Many of the interests which need to be managed are deeply embedded in government and involve politicians all the way up to the national executive. Members of the increasingly politicised public administration – including, for example, senior officials at SOEs – have to manage those interests and the interference of their political principals.

Furthermore, political leadership, especially key positions like Premiers and MECs, changes so often that there is no long-term knowledge and institutional memory being built. These sectors are very complex, and you can't just bring new managers and politicians in constantly and expect that kind of sophistication to emerge so quickly.

The new professionalisation framework, including rules for the appointment of Directors-General, approved by Cabinet may help mitigate this to some degree at higher levels, but the mechanisms for this framework haven't yet been ironed out. Additionally, there is little-to-no regulation of political parties, which further clouds the political-administrative interface as politicians are not usually held to compliance standards.

### **On the procurement and compliance regimes**

SOEs are bound by policies which are often at odds with what is required to fulfil their objectives. The procurement regulations result in long and laborious processes in order to bring in material critical to running operations.

Our legislation and regulatory environment is missing a competent focus on the technical aspects of life cycle asset management, from cradle to grave, of our public infrastructure – locomotives, wagons, rolling stock, rails, power stations, and the like. The PFMA and other policies have led to a short-term focus on the lowest cost of procurement – but this is not necessarily the lowest cost overall, nor does it necessarily ensure that the assets that we purchase are best, fit for purpose, and can be maintained over their life cycle. Part of the problem is that technical acquisitions are often managed by procurement specialists without the involvement of technical experts.

It needs to be borne in mind that National Treasury is the most powerful department in the country and that the PFMA is unlikely to become less rigorous or burdensome. Therefore any proposed changes to the procurement regime must be carefully crafted and will require powerful advocacy if they are to be adopted.

We have grown our procurement system in a compliance culture and we haven't sufficiently focused on the development outcomes that we want to see rather than the compliance outcomes that we want to see. There needs to be a renewed focus on performance. The compliance culture in the public service can paralyse officials who are scared to take decisions. A potentially important reform is that performance should not be evaluated by auditors, who tend to have exclusively financial skills.

### **On planning**

The planning cycles required by government can be burdensome and can become an exercise in futility. Planners cannot do long-term, comprehensive planning as they need to follow the five-year planning cycles set by the national department. But fixing passenger rail in order to

satisfy the right level of demand is often not possible to achieve within a five-year cycle. An engineer operating based on a three-year medium term expenditure framework can't do much because they don't know what will happen in the third year. Furthermore, if the time between planning and implementation is too long, the project loses credibility.

Managing this planning dilemma is critical and requires much more innovative thinking than is currently being done. There needs to be a way of allocating budgets for longer terms. For example, certain Water Affairs projects such as building dams would have money allocated its lifetime – so a major dam could be built over fifteen years and ensure that it would have budget for that entire cycle.

The formal planning and budgeting regime intersects with a highly politicised bureaucracy in which there is a lot of churn in leadership, and also intersects with a procurement regime which is not focused on long term strategic procurement but on goods and services acquisition. These three intersect, making it very difficult for senior members of the state to lay out a plan, envision it and develop the necessary resources.

### **On freight rail**

Transnet has seen a 24-25% drop in volume over the last five years and has been beset by various crises – including floods, fires, theft, sabotage and various other problems – leading to six force majeure incidents over 18 months. Transnet's system should be able to run a total of about 430 million tons, at best; in 2018, Transnet was running about 226 million tons and by 2021 there was a significant drop to about 180 million tons.

The three key binding constraints in freight rail are locomotive under-supply, under-investment in infrastructure, and security issues.

### **On under-investment in rail infrastructure**

It has been government policy to disinvest in rail since the De Villiers report of 1986, which is apparent when one looks at the rail budget, which has been whittled down from billions to hundreds of millions of rands. This historically planned disinvestment has now resulted in unsustainable, aging rolling stock.

Because of this under-investment, Transnet is not able to conduct 'A grade' maintenance over its entire system for a long time. It has to prioritize specific areas, which are maintained to A grade; other areas are maintained to B or C grade depending on the volumes that move on those portions of the network. Transnet would need over R70 billion to catch up on the under-investment, which is not available to them.

In addition, investment in rail infrastructure should happen ahead of, and in anticipation of, demand – which is not happening. As a result, Transnet has not been able to increase the capacity of certain lines to meet demand, and more and more freight is moving to the roads.

There is a new rail policy for the first time in 86 years, which does recommend that government invests in rail infrastructure, but how that will be implemented remains to be seen.

### **Locomotive under-supply**

Transnet made the decision to suspend the now well-known 1064 locomotive contract with CRRC, which was central to state capture at the SOE. Although that was the right decision, Transnet did not adequately anticipate the consequence of the termination of the contracts and did not find ways to mitigate the risks that arose. The Chinese OEMs stopped supplying Transnet with spare parts (not just for this contract, but for all of its Transnet orders covering around 200 more locomotives), which meant that Transnet has had to park more and more

locomotives ever month. These locomotives were meant for moving major exports like coal and chrome, so this decision has had a severe impact on those lines. Transnet has reached an agreement with these OEMs to resume supply of the spare parts, but the system overall needs to be improved in the next five years. In particular, Transnet needs to put in place long term maintenance agreements with OEMs to prevent a recurrence of these issues.

### **On security issues**

Transnet and Prasa both face dire security challenges. Critical assets and infrastructure are routinely stolen or destroyed – often by those interests discussed above. For example, Transnet loses a hundred kilometres of cable every month. By the time critical repairs and replacements can be conducted, Transnet has lost the critical flows for that period of time, which can never be caught up. There is a massive deficiency in the capability of the state when it comes to securing state assets and infrastructure.

### **On private rail operators**

A key element of the National Rail Policy is allowing private freight rail operators to use the country's rail network. It is hoped that this would move significant volume of freight from road to rail, given that Transnet is currently failing to meet freight demands.

There is a sense that Transnet has failed to properly consult with others in the sector, including private rail operators and exporters, particularly with regards to Transnet's plan to bring in private operators to run portions of its network. While there seems to be consensus that it is a good move, Transnet has not acknowledged that this will be extremely capital intensive for private operators, and that the regulation in the sector can be burdensome. They simply cannot enter into these private operation contracts with Transnet if they do not reflect the long term commitment that is necessary.

### **On types of freight**

TFR's strategic policy has been focusing on mega exports like chrome, coal and manganese. But Transnet has lost over 60 million tonnes of general freight business, and over 10 000 private sidings, since 1990. Road freight vehicles generally convey loads of 20-30 tonnes – and road is successful because it can promise on-time delivery and can be booked in advance. This type of general freight is missing from the Transnet strategy.

Part of the problem is that many of Transnet's greatest problems – for example, 44% of security incidents – occur on the container corridor (Durban port to Gauteng), which moves general freight. These problems are exacerbated by trucking companies that have an interest in preventing general freight moving to rail. Therefore any solutions to these problems must include the trucking sector, which could have a role to play in an inland terminal system, for example.

### **On skills**

State capture included a process of driving technical skills out of these organisations and we are continuing not to sufficiently value technical skills. The answer is not necessarily to recruit retired technical experts and bring them back into the system, but we need a very serious look at the role and place that we attach to the engineers and the technicians below them and how we build that cadre going forward.

## QUESTIONS TO GUIDE FUTURE DELIBERATIONS

### Dialogue series: framing questions

- What are the medium and long term priorities for the state in the transport sector in South Africa? What are the key outcomes the state needs to facilitate or deliver?
- What is the current state of the state to deliver on these?
- What kinds of capabilities does the state need to develop to support these outcomes?
- How could these capabilities be developed or enhanced?
- What immediate actions could be taken?

### Public transport

- There was a vision of an integrated, user-friendly public transport system which could make an impact on the spatial legacy of apartheid in South African cities. What have the main impediments been to the implementation of this vision?
- What lessons can we learn from the implementation of Rea Vaya for the implementation of an integrated public transport system?
- In the context of taxi violence and other vested economic interests (including bus companies) can meaningful public transport reform be implemented, and what would it take (carrot and stick i.e. supportive incentives and enforcement)?
- What is needed to ensure appropriate rail devolution is implemented, and implemented efficiently and effectively for the public?

### Freight

- What is the current state of rail infrastructure? What are main impediments/binding constraints to fixing freight rail in South Africa?
- What are the impediments to coordination of logistics between freight rail, trucking, and ports? Does the planning for freight rail consider the broader logistics environment/network?
- The public procurement regime is currently under review with the Public Procurement Bill. In what way does the current system limit SOE's ability to develop and manage strategic public infrastructure/state assets, and what would assist SOEs in this regard (what would a more strategic regime involve/allow SOEs to do?)
- What is necessary to ensure that third-party access to the rail network is implemented effectively? What does Transnet need to do to secure private investment? What does this mean for Transnet in the short and long terms?
- The key capability required of the state is the ability to coordinate policy, planning, implementation – between levels and organisations within the state – and between state and private sectors. What limits coordination? How might we begin to improve coordination capability? Looking at Operation Vulindlela/Presidency, DOT, DPE, DPW, Transnet and now third-party rail operators.

### For both themes

- Improving the governance models for SOEs in South Africa: do boards have enough teeth and space to set the strategic direction for their SOEs, and how could this be improved? What would an appropriate shareholder model be for SOEs in SA look like?
- Related to the above is the question of leadership stability: there has been a large churn in leadership especially at Prasa over the last decade. How can the question of stability of leadership be addressed?
- Is SA a developmental state? Is it trying to be one? What role/purpose would passenger rail and freight rail play for a developmental state – and are Transnet and Prasa able to play that role?

# Security Cluster and the Criminal Justice System

The third AfDG dialogue was held in Johannesburg on 26 January 2023 on the topic “Security Cluster and the Criminal Justice System”. The discussion focused on the capacity of the security cluster in the South African state, looking beyond a narrow anti-corruption lens to focus more broadly on the institutional arrangement of law enforcement bodies, and how they are able to respond to the increasing sophistication of organised crime, and the criminalisation of the state.

The panel comprised the following speakers:

- **Advocate Doctor Mashabane**, Director-General of the Department of Justice and Constitutional Development
- **Ziyanda Stuurman**, Author of *Can We Be Safe? The Future of Policing in South Africa*
- **Gareth Newham**, Head of Justice & Violence Prevention at the Institute for Security Studies
- **Anton du Plessis**, Deputy National Director of Public Prosecutions responsible for Operations, Strategy and Compliance.

Around 30 people attended the dialogue in person, with 32 more joining online. The discussion was facilitated by **Firoz Cachalia**, chair of the National Anti-Corruption Advisory Council.

This report summarises the discussion, which was frank, intimate, and governed by the Chatham House Rule – i.e. the statements made have not been attributed to any particular speaker.

## HIGHLIGHTS FROM THE DISCUSSION

- It is widely acknowledged that the state is failing to ensure the safety of its people. Law enforcement agencies are not only failing to prevent crimes, but are failing to investigate and bring to account the perpetrators of these crimes. Violent crime is not stabilising and is in fact getting demonstrably, measurably worse. There has been a 62% increase in murders and 32% increase in armed robberies since 2012. In 2012, the SAPS could solve 31% of murders; last year the clearance rate for murders was 14.5%. There has been 53% decline in detection for robberies; last year they could only solve 10%. The detection rate for all violent crime categories has dropped by 32.6%. This means that 86% of murder cases and 90% of robbery cases went unsolved last year.

- In addition to violent crime, organised crime is on the rise. The recent Global Initiative Against Crime Report labelled organised crime as an existential threat to the state because it is directly competing with the state for state power. Organised crime in South Africa is extremely fragmented, with an array of criminal networks across various industries and sectors, including the police, and our law enforcement institutions do not have the necessary capabilities for addressing these crimes.
- The criminal justice system, and in particular the SAPS, lacks many of the basic capabilities necessary for delivering safety and security, including the investigation and prosecution of crimes. The system is currently very vulnerable to targeting by criminals.
- Capabilities need to be built across the system, as law enforcement institutions are dependent on one another – for example, the NPA cannot effectively prosecute crimes if SAPS does not have the ability to properly investigate them. Institutional linkages must be strengthened and the mandates of each component clearly articulated.
- The state has failed to set clear priorities for law enforcement agencies. Without clear priorities, we cannot know which capabilities and resources are required and how to use them. The Justice and Crime Prevention Security Cluster should be seized initially with two priorities: the murder rate and organised crime. Four key priorities in terms of organised crime were suggested by a panellist: extortion and kidnapping for ransom (which is likely to grow substantially), illicit mining, crime against critical infrastructure, and cyber criminality.
- While some institutional reforms have strengthened the NPA, there is no real reform agenda for the SAPS and for the criminal justice system as a whole. There is abundant and high-quality data and research which can be used to formulate crime-fighting strategies and plans for institutional reform, but it is not being used.
- The SAPS budget has grown dramatically over time while its performance has only worsened. The organisation is dysfunctional and not fit for purpose. The allocation of more resources will not address the core problems. The SAPS is top-heavy, its leadership ranks inflated by automatic promotions, and has been experiencing a serial crisis at the level of top management. Political interference is common, as many senior officials are engaged in corrupt relationships with politicians and/or criminals. One quarter of the management are unqualified for their positions. Critical reforms are needed to restructure the institution, including reforming appointment/dismissal processes as well as internal disciplinary systems.
- Socio-economic factors contribute substantially to crime, and also affect the police service (and criminal justice system). A holistic crime prevention strategy must take this into account, and enhance the role of the community in combatting crime. Law enforcement institutions need buy-in and trust from the communities they serve.
- One of the challenges faced by the criminal justice system is a very fragmented legislative and regulatory environment. For example, the Criminal Procedures Act, which has remained largely unchanged since 1977, creates significant challenges for criminal justice institutions and for the system as a whole.
- Law enforcement institutions need political support to advocate for resources and to protect their independence.
- The weakness of Crime Intelligence is a major challenge. Preventative intelligence prepares the system for proactive approaches to solving the root causes and enables the criminal justice system to be ahead of evolving capabilities of criminal syndicates.



## SUMMARY OF DISCUSSIONS

### On the changing nature of crime

#### *Violence and murder*

A major challenge we are facing is violence, which is an incredibly complex issue. The starkest indicator of this is the murder rates. For the first 18 years of our democracy the murder rate dropped by about 54%. The rate of 67 murders per 100,000 dropped to 30 murders per 100,000 by 2012. It has since increased by 53%. The rate is now 46 murders per 100 000, possibly higher given the murder statistics in the last two quarters that we have data for. There are almost 10,000 more people murdered last year than in 2012, the chance of being murdered is up by 53 percent, and there 26 murders every day. Violent crime, and in particular murder, is not stabilising and is in fact getting demonstrably, measurably worse. The state is failing to achieve safety for South Africans. Although the state has detailed data on where, when, and how murders are committed, it has no murder reduction strategy.

#### *Organised crime*

Organised criminality is one of the biggest risks we are facing as a country. State capture is a manifestation of it, but the nature and extent of organised crime and how it is infiltrating every aspect of South African life, and impacting the most on the poorest and the most vulnerable in this country, has to be tackled and requires significant re-focusing and re-prioritisation by law enforcement institutions.

The recent Global Initiative Against Crime Report did a detailed risk assessment of organised crime in South Africa. It labelled organised crime as an existential threat to the state because it is directly competing with the state for state power. Organised crime uses corruption to remove state authority away from the state and the public into groups of individuals and networks for their own personal and group gain. Organised crime in South Africa is extremely fragmented, with an array of criminal networks across various industries and sectors, including the police. The weakness of the criminal justice system has encouraged the growth of organised crime and allowed it to flourish.

#### *The capability of the criminal justice system to respond to these changes*

The fundamental basis of society is safety and stability – which cannot be achieved without a strong rule of law. This is what allows for economic activity and development to function. In the absence of rules, and where there are no strong law enforcement institutions, individuals and groups come into power who are not guided by the Constitution or by a legal framework. We can't succeed as a country if we do not improve the criminal justice system and get a strong sense amongst the public that it is legitimate, that it is functional, and that it provides justice to enough people.

Although we cannot prosecute our way out of the current crisis, the criminal justice system does play a preventative role and is not purely reactive. Holding criminals accountable does change the way that people behave. Criminals are attacking a system that is vulnerable after state capture, and they are exploiting the weaknesses in the criminal justice system at a time when we can afford it the least. It is therefore critical to demonstrate that the system can respond to these threats.

There are currently around 30 'priority crimes', and very little agreement in government on what the true priorities should be, which shows a fundamental misunderstanding of how to prioritise and focus the resources of the criminal justice system. Without clear priorities, we cannot



know which capabilities and resources are required and how to use them. It was suggested that the Justice and Crime Prevention Security Cluster should be seized initially with two priorities: the murder rate and organised crime. The panel suggested there are four priorities in terms of organised crime: extortion and kidnapping for ransom (which is likely to grow substantially), illicit mining, crime against critical infrastructure, and, in the near future, cyber criminality.

Most police personnel are not trained or equipped to deal with organised crime, which is significantly more complex than the 'standard' crimes police are trained to address. Out of 5,000 NPA prosecutors, only 500 have the capability to deal with these complex matters. The SAPS and NPA need to build skills and capabilities through training, capacity development programs, twinning programmes, mentorship etc. Capabilities need to be built across the system, as law enforcement institutions are dependent on one another – for example, the NPA cannot effectively prosecute crimes if SAPS does not have the ability to properly investigate them. Institutional linkages must be strengthened and the mandates of each component clearly articulated.

Community-based crimes that directly impact on people's sense of personal security also need to be effectively dealt with. Unfortunately, the reality of the situation is that the SAPS is not effectively addressing either complex crimes or community-based crimes.

Law enforcement institutions also need political support to advocate for resources, protect their independence, push bold and innovative measures, and give them the space to be able to do what they need to do to move forward.

### **On the capability of the police**

The criminal justice system, and in particular the SAPS, lacks many of the basic capabilities that are necessary for it to fulfil its mandate.

Over the last 11 years, the budget of the police has grown by 72% from R58 billion to the current R100 billion rand. We would expect the 72% increase in the budget would improve the police's ability to solve crimes rather than lessen it, but that is not what has occurred. The police's ability to solve murders has dropped by 55%. In 2012, it could solve 31% of murders; last year the clearance rate for murders was 14.5%. There has been 53% decline in detection for robberies; last year they could only solve 10% of armed robberies. The detection rate for all violent crime categories has dropped by 32.6%. This means that 86% of murder cases and 90% of robbery cases went unsolved last year. If you are attacked by an armed gang or an individual, 90% of the time that person won't even get onto the docket.

There are positive examples of crime-fighting strategies that have worked in South Africa. In two years, following a very basic strategy, Gauteng's aggravated robbery strategy reduced car hijacking in the province by 32%. It was by targeted intelligence, supported with focused investigations, supported by forensics and well-placed visible policing or rapid response vehicles. Gauteng managed to increase the arrest rate by 100% within the first six months of that strategy, and arrested the right people and got those cases through the court. This exercise revealed that prior to the implementation of the strategy, a very small percentage of cases were actually being investigated and that there was little-to-no evidence being collected on community-based crimes. Since 2012, when that strategy was stopped, car hijacking has gone up 122%.

Despite the 72% increase of budget, the police force has lost 11% of its personnel. Lower ranks are entitled to an automatic promotion every four years, just for coming to work. This has led to a heavily bloated police leadership and a loss of personnel at lower levels.

The absence of crime intelligence in police matters is a critical issue that needs to be addressed on a systemic level. It creates a massive gap in terms of understanding the crime situation in South Africa. Preventative intelligence prepares the system for proactive approaches to solving the root causes and enables the criminal justice system to be ahead of evolving capabilities of criminal syndicates.

There is a toxic culture within the police service, which is highly politicised, and political interference is rife. The bloated leadership level is difficult to address because many high-level officials are protected by politicians who ensure that they are not removed or reassigned. Police officers and the SAPS itself have also been implicated in state capture and corruption, and in particular in protecting individuals who have been involved in wrongdoing.

### **On police reform**

State capability, co-ordination, and accountability are key. These institutions need to get the best people across the public and private sector to assist them, and should be monitored on a quarterly basis to see what are they doing in which community, how they are using available evidence to understand the situation in each community, and how they are using the available resources to do that. If these institutions can bring the violent crime rate down, prevention programmes would start working better because people are not too scared to get involved.

There is a serial crisis of the top management in SAPS. One solution is to revitalise the top leadership, which will require reforming appointment processes in the sector. A necessary first step would be a restructuring exercise. It is vital to assess who was appointed, when they were appointed, how were they appointed, and whether they have the necessary skills and abilities for their position.

The NDP recommends an independent panel to appoint the national commissioners and deputy national commissioners following a transparent, merit-based process. This recommendation has not been implemented. Since then, there have been a whole range of other recommendations from Khayelitsha Commission of Enquiry, the Marikana Commission of Enquiry, the Turnaround Detective Strategy, the White Paper on Policing and others; 90% of those recommendations have simply not even been considered by the police. There is abundant and high-quality data and research which can be used to formulate crime-fighting strategies and plans for institutional reform, but it is not being used.

There have been many investigations into the criminal justice system over the last 20 years, and there are many proposed solutions that would be very effective in reforming the police. Those in authority positions who have the power and resources to implement these reforms have not been held accountable for failing to do so. Effectively addressing these failures at the senior level would ensure that restructuring the institution at the lower levels can take place, and ensure the re-establishment of command and control.

However this cannot be solved by making a few appointments to heads of institutions. There needs to be an institutional reform program, built on organisational change management expertise. Leaders in law enforcement institutions need to have people working with them, who have the expertise to look at the big picture, look at international best practice, offer solutions that are practical to the managers, and then help them through the process. Really bold action to clean up the police force may require legislative changes in the criminal justice system.

Some of this has taken place in the NPA, but the SAPS remains a complete blind spot to government, and the Presidency in particular. It is the biggest law enforcement agency and reaches every corner of this country – and yet no significant reforms have taken place or have even been proposed.

There is no real strategy for restructuring and reforming the police service – the last strategy that has been adopted, Agreement 1 of 2020, which deals with the matching and placement of personnel, is still outstanding. The police service is so big that it will prove very difficult to reform. There have been examples post-1994 of effective re-selection of personnel in the police service. The public order police capacity was entirely re-selected – every single person had to apply and be interviewed, their records were scrutinised etc. Today that could be supplemented by lifestyle and/or tax audits.

There has been a near complete collapse of internal discipline in the SAPS. Six years ago the SAPS was managing just under 6,000 disciplinary hearings a year; that has dropped to 1,300 hearings last year. The most likely outcome of a disciplinary hearing, where there has been investigation and there is prima facie evidence of wrongdoing, is a written warning; the least likely is outcome is being fired. Even if only 10% of police officials are corrupt or otherwise involved in wrongdoing, that means that there are 18,000 individuals that shouldn't be employed in the SAPS. The disciplinary system can't even dismiss 200 a year.

There is an expedited disciplinary process in the SAPS regulations that can be used to quickly dismiss police officers. It was written so that when police officers were caught red-handed in criminal activities, the SAPS didn't have to spend six to nine months paying them before they could finally get rid of them. They can also suspend people without pay. However this is used extremely selectively – and often in order to remove specific individuals for political reasons. There are also currently attempts to renegotiate to remove that capacity because there some generals are worried it might be used against them.

The re-establishment of command and control should be a priority. However this is impossible as long as the top echelon of police leadership – the board of commissioners of police, lieutenant generals etc – are not able to agree on what that means. Some are working with organised crime, some are waiting to retire and don't care what happens in the institution, and some are only in leadership positions due to the organisation's dysfunction. Police leaders have their own networks and fiefdoms, and there is a systemically toxic and dysfunctional environment. One quarter of the senior management echelon do not have the minimum qualifications for the posts that they hold.

The NPA has put in place four 'pillars' – independence, professionalism, accountability and credibility – which are built into every work plan of every person within the organisation, as well as divisional work plans etc. There is a clear commitment from leadership to uphold those values and drive change in the organisation. This is a key first step in changing institutional culture within such organisations.

### **On the socio-economic causes and consequences of crime**

The 'social' parts of the national crime prevention strategy – such as community mobilisation and the engagement of stakeholders in the right against crime – need to be emphasised. Poverty and under-employment, as well as other socio-economic challenges, contribute significantly to crime and will need to be tackled in order to make progress.

The state of the police is also a product of our socio-economic issues. The police are also a driver of violent crime and a contributor to organised crime in South Africa; they are both a cause and consequence. The pervasive social problems in our communities are mirrored within the police service and other parts of the criminal justice system. Many police officers come from low-income communities, without access to a high level of education, where policing is not a first-choice career. They often bring with them a sense of justice that is very different from the constitutional principles on which the police system is based, and go into police stations

characterized by a toxic institutional culture that incentivises corruption and wrongdoing. Low-level corruption has become a way of life in the police service. The breakdown in the social behaviour of police officers needs to be addressed – disciplinary and prosecution mechanisms for dealing with lower-level issues in the police need to be reformed and bolstered in order to change the institutional culture.

Police work should not be seen as a guaranteed pay cheque but as part of the public service with a duty to deliver safety to the people. A base of ethics, including professionalism, must be strengthened and introduced into the public service system, including law enforcement.

These reforms will require the trust of the public. Afro Barometer 2021 showed that 24% of South Africans trust police only somewhat or a little. The figures are probably lower following the July 2021 riots. The police need to reach out to communities and form better connections in order to rebuild trust between police officers and the communities they serve. These are significant challenges and change won't happen overnight, but building trust, both within the police service and outside of it, and within communities is really important to any reform process, if we want to achieve long-lasting culture change within the police.

Furthermore, we need to reckon with how crime and the failure of the criminal justice system has changed society and common perceptions of justice. People have lost faith in the justice system due to its dysfunctionality. As people have felt unprotected by the formal institutions charged with safety and justice, they have turned to other conceptions of justice, including vigilantism, which can be exclusionary and dangerous. It is important to consider how crime and insecurity impact communities and erode the legitimacy of the justice system, and what that might mean for the common understanding of 'justice' in our society.

The historical foundation of our criminal justice system is based on being exclusively state led and focused on police reactions, arrests and so on. We need to re-orient our concept of crime prevention to include the role of the socio-economic challenges in exacerbating the challenges of crime that we have, and to involve civil society and non-state actors in addressing crime in a holistic fashion.

### **On the legislative environment**

One of the challenges faced by the criminal justice system is a very fragmented legislative and regulatory environment. The Department of Justice is currently busy overhauling the Criminal Procedures Act, which has remained largely unchanged since 1977. The Act contains a number of critical weaknesses, including, for example, the potential for the abuse of private prosecutions. A key problem is cash bail amounts, which are unaffordable for a substantial amount of people who have been granted bail – this leads to significant overcrowding in correctional services facilities and unacceptably long detainment for those awaiting trial. De-criminalisation of certain offences could also reduce the burden on the criminal justice system.

Addressing crime requires a holistic approach. State institutions have historically worked in silos, which has created significant coordination problems and has reduced the efficacy of crime reduction strategies. The District Development Model, if effectively implemented, could help addressing this problem.

## QUESTIONS TO GUIDE FUTURE DELIBERATION

### Dialogue series: framing questions

- What are the medium and long term priorities for the state in the transport sector in South Africa? What are the key outcomes the state needs to facilitate or deliver?
- What is the current state of the state to deliver on these?
- What kinds of capabilities does the state need to develop to support these outcomes?
- How could these capabilities be developed or enhanced?
- What immediate actions could be taken?

### *Security cluster and the criminal justice system*

- How can we understand the changing nature of crime in SA, and is the criminal justice system appropriately capacitated to respond to it?
- Do law enforcement institutions have a strategy for dealing with the changing nature of crime? How do they plan to deal with more complex organised crime networks, money laundering etc? What capabilities do they need (skills, resources) – and are they able to acquire these capabilities?
- What is the state of co-ordination and collaboration between institutions within the criminal justice system? What is working and what is not? What are the impediments to effective coordination? How could this be improved – learning from the various joint task teams that have failed? How can these institutions avoid duplication of efforts and overlap?
- What is the state of the political-administrative interface in law enforcement? How do the independent agencies (like the NPA, SAPS) manage relationships with the Departments of Justice and Police? What support do they require – and, at the same time, how do they safeguard their independence?
- There has been a lot of focus on high-profile, national corruption cases in law enforcement. But at a more basic level, is the SAPS able to deliver on its primary mandate – keeping people safe? Does the SAPS have the necessary capabilities? What needs to happen to ensure that it does?
- Our previous dialogues have highlighted a major security weakness – state assets and infrastructure are highly vulnerable to theft and destruction and the state seems unable to secure them. Is there a strategy to address these problems? What are the capabilities that need to be developed? (Some SOEs are wanting to build their own investigative capacities – being given expanded powers – in the face of weaknesses in the wider system. Would this lead to an even greater fragmentation of law enforcement environment – but perhaps it is needed in the face of the weak possibilities for meaningful reform to policing in SA?)
- Capability building seems to be focused on the national level – what needs to happen at provincial/local levels? Real coordination is needed at provincial / regional level – practical coordination around specific projects and cases – what could facilitate this?
- The president has made much of his process of appointing the NDPP. But this is not a legal requirement and the president (and minister) still has a lot of power to appoint heads of institutions. Do we need to formalise a more robust appointment process and extend it to other positions such as police commissioner? Do we need other reforms regarding appointments?
- Much of the discussion about state capture in law enforcement institutions has highlighted the loss of skilled and experienced people. What has been done to address this/to (re) acquire critical skills?

# Water security and urban governance

The fourth AfDG dialogue was held in Johannesburg on 17 April 2023 on the topic “Water security and urban governance”. Among other issues, the discussion explored the state of local government and its impact on water and sanitation services, how to strengthen municipal systems for water delivery, public procurement and water infrastructure, and future state capabilities required to manage the impacts of climate change. Around 30 people attended the dialogue in person, with ten more joining online. The discussion was facilitated by the AfDG’s Pam Yako. The panel comprised the following speakers:

- **Dr Sean Phillips**, DG in the Department of Water & Sanitation
- **Dr Jennifer Molwantwa**, CEO of the Water Research Commission
- **Lubabalo Luyaba**, SALGA water specialist
- **Gillian Maree**, GCRO senior researcher

## HIGHLIGHTS FROM THE DISCUSSION

- The institutional arrangements in the water sector are complex, and this complexity is further complicated by overlapping and duplicating mandates within the various spheres of government for basic service delivery.
- Legislation creates a number of checks and balances for ensuring accountability and performance. However, many of these fail in practice – for example, municipalities often are appointed as both Water Service Authorities and Water Services Providers, compromising a key oversight function.
- The performance of municipal water and sanitation services is inextricably linked to the overall management, governance, and performance of a municipality. Most municipalities are performing very poorly. The provincial and national spheres have not been able to support municipalities or to intervene when water management fails. Section 63 of the Water Services Act needs to be amended to make it feasible for the national department to intervene where municipalities are failing.
- This amendment is needed to strengthen national regulatory function, performed by the Department of Water and Sanitation (DWS), which has been relatively weak.
- A key problem is the general failure of the local government fiscal framework. Each municipality is meant to fund water and sanitation from their equitable share and revenue from the sale of water. This has not worked, as many municipalities do not bring in enough revenue to cover the costs of providing these services and the equitable share is often used for other purposes. Many municipalities are running water at a loss and building up unsustainable debt levels which are undermining the viability of the overall national water project. Reviewing the local government fiscal framework is key in addressing these issues.

- Additionally, revenue from water sales can be decided upon by the council to be used for any purpose. Water cannot be run as a business, as envisaged by the fiscal framework, when there is no relationship between revenue collected and the budgets allocated to water.
- Corruption is a significant problem as there is substantial capital expenditure and very lucrative contracts in all parts of the water sector. The DWS and various water boards have been targets of state capture. Reform of appointment processes for water boards and other entities is a key part of addressing corruption, as is collaboration with law enforcement agencies and a consistent zero-tolerance approach.
- The complexity and opacity of the water sector is a concern. The average citizen does not understand the institutional arrangements involved, and poor communication from water entities exacerbates this confusion. Water entities need to develop communication strategies in order to engage with users, and to share data and foster openness with others in the space, such as researchers.
- There has been slow progress on critical issues due to the large number of leadership changes in the DWS. Political instability and leadership churn have been major hurdles. Water service institutions are often poorly capacitated. They lack the highly technical expertise required to fulfil their functions. We need to focus on appointment reform, performance management and professionalisation within water institutions.
- Increased private sector participation could assist in bridging the capability gap, but the public sector lacks the capacity to effectively manage private sector partnerships. Regulatory and institutional reforms could make this easier for water management entities.
- South Africa is a water-stressed country with increasingly scarce water sources, of deteriorating quality. The management of water services in South Africa has failed to take sufficient account of the reality of limited water availability. Water issues need to be demystified in order to ensure that there is a greater appreciation of water scarcity and the consequences of climate change and environmental degradation.

## SUMMARY OF DISCUSSION

### On the institutional architecture of the sector

The institutional arrangements in the water sector are complex, and this complexity is further complicated by overlapping and duplicating mandates within the various spheres of government for basic service delivery.

According to the Constitution, water and sanitation is primarily a national and municipal function. The national department is responsible for water resources management planning, and for the catchment and storage of water in large quantities and for the transfer of water through bulk lines. The national department is responsible for national infrastructure such as dams and pipelines. It also has a regulatory function, and various regulatory responsibilities are given to the Minister. Lastly, the national department is responsible for international cooperation.

The purification and distribution of water to communities and businesses is generally a municipal function. The national government in terms of the Water Services Act has put Water Boards in place as a support mechanism to municipalities – while they fall under the national department, they perform a municipal function where there are economies of scale in terms of municipalities sharing bulk infrastructure through a Water Board.



The national department is also in the process of creating Catchment Management Agencies, which will be locally-based independent entities responsible for the catchment management function. Six have been created: two already in place, and another four to be in place by the end of 2023.

The Water Research Commission is responsible for research in the sector. There are also voluntary Water User Associations which are established when water users work together to collaborate, often in sectors such as mining and irrigation where economies of scale can benefit groups of users.

DWS has drafted a bill for the creation of a national water resource infrastructure agency (NWRIA). The current tool for raising finance for water resource infrastructure is the Trans-Caledon Tunnel Authority (TCTA), which is limited – it does not have any assets and borrows on a project finance basis with only an implicit National Treasury guarantee. The idea is to create an agency with a substantial balance sheet which would be in a good position to borrow money and invest in infrastructure. The bill has gone through Cabinet and is currently out for public consultation. Once the NWRIA is established, all assets currently owned by DWS will be transferred to it, as well as the revenue streams associated with those assets. The water trading entity in the DWS, which receives revenue from the sale of raw water, will be transferred, as well as the TCTA. The NWRIA will therefore amalgamate three separate entities and serve to rationalize the infrastructure management and financing function within one institution.

### **On the performance of municipalities**

The performance of municipal water and sanitation services is inextricably linked to the overall management, governance, and performance of a municipality. The ability of households to access these services is determined to a significant extent by where they live. The decentralisation of infrastructure development, maintenance and the delivery of services effectively means access is determined by the capability (or lack thereof) of a particular municipality.

The Water Services Act, along with other legislation, distinguishes between Water Service Authorities (WSAs) and Water Service Providers (WSPs). The interpretation of that legislation to date has been that the Minister of Cooperative Governance and Traditional Affairs (COGTA) appoints the municipalities as WSAs. No one can sell water in a municipality unless they are approved as a Water Services Provider by the WSA. What has happened, post 1994, is that almost every single municipality in the country has appointed itself as the WSP, and is the only WSP in the municipality, so the municipality is both WSA and WSP. This has created significant challenges as WSAs are supposed to monitor the WSPs to ensure they meet minimum standards and can withdraw approval if those standards are not being met. In that regards there has been a widespread failure of WSAs to perform that monitoring and regulatory function.

While international best practice is for water services at the municipal level to be professionally run at some degree of arm's length from the municipal political leadership, in South Africa local political leadership is often very closely involved in the day-to-day operations of water services. The water services function is not ring-fenced within the municipality, and in almost all cases the water and sanitation department is not responsible for billing and revenue collection, so there is no relationship between the amount of revenue collected and the amount of budget allocated to the water and sanitation function. The incentives are wrong for the managers to optimise revenue collection and to make sure that expenditure is efficient. The understanding of roles and responsibilities of water authorities and water providers within municipalities is often unclear – even to their own support functions.



Although there is no mandate for provincial government to be involved in water provision, steps must be taken to involve this sphere of government. Water provision is essential for development, and the provincial or regional perspective must be considered. Involving provincial government in the conversation is important.

There has been a significant focus on the failures of local government. However, the provincial and national spheres have not been able to support municipalities or to intervene when water management fails. Mechanisms such as section 139 interventions are available to the national department but are rarely used – or have not been effective. The entire system is failing to support and strengthen local government, or to hold entities accountable for failures.

### **The regulatory framework**

The national regulation of water supply and sanitation has been relatively weak but plans are in place to strengthen this. National minimum norms and standards have been revised and expanded to include requirements for minimum qualifications and experience; the Integrated Regulatory Information System (IRIS) is being expanded into a publicly visible regulatory dashboard containing information from all available sources (blue drop, green drop, National Treasury data etc.), so that the state of water and sanitation in each municipality can be seen at a glance. The plan is for regional DWS officers to act on the basis of evidence in the dashboard and take consistent regulatory actions where there are concerns; standard operating processes and decision rules are being put in place in all regional offices to ensure consistency of regulatory actions.

The intention is also to amend Section 63 of the Water Services Act to enable the national minister to “take over” the water and sanitation function of a municipality if it has been repeatedly failing to meet national norms and standards and has not responded to interventions by provincial and national COGTA. Currently Section 63 interventions are unworkable and impractical because no municipality has a ring-fenced water and sanitation function – water and sanitation are integrated into the entire municipality. If the minister were to take over water and sanitation in a municipality, they would have to take over the entire supply chain management function, billing, and revenue collection etc. of the municipality. This could be open to a Constitutional challenge. Section 63 therefore needs to be revised to emphasise the national department’s role as a regulator, and to distinguish that role from the intervention role of COGTA. DWS means to clarify Section 63 such that if the minister takes over a WSA or WSP as a regulatory enforcement measure (and a last resort) that this includes taking over the whole function, including billing and revenue collection, supply chain, human resource management, etc.

The DWS is also considering amending the Water Services Act to introduce licensing of WSPs. In the electricity sector there is already licensing of municipalities to be electricity distributors, but many (if not most) municipalities are not meeting those licensing conditions, and the National Energy Regulator of South Africa (NERSA) is unable to do anything about it. If DWS adopts this system, an improved Section 63 – allowing the minister to intervene if a WSP does not meet the licensing conditions – would work well.

Another challenge is that the legislation and institutional arrangements in place do not necessarily account for spatial differences that may affect water services. The aim is to create an enabling environment, including appropriate by-laws and other regulations, that would ensure each area can provide a fit-for-purpose model of water delivery.

### **On the financing model and the true cost of water**

The provision of basic water services is fundamentally a welfare provision – water is a basic human right that the government is obligated to provide. This implies huge costs and responsibilities. But there is a financial crisis in the sector, and a key cause of this is the general failure of the municipal funding model to deliver on expectations.

The model of local government financing – that, aside from equitable share transfers, municipalities fund their operations by selling services – is complex and under serious pressure. Any conversations about paying for water, ring fencing budgets etc, need to reckon with this problem. There are powerful vested interests at play (the energy sector provides strong lessons for the water sector) and there is a need for alternative means of financing water provision. Municipalities must be at the centre of that discussion, but it is not going to be an easy one and it hasn't really started.

There is no robust fiscal framework for operations and maintenance. While services are supposed to be funded from the equitable share and revenues generated by the sale of water, the current financial model of municipalities is that those revenues can be decided upon by the council to be used for any purposes. The fiscal framework envisages water being run as a business, but this cannot be done effectively when there is no relationship between revenue collected and the budgets allocated to water.

Further, since services must be funded largely from own revenue, municipalities with the highest percentages of poor households tend to provide the lowest quality of service. Most municipalities cannot bring in enough revenue to cover the costs of providing these services. Many, if not most, municipalities are now running water at a loss. Unsustainable debt levels are undermining the financial viability of the overall national water system, and a review of the local government fiscal framework is key in addressing these issues.

Water is much more expensive than the end-user cost would suggest, and many don't realise the true cost of water. It is important for the state to establish that true cost and how the different institutions involved account for that cost. Our water system generally uses the same expensive water for drinking as for conveying waste – this could be an area where rethinking the water system could substantially change the true costs involved.

### **On corruption and trust**

Corruption is a significant problem as there is substantial capital expenditure and very lucrative contracts in all parts of the water sector. The DWS and various water boards have been targets of state capture. At the municipal level, corruption is a major reason for the deterioration of water and sanitation services. A range of Special Investigating Unit (SIU) investigations are ongoing and DWS implementing disciplinary action for financial mismanagement has resulted in a number of dismissals, including of a Deputy Director General. Reform of appointment processes for water boards and other entities is a key part of addressing corruption, as is collaboration with law enforcement agencies and a consistent zero-tolerance approach.

The opacity of the water sector is a concern. The average citizen does not understand the institutional arrangements involved, and poor communication from water entities exacerbates this confusion. Water entities need to develop communication strategies in order to engage with users, and to share data and foster openness with others in the space, such as researchers.

We are seeing rapidly increasing levels of dissatisfaction and distrust of government; trust levels are at the lowest point since the Gauteng City Region Observatory (GCRO) started monitoring this issue ten years ago. Increasingly, people don't believe that their water is clean: 12% of residents in Gauteng believe that their water is only sometimes clean, and about 2% believe it

is never clean – even though Gauteng’s drinking water is generally clean and high quality. People having been losing trust in state institutions and increasingly do not believe their drinking water is safe. In these environments, the lack of trust allows fake news and disinformation to multiply. More work is needed to give people confidence in the ability of government to provide water under difficult circumstances. Increasing transparency in the water delivery system can improve trust. Government needs to share information so that citizens can be informed and prepared, particularly as we are going to experience more shortages, droughts, flooding etc. Cities and other water service entities need to think about how to put that information out in the public as well as encouraging citizens to contribute and share data.

### **On the administration, state capacity and capabilities**

There has been slow progress on critical issues due to the large number of leadership changes in the DWS: a string of different ministers, and more than ten Directors-General (DGs) and acting DGs over a ten-year period. Every time there was a change in leadership, there was a review of all the strategies, which resulted in a hiatus in many key programmes such as the catchment management agency programme.

Institutional stability – at all levels, including local – is crucially important. Stability requires politicians to refrain from intervening in administrative issues and to exercise their oversight functions with integrity; it requires stable relationships between politicians and administrators, in particular the DG or the head of department; and also the continuity of management in the department. Politicians interfering with the functions of the administration can break systems and procedures and ways of working, which are all part of the capability equation.

Where there have been gains, there needs to be continued, sustainable improvement, so that things do not fall apart when one individual is removed, or they walk away.

Local water service institutions are often poorly capacitated. They lack the highly technical expertise required to fulfil their functions. Due to this outsourcing has become routine, and project management has become a vital function within these institutions. When the project management function is also poorly capacitated, water service institutions are unable to appoint competent providers and cannot hold them accountable for poor performance.

A focus is thus needed on appointment reform, performance management and professionalisation within water institutions. Are the right people employed and can they do the job? If they can’t, can they be capacitated or do they need to be removed? There are key performance management interventions that are not particularly complex but aren’t being done due to inertia in these institutions.

Institutional culture is also an important factor. Poor leadership, churn at senior levels, corruption and other issues have affected the morale of officials in state entities, leading to the further weakening of these institutions. These often-unseen dynamics are important to understand and improve in order to build capable institutions.

Professionalization of the public sector is key and must be expedited. Performance management and consequence management for poor performers in the water services must be prioritised and an environment created where professions are respected. Many engineers and other experts don’t want to work for municipalities because their views will not be treated with respect by the political and/or administrative leadership.

Building capacity needs to happen at all levels of government. The South African Local Government Association (SALGA), working with DWS, has developed a five-year councillor

development strategy to continuously capacitate councillors. If municipal administration is similarly capacitated, then administrators and councillors can work together to improve service delivery.

The focus must not be exclusively on the science or the engineering, but also on building an understanding of the political dimensions. In South Africa's constitutional democracy, trying to find solutions that circumvent the role of political leadership will not work. The question is how to get councils and political role-players to effectively fulfil their function.

### **On private sector and community participation**

While there are individuals and companies within the private sector with critically needed skills and capabilities who are willing to assist the state in the realm of water provision, there are still some barriers to increasing private sector participation. The main challenge is the public sector's capacity, at all levels, to develop and manage these partnerships, to bring bankable projects to the market etc. It makes sense to bring in private sector finance (banks and pension funds want to invest much more in public infrastructure), and their expertise should be used but it needs to be properly managed. There are many examples internationally of badly managed private sector engagement – the UK, for example, once a beacon of effective private sector engagement is currently experiencing serious problems due to poorly regulated private water providers.

The Public-Private Partnership (PPP) framework, as regulated by Treasury, is a major hurdle. It is a long and cumbersome process that is highly regulated which, in practice, makes it almost impossible for water institutions to enter into PPP projects. The Municipal Systems Act also creates significant obstacles. There is very little capacity within departments and municipalities to design a PPP, with all the required financial modelling, and contract with the private sector. These legislative "blockages" mean that institutions are incentivized to rely on their own internal capacity, which is simply not sufficient to achieve all that needs to be done. Amendments to the legislation and/or regulations to ease the burden could make PPPs more feasible. In addition, a specialist water-specific PPP unit could provide financial expertise, undertake feasibility studies and other forms of support to municipalities to help them enter into PPPs. The DWS has entered into a partnership with SALGA and the Development Bank of Southern Africa (DBSA) to create a water partnerships office, which could fulfil such a function.

Some community groups, frustrated with service delivery failures, have started their own initiatives to provide water and sanitation services. Municipalities and state entities generally discourage this as a "parallel governance system" although community water committees are provided for in legislation. There is scope to work with communities who, with support, can help to operate their local borehole supplies etc.

### **On water scarcity and environmental threats**

South Africa is a water-stressed country with increasingly scarce surface water sources, of deteriorating quality. To date, the management of water services in South Africa has failed to take sufficient account of the reality of limited water availability.

There is low awareness of the scarcity of water in South Africa, but this can change very quickly if the messaging is correct and comes from the right people/institutions. There is a need to incentivise water conservation and ensure that users know about existing incentives.

Given water scarcity and climate change, water institutions in the state need to start talking about water conservation and critical issues such as underground storage, conjunctive use, groundwater re-charge etc. The research has been done but officials in these institutions are generally unable to engage on these issues at the necessary level.

Water issues need to be de-mystified in order to ensure that there is a greater appreciation of water scarcity and the consequences of climate change and environmental degradation. There is a need for more awareness about settlement patterns and climate change impacts in order to ensure that settlements are not built in the path of flood lines or other dangerous areas – as was seen in the KZN flood. Municipalities need to work together with councillors and communities to ensure that people don't build in these areas.

Water scarcity cannot be addressed simply by supplementing water resources (by e.g. desalination plants) without focusing on conservation – both will be needed. If we don't address the looming climate crisis, the consequences will be dire.

### **On perceptions of water**

Our understanding of 'the resource' needs to be framed in terms of how we use it and why we want it. For example, Gauteng is growing rapidly (by approximately 1.5 million people every five years) and much of this development is densification, infill etc. This comes with its own infrastructural challenges that need to be addressed.

We need to start asking what people want from infrastructure and water. How is water a tool for driving social mobility and economic development? What innovations and alternative models of development can meet these needs?

## **QUESTIONS TO GUIDE FUTURE DELIBERATION**

### *Dialogue series: framing questions*

- What are the medium and long term priorities for the state in South Africa? What are the key outcomes the state needs to facilitate or deliver?
- What is the current state of the state to deliver on these?
- What kinds of capabilities does the state need to develop to support these outcomes?
- How could these capabilities be developed or enhanced?
- What immediate actions could be taken?

### *Institutional arrangements*

- What is the relationship between national government, municipalities and water boards? What challenges does this create for service delivery? What capabilities are each institution supposed to bring to the table?
- Who is ultimately responsible/accountable for the oversight of water and sanitation delivery in municipalities?
- DWS has access to an effective intervention structure that it could make use of (Section 63 of the Water Services Act, which effectively means it can both initiate and oversee an S 139(1) intervention at its own discretion.) but it is rarely used. Why is this the case? Could an increased use of Section 63 improve outcomes and accountability for failing municipalities?
- What role does leadership play in engineering change and sustainability in delivery water?

### *Affordable universal access & free basic services*

- How does the provision of FBS (water specifically) work in reality? What is the reality of citizens' access to water? Do households actually receive the minimum amount of free water they are entitled to?
- The total number of registered indigent households (fewer than 3 million) bears no resemblance to actual poverty levels, but households can only access FBS if they are registered. What does it take for a household to register with a municipality as 'indigent' and is this process accessible and effective?
- Is the amount of free water (6kl) sufficient to meet the needs of most households? (Research suggests that the minimum basic requirement for households is approximately twice as much water (10kl) as the current allowance.)
- In reality, the free services only meet the requirements of a small proportion of households. Most poor households, therefore, have to pay for all or most of their municipal services. Are these costs actually affordable?
- What can be done to improve access to free basic services? Is the FBS model viable or do we need to consider alternative models for ensuring universal access?

### *Municipal capabilities*

- What are the binding constraints on municipal service delivery? What are the key capabilities that need to be built?
- Procurement and supply chain management play a huge role in service delivery at both national and municipal levels. What are the current challenges in the procurement system? In light of the ongoing reform process (eg. the new Bill), what reforms would improve the management of water services?
- There is a serious financial crisis in the water and sanitation sector as a whole, and a key driver of this crisis is the general failure of the municipal funding model to deliver to expectations. What has gone wrong with the municipal funding model that we have arrived in this situation? What alternative models may deliver better results?
- How can municipalities deal with the infrastructure backlog? What might a new funding model look like? What is the role of DWS here?

### *Environmental concerns*

- What are the capabilities that municipalities (and water boards, and the DWS) will need to manage water scarcity in the future? What do they need to be able to adapt to the impact of climate change, building the necessary resilience and forward planning?
- This discussion did not deal with sanitation and the management of sanitation and wastewater services which have significant impacts on the environment and water availability as well as on public health. Given the complexities and importance of sanitation services, what are the priorities for action in this area?



# Synthesis Workshop: On State Capacity

**T**he fifth AfDG dialogue was held in Johannesburg on 23 May 2023. This was a synthesis workshop that brought together the core themes discussed at our previous dialogues and took a close look at capacity and capabilities across the state.

The panel comprised the following speakers:

- **Prof Somadoda Fikeni**, Chairperson of the Public Service Commission.
- **Prof Anne Mc Lennan**, visiting associate professor at the Wits School of Governance, and a senior associate at the Higher Education Leadership and Management (HELM) Programme.
- **Dr Crispian Oliver**, Executive Director of the Presidential Climate Commission, and member of the AFDG Management Committee.
- **Rudi Dicks**, Head of the Project Management Office in the Presidency.

Dr Sarah Meny-Gibert from PARI provided an overview of the previous dialogues and raised some questions for discussion on the topic of state capacity in South Africa. That overview is included in this report.

Around 40 people attended the dialogue in person, with 100 more joining online. The discussion was facilitated by the AfDG's Dipak Patel.

This report summarises the discussion, which was frank, intimate, and governed by the Chatham House Rule – i.e. the statements made have not been attributed to any particular speaker.

## SYNTHESIS OF PREVIOUS DIALOGUES

### Summary address by PARI:

We have had four previous dialogues – on the energy sector and the just transition, on passenger and freight rail, on the criminal justice sector and policing in particular, and on urban governance and water security. Key themes emerged across all four dialogues – i.e. critical issues that the state must address:

**The first is to address the growing impact of organised crime on our communities, businesses, and on our public infrastructure.** Public infrastructures in the energy and transport sectors are particularly vulnerable. Law enforcement (especially in areas such as crime intelligence) is not fit-for-purpose (and even implicated in some of this crime). Building this capacity is urgently



needed, through police appointment reform and other efforts. The criminal justice dialogue also highlighted successful efforts to re-build capabilities – in, for example, the NPA.

**Second, major investments in, and capabilities for, public infrastructure are needed.** Old problems remain – the need to develop a transport system that can address the spatial legacies of apartheid; and new challenges have emerged: we need to massively expand the transmission grid to support a restructured energy sector. We also urgently need to recapitalise our local government infrastructure. The current local government fiscal framework will not facilitate this. We are passing on the burden of this model to the poor. New and innovative thinking is needed to generate vibrant local state capabilities and sustainable resourcing for the most important part of the state from the point of view of citizens.

**State capture, and corruption more widely, was a backdrop to all discussions.** State capture has impacted the sustainability of our SOEs and put enormous strain on the fiscus. The Zondo Commission highlighted that board appointment processes need reform, and flowing from this, a clearer framework for appointing executive teams.

**The mandate and governance of our SOEs needs to be addressed.** We heard in the dialogues of positive results from the appointment of new boards, and new management, but there is a deeper crisis to address, and new leaders are having to grapple with significant institutional legacies from the height of state capture, as we heard – for example – in the transport dialogue. We need to provide SOEs with a clear – and not overburdened – policy mandate and a clear outline of how the state best exercises its policy imperative in relation to the strategic direction of our SOEs.

**How was state capability understood?** Implicit in much of the discussion was an understanding that state capability is not simply reducible to administrative-bureaucratic attributes, but is about a state that can get things done. Following many scholars, what was implicitly envisioned in these discussions is a state that can ‘reach into society’ – coordinate, support, and incentivize economic and social actors around a common set of goals.

**Supporting a strategic orientation amongst public sector managers:** A key theme running through all dialogues was the need to support senior public sector managers to make bold decisions – to broker complex procurement projects, for example, to plan and develop ambitious socio-economic programmes. Some commentators at the dialogues noted that our planning, budgeting, and procurement regimes do not adequately support this more strategic orientation. And while some senior public servants feel strangled by compliance, others have taken refuge in it. PARI’s sociological work on the public administration has shown that keeping one’s head down and ticking boxes is an understandable reaction in an organisational environment of risk and instability.

**The state and its orientation to wider society:** This environment described above has contributed to some departments forming defensive ‘laagers’ – closed to democratic public participation in policy making. At local government level – public participation is often simply compliance focused. Despite this, some in civil society and academia have also experienced an opening over the last few years on the part of some government institutions to dialogue and to partnership – including the AG, Presidency, the PSC and others. The successes of these dialogues over the last few months suggests the room for substantial collaboration.

**The need for a clear, strategic goal setting:** Our understandable focus on state capture has arguably led to a neglect of economic policy debate and the development of policy alternatives behind which a broad range of constituencies can rally. The suggestion is not that we should



have abstracted debates about what constitutes a developmental state in South Africa. Rather, what is needed is hard strategic goal setting at the sectoral level, appropriate social compacting, and then detailed planning for enhanced state capabilities.

**And taking everybody with in this vision...** This must have equity, addressing poverty and unemployment at its centre. The first dialogue, on energy, noted that the potential for social division under deepening climate change and the pressures of the energy transition is enormous. A speaker ended with the following: “Tensions and contestations at the political level – which result in mixed signals to the public – will undermine our ability to manage the energy crisis. A broad-based political settlement within the state and beyond is critical ... It is critical that we execute a well ordered, well managed transition that takes care of people in the process.” State capabilities to support reskilling of labour, to support down-stream industrial development in the move to renewables, to support local content that generates employment, that builds firm capabilities. Reform to our procurement regime must give the state muscle.

**Fragmented politics:** Economists like Mariana Mazzucato and Mzukisi Qobo at Wits have recently noted that bold and clear vision is a necessary component of building state capabilities (and not just an outcome of it). The political settlements literature, however, reminds us that we have a fundamental challenge in South Africa: our ruling political elite, and wider society, is divided, and fractured by struggles for access to resources. This political landscape does not lend itself to the development of a coherent vision and plan of action. The ruling party currently externalises conflict into courts and commissions not because it can’t be bothered to address these internally, but because it knows how fragile the threads are holding it all together. Coalition politics has arrived at local government level and is teaching us the simple existence of electoral competition is woefully insufficient to nurture democracy or development. So where then, does this direction for bold, clear vision come from?

**A way forward?** Perhaps from a broad-based political movement – one with memory of the initial promise of the post-apartheid project? The content of the last four dialogues – attended by former directors-general, senior state officials, civil society, researchers have been of a high standard. It is clear that there is a wealth of analytical and problem-solving capacity to address many of the challenges facing the state.

If government’s plans to develop a cadre of stable, professional senior state leaders succeeds, in part through reforms to appointment processes for senior officials, and other initiatives under the Professionalisation Framework – there is a depth of knowledge and commitment from which this cadre can draw. It may demand new ways of working from senior officials – ways not unfamiliar to an earlier post-apartheid generation of state officials who worked in often collaborative ways – in which the state was pivoted outwards towards stakeholders and citizens.

## HIGHLIGHTS FROM THE DISCUSSION

- The issue of reforming and capacitating the public service is urgent. Ongoing political crises at all levels of government, from the local to the national, have been exacerbated by the rise of coalitions and political instability. The political sphere will not be easily reformed. But the public service is one place where we have the chance to move fast and implement substantial reform. The environment is ripe for this agenda. We need to prioritize key changes we can implement right now, and begin to make those particular recommendations, in time for the new term of the National Executive.

- The professionalisation of the public sector is a critical part of state reform. If implemented carefully, it will stabilise the political-administrative interface and insulate the public service from improper political interference, as well as improve the functioning of state institutions and help capacitate them with the needed skills and human resources.
- Key reforms currently being legislated include: reforming appointment processes for senior officials, up to and including DGs; creating a single public service; extending the tenure of DGs; establishing the PSC as an independent Constitutional entity.
- The creation of a single administration is key to professionalising the public service. Parliamentary staff, local governments, state-owned entities etc. all have their own regimes and systems. This fragmentation and lack of standardisation is a major challenge.
- Capacitating the public service will require bringing in sorely needed skills from outside of the state, improving training institutions, and rethinking incentives for young professionals.
- Public sector reform must also involve improving or rethinking the inter-governmental relations framework, to ensure that the spheres of government can effectively address problems together.
- A capable public servant must be able to act and make decisions independently, but the space in which they operate does not enable that at all. There is a preoccupation with monitoring and enforcing compliance that generally does not focus on real outcomes and the performance of the state in meeting the needs of the people. In such a constrained environment, public servants who want to get things done may end up having to break some rules, which makes them vulnerable.
- The state has been unable to cohere around a clear policy in key areas, due to the intensity of contestation and the state's inability to stand outside of this contestation.
- The movement for institutional reform will probably not come from political leadership, who have been involved in weakening the state in the first place. We need a movement to push back the boundaries of politics and actively engender a state building movement in this country.
- We need to reconfigure the relationship between the state and civil society. Civil society could be a massive resource for fixing the state, if there was an avenue through which they could work together.

## SUMMARY OF THE DISCUSSION

The issue of reforming and capacitating the public service has never been more urgent. Ongoing political crises at all levels of government, from the local to the national, have been exacerbated by the rise of coalitions and political instability. The political sphere will not be easily reformed. But the public service is one place where we have the chance to move fast and implement substantial reform. The environment is ripe for this agenda – the government has made building and capable, ethical, developmental state a priority, and the recommendations of the Zondo Commission show the urgent need to rebuild the institutional capacity of the state. We need to prioritize key changes we can implement right now, and begin to make those particular recommendations, in time for the new term of the National Executive.

### On the professionalisation of the public sector

The National Framework towards Professionalisation of the Public Sector highlights the need for reform in critical appointment processes. It envisages a meritocratic system where a panel of experts will be set up by the Public Service Commission, working with professional

bodies, and will be part of the selection process (and performance assessment process), alongside political leaders. Currently Directors-General (DGs) and Heads of Department (HODs) are appointed by a panel three to four ministers, which has allowed for patronage to dictate appointments, and has allowed politicians to appoint senior officials based on loyalty. The Public Service Amendment Bill, submitted to Parliament in March 2023, provides that the Director-General in the Presidency will be the Head of the Public Administration. Once DGs are appointed by and can report to the Head of Public Administration, they cannot be easily removed by the Minister of their department. This would insulate DGs from improper political interference and help stabilise the professional-administrative interface.

Reforms must allow for the appointment of the most capable persons and create an apolitical professional layer that will interpret the mandate of the government of the day while maintaining professionalism. There are examples of other countries which experience political turmoil and unstable coalitions (such as Italy, Israel and Belgium) but are able to continue providing services to their people due to this professional layer. We need to create systems that will withstand the changes to come, and can be 'shock absorbers' should those changes come in an unexpected manner.

'Professionalisation' must be considered within the whole ecosystem of producing human resources – including training institutions, universities, induction processes, professional bodies etc. It is not enough to focus on rules and compliance systems – as we have seen, people can and will manipulate the rules. There has been much discussion about ethical training and the values of the public service. But how do we move beyond simply raising awareness of these principles and values, and ensure that they are internalised and change the behaviour of officials and institutions? Most of the officials implicated in wrongdoing at the State Capture Commission were aware of and had a sophisticated grasp of ethics and governance principles, but they did not behave accordingly. What is it that training institutions, professional bodies etc ought to be doing to create a values-based public service system? Fundamentally, we must return to the core mandates and *raison d'être*s of each state institution. Why were they created, and what are the real aims they need to achieve?

The creation of a single administration is key to professionalising the public service. Parliamentary staff, local governments, state-owned entities etc. all have their own regimes and systems. This fragmentation and lack of standardisation is one of the main challenges in the public service.

There is a problem of the political class across all parties, where politics is seen as having a low threshold to enter and those who have been unable to find success in the business world consider it an easy route to wealth and status. We end up with a situation where people without basic capabilities are in charge of oversight. For example, approximately many KZN councillors cannot read and write sufficiently for their work and are requesting training – and yet are expected to perform professional oversight duties. The quality of public servants and politicians – including DGs, ministers, parliamentarians – has declined over time. We never took time to invest in human capital; instead, we focused on designing systems and structures without asking who will run them.

The interface between the spheres of government, and the failure to develop an effective cooperative governmental system, has also been a significant challenge. The intergovernmental relations framework needs to be enforced and probably reformed. As it stands, the national government is largely unable to intervene when provincial or local governments fail. Dealing with service delivery at a national level cannot be effective when delivery at the coalface – for example, electricity distribution and road maintenance – fails. The professionalisation drive will also need to address how a single public service would work across the three spheres of government.

In order to successfully reform the public service, we need political leadership that is committed to action. One thing that does work in some government institutions is the hierarchy. While this can be a problem, it does mean that if the leadership is committed, and if there is a strong hierarchy, the entire institution can be mobilised. Not much can be implemented successfully without political protection. DGs need to have clear, focused goals for public sector reform, track progress, and provide support for that progress to continue.

We need to prioritise and sequence these reforms and not attempt to do everything at once. There are a few key priorities which are currently before Parliament in various pieces of legislation. One is the extension of a DG's term from five to ten years, which will strengthen their security of tenure and therefore their independence. Another is the creation of the PSC as an autonomous entity and not as a government department, to allow it the independence of other constitutional entities. There are low-hanging fruits that should be sped up, including defining the political-administrative interface and explicitly delineating the roles of accounting officers from accounting authorities, for example.

### **On capacitating the state**

Professionalisation is also about capacitation. Government is facing significant capacity constraints – it simply does not have skilled officials in a whole range of areas that require intervention. For example, the Presidency has struggled to find capable legal drafters, resulting in poorly drafted regulations which are inevitably knocked down on review. Government therefore requires partnerships with various sectors of society, particularly professional bodies, that can provide these skills. Professionalising and capacitating state institutions is going to take a long time – but in the short term, it is vital that government is able to source capacity from civil society and the private sector as quickly as possible in order to fill these gaps.

Those working in under-capacitated state entities need a way to tap into skills and expertise they are lacking. A resource pool that can assist lower-level bureaucrats with project management, policy writing etc. could help achieve greater consistency and coherence within government.

The public sector needs to attract those with the required skills and expertise. This will be difficult as long as public service officials are paid considerably below their private sector counterparts. We are a society where professions (such as the legal and auditing professions) are dominant social interests in the private sector and their salaries are benchmarked against global salaries. State institutions which have been able to attract skilled professionals – such as the Presidency, the AG and the Reserve Bank – pay above the public service salary scales. Hundreds of thousands of young professionals that are being trained by an effective professional training system, and are going into the private sector at world competitive salaries. If we are to bring them into the public sector, we need to (1) protect them from the political class and (2) consider public sector pay scales. While the state might not be able to match global private sector salaries, we need to acknowledge that incentives matter.

Civil servants in professional roles, such as procurement or project management, should be members of professional bodies, adhere to the standards of those bodies, and face sanctions from them should they engage in wrongdoing.

Part of professionalising the sector has to involve professional discipline. Senior public servants must be excluded from access to bargaining councils and other measures meant to protect lower-level officials, and we need to ensure that they can be effectively disciplined.

## On compliance and agency

The political economy and the eco-systems of our state institutions pose a significant obstacle for reform. These economies and institutional cultures were deeply rooted before the transition to democracy and were not sufficiently transformed. Many of the reforms that were attempted – such as new public management or developmental state reforms – were layered on the surface of an already problematic bureaucracy that was designed to serve the need to one small group and to be accountable only to its political principals. Although we have democratised our policies, much of this change is merely symbolic as they have been handed to a system which continues to work, in its routines and practices, as it did before 1994.

We need to clearly define what we mean by ‘capacity’ and ‘capability’, and how we mobilise these concepts. The usual understanding of these terms involves knowledge, skills and expertise – the required know-how for a public servant. But a capable and professional public servant must also have agency, and the willingness to activate that agency – they need to be able and willing to make important decisions, and bear the consequences of those decisions. Lastly, capable public servants need space to enable them to exercise that agency. Policy, institutions, routines, leaders, managers, systems – all these need to actually allow public servants to act, make decisions, and implement those decisions without being overly burdened by micro-controls.

A capable public servant must be able to act and make decisions independently, but the space in which they operate does not enable that at all. Our state institutions have a culture of compliance exacerbated by increased rules and controls – the entire bureaucratic system now works to comply rather than to serve citizens. There is a preoccupation with monitoring and enforcing compliance that generally does not truly engage with real outcomes and the performance of the state in meeting the needs of the people.

When creating or reforming systems, we need to think about the behaviours those systems create. They are often contrary to the desired outcomes of the system. An overly burdensome compliance-oriented system within state institutions creates undesirable behaviours. Rather than becoming more effective at delivering services, public servants and their institutions become more effective at compiling reports, setting easily-achievable targets, and completing compliance checklists. The system disincentivises and penalises delivery. In these constrained environments, public servants who want to get things done may end up having to break some rules, which makes them vulnerable to political actors who may want to dislodge them.

Part of the problem is that many of these bureaucratic complexities are designed not to make the system accountable and transparent. There is a compliance industry, and there are people who have vested interests in and stand to gain from these complexities. Even simple disciplinary matters are easily mired in bureaucracy to the extent that money can keep justice at bay for years, if not forever.

It was a mistake for the DPME to hand over the monitoring of performance outcomes to the Auditor-General. The AG looks at auditing from a financial perspective and does not have the ability to understand delivery mechanisms in the state or to measure real impact. The AG’s approach to performance auditing is preventing accounting authority from making important decisions because they fear being penalised. Performance outcomes should be monitored by the DPME or another body that is capacitated to do so.

Creating this space to act is a political issue and will require political disruption and strong will from political leadership. There are many politicians and senior officials with vested interests in maintaining the current system.

### On the centre of government

There have been pockets of success in the centre of government, particularly regarding the Presidency's ability to work with the National Treasury in the structural reform programme, Operation Vulindlela. These successes have been brought about by different methodologies and by bringing in skills where they are not readily available. But it is not sustainable for the Presidency to continue to operate as it has been – by taking over functions of line departments or driving and cajoling departments. The departments and officials across the state need to be aligned.

The state has been unable to cohere around a clear policy in key areas, due to the intensity of contestation and the state's inability to stand outside of this contestation. This contestation involves big economic forces and deeply vested interests. Developmental states succeed, according to Peter Evans, when they are embedded in the economy (have deep, enduring relations with economic and social actors) and are autonomous. We have got an embedded state – although we are in the process of dis-embedding ourselves from state capture – but we do not have an autonomous state. The state is not able, in the context of contestation, to stand outside and separate from society, to make decisions, and lead.

### Examples of public sector reform – or the lack thereof – from the discussion

An example of the complexities of reform is the NPA. The President set up an appointment process far beyond what was statutorily required, including a selection committee with experts. This worked well to select the NDPP and senior leadership, but the layer below was appointed by their predecessors who were involved in corruption and state capture. These officials are generally incapable or unwilling to perform at the level expected of them – or are continuing to participate in corrupt activities. This happens in many dysfunctional institutions, where simply installing new leaders is insufficient to create real, lasting change.

What can be done? The state needs to be able to get rid of such officials. However, officials who are dismissed often invoke the protection of the LRA and subject the institution in question to lengthy and expensive legal processes. But we should challenge whether the LRA should be applicable to senior management – that was never the intention, as the legislation was meant to protect workers, not senior management earning hundreds of thousands per year. Truly obstructive officials may cost more than any payout by remaining in their institutions.

Another issue is discipline. This function is devolved to every department but very few are capable of effectively managing the disciplinary function. Disciplinary cases take years to complete and cost the state an exorbitant amount of money. Wealthy officials are able to take advantage of the system and draw out these processes almost indefinitely. The answer may be a centralisation of this function with an efficient task team that is responsible for the management of disciplinary procedures. You cannot effectively manage officials when they know that they can 'game' a disciplinary process seemingly forever. A strong example of this is the Gauteng Department of Health, where senior management officials have been on paid suspension pending disciplinary procedures for years.

The SAPS is an example where there has been basically no attempt to reform or improve the institution. (This was discussed in depth in a previous dialogue.) The key problem is a serial crisis of top leadership. The organisation is extremely hierarchical, so if the right people were appointed, working to a clear institutional reform programme, with people inside and outside of the police, on how to effectively use their resources in a targeted, measurable way, we would probably see quite substantial results. But there seems to be no political will to address the problems in the organisation. A political shift needs to happen, and there is probably only one person who can make that happen – the President.



## On the political terrain

The movement for institutional reform will probably not come from political leadership. Most of the political leadership (not just in the ANC, but in many equally destructive parties) currently in power have been involved in destroying institutions and weakening the state – through patronage and state capture, but ultimately because they view their relationship to the state in a hierarchical manner and feel free to intervene at any level in the state, in a whole range of administrative decisions from procurement to appointments and more.

State capture and patronage systems that emerge in state institutions weaken and collapse institutional capacity. State reform must break the backbone of these patronage networks. Various patronage networks have been embedded in the state, and there is a possibility that they will unembedded, forcefully, by an electoral defeat, or at least an electoral decline in the ruling party. All these people will try to hold on to the ways in which they have access to the state. We must consider the ways in which this will affect the political-administrative interface and any attempts to reform it.

We need a movement to push back the boundaries of politics and actively engender a state building movement in this country; there has to be a moment at which the state itself, and the bureaucrats within the state, assert their independence. We need to organise around that, and this institution building movement ultimately must derive from society and social movements. Former public servants can play a role by reflecting on their experiences and presenting their thoughts and ideas in these movements. We are not paying enough attention to what is happening outside the state, in grassroots organisations, community groups etc. – we should be trying to ensure that a different and new generation of people outside the state, who don't have all our entrenched bad behaviours, can access the state.

We need to reconfigure the relationship between the state and civil society. The doors of the state are completely closed to civil society and there is a default hostility from the state. Civil society groups are often met with allegations of 'regime change'. Civil society, instead of working with the state, has to spend all of its resources, time and energy fighting it. But civil society could be a massive resource for fixing the state, if there was an avenue through which they could work together.

We need to consider that the model of liberal democracy is in crisis, not just in South Africa but across the world. At the heart of the crisis is who the state is accountable to. Some states are managing to continue with service delivery to various degrees but the crisis around who the state answers to is a universal one. Many states have become more monitory and much less developmental than they used to be, exacerbated in part by the fact that there have been a series of global economic crises. There are other long-term, global trends that we should reflect on, including state capacities, the rise of technology etc.

## QUESTIONS TO GUIDE FUTURE DELIBERATION

### *Framing questions that have been used for the entire series:*

- What are the medium and long term priorities for the state in South Africa? What are the key outcomes the state needs to facilitate or deliver?
- What is the current state of the state to deliver on these?
- What kinds of capabilities does the state need to develop to support these outcomes?
- How could these capabilities be developed or enhanced?

- What immediate actions could be taken?

#### *On the public administration:*

- The NDP and the professionalization framework both speak to the need to stabilize the political-administrative interface and insulate senior officials from inappropriate interference in the work of the administration. This has also been a recurring theme in previous dialogues. What is the critical work for the PSC over the next year(s) to support this vision?
- What are the top priorities in the professionalization agenda that could make the biggest impact on improving state capabilities/capacity in the short term?
- How would establishing a single public service assist in addressing the state capacity challenges we have been speaking about throughout this dialogue series?

#### *On local government:*

- Do we need to enhance the legal framework for the way in which coalition governments are formed? How can we create more stability in local governments run by coalitions? What support is needed to ensure that coalition governments can work effectively?
- A consistent theme in previous dialogues (especially on energy and water) has been the general failure of the municipal funding model to deliver to expectations and the impact of this on the delivery of basic services. Do we need to rethink the model for financing local government, and what might that look like?
- What are the binding constraints on municipal service delivery? What are the key capabilities that need to be built?

#### *On SOEs:*

- Appointment reform has been an important theme in discussions on state capacity. How can we ensure that our SOEs have stable boards that have productive relationships with political leadership?
- Another recurring theme has been the overburdening of SOEs with multiple and sometimes competing mandates. What can be done to set clear, prioritised agendas to ensure that SOEs have clarity of mandate?
- We have heard that SOEs are often bound by procurement policies and regulations that are at odds with the functions they have to perform. What kind of procurement regime would support SOEs to manage complex projects effectively and build strategically?
- The relationship between SOEs and their shareholder can be challenging. Is the current shareholder model working? How might it be reimagined?

#### *On the Presidency:*

- Our previous dialogues have highlighted that a lack of strong direction and policy confusion between state institutions creates significant challenges. What are some of the lessons we can draw from Operation Vulindlela on the coordination of complex projects in the state?
- Many vital functions have been centralised in the Presidency – how can these capabilities be institutionalised within the departments and state entities that should be responsible for these functions?



*On law enforcement:*

- Our previous dialogues have highlighted a major security weakness – state assets and infrastructure are highly vulnerable to theft and destruction and the state seems unable to secure them. Is there a strategy to address these problems? What are the capabilities that need to be developed?
- What is the state of the political-administrative interface in law enforcement? How do the independent agencies (like the NPA, SAPS) manage relationships with the Departments of Justice and Police? What support to they require – and, at the same time, how do they safeguard their independence?
- The president has made much of his process of appointing the NDPP. But the president (and minister) still has a lot of power to appoint heads of institutions and there is very little legislation governing these processes. Do we need to formalise a more robust appointment process and extend it to other positions such as police commissioner? Do we need other reforms regarding appointments?



