
Zondo Commission recommendations update: Where do we stand in 2024?

RESOURCES

- The full [report of the Zondo Commission](#).
- The President's response to the Zondo Commission recommendations and the [State of the Nation \(SONA\) dashboard on the implementation of the recommendations](#).
- The Public Affairs Research Institute's (PARI) 8-page summary of the Zondo report, [The Zondo Commission: a bite-sized summary](#).
- PARI's 2023 discussion document, [Implementing the Zondo Commission recommendations: taking stock of progress and charting a way forward](#).
- The Civil Society Working Group (CSWG) on State Capture's [collective response to the report and recommendations](#).
- [The CSWG's Zondo Recommendations Tracker](#).
- The reports of the [2022](#) and [2023](#) PARI-CASAC conferences on the Zondo Commission recommendations.

The Judicial Commission of Inquiry into Allegations of State Capture (Zondo Commission) provided strong evidence of state capture and detailed insights into how state capture was organised and facilitated by persons in the public and private sectors. However, like all other commissions, it was established to investigate a matter of public concern and to report to the President; it is not a direct accountability mechanism. It had no power to implement any of its recommendations or to act on any of its findings. The implementation of the Commission's recommendations — and, indeed, any response to the Commission's findings — depends on the will and capacity of those in power to act, and on organised civil society's ability to mobilise for change.

The report of the Zondo Commission can be a powerful tool for accountability. Unlike courts and legal instruments, commissions can look beyond narrow questions of legal liability in specific cases. The Commission made a serious effort to track and explain the social and political context of state capture, as well as the mechanisms that have enabled systemic corruption. It was able to highlight policy, legislative, and institutional design weaknesses that facilitated systemic corruption, and created an archive of rich and detailed evidence for policymakers and accountability institutions to use in building their reform agendas.

This document sets out the progress on commitments made by the executive and legislature concerning the Zondo Commission recommendations. It is an update of a [document published by PARI in October 2023](#) for that year's [PARI-CASAC Conference on the Zondo Commission](#).

The recommendations contained in the Zondo Report can be critiqued, and we do not argue that they should be implemented by the executive wholesale. Indeed, they should be subject to careful consideration and robust debate, which was the aim of conferences held by PARI and CASAC in 2022 and 2023. However, crucially, the Commission has exposed critical weaknesses in the state which need to be addressed by government — whether through investigating and prosecuting corrupt actors, reforming state institutions or making legislative changes.

Most of the Commission's 205 recommendations concern further investigations and prosecutions of implicated parties. This has also been the focus of most discussion in the media and by civil society. These processes are being tracked by some of our civil society partners. PARI, however, is primarily concerned with the institutional and systemic reforms needed to combat corruption and state capture. That is the focus of this document.

This is intended to be a brief and accessible guide to the progress, or lack thereof, in key areas of reform. We hope it will be used as a resource to aid discussion and accountability. It is critical that we examine the reforms currently proposed and consider whether they respond appropriately and sufficiently to the problems exposed by the Zondo Commission. More in-depth monitoring, assessment and evaluation is necessary to ensure a successful ongoing response to state capture.

Parliamentary oversight

The Zondo Commission report was critical of Parliament's failure to intervene in corruption and state capture. It found that the legislature had failed to fulfil its oversight and accountability obligations because the governing party was determined to protect those of its leaders implicated in state capture and was unwilling to expose allegations of malfeasance to public scrutiny. The report found that Parliament's oversight powers and the tools available to it were generally sufficient for it to fulfil its constitutional obligation to hold the executive accountable, but that these were not generally used effectively. The report made a number of concrete recommendations on parliamentary oversight, including ensuring that it is properly resourced, establishing a committee to oversee the Presidency, considering the appointment of committee chairs from opposition parties, reforming the making of those appointments to state institutions made by Parliament, ensuring that members of the executive are responsive and accountable, and monitoring, tracking and enforcing parliamentary resolutions.

The Parliamentary Monitoring Group (PMG) has produced a [comprehensive review](#) of the recommendations concerning Parliament and progress on them by the closure of the 6th Parliament. Parliament addressed 13 of the 19 recommendations by the end of March 2024. The PMG notes that they could not find evidence of where, how and by whom the decisions were taken on some recommendations. Of the 13 that were said to have been addressed, Parliament decided not to implement the recommendation in all but three cases (italicised below).

Regarding its own oversight functions, Parliament categorised the following recommendations as addressed:

- Parliament decided not to enact legislation protecting MPs from losing their party membership, and therefore their seats in Parliament, for exercising their oversight duties reasonably and in good faith, as it felt that MPs were already adequately protected.
- *Parliament has appointed additional content advisors, legal advisors and researchers.*
- The Rules Committee decided there was no need for further legislation or rules about reports by representatives of the executive to Parliament, ministers failing to attend portfolio committee meetings, or ministers failing to report back on remedial measures.
- The Rules Committee decided not to adopt any legislation on 'amendatory accountability' (i.e. where the executive accepts that something has gone wrong and takes positive actions to remedy the situation in a substantial way).
- The Rules Committee did not agree with the recommendation that more chairpersons be elected from minority parties.
- The Rules Committee decided not to amend its processes for parliamentary appointments.
- *The Rules Committee of the 6th Parliament did not decide whether to institute an oversight committee on the Presidency. It undertook a study tour to explore international best practice. The Rules Committee of the 7th Parliament recently voted in favour of establishing such a committee.*
- *Parliament passed the Electoral Matters Amendment Bill in March 2024. This creates offences related to donations to political parties in order to receive reciprocal benefits.*

Matters still ongoing include:

- Ongoing consultations between Parliament and National Treasury for more resources to fulfil Parliament's oversight mandate.
- Implementation of various measures to improve tracking and monitoring, including piloting of an electronic system and procedures for regular reporting on the implementation of house resolutions.

Parliament is still processing allegations against MPs implicated in the Zondo report. Twelve cases were referred to the Joint Committee on Ethics and Members Interests; eight have been concluded and four have been found to have breached the code of ethics and held accountable. The Committee noted that the previous code did not have provisions that dealt with some of the unethical conduct detailed in the Zondo report.

Ultimately, Parliament decided against adopting almost all of the recommendations as they were deemed to be unnecessary. However, it tended to interpret them quite narrowly. The core findings of the Commission were not examined, nor were they responded to in a holistic, programmatic and systematic way.

If, as Parliament concludes, the existing rules are indeed sufficient, how then did the oversight failures of previous parliaments occur? What should be done to address structural weaknesses in parliamentary oversight that facilitated state capture? These questions should be borne in mind when considering Parliament's oversight strategies and plans for the future.

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

Criminal justice system and anti-corruption architecture

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

The evidence presented at the Commission showed that law enforcement agencies were politicised and compromised at the highest levels. The weakening and hollowing out of these institutions, through undue influence over appointment and removal processes, has served to de-professionalise them while enabling further patronage. The legitimacy, impartiality and independence of key criminal justice system institutions such as the National Prosecuting Authority (NPA), Directorate for Priority Crimes Investigation (DPCI) and the South African Police Service (SAPS) needs to be reestablished.

The President's response plan promised that legislative changes would be made to introduce greater transparency and consultation in selecting and appointing the National Director of Public Prosecutions (NDPP), drawing on the process adopted for the selection of the current NDPP. This is an important step — although whether it effectively enhances transparency and independence will depend on the details of the legislation and the prescribed appointment procedure.

In 2024, the NPA Amendment Act was passed and enacted, establishing the Investigating Directorate Against Corruption (IDAC) as a permanent entity within the NPA. This was an important and positive development. However, the Act was criticised for not sufficiently addressing concerns about the independence of the NPA, concerns echoed by the Portfolio Committee on Justice and Correctional Services. Despite the commitments in the President's response plan to strengthen the financial and administrative independence of the NPA, and to reform the appointment process for the NDPP, the Act did not address either of these issues. This was a significant missed opportunity.

No other law enforcement institutions have been included to any significant extent in this reform agenda. The SAPS in particular — including the DPCI — should receive similar attention, particularly where appointment procedures are concerned. There appears to be no strategy for ensuring that these institutions are properly capacitated, for ensuring proper oversight or for addressing internal corruption. These issues have been referred to the National Anti-Corruption Advisory Council (NACAC), which has been charged with advising the President on the country’s anti-corruption institutional architecture, as well as supporting implementation of the [National Anti-Corruption Strategy \(NACS\)](#). The NACAC has also been charged with considering the Zondo Commission’s recommendations to establish new anti-corruption institutions. The NACAC submitted a report on this to the Presidency, but it has not been publicly released, nor is it clear whether and how the Presidency has responded.

Another concern is the lack of clarity about how the Commission’s extensive database is being stored, managed, and accessed by relevant parties. Frustrations between the NPA and the Department of Justice recently vented in the media demonstrate the need for a rationally determined policy which clearly sets out the management of the database, security protocols, and rules for access by the NPA and other parties, with the appropriate resourcing for storage and data security. This should be clearly communicated to the public.

In May 2024, Parliament passed the General Intelligence Laws Amendment Bill, which was sent to the President for assent. If assented to, this act will implement one of the Zondo Commission’s most significant recommendations concerning intelligence: the disestablishment of the State Security Agency and the establishment of two intelligence agencies, one domestic, one foreign. However, the Bill is seriously flawed and fails to implement adequately key safeguards identified by the Commission as critical. Civil society has [sounded alarms](#) over provisions in the Bill which would dramatically expand the scope of intelligence and surveillance, while weakening oversight and neglecting necessary safeguards. Parliament has also decided that it would enact no new legislative amendments to oversee the intelligence services, despite the Commission’s recommendations to the contrary.

The private sector

The Commission exposed the central role that private sector actors played in state capture, through direct involvement in procurement corruption, fraud and money laundering, but also in weakening institutions that stood in the way of state capture. Perpetrators, large multinational firms amongst them, included management consultants, advisors, accountants, auditors, lawyers, bankers and providers of goods and services. Unfortunately, the Commission did not make many findings or recommendations for addressing corruption in the private sector, though it did make recommendations relevant to forms of private sector corruption, such as public procurement reform.

The President endorsed the Commission’s recommendation to amend the Companies Act to give companies more time to hold delinquent directors accountable. This has been included in the Companies Second Amendment Act, enacted in July 2024.

At the end of 2022, Parliament passed the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, enacted in an attempt to avoid the ‘greylisting’ of South Africa by the Financial Action Task Force (FATF). This provided for the creation of a beneficial ownership register maintained by the Companies and Intellectual Property Commission (CIPC). This is a positive step. However, there is still much work to do to make this register an effective oversight and anti-corruption tool. It is necessary to build capacity to populate the register and ensure it is a true reflection of beneficial ownership, including interlinking it with other relevant databases in government and the private sector. Government should commit to making this information transparent and accessible.

Very few private sector actors have faced [consequences for their involvement in state capture](#). Some professional bodies, like the NDP (IRBA), have acted against members implicated by the Commission. Some money has been recouped from corporates involved in state capture. But overall, very little real accountability has been demanded from private sector actors, either firms or the individual ‘bad apples’

they tend to blame for their misconduct. Most implicated private sector institutions and individuals have emerged completely unscathed. However, some progress has been made, including:

- German software company SAP will pay R2.2 billion to South African state entities and government departments as restitution for its role in state capture, following coordination between the NPA and the US Department of Justice, and after an investigation into SAP's breaches of the American Foreign Corrupt Practices Act.
- The CIPC has reviewed the compliance of companies implicated in the report and has acted against certain companies and individuals.
- Bain & Co has been blacklisted from doing business with the South African state - although this is still subject to litigation by Bain.
- The NPA has brought charges against McKinsey & Co.

Public procurement reforms

The Zondo Commission found that the public procurement system was the primary site for the 'redirection' (theft) of state resources and made numerous recommendations for enhancing its integrity. It recognised that the lack of comprehensive procurement legislation has aided in abuse and poor oversight and called on government to address this. The government has instituted several procurement reforms through the Public Procurement Act, signed into law by the President in July 2024 but not yet brought into effect.

The Act establishes the Public Procurement Office (PPO) within the National Treasury, tasked with ensuring compliance, promoting standards, and fostering transparency. Among other provisions, the Act introduces rules for instance prohibiting any person from trying to interfere with or influence procurement. Suppliers who abuse the system are debarred from participating in future procurement. Certain categories of people – mainly public office bearers and people who work for the state – may not do business with the state.

PARI and other civil society organisations in the Procurement Reform Working Group (PRWG) have highlighted concerns about the new legislation's ability to address some of the failures exposed in the Zondo report, especially in regard to providing a clear framework for public procurement and facilitating anti-corruption enforcement. PARI and others have also raised concerns about the Act's extensive recourse to subordinate law, that is, expressing important policy decisions, best embodied in statute law, in as yet unpublished regulations. Also, some of the crucial provisions in the Act are ambiguous. All this may make the Act difficult to operationalise and open the state to litigation.

The Act needs strengthened anti-corruption enforcement mechanisms, including incentivised whistleblowing and a commitment to open contracting. The Zondo Commission favoured incentivising whistleblowing in procurement, but implementation of this recommendation will now, at best, be deferred to promised amendments to the Protected Disclosures Act (see below). Nevertheless, the Act has positive aspects. One of its objects is, "to advance ethical conduct and combat corruption through access to procurement information and other transparency measures". Note also that NACS includes a commitment to enhancing systems, standards and infrastructure for transparency in public procurement: see Pillar 4 of the Strategy. Over the last decade, especially since the establishment of the Office of the Chief Procurement Officer (OCPO), there has been an increase in publicly available data on the public procurement system, though the data itself is evidently piecemeal and does not provide the state or other stakeholders with a sufficiently systematic view of the system to enable effective oversight.

Nevertheless, the new Act creates opportunities for greater transparency in public procurement including in relation to information about beneficial owners and politically exposed persons. Relevant provisions provide an opportunity for civil society to advocate for supporting systems and infrastructure for transparency and towards enhanced scrutiny of the system.

Public administration

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

In 2022, Cabinet adopted the [National Framework towards the Implementation of Professionalisation of the Public Sector](#), which sets out an agenda for reforming appointment and dismissal processes for senior public servants, and proposes broader professionalisation of the administration. The plan makes several detailed recommendations for more clearly delineating the role and function of executive authorities and administrative heads. Government has also committed to the professionalisation agenda under pillars 2 and 3 of the NACS. The President’s first response to the Zondo recommendations – published October 2022 – was to moot an ‘enhanced role for the Public Service Commission (PSC), working with a new Head of Public Administration, in the appointment of top officials’.

To this end, the Public Service Amendment Bill, the Public Administration and Management Amendment Bill, and the Public Service Commission Bill were tabled in Parliament in 2023 but lapsed at the end of the 6th Parliament. All three have now been reintroduced. The Public Service Amendment Bill includes some important and positive provisions for better delineating the powers and responsibilities of political leaders vis-à-vis senior administrators. It also includes important prohibitions on senior public servants holding political office. The Public Administration and Management Bill includes significant provisions prohibiting public sector employees from conducting business with the state.

However, PARI and other civil society organisations have argued that the proposed amendments [do not go far enough](#) to realise the vision of the National Development Plan (NDP) and the Professionalisation Framework of stabilising the political-administrative interface and better insulating the public administration from patronage politics. It is not yet clear precisely how government intends to create robust checks and balances in the appointment and dismissal processes for senior administrators. Proposals are mooted in the NDP and clear principles for reform in the Professionalisation Framework. These should be taken forward, and, as proposed in the Professionalisation Framework, delinking the tenures of heads of department from those of political heads should also be addressed at some point.

A positive development is the creation of a centralised register of people who have been dismissed from organs of state or who have resigned to avoid being disciplined. There are currently over 12 000 records on the central register. According to the Presidency, a review of disciplinary codes and tracking of criminal cases against public servants are being implemented. Similarly, a review of all Regulations, Determinations and Directives issued in terms of the Public Service Act is to be completed in 2024.

[Stronger checks and balances](#) in appointment and dismissal processes for senior public servants must be a central strategic thrust of the professionalisation agenda, and mechanisms should be built into this process to ensure the public a level of transparency at the most senior levels of the public service. The reintroduction of the three public administration bills could provide a critical opportunity to implement these reforms.

State-owned enterprises

Having identified improper appointments and dismissals as a key mechanism of state capture in state-owned enterprises (SOEs), the Commission's report provides a substantial and detailed proposal for a 'Standing Appointment and Oversight Committee'. It envisages inter alia that the Chief Justice, the Legal Practice Council, and the Independent Regulatory Board of Auditors participate in constituting a committee for appointments to the boards and senior posts of SOEs. The President raised reasonable concerns about this proposal, while acknowledging the need for reforming SOE governance.

In August 2023, the President stated that the draft National State Enterprises Bill would align the process for appointing SOE boards and executive management with the recommendations of the Commission, and that this new law would improve oversight, transparency and accountability of SOEs. The National State Enterprises Bill (lapsed at the end of the Sixth Parliament and recently reintroduced) introduced the single shareholder model by establishing a holding company to supervise identified state enterprises. The draft legislation also envisages the disbandment of the Department of Public Enterprises, which was set up in the 1990s to exercise political and legislative control over SOEs. Since the new government was formed in 2024, the ministry no longer exists.

Unfortunately, the draft bill does not sufficiently address the governance challenges facing SOEs that were so clearly exposed by the Zondo Commission. The bill does not specify how the boards and executives of SOEs under the holding company will be appointed. However, a robust process for appointing the first board of the holding company has been proposed in the Bill. After this initial process to appoint the first board of the holding company, its subsequent boards will be appointed by the President on recommendation of the incumbent board. There are no further provisions safeguarding appointments and removals in the Bill – a clear weakness given the findings of the Zondo Commission. It is not clear how this bill will substantially improve the oversight, transparency and accountability of SOEs.

The Bill charges the board of the holding company with implementing 'an appropriate procurement and provisioning system for itself and a procurement and provisioning framework for its subsidiaries that is in accordance with section 217 of the Constitution'. The holding company and its subsidiaries will not be subject to the Public Procurement Act, as once the SOEs are transferred by the President to the holding company they are removed from the Public Finance Management Act (PFMA) Public Entities schedule. The Public Procurement Act applies to public entities listed in that schedule. This appears to be at odds with the push to harmonise the currently fragmented and vulnerable procurement framework.

This bill, if passed in its current form, would only affect SOEs when the shareholder (the President), on the recommendation of the holding company board, deems that they should be transferred to the holding company. This process would likely take a long time, and only a small number of SOEs are eligible to be transferred. Most SOEs will thus not be affected by these reforms — and no other reforms concerning governance in other public entities, including at municipal level, have been forthcoming, despite the exhaustive evidence uncovered by the Zondo Commission that public entity governance is in crisis. There is a clear need for reforms that address governance issues in public entities across the board.

Whistleblowing

The Commission made three key recommendations concerning whistleblowers.

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

The President acknowledged the important role played by whistleblowers in the fight against corruption. The President's 2022 response emphasises the need to protect whistleblowers from victimisation and retaliation. The Department of Justice (DOJ) undertook a review of the Protected Disclosures Act (PDA) and the Witness Protection Act (WPA), as well as considering the recommendations of the Zondo Commission. It then produced a [discussion document](#) on proposed reforms for the whistleblower protection regime in July 2023. This document proposes strengthening the existing legal regime by amending the PDA and WPA.

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

This discussion document was published in mid-2023, and no updates have been issued in the year and a half since. No concrete policy commitments have been made concerning protecting and incentivising whistleblowers, and no timelines have been presented by the DOJ or the Presidency for the drafting and passing of the necessary legislative amendments.

This discussion document was produced by the State Reform Programme
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Further information and analysis relevant to the
Zondo Commission can be found on PARI's website:
<https://pari.org.za/category/zondo/>
