

# AN AGENDA FOR ACTION

## A JOINT SUBMISSION BY THE CIVIL SOCIETY WORKING GROUP ON STATE CAPTURE

A SUMMARY OF CIVIL SOCIETY'S  
RECOMMENDATIONS TO THE  
ZONDO COMMISSION

FEBRUARY 2020



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## JOINT SUBMISSION ON RECOMMENDATIONS BY THE CIVIL SOCIETY WORKING GROUP ON STATE CAPTURE



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A joint submission by civil society to The Judicial Commission of Inquiry into Allegations of State Capture.

This joint submission was by the Civil Society Working Group on State Capture to the Zondo Commission in February 2020.

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## ABOUT THE CIVIL SOCIETY WORKING GROUP ON STATE CAPTURE

The Civil Society Working Group on State Capture was established in November 2018 and is a coalition of more than twenty civil society organisations united in their stance against the looting of public funds and committed to promoting the interests of the public.

The Judicial Commission of Inquiry into Allegations of State Capture (“Zondo Commission/the Commission”) is a legal process established in terms of the Commissions Act.<sup>1</sup> The Act makes it clear that the foremost reason for establishing a Commission of Inquiry is for such a body to use the powers conferred upon it to investigate matters of great public concern. The Civil Society Working Group on State Capture (“CSWG/the Working Group”) has been actively engaged in making submissions to the Zondo Commission over the past year (2019) in order to assist the Commission in its fact-finding mission, and to ensure accountability for economic crimes committed by both members of the political elite and private businesses linked to state capture. These submissions contain evidence-based findings and present what is needed to protect and promote the interests of the public.

The submissions of members of the Working Group recognise that functioning democratic institutions play an important role in achieving lasting social justice. Further, it recognises that the Zondo Commission requires active engagement by civil society that is both supportive of the Commission’s work, and critical of its shortcomings in order to best fulfil its role.<sup>2</sup>

The Working Group members’ submissions acknowledge and honour the whistle-blowers, activists, journalists and researchers for the bravery and courage they have shown in exposing many of the economic crimes contained in these pages, despite the continued risks faced in standing for truth and justice. This work would not be possible without them.

Open Secrets is the Secretariat and convener of the Civil Society Working Group

### PARTICIPATING ORGANISATIONS:

**AIDC** – Alternative Information and Development Centre; **AKF** – Ahmed Kathrada Foundation; **Black Sash**; **BJC** – Budget Justice Coalition; **CALS** – Centre for Applied Legal Studies; **CASAC** – Council for the Advancement of the South African Constitution; **Centre for Change**; **CST** – Centre for Complex Systems in Transition; **CW** – Corruption Watch; **DOI** – Dullah Omar Institute; **DPRU** – Development Policy Research Unit; **EE** – Equal Education; **EELC** – Equal Education Law Centre; **FUL** – Freedom Under Law; **LRC** – Legal Resources Centre; **HSF** – Helen Suzman Foundation; **MVC** – My Vote Counts; **Open Secrets**; **OUTA** – Organisation for Undoing Tax Abuse; **PARI** – Public Affairs Research Institute; **PPLAAF** – Platform to Protect Whistle-blowers in Africa; **S27** – Section27; **SAFCEI** – South African Faith Communities Environment Institute; **R2K** – Right to Know Campaign; **TAC** – Treatment Action Campaign; **#Unitebehind**.

**The human cost of state capture and its contribution to deepening poverty and inequality provides the necessary urgency for the reforms set out in this submission.**

**This is our agenda for action.**

# I | THE PURPOSE OF THIS SUBMISSION

The purpose of this submission is to summarise and highlight recommendations made by members of the Civil Society Working Group on State Capture (“the Working Group”) to the Zondo Commission that can form the basis of an Agenda for Action to be prioritised by the state under the vigilant eye of civil society.

This Agenda for Action is based on detailed submissions made to the Zondo Commission by organisations of the Working Group covering the widespread impact of state capture on lives of people in South Africa. The Agenda for Action summarises recommendations that can hopefully serve as a roadmap during the next years of critical areas of reform within the South African state and private sectors. This submission was prepared at a time when these and other civil society organisations were deeply concerned about the impact of state capture on the lives of millions of people. The human cost of state capture and its contribution to deepening poverty and inequality provides the necessary urgency for the reforms set out in this submission.

The recommendations identify and address five areas, across the broad scope of the Working Group’s submissions, as needing critical attention:

1. Strengthening and building the capacity of criminal justice agencies;
2. Holding enablers of state capture to account;
3. Improving the financial accountability of political parties through amended regulations;
4. Addressing the endemic nature of corruption in state-owned enterprises (SOEs); and
5. Addressing the impact of corruption and how it undermines the fundamental rights of vulnerable groups.

Evidence of the impact of state capture on people is taken from the People's Hearing on State Capture (an initiative by the Working Group in October 2019), to give voice to the victims of these economic crimes. These recommendations were made after listening to evidence given by people impacted by state capture and are presented here to amplify their urgency. The crimes committed by corrupt individuals and networks have had a devastating impact on South Africans; they have eroded human dignity, access to basic rights contained in the Bill of Rights<sup>3</sup>, and in some cases, they have threatened or cost lives. The Working Group stands in solidarity with communities affected by state capture, and their recommendations are included in this submission.

The Working Group notes that state capture not only affects those communities in which there is a direct and clear, tangible impact; it also profoundly affects everyone in the country in terms of diminished access to resources and undermined rights. It is of course poor and marginalised communities that bear the brunt of these injustices.

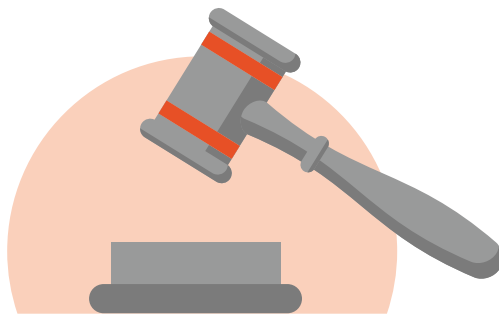
The aim in bringing this Agenda for Action to the attention of the Zondo Commission is two-fold.

First, the Working Group calls on the Commission to investigate *all* parties implicated in state capture while it is in the opportune position to do so.

Second, the Working Group hopes to strengthen the findings of the Commission by bringing to its attention the remedies proposed here, including the benefits of the Commission releasing an interim report.

The Working Group is aware that the work of the Commission does not occur within a vacuum, and that while there is an expectation in relation to the findings of the Commission, justice and accountability for corruption rely on long-term responses by a range of state institutions and the country's political leaders. Therefore, these recommendations should be viewed as a guide to all stakeholders within public institutions, including criminal justice agencies, law enforcement bodies, and Parliament and the Executive.

The Working Group asks that the Commission uses its powers to call on criminal justice agencies to provide a swift response to the crimes outlined in this submission. We believe that the capacity of the criminal justice system must be strengthened, and we support the public call by the National Director of Public Prosecutions (NDPP), Shamila Batohi,<sup>4</sup> for proper and increased funding of the National Prosecuting Authority of South Africa (NPA) and the Directorate for Priority Crime Investigations (the Hawks), and for this to be accompanied by prosecution of the powerful. It is imperative that the country's criminal justice agencies are well resourced in terms of budget and capacity in order for them to act on the findings of the Zondo Commission, and the evidence of state capture presented by many witnesses and whistleblowers.



## 2 | THE IMPACT OF CORRUPTION ON THE LIVES OF SOUTH AFRICANS

The struggle against State Capture and corruption in South Africa is a struggle for human rights. This is why the ongoing revelations at the Commission of Inquiry into State Capture (the Zondo Commission) are important – they lay bare the various networks of looters in the public and private sector who have criminally enriched themselves at the expense of the many.

The consequences of the looting have been dire and have undoubtedly contributed to poverty and unemployment and extends beyond a financial loss. The capacity of the state has been severely eroded. In addition, South Africa has had to grapple with a weaker economy, a continued revenue short-fall and dysfunctional State-Owned Entities that are bleeding the fiscus dry. It is unconscionable that constitutionally enshrined human rights such as health care, social security, housing and basic education, to name only a few, have been compromised because of the actions of corrupt individuals.

Throughout their appearances before the Zondo Commission, powerful individuals implicated in orchestrating state capture – and their courtroom antics – have dominated news headlines. What appears to be forgotten is the extent of misery caused by the actions of these individuals.

The Civil Society Working Group's mobilisation around the Zondo Commission has been informed by the reality that South Africa's struggle for social justice and human rights will not be realised if those who loot with impunity in the public and private sector remain unaccountable.

The deepening levels of inequality, poverty and unemployment caused by contemporary state capture should be foremost in their minds when investigating and prosecuting the crimes of powerful politicians, private individuals and corporations. However, the fight against corruption and the rebuilding of our institutions, cannot only be left to law enforcement agencies and the justice system. The people of South Africa should also play their part in holding those in power to account.

In the effort to highlight the *real impact* of state capture and corruption the Civil Society Working Group hosted [the People's Hearing on State Capture](#) at the Women's Jail at Constitution Hill on 12 October 2019. The People's Hearing on State Capture set out to offer up a space for the public to have their voices heard. These public testimonies went a long way to highlight the impact of state capture and corruption on the daily lives of millions of South Africans.

The People's Hearing on State Capture was a call on all South Africans to contribute by posting videos, pictures and messages on their social media platforms under the hashtag – #DearJudgeZondo – detailing the impact of state capture on their lives and communities and call on the commission to hear their voices.

On the day [#DearJudgeZondo videos](#) were presented together with activists' testimonies and [documentary evidence](#) which focused on the impact of state capture on commuter's dependent on PRASA, unemployed mineworkers at a Gupta-owned mine, and learners in Limpopo who have no school textbooks.

The day's proceedings were open to the public where the heads of various government anti-corruption agencies, the NPA and the leadership of the Zondo Commission were also invited.

The Dozens of witness statements and testimonies that were heard during the day-long proceedings spoke to the impact of state capture and corruption on the human rights of the people of South Africa; clearly demonstrating that corruption is not a victimless crime, as some of the perpetrators and beneficiaries of such criminal actions have suggested.

The testimonies shared reflect the daily reality for millions of people in South Africa. It was, for instance, made evident that due to state capture and corruption: the impact on public transport has been to turn what should be short daily train commutes into hazardous, lengthy journeys; access to pensions and children's grants have been placed in jeopardy; children are dropping out of school because of unsafe learning environments and hopelessly inadequate and crowded classrooms. The evidence also clearly showed how funds meant to provide access to health care and emergency services were diverted via criminal means while people were dying in understaffed clinics that had run out of medicine.

The People's Hearing on State Capture was chaired by three panelists<sup>5</sup> - international criminal justice expert and former TRC Commissioner, Yasmin Sooka; long-standing political and gender activist, Nomboniso Gasa; and Xolobeni community leader and human-rights defender, Nonhle Mbuthuma.



All underlined text refers to links which are accessible in the electronic version of this submission. Please visit Open Secrets' website [www.opensecrets.org.za](http://www.opensecrets.org.za) to download the electronic version.



## THE RECOMMENDATIONS MADE BY THE PANEL FOLLOWING THE PEOPLES HEARING ON STATE CAPTURE:

### 1. The **Zondo Commission** on State Capture should:

#### 1.1 **Release an interim report of its findings in which those the Commission deems the most responsible are identified with a view to prosecutions:**

This is critical to ensure that the public see accountability in action in the form of prosecutions beginning sooner rather than later. The recent Nugent Commission of Inquiry into South African Revenue Service has used this to great effect to disrupt corrupt networks.

#### 1.2 **Hear evidence of the cost and impact of state capture:**

The Commission should hold a special session in which it prioritises time for the public to provide evidence of the impact of state capture on their lives. This must be accompanied by regular public communication in a manner that ensures most South Africans have access to the workings of the Commission. These hearings should also highlight the impact of state capture on the security and safety of whistle-blowers and activists.

#### 1.3 **Consult the recordings from the People's Hearing:**

The panel urged that these hearings, including all video material, be made available to the Zondo Commission as soon as possible, and that the evidence from the hearing should be consulted and considered by the Zondo Commission.

#### 1.4 **Ensure that the Commission's report reflects on the human cost of state capture and corruption:**

This should include information collected from the public about the impact of state capture. In addition, those activists and whistle-blowers who have faced harassment, abuse and violence should be recognised for their efforts and courage in upholding the rule of law.

### 2. The **criminal justice agencies** should:

#### 2.1 **Prosecute:** Prosecutions cannot wait for the end of the Zondo Commission's term; where there is already substantial evidence of wrongdoing, agencies must proceed swiftly.

#### 2.2 **Recover stolen money:** Urgent actionable steps should be taken to recover looted money. Recent efforts to freeze the assets of state capture players is a step in the right direction.

#### 2.3 **Preserve witness testimonies:** These should be documented on camera so that their evidence is safeguarded; this will also aid witnesses with a form of protection.

### 3. The **media** is called upon to reflect the social impact of state capture in more detail rather than focusing on the obfuscations by perpetrators.

### 4. The **South African Human Rights Commission** must use its powers to assist members of the public who have been harmed by state capture to obtain redress like compensation.

### 5. **Civil society** should:

#### 5.1 Continue its efforts to focus on the human rights impact of state capture.

- 5.2 Monitor the performance of the Zondo Commission and other accountability institutions.
- 5.3 Create a collection of dossiers in the public domain of those implicated in all forms of fraud, corruption and state capture to prevent recurrence of these crimes, and also to prevent implicated parties from holding positions in public offices.

The People’s Hearing received a great deal of coverage by various media outlets. The SABC were in attendance throughout the hearings and included the day’s proceedings in the evening news segment that day - [Counting the cost of state capture and corruption in SA](#). eNCA covered the People’s Hearing the following day. Other news outlets also covered the People’s Hearing in various articles: the Daily Maverick’s [Maverick Citizen](#), [News24](#), [The Citizen](#), [The Daily Vox](#), [Media Monitoring Africa](#), including the webpage of [Treasury South Africa](#) and Radio786. Our social media campaign #DearJudgeZondo was trending on twitter throughout the day of the People’s Hearing, this was covered in the article, [#DearJudgeZondo – Devastated State Capture victims want Judge to hear their stories](#) .



# 3 | THE CIVIL SOCIETY WORKING GROUP RECOMMENDATIONS TO THE ZONDO COMMISSION

The recommendations contained below have a direct link to the submissions made by the Civil Society groups<sup>6</sup> to the Zondo Commission. These submissions argue that in order to address the complex nature of state-capture, the Commission must ensure that its findings tackle the root causes of state capture and not only the symptoms. The recommendations contained in these pages are intended to assist the Commission in this task.

## 3.1 HOW DO WE ADDRESS THE SYSTEMIC WEAKENING OF THE CRIMINAL JUSTICE SYSTEM?

The issue of manipulation of criminal justice agencies is directly relevant to this Commission's terms of reference. At its broadest level, the Commission is concerned with the involvement of public representatives, public servants and personnel attached to state entities

in criminal acts that constitute corruption and fraud, and that involve illegal ‘inducements for gain’<sup>7</sup>. Manipulation of criminal justice agencies allowed high-level corruption to proliferate by ensuring that these agencies were able to disregard it or were sometimes powerless to act.

The following recommendations are drawn from the submissions made by organisations in the Working Group addressing various critical areas within the criminal justice system. These include strengthening the NPA<sup>8</sup> and repairing the gaps in appointment and dismissal processes that give rise to political manipulation of the criminal justice agencies.<sup>9</sup>

We recommend that the Zondo Commission addresses the systemic weakening of the criminal justice system as follows:

## **1. Restoring the criminal justice agencies**

- 1.1** Reform the leadership structures within criminal justice agencies urgently by performing competency assessments of all senior managers, focusing particularly on the South African Police Services (SAPS), including the SAPS crime intelligence division and the Hawks.
- 1.2** Conduct internal audits to identify persons appointed or promoted in terms of regulations that currently allow the SAPS National Commissioner to appoint or promote individuals without going through a selection process.
- 1.3** Create appropriate measures to address the appointment of staff to posts for which they do not have the required competencies, or where they have criminal records.
- 1.4** Build internal skills capacity and plan for the long-term instead of outsourcing these functions to private sector consultants.
- 1.5** Enlist the help of a forum similar to the National Health Anti-Corruption Forum), which may be useful to ensure that civil society and state partners can have robust, frank exchanges about actual cases of corruption and how best to remedy these. This could also help facilitate technical support from civil society organisations.
- 1.6** Scrutinise how we are spending funds in the criminal justice system, given that bigger budgets do not necessarily translate into meaningful action.

## **2. Transparency and accountability**

- 2.1** Review accountability systems pertaining to the SAPS crime intelligence division, including management of the crime intelligence secret service account. Steps should be taken to establish more effective mechanisms for oversight and accountability of crime intelligence, in line with overall efforts to improve the accountability of all intelligence agencies.
- 2.2** Implement a process within all organisations to renew commitment to key values of accountability, fairness and impartiality that underpin the principle of the rule of law among officials in the criminal justice system.
- 2.3** Revive, affirm and strengthen a culture within these agencies that supports their ability to operate in an accountable manner in line with principles of the rule of law, through training programmes if necessary.

- 2.4 Enforce access to information relating to the ultimate beneficial ownership of private companies.
- 2.5 Strengthening accountability with regard to SARS<sup>10</sup>
  - 2.5.1 Apply more rigorous tax compliance practices.
  - 2.5.2 Increase capacity in SARS's compliance unit and large business center as a means of holding non-compliant actors accountable.

### 3. Strengthen anti-corruption investigation and prosecution capacity of criminal justice agencies

- 3.1 Increase the budgets of all criminal and anti-corruption agencies to meet their capacity needs to perform their roles without restrictions or hindrances.
- 3.2 Address the lack of adequate skills and capacity within the criminal justice system, which has experienced a depletion of skills and needs urgent support to continue all investigations.
- 3.3 Develop a monitoring system that combines financial audit information (e.g., Auditor- General reports) and performance data (e.g., annual reports) of criminal justice agencies, so that the public can have a clear sense of the “value for money” given by these agencies. This will also assist in ensuring that the activities of agencies are budgeted for appropriately.
- 3.4 Ensure that there is a way to track the movement and progress of investigations in the criminal justice system via a mechanism that keeps a public record of developments in a case, similar to the Parliamentary Monitoring Groups' method for tracking legislation.
- 3.5 Request the implementation of a feedback loop to the legislature and others on lessons learnt in investigations and reasons for lack of prosecutions.

### 4. Legal reforms to address gaps that may allow for manipulation of criminal justice agencies

- 4.1 Ensure greater transparency in the interface between the executive and criminal justice leadership through regulations that address the two Constitutional provisions that perpetuate ambiguity in respect of the relationship between the executive and senior leadership of major criminal justice agencies. The two provisions are Section 179(6), concerning the relationship between the Minister of Justice and the NDPP; and Section 207(2) which requires the National Commissioner of Police to comply with “directions” issued by the Minister of Police. This action would be in line with the Constitution's emphasis on accountable and transparent government.
- 4.2 Enforce mechanisms to ensure professional criminal justice leadership. These should include legislative measures to ensure that the best possible candidates are put forward for appointment to leadership roles; and to allow for the public to have a say in this process.
- 4.3 Appoint panels to shortlist, interview and assess candidates, and make recommendations for the appointment of senior managers within the SAPS, NPA, Hawks and IPID, at both national and provincial levels. These panels should be made up of stakeholders

derived from professional bodies, academic institutions and individuals of high standing who can bring together a broad range of skills and knowledge to assess the integrity, substantive knowledge and leadership skills of candidates.

- 44 Create a more transparent and rigorous appointment for employees at all levels. Such mechanisms should also play a role in the appointment of the head of the Special Investigating Unit (SIU). This is because the SIU plays a key role in the investigation of corruption, and at present its head is appointed directly by the President.

## 3.2 HOW SHOULD THE RIGHTS OF THE MOST VULNERABLE BE PROTECTED?

In order to address the protection of vulnerable groups in our society, we draw on some of the findings that have been made in the submissions to the Zondo Commission.<sup>11</sup> These findings illustrate how the funds intended to pay for the delivery of services to give effect to the rights enshrined in the Bill of Rights (such as social grants, access to health-care services and access to basic education) have been diverted using schemes designed by corrupt networks to steal. The recommendations address pervasive elements, including the irregular awarding of tenders, the irregular appointments of corruptible leaders, and the weakening of departments by dismissing or targeting persons who spoke out against such practices. Many of these elements were evident in the submission on the Estina-Vrede Dairy farm, for example.<sup>12</sup>

As a consequence of corruption, many children have not been able to claim their right to basic education and a safe learning environment,<sup>13</sup> the social grants of the indigent (including the elderly and children)<sup>14</sup> have been put at risk, and the right to access health-care services has been compromised.<sup>15</sup> The findings also illustrate that state capture is systemic and part of a much bigger network, one not limited to the Gupta family.

The following recommendations are submitted to the Zondo Commission to achieve the protection of the rights of vulnerable groups:

### 1. Transparency and accountability in procurement processes

- 1.1 Address procurement and accountability challenges within departments, especially regarding leaders who exercise power within departments.
- 1.2 Ensure that those implicated in irregular and unlawful procurement processes are held to account. One way is to implement the accountability mechanisms in the Public Finance Management Act 1 of 1999 (PFMA), including the dismissal of accounting officers who fail to ensure compliance with the PFMA.
- 1.3 Ensure that provincial treasuries have oversight over spending by the provincial departments of health. In some cases, there appears to be no oversight role played; in other cases, treasury advice is simply ignored by health departments.
- 1.4 Enforce Section 86 of the PFMA, which provides for fines or imprisonment where there has been willful or grossly negligent discharge of duties by accounting officers of departments. This includes the failure, by an accounting officer, to take effective and

appropriate steps to prevent unauthorised, irregular, and fruitless and wasteful expenditure.

- 1.5 Create regulations for specific legal sanctions against politicians who interfere in matters beyond their remit, such as the payment of invoices or awarding of contracts.
- 1.6 Ensure proactive disclosures of tenders or spending-related information.
- 1.7 Ensure a transparent system of Service Level Agreements<sup>16</sup> (SLAs) for the provision of social services. The Constitutional Court recently ruled that Cash Paymaster Services<sup>17</sup> (SASSA)<sup>18</sup> was a function of the state, setting the legal precedent that when a private company does work on the government's behalf, that private party is essentially performing a Constitutional duty on behalf of the department. (The same should apply for sub-suppliers or contractors linked to procurement as well.) The case arose because the secrecy of the SLA prevented the general public from being able to assess whether the extent and conditions of CPS services were aligned to their Constitutional obligations. Hence the call for all SLAs of crucial public services (when rendered by the private sector) to be made public.
- 1.8 Investigate the Council for Medical Schemes and remunerative work outside the public sector.<sup>19</sup>

## 2. Appointment and dismissal processes

- 2.1 The National Development plan calls for the development of a professional public service, insulated from political patronage, that serves government. Government should give effect to this policy vision.
- 2.2 An independent and impartial body/person should be responsible for appointment and dismissal processes, and this process should be made transparent.
- 2.3 Similarly, independent administrative checks on appointment and removal processes must be developed, through the assignment of certain powers to independently constituted commissions and committees.
- 2.4 To strengthen these measures, we recommend creating an administrative head of the public service and equivalent provincial heads of the public service. These individuals will carry the responsibility of managing the career progression of heads of departments, including convening panels for recruitment processes, performance assessments and disciplinary procedures.
  - 24.1 The administrative head of the public service (and provincial equivalents) would need to be appointed in a way that ensures their integrity and independence from private interests, through a transparent process that facilitates civil society oversight.
  - 24.2 This could be done through the use of a selection panel, convened by the chair of the Public Service Commission and the administrative head of the public service, who would draw up a shortlist of suitable candidates for top posts.
  - 24.3 The selection panel should make use of competency tests and other

assessment mechanisms. Likewise, it would be necessary to develop processes for local government structures that create similar administrative checks on appointment and removal processes.

- 2.5 Once such independent administrative checks on appointment and removal processes have been established for senior administrators in the public service and municipalities, government must locate responsibility for appointments and dismissals with the senior administrators (head of department in the case of the public service, and the municipal manager in the case of local government). As it stands, the law locates this responsibility with politicians, who have discretionary powers to delegate this function.
- 2.6 Ensure that appointment processes are transparent and accessible to the public, in particular communities which have a direct and material interest in the leaders in these positions and include stringent measures for diversion from the law.
- 2.7 Create regulations to include public participation in the appointment process, thereby discouraging irrational or nepotistic appointments.
- 2.8 Conduct audits of all senior appointments in provincial departments of health so that only those who are competent and have the required skills are employed.
- 2.9 Review dismissal procedures that take too long and burden public resources; for instance, putting people on paid leave or moving them within departments until investigations into their conduct is completed.
- 2.10 Similarly, where officials are suspended, we recommend establishing a unit that monitors the suspension process within the public sector, -- geared towards faster outcomes with clearer objectives and greater transparency about employees suspended with/out pay.
- 2.11 We call on Parliament to reform legislation to limit the practice of appointing senior managers in an acting capacity. This has caused massive institutional instability in key state institutions tasked with service delivery.

### 3. Whistle-blower protections

- 3.1 There must be a safer process for whistle-blowers to follow when disclosing information, in particular for provincial government employees. This includes measures to restore public confidence in existing whistle-blower processes.
- 3.2 The public should be made aware that such protections are in place in order to encourage more whistle-blowers to come forward. Parties to these submissions have repeatedly encountered state employees, for example school teachers and principals, who have refused to disclose accurate information regarding service provision, for fear of retaliation and victimisation. This is because they have faced direct intimidation from higher-ranking officials in the state, as well as from private individuals.
- 3.3 Introduce *qui tam* (incentivized and monitored whistle-blower) enforcement schemes in forthcoming legislation for procurement. Whistle-blowers who are courageous enough to act often face greatly diminished earning potential for long periods after they have reported wrongdoing, and they need to be protected against this.



## 4. Legal reform

- 4.1 There is a need to review and strengthen the Protected Disclosures Act to ensure better protection for whistle-blowers across all sectors. We propose modeling amendments on the new whistleblower laws introduced earlier this year in Australia.<sup>20</sup>
- 4.2 The CPS/SASSA case<sup>21</sup> shows that there is a gap in legislation that affects other cases and prevents feedback. Therefore, amend or revise the regulatory framework governing SASSA (SASSA Act, 9 of 2004 and the Social Assistance Act 13 of 2004), to:
  - 4.2.1 limit the power the Minister of Social Development exercises with respect to the management decisions of the Chief Executive Officer (CEO) of SASSA;
  - 4.2.2 strengthen the autonomy and independence of the CEO of SASSA;
  - 4.2.3 direct the appointment of a board for SASSA with sufficiently qualified and independent experts, and establish an independent inspectorate with oversight functions as soon as possible.
- 4.3 Amend the Health Professionals Council of South Africa – Proclamation No. R. 23 of 2019 (17 May 2019), as there have been allegations of irregularities relating to the human resources practices within the HPCSA.<sup>22</sup>
- 4.4 Investigate regulatory weaknesses, especially those concerning pharmaceutical companies’ anti-competitive practices in contravention of legislation.
- 4.5 Clearly demarcate the roles of MECs and all heads of departments to limit the political interference in the functioning of departments.
- 4.6 Ensure proactive disclosures by provincial departments by creating clear guidelines on what information should be provided to the media and the public on request without recourse to PAIA.

The Department of Health often rejects media requests for tender or spending-related information, stating that in order to access the requested information, applications must be made in terms of the Protection of Access to Information Act (PAIA). This runs counter to the Constitutional values of transparent, accountable governance and is the opposite of what is intended by the PAIA.

## 3.3 HOW DO WE PROTECT STATE-OWNED ENTITIES (SOEs) FROM FUTURE STATE CAPTURE?

The recommendations presented below have been drawn collectively from submissions made by a number of organisations within the Working Group focusing on the state-capture of various SOEs. Most notably, these extend to state capture of the SABC,<sup>23</sup> ACSA,<sup>24</sup> PRASA,<sup>25</sup> Transnet,<sup>26</sup> Denel,<sup>27</sup> and Eskom,<sup>28</sup> while addressing the appointment of board members of SOEs<sup>29</sup> and irregular procurement practices that facilitate grand corruption.<sup>30</sup> The importance of applying these recommendations cannot be understated, as billions of Rands have been syphoned from the public purse via SOEs.

## **THE FOLLOWING RECOMMENDATIONS ARE SUBMITTED TO THE ZONDO COMMISSION TO ADDRESS THE EPIDEMIC OF STATE CAPTURE IN SOEs:**

### **1. Investigations of all implicated parties**

- 1.1** The Commission is encouraged to use its powers to compel witnesses to come forward for questioning. This should include political parties and private sector institutions, such as banks and auditors.
- 1.2** The Commission should call on law enforcement and prosecution agencies to update the public on the progress of its investigations.

### **2. Appointment and dismissal processes**

- 2.1** Diffuse the concentration of power in SOE boards – the state cannot be the majority/sole shareholder, policy-maker and regulator of SOEs. This presents a toxic conflict of interest.
- 2.2** Revise the appointment of SOE boards so that these are based on competency and not political connection.
- 2.3** Strongly encourage the composition of SOE boards through policy and regulations to include the Minister, expertise from within that particular sector, stakeholders such as civil society organisations, Parliament, and ex-officio members such as the CFO and CEO – similar to a People’s Oversight Committee. Create clear minimum requirements for Board appointments.
- 2.4** Ensure that members of the public, the main stakeholders of SOEs, have access to transparency over who is appointed and why.
- 2.5** Treasury needs to manage oversight and ensure that the contractual conditions between the SOE and service providers are met. For instance, when SOEs enter into loan agreements, the conditions of the loans need to be made clear.
- 2.6** The Auditor-General in South Africa must play an oversight role and conduct sample audits of appointments to SOE Boards.
- 2.7** Greater oversight is required regarding leaders who are simply shuffled from one SOE position to another.
- 2.8** The dismissal of accounting officers implicated in economic crimes should happen swiftly and in accordance within the law. A public sector unit should be established to investigate suspensions and provide faster outcomes.
- 2.9** The culture of impunity needs to be addressed, and corruption at all levels within departments should be investigated.

### **3. Transparency and accountability**

- 3.1** Greater transparency is required in the relationship between the Executive and SOEs.
- 3.2** Non-executive directors should not have any power or influence on SOE board tender committees.

#### **4. Political party accountability:**

- 4.1** All office-bearers breaching their political party ethical codes must be held to account by that party's leadership, to protect the interests of the citizens who elected them.
- 4.2** Introduce intra-party legislation that enables political leaders to hold members to account for corrupt activities.

#### **5. The role of Parliament in ensuring accountability:**

- 5.1** There needs to be a safe environment created for staff within Parliament, including a platform for whistle-blowers. We note with concern "security vetting" used to intimidate workers in Parliament,<sup>31</sup> as well as the dismissal of staff without due process,<sup>32</sup> and allegations of a toxic work environment resulting in the tragic protest suicide of Lennox Garane.<sup>33</sup>
- 5.2** Ensure far greater oversight at parliamentary level. For example, SOEs should provide annual reports on time, and make their Memorandums of Understanding (MOUs) available – Parliament must insist on greater compliance here.
- 5.3** Encourage Parliament to use its powers to summon state officials, where applicable in the interest of accountability.
- 5.4** Corrupt individuals should be barred from serving on SOE boards.

#### **6. Legal proceedings**

- 6.1** Encourage civil proceedings to facilitate recovery of assets where appropriate. It is the obligation and responsibility of the state to ensure that assets are recovered.
- 6.2** Pro-bono legal services should be provided to ensure the recovery of assets from culprits on behalf of those who are unable to fund lengthy legal proceedings.
- 6.3** Ensure that the executive authority of each SOE be held responsible for the costs of civil proceedings to recover assets.
- 6.4** Implement a streamlined recourse mechanism that allows bid participants to have the adjudication process reviewed.

#### **7. Addressing unlawful practices in procurement processes**

- 7.1** Ensure that corrupt decision-makers in procurement processes are prosecuted; this is imperative to combat the abuse of SOEs through irregular awarding of tenders.
- 7.2** Further, when people have been proved to be corrupt, they should not be allowed to serve on other boards (as has happened in the cases of Eskom and SAA).
- 7.3** Mechanisms must be put in place that divert from the current practice of relying upon the sole discretion of the state.
- 7.4** Non-executive directors should not have the power to make decisions in terms of which companies are granted tenders or contracts.

7.5 Review current tender thresholds and consider introducing thresholds linked to levels of oversight required in the procurement contract; as the threshold increases, so should the level of accountability and oversight of that contract.

7.6 Deviation from contract amounts needs to be reviewed by boards to pick up problematic procurement processes.

## 8. Interrogate the use of “emergency conditions” to initiate procurement deals:

8.1 Encourage the implementation of a systematic process to identify problematic procurement processes, given that boards tend to make use of emergencies to justify procurement.

8.2 Review the emergency procurement process system to prevent boards either allowing an “emergency” to occur or relying on the “emergency” process so that standard procurement processes can be bypassed.

## 9. Whistle-blower protections

9.1 Introduce a whistle-blower forum specifically for actors (both state and non-state) working within the procurement service industry with government.

# 3.4 HOW DO WE HOLD THE ENABLERS OF STATE CAPTURE TO ACCOUNT?

The Working Group deliberately moves the private-sector enablers of state capture from the periphery to the center of its analysis of grand corruption.<sup>34</sup> This is informed by the reality of the modern globalised and financialised world: corruption on a grand scale, along with organised crime and state capture, are enabled by skilled professionals, including bankers, lawyers, accountants and consultants. When implicated and exposed, these well-paid “legitimate” corporations present themselves as unwitting actors caught up in corruption scandals, but the evidence tells a different story.

The following recommendations are submitted to the Zondo Commission to address the role of non-state actors who enable state capture:

## 1. Investigations of *all* implicated parties

1.1 Investigate *all* external parties involved in the Gupta racketeering enterprise: specifically, banks, law firms, accounting firms and other professionals who facilitated illicit and suspicious transactions, and who failed in their lawful due diligence requirements.

1.2 Strongly encourage holding private actors to account through the Companies Act. The Commission must summon banks and enforce investigations based on the information that has emerged from the Gupta leaks.

- 1.3 The Commission must hold professional bodies required to ensure ethical compliance by their members to account, for instance, where accountants or lawyers have transgressed their professional code of ethics to aid or enable state capture. – In these cases, what processes must be followed to disbar them from practice?
- 1.4 Use the information included in the submission by Open Secrets and Shadow World Investigations to further investigate and prosecute where possible the private actors in accounting firms and consultancies.

## 2. Legal reform

- 2.1 Address the gaps in the framework of regulations and institutions of accountability that are supposed to hold private actors accountable for unlawful conduct. This is both a global and local obstacle to accountability.
- 2.2 Address the systemic weaknesses in South Africa's legal framework regarding public knowledge of beneficial ownership of corporations. There is at present no publicly accessible registry for beneficial ownership.
- 2.3 There are significant gaps in the Public Companies Bill that need to be addressed.

## 3. Increase the capacity of the criminal justice system

- 3.1 The capacity of the criminal justice system to hold private actors accountable for corruption has been eroded. This is another urgent reason to build capacity in these agencies before the findings of the Commission are released.

## 4. Transparency and accountability

- 4.1 Stringent measures must be used to disrupt the culture of impunity and hold these actors to account.
- 4.2 The NPA and its dedicated investigative directorate should prioritise prosecutions of those banks, accountants, consultants and lawyers which laundered money for the Gupta enterprise. Holding money launderers to account is a crucial first step in ending impunity for these crimes.
- 4.3 The Commission should investigate why governing bodies took no action against implicated individuals and firms.

## 5. Reimburse the public

- 5.1 Firms that have been implicated in state capture, and their managers, must be called before the Commission to offer a full and frank account of their roles. The Commission should recommend that steps be taken to ensure that parties who charged fees for work done in expediting illegal and illicit contracts, must return this money with full interest.
- 5.2 The Commission must insist on the creation of a public fund that can be used to cover the costs of
- 5.3 legal pursuit of funds siphoned off by state capture.

## 3.5 HOW CAN WE LIMIT THE CORROSIVE IMPACT OF POLITICAL PARTY FUNDING?

The gaps in political-party funding regulations in South Africa allow for the toxic marriage between money and politics to morph into opportunities for corruption, fraud and political interference in decision-making. It is important to have regulations in place that require political parties to be financially accountable and transparent to the constituencies that elected them, and the public as a whole. While political parties need funding in order to compete in a multi-party democracy, if left unregulated, party funding can take the form of both legal-but-inappropriate and illegal enrichment on the part of political parties or individuals. The Working Group submission<sup>35</sup> illustrates how larger political parties in particular are vulnerable to undue influence by wealthy private interests, as well as capable of abusing their power to amass large sources of private and public funding, contributing to an unfair environment for other political parties.

The following recommendations are submitted to the Zondo Commission to limit the corrosive impact of political party funding:

### 1. Legal reform

- 1.1 The President must gazette a date for the Political Party Funding Act (PPFA) of 2018 to come into effect as a matter of urgency.
- 1.2 An amendment to the Promotion of Access to Information Act (PAIA), as per the court order from the June 2018 judgment on *MVC NPC vs the Minister of Justice & Others*, must:
  - 1.2.1 not limit the recording, preservation and disclosure of donations to those in excess of R 100 000; rather all donations should be recorded, preserved and made accessible through PAIA;
  - 1.2.2 allow for the recording, preservation and access to private funding information, not limited to the definition of a donation as defined in the PPFA; and
  - 1.2.3 allow for requests for information on application.
- 1.3 The legislation guiding the disbursement of political party funding is consistently or inconsistently applied. “Voluntary” donations should be scrutinised, and the laws that govern these should promote a fair intra-party democratic environment.
- 1.4 Address the issue of using state resources for campaigning – as in the case of SASSA – a state agency – using its food parcels as a campaign tool for the ANC.<sup>36</sup>

### 2. Private funding of political parties:

- 2.1 The PPFA must be implemented as soon as possible in order to allow for disclosures well before the 2021 local government elections.

### 3. Public funding of political parties:

- 3.1 Consider the constitutionality of public funding allocated to political parties outside the purview of the Public Funding of Represented Political Parties Act [PFRPPA] of 1997.

- 3.2 If parties are allocated funds outside the purview of the PFRPPA, they should be obliged to report how much they are allocated, and how these funds are spent. Audited reports of how such funds are spent must be provided. For example, Parliament's annual reports must indicate how much each represented political party receives in funds allocated by the Financial Management of Parliament and Provincial Legislatures Act of 2009.
- 3.3 More transparency is needed on how provincial legislatures and Parliament allocates public funds to political parties.
- 3.4 There should be greater transparency regarding "constituency funds" allocated by Parliament, leadership allowances, and how this money gets spent, along with stricter rules regulating what funds may be spent on, supported by audit reports.

#### 4. Intra-party campaigns:

- 4.1 Regulate all donations, sponsorships or benefits allocated towards candidates standing for leadership positions in political parties' intra-party campaigns in separate legislation to the PPFA or PAIA.
- 4.2 Party funding agencies must be required to provide information on how much each political party receives as part of their party funding campaign.

#### 5. Transparency and accountability

- 5.1 The Joint Ethics and Members Interest Committee should be more transparent and open to enable public oversight and scrutiny of decisions by the Committee.
- 5.2 Increase transparency by publishing all declarations of financial interests made by members of the Executive, Assemblies and Councils in the public domain, with no declarations permitted to be confidential.
- 5.3 Consider criminal offence provisions for those members of the Executive, Assemblies and Councils who do not comply.
- 5.4 The Electoral Commission of South Africa (IEC) must regulate Chapter Five of the PPFA to provide for enforcement powers to monitor compliance and investigate non-compliance with the PPFA.
- 5.5 Investigate the allocation and use of parliamentary constituency office funding by members of Parliament. If it is true that money allocated for non-partisan constituency work by Parliament is being used for party activities, this would contradict the principles of public participation. This would also apply to provincial legislatures, members of the provincial legislature and members of the provincial parliament.

#### 6. Information Regulator:

- 6.1 The Information Regulator has an important role to play in providing public access to information that can help expose state capture and corruption, as well as the impact this has on the public. The Information Regulator is currently failing to monitor non-/compliance with PAIA.

**6.2** The capacity of the Information Regulator must be reviewed with urgency, and if it is failing in its mandate, it must be held to account.

## **7. Whistle-blower protections**

**7.1** Ensure whistle-blowers are able to report in safety to the IEC any cases involving the submission of false, inaccurate or misleading information regarding the private funding of political parties or independent candidates.

## **8. Public participation**

**8.1** The Commission is encouraged to do more to make its information available to the public, and to remain actively engaged with the public through briefings in South African languages and to the media.



## 4 | CONCLUSION

The recommendations in this Agenda for Action are meant to support efforts to ensure that human rights to life, dignity and access to affordable basic services become the norm rather than the exception in South Africa. The struggle against state capture and corruption should be seen as part of other efforts to challenge inequality and deepening poverty.

The recommendations made by members of the Working Group in their various submissions are intended to strengthen the Zondo Commissions' ability to make firm findings that can lead to systemic reform in the struggle against corruption and state capture.

It is vital that the capacity of law enforcement and criminal justice agencies are urgently increased, and that these are staffed with skilled professionals committed to the South African Constitution and Bill of Rights. Without a strong criminal justice system in place, the findings of the Zondo Commission will become moot.

The South African people have witnessed political elites making empty promises to tackle high-level corruption. This must change, and we must see real action and consequences if we are to continue to trust the democratic political order. There must be accountability for corruption, and this must start with our leaders in politics, public institutions and private corporations who have enabled state capture.

Civil society will continue to expose failure to hold those who abuse power to account. The oversight role played by the Working Group extends to all institutions tasked with bringing into effect the recommendations contained in this submission, and to ensure that the findings of the Zondo Commission are urgently acted on.

**There must be accountability for corruption, and this must start with our leaders in politics, public institutions and private corporations who have enabled state capture.**

## ANNEXURE I

# 5 | LIST OF CSWG ORGANISATIONS

### AIDC

[WWW.AIDC.ORG.ZA](http://WWW.AIDC.ORG.ZA)

The Alternative Information and Development Centre aims to strengthen alliances with popular movements and organisations providing concrete alternatives for creating decent work and livelihoods. AIDC works towards a society free of oppression, exploitation and alienation.

### AKF

[WWW.KATHRADAFFOUNDATION.ORG](http://WWW.KATHRADAFFOUNDATION.ORG)

The Ahmed Kathrada Foundation was formed in 2008 to continue the legacy of anti-apartheid struggle stalwart Ahmed Kathrada and his generation. The Foundation is an independent, non-partisan entity. The objective of the Foundation is to deepen non-racialism in post-apartheid South Africa.

### BLACK SASH

[WWW.BLACKSASH.ORG.ZA](http://WWW.BLACKSASH.ORG.ZA)

The Black Sash Trust is a veteran human rights organisation advocating for social justice in South Africa. Its mission is to work towards the realisation of socio-economic rights, as outlined in the South African Constitution, with emphasis on social security and social protection for the most vulnerable, in order to reduce poverty and inequality.

## **BJC**

[WWW.BUDGETJUSTICESA.ORG](http://WWW.BUDGETJUSTICESA.ORG)

The Budget Justice Coalition is a coalition of civil society organisations working collaboratively to build people's participation in and understanding of South Africa's budget and planning processes. The BJC does budget advocacy to mobilise the power of the people to ensure that the state advances social, economic and environmental justice that serves people's rights, quality of life and dignity in a developmental, equitable and redistributive way. The founding member organisations include: The Public Service Accountability Monitor, Section27, Alternative Information and Development Center, Equal Education, Equal Education Law Centre, Children's Institute, Studies in Poverty and Inequality Institute, Institute for Economic Justice, and the Dullah Omar Institute.

## **CASAC**

[WWW.CASAC.ORG.ZA](http://WWW.CASAC.ORG.ZA)

The Council for the Advancement of the South African Constitution is a group of progressive people who seek to advance the South African Constitution as the platform for democratic politics and the transformation of society. It embraces the contestation of ideas and encourages debate on how best to build a just and equal society in which people can live securely and with dignity.

## **CALS**

[WWW.WITS.AC.ZA/CALS](http://WWW.WITS.AC.ZA/CALS)

The Centre for Applied Legal Studies was founded in 1978 by Professor John Dugard as a legal research unit within Wits University. The purpose of the Centre was to encourage law reform and improve access to justice during apartheid. While much has changed since then, the organisation remains committed to promoting human rights and challenging systems of power in South Africa and the region.

## **CST**

[WWW.SUN.AC.ZA/CST](http://WWW.SUN.AC.ZA/CST)

The Stellenbosch Centre for Complex Systems in Transition is a Stellenbosch University flagship initiative established in 2015. This initiative brings together complexity thinking, sustainability science and transdisciplinary research methodology.

## **CW**

[WWW.CORRUPTIONWATCH.ORG.ZA](http://WWW.CORRUPTIONWATCH.ORG.ZA)

Corruption Watch aims to ensure that the custodians of public resources act responsibly to advance the interests of the public, and to ensure that opportunities for entering into corrupt relationships are reduced.

## **DPRU**

[WWW.DPRU.UCT.AC.ZA](http://WWW.DPRU.UCT.AC.ZA)

The Development Policy Research Unit is one of Africa's premier economic policy think-tanks. The DPRU aims to inform economic and social policy making by specialising in academically rigorous research into various socio-economic challenges in South Africa and Africa in general. The DPRU is a university-recognised research unit located within the School of Economics at the University of Cape Town.

## **DOI**

[WWW.DULLAHOMARINSTITUTE.ORG.ZA](http://WWW.DULLAHOMARINSTITUTE.ORG.ZA)

Dullah Omar Institute, formerly the Community Law Centre, at the University of the Western Cape ("the Centre"), established in 1990, works to realise the democratic values and human rights enshrined in South Africa's Constitution. Based on high-quality research, the Centre engages in policy development, advocacy and educational initiatives, focusing on areas critical to the realisation of human rights and democracy in South Africa and Africa in general.

## **EE**

[WWW.EQUALEUCATION.ORG.ZA](http://WWW.EQUALEUCATION.ORG.ZA)

Equal Education is a movement of learners, parents, teachers and community members working for quality and equality in South African education, through analysis and activism. Where necessary, strategic litigation to support the campaigns led by EE members is provided by its sister organisation, Equal Education Law Centre.

## **EELC**

[WWW.EELAWCENTRE.ORG.ZA](http://WWW.EELAWCENTRE.ORG.ZA)

The Equal Education Law Centre (EELC) engages in strategic litigation regarding major issues surrounding long-term educational reform, as well as working on individual cases arising from the experiences of learners, parents and teachers, such as expulsions, disciplinary matters and access to schools. .

## FUL

[WWW.FREEDOMUNDERLAW.ORG](http://WWW.FREEDOMUNDERLAW.ORG)

Freedom Under Law was created as a non-profit organisation for the purposes of “promoting democracy under law and to advance [the] understanding of and respect for the rule of law and the principle of legality”. It principally acts in accordance with this purpose by instituting or joining in litigation and other legal and regulatory proceedings from time to time to combat and correct institutional conduct that is in conflict with the rule of law.

## HSF

[WWW.HSF.ORG.ZA](http://WWW.HSF.ORG.ZA)

The Helen Suzman Foundation is an independent, non-partisan think-tank in South Africa dedicated to promoting liberal democratic values and human rights in post-apartheid South Africa through its research, publications, public interest litigation and submissions to Parliament.

## LRC

[WWW.LRC.ORG.ZA](http://WWW.LRC.ORG.ZA)

The Legal Resources Centre was established in 1979 with the primary aim of using the law as an instrument of justice for South Africa’s marginalised and under-resourced populations. Within the troubling legacy of apartheid, the LRC continues to work towards three overarching objectives – equality, democracy and development – to foster enduring, sustainable progress through engaging in a gamut of social and economic justice issues. The organisation works as a public-interest law firm delivering outcomes primarily via client-based litigation.

## MVC

[WWW.MYVOTECOUNTS.ORG.ZA](http://WWW.MYVOTECOUNTS.ORG.ZA)

My Vote Counts is a non-profit organisation advocating for more transparency, accountability, fairness, inclusiveness and responsiveness in South Africa’s political and electoral system. Its two core projects are:

campaigning for reform in the political system through advocating for more transparency of political parties’ sources of private funding; and campaigning to reform the electoral system.

## **OPEN SECRETS**

[WWW.OPENSECRETS.ORG.ZA](http://WWW.OPENSECRETS.ORG.ZA)

Open Secrets is a non-profit organisation that exposes and builds accountability for private sector economic crimes that have impacted human rights, through investigative research, advocacy, and the law.

## **OUTA**

[WWW.OUTA.CO.ZA](http://WWW.OUTA.CO.ZA)

The Organisation for Undoing Tax Abuse works with communities and authorities to resolve the decline in administration and service delivery within all spheres of government. OUTA focuses on challenging and taking action against wasteful and corrupt expenditure.

## **PARI**

[WWW.PARI.ORG.ZA](http://WWW.PARI.ORG.ZA)

The Public Affairs Research Institute is a Johannesburg-based organisation that studies the effectiveness of state institutions in the delivery of services and infrastructure. It generates high-quality research to better understand the drivers of institutional performance in the public sector and improve implementation of policies in relevant fields. It works with change agents in the public service to address institutional blockages or weaknesses in their departments.

## **PPLAAF**

[WWW.PPLAAF.ORG](http://WWW.PPLAAF.ORG)

Plateforme de Protection des Lanceurs d'Alerte en Afrique, or The Platform to Protect Whistle-blowers in Africa, seeks to defend whistle-blowers, as well as strategically litigate and advocate on their behalf where their disclosures speak to the public interest of African citizens.

## **R2K**

[WWW.R2K.ORG.ZA](http://WWW.R2K.ORG.ZA)

The Right2Know Campaign was launched in August 2010 and has grown into a movement centred on freedom of expression and access to information. R2K is a democratic, activist-driven campaign that strengthens and unites citizens to raise public awareness, mobilise communities and undertake research and targeted advocacy that aims to ensure the free flow of information necessary to meet people's social, economic, political and ecological needs, and enable them to live free from want, inequality and indignity.

## **SAFCEI**

[WWW.SAFCEI.ORG](http://WWW.SAFCEI.ORG)

The Southern African Faith Communities' Environmental Institute is a multi-faith organisation committed to supporting faith leaders and their communities in Southern Africa to increase awareness, understanding and action on eco-justice, sustainable living and climate change.

## **SECTION 27**

[WWW.SECTION27.ORG.ZA](http://WWW.SECTION27.ORG.ZA)

SECTION27 is a public interest law centre that seeks to achieve substantive equality and social justice in South Africa. Guided by the principles and values in the Constitution, SECTION27 uses law, advocacy, legal literacy, research and community mobilisation to achieve access to health-care services and basic education.

## **SHADOW WORLD INVESTIGATIONS**

[WWW.SHADOWWORLDINVESTIGATIONS.ORG](http://WWW.SHADOWWORLDINVESTIGATIONS.ORG)

This London-based organisation undertakes path-breaking investigations into cases of grand corruption in order to reveal patterns and systems of corruption, predominantly but not exclusively, in the global arms trade. The organisation also assists prosecutors, law enforcement agencies, NGOs, journalists, activists and legislators in their efforts to fight corruption.

## **TAC**

[WWW.TAC.ORG.ZA](http://WWW.TAC.ORG.ZA)

The Treatment Action Campaign was founded in December 1998 to campaign for access to treatment for HIV/AIDS. Today the TAC continues to represent users of the public health-care system in South Africa, and to campaign and litigate on critical issues relating to the quality of and access to health care. The organisation currently has over 8 000 members and a network of 182 branches and provincial offices in seven of South Africa's nine provinces.

## **#UNITEBEHIND**

[WWW.UNITEBEHIND.ORG.ZA](http://WWW.UNITEBEHIND.ORG.ZA)

#UniteBehind is a civil society coalition of over twenty organisations that mobilises together around common campaigns and local struggles. By coming together under a united banner, the members can more effectively organise for a just and equal South Africa in which the people share in the country's wealth.



# NOTES

- 1: The Commissions Act 8 of 1947.
- 2: The Civil Society Working Group on State Capture: Resisting the looters who stole our human rights (media statement in support of Human Rights Day activism). Available <https://www.polity.org.za/article/civil-society-working-group-on-state-capture-resisting-the-looters-who-stole-our-human-rights-2019-03-20> (accessed 17/05/19).
- 3: Constitution of South Africa, 1996.
- 4: Ernest Mabuza, "Batohi wants Ramaphosa to deal with 'capacity' issues at NPA, Hawks," 1 October 2019. <https://www.timeslive.co.za/news/south-africa/2019-10-01-batohi-wants-ramaphosa-to-deal-with-capacity-issues-at-mpa-hawks/> (accessed 10/10/19).
- 5: More details on the panelists for the People's Hearing on State Capture: Yasmin Sooka is a former member of both the South African and the Sierra Leone Truth and Reconciliation Commissions, and the former legal advisor to Ban Ki-moon on the UN Panel of Experts on Sri Lanka. Nomboniso Gasa is not only a leading gender activist, but a professor and senior researcher at UCT whose work focused on land, politics, gender and cultural issues. Ms Nonhle Mbuthuma is a human rights defender leading the struggle for indigenous peoples' rights, land rights and environmental rights in the Xolobeni region of the Eastern Cape, as well as the founder of Amadiba Crisis Committee (ACC).
- 6: These recommendations are based on the collective findings of each organisation's submission/s to the Zondo Commission. We have not referred to them here in an effort to avoid duplicating submissions. Annexure 1 contains a list of all the organisations that provided submissions. Where publicly available, and applicable, a link to a particular submission is given.
- 7: Proclamation 3 of 2018 provides that this Judicial Commission of Inquiry has been established "to investigate matters of public and national interest concerning allegations of state capture, corruption and fraud", including "whether, and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive (including Deputy Ministers), office bearers and/or functionaries employed by or office bearers of any state institutions or organs of state or directors of the boards of SOEs." (Government Gazette 41403, 25 January 2018.)
- 8: See the joint submission made by the Dullah Omar Institute and Africa Criminal Justice Reform Organisation. Available at: <https://acjr.org.za/resource-centre/acjr-submission-to-zc-24-june-2019.pdf>.
- 9: See the following submissions by the Helen Suzman Foundation; Freedom Under Law; the joint submission by Corruption Watch and the Institute for Security Studies, available at: <https://www.corruptionwatch.org.za/wp-content/uploads/2019/06/ISS-Corruption-Watch-Submission-to-the-Zondo-Commission-1-April-2019.pdf>.
- 10: See the submission made by the Alternative Information and Development Centre. Available at: <http://aidc.org.za/download/taxation/AIDC-Submission-to-the-Zondo-Commission-of-Inquiry.pdf>.
- 11: See footnotes 8 and 9.
- 12: See submission by Shadow World Investigations (formerly CW-UK).
- 13: See the submission made jointly by Equal Education, Section 27 and Equal Education Law Centre. Available at: [https://eualeducation.org.za/wp-content/uploads/2019/08/ee-eelc-s27\\_submission-to-zondo-commission.pdf](https://eualeducation.org.za/wp-content/uploads/2019/08/ee-eelc-s27_submission-to-zondo-commission.pdf).
- 14: See the submission on SASSA made jointly by Black Sash, CALS and CST. Available at: <https://47zhcvti0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2018/08/SASSA-State-Capture-2018-07-A4-report-for-web-standard.pdf>. See also OUTA submission on the Transnet retirement benefit fund.
- 15: See the TAC and S27 joint submission on the impact of state capture on the health care system.
- 16: A service-level agreement (SLA) is a contract between a service provider and its internal or external customers that documents what services the provider will furnish, and defines the service standards the provider is obliged to meet.
- 17: CPS is a Social Grant Distribution technology used to distribute social welfare grants on a monthly basis to over nine million beneficiaries.

- 18: South African Social Security Agency (SASSA).
- 19: See the TAC and S27 joint submission on the impact of state capture on the health care system.
- 20: See <https://hsfnotes.com/fsrandcorpcrime/2019/02/26/whistleblower-reform-in-australia-new-legislation-enacted/> (accessed 22/10/19).
- 21: See footnote 11.
- 22: See footnote 12.
- 23: South African Broadcasting Corporation (SABC) submission by OUTA.
- 24: Airports Company South Africa (ACSA) submission by OUTA.
- 25: The Passenger Rail Agency of South Africa (PRASA) submission by #Unite-Behind and a separate submission by OUTA.
- 26: Submission by OUTA.
- 27: Submission by OUTA.
- 28: Submission by OUTA.
- 29: See the submission by Dullah Omar Institute. Available at <https://dullahomarinstitute.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/doi-submission-to-zondo-commission.pdf>.
- 30: See submission by SAFCEI. Available at <https://safcei.org/wp-content/uploads/2019/08/SAFCEI-Submission-to-the-Zondo-Commission-of-Inquiry-into-State-Capture-Nuclear-issues-31-July-2019-Final.pdf>.
- 31: See <https://www.news24.com/SouthAfrica/News/Parly-staffer-who-spoke-out-about-vetting-may-face-disciplinary-action-20151026>, accessed 27/10/19.
- 32: See <https://city-press.news24.com/News/ex-security-chief-takes-on-parliament-in-labour-row-20160730>, accessed 27/10/19.
- 33: See <https://www.dailymaverick.co.za/article/2019-01-11-parliament-breaks-promises-over-probe-into-managers-death-claims-garane-family/>, accessed 27/10/19.
- 34: See the joint submission by Open Secrets and Shadow World Investigations (formerly CW-UK).
- 35: See submission by My Vote Counts.
- 36: See footnote 13.



Group Secretariat:

**open  
secrets**

power & profit | truth & justice

A joint submission  
by the civil society  
Working Group on  
State Capture.

