

# **A Long Shadow: South Africa's Deep State and the Arms Trade:**

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**Open Secrets**

## **1. Introduction**

It is trite to say that one cannot understand corruption and state capture in South Africa purely by considering the democratic period after 1994. Through extensive research and activism, recognition among South Africans is developing that contemporary challenges of corruption and state capture are deeply rooted in our history. Unfortunately, such discussions have increasingly been hijacked for partisan political point-scoring, resulting in an entirely unhelpful back and forth comparison of 'apartheid corruption' and contemporary corruption. On both sides of this debate, there is a tendency to try and excuse the crimes of one era by pointing to the other. Not only does such an approach undermine the struggle for accountability for both past and contemporary crimes, but it also ignores the continuities in the networks that have profited from these crimes over a long period in South Africa, regardless of which political principal has been sitting in the Union Buildings. In short – this situation suits the powerful.

The evidence shows that the white apartheid state was itself captured by a powerful conservative network that derived profit from propping up that regime. Further, this network was only marginally disrupted by a formal change in government and processes of transitional justice that purported to address the crimes of the past. This conservative network is best understood as representing the 'deep state' – a secret network of corporations, banks, arms companies, intelligence agencies, and politicians that exert significant state power behind that state's formal institutions. This deep state network was both local and global. In this paper, we argue that the evident continuities between apartheid and post-apartheid 'state capture' are best understood by examining these deep state networks. Where the interests of deep state actors intersect, there is a powerful capacity to subvert the state for private gain and to undermine state institutions tasked with oversight and accountability.

In South Africa's case, the long-running role of the deep state in economic crime is exemplified by their role in facilitating illicit arms deals. From assisting in busting

sanctions for the apartheid state to the corrupt arms deal in 1999 and attempts to avoid investigations of either, there is a visible network of politicians, arms companies, spies, banks, and middlemen that have collaborated to profit at the expense of South Africans. They in turn have used their leverage and power to avoid accountability for their crimes, undermining democratic institutions in the process. We argue that it is imperative to turn our focus on to these deep state networks and to demand investigation and prosecution of allegations of economic crime so as to finally disrupt those who have operated with impunity for so long.

## **2. What is the 'deep state'?**

The term deep state is itself heavily contested, not least because conservative networks willfully misrepresent the term to describe any resistance they face to their particular brand of conservatism. Nowhere is this more evident than in Donald Trump's administration where any perceived 'resistance' to or criticism of Trump's policies from within government is painted as deep state networks aiming to derail his presidency.<sup>1</sup> Usually, Trump and his allies use the term to describe career civil servants and bureaucrats, though he has had very public spats with US intelligence agencies as well. In reality, the deep state includes these actors but extends to corporate interests, the military and organised crime. In fact, Trump's administration has sought massive hikes in military spending, radical tax cuts for corporations, and enacted foreign and domestic policy by bypassing formal institutions of state such as the State Department. This conduct suggests a powerful influence of the deep state over this administration, particularly military and corporate interests.

A more accurate account of the deep state comes from examining the origin of the term Turkey. There it was used to describe a powerful network of bureaucrats, the military, politicians and organised criminals that acted covertly and killed many people as a backlash against secularism and democracy from the 1950s.<sup>2</sup> It has since been used to describe powerful and secretive networks of securocrats in both Turkey and Egypt, particularly following the successful coup against Mohamed Morsi in 2013 and

<sup>1</sup> Demetri Sevastopulo, 'Donald Trump blames 'deep state' for insider attacks', Financial Times, 6 September 2018, Online: <https://www.ft.com/content/114bdfe0-b1ec-11e8-8d14-6f049d06439c>.

<sup>2</sup> The term 'deep state' is in fact derived from the Turkish *derin devlet*. See 'What is the "deep state"?', *The Economist*, 9 March 2017.

the failed coup against Erdogan in 2016.<sup>3</sup>

In sum, the influence of a deep state occurs when “formal institutions disguise specific informal institutions which are usually the actual rules that are being followed”.<sup>4</sup> These ‘actual rules’ are set by the interests of corporations, intelligence agencies, arms companies and politicians. Where and when their interests intersect, there is a tendency to bypass formal power, erode accountability and undermine the rule of law. Hakki Tas calls the “deep state” a “parallel government [made up of politicians, business people, state officials and intelligence officers] operating outside the law and redefining state policy”.<sup>5</sup> The apartheid regime drew heavily on these types of networks for its support, both at home and abroad. They became accomplices in economic crime when aiding and abetting a crime against humanity.<sup>6</sup>

Another defining feature of such networks is how they counter change and avoid accountability and justice, even at times of significant political upheaval. This has been seen in Tunisia, where their Truth and Justice Commission – specifically tasked with addressing corruption and economic crimes - faced vast obstacles in accessing crucial state archives and faced public attacks from senior officials.<sup>7</sup> Sihem Bensedrine -the chairperson of the commission - argues that this resistance to the work of the commission stems from the “deep state” who refuse to give up their privileges.<sup>8</sup>

This is just one indication of how deep state networks are central to economic crimes and are a fundamental obstacle to attempts to incorporate such crimes into transitional justice processes. The South African experience exemplifies this as well. Arms corporations, intelligence agencies and banks were central to the survival of the

<sup>3</sup> Amanda Taub and Max Fisher, ‘As Leaks Multiply, Fears of a ‘Deep State’ in America, New York Times, 16 February 2017, Online: <https://www.nytimes.com/2017/02/16/world/americas/deep-state-leaks-trump.html>

<sup>4</sup> Mehtap Söyler, ‘Informal institutions, forms of state and democracy: the Turkish deep state’, *Democratisation*, Volume 20, 2013, Issue 2, pp. 310 – 334.

<sup>5</sup> Hakki Tas, “On the Illegitimate Use of Force: The Neo-Jacobins of Europe”, *The European Legacy*, Vol. 19, No.5 (2014): 556-567.

<sup>6</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017) 504.

<sup>7</sup> Chris Stephen, “Attacks by ‘deep state’ leave Tunisia truth commission in crisis”, *The Guardian*, September 11 2015. <http://www.theguardian.com/world/2015/sep/11/attacks-state-tunisia-truth-commission-crisis-democracy>.

<sup>8</sup> Chris Stephen, “Attacks by ‘deep state’ leave Tunisia truth commission in crisis”, *The Guardian*, September 11 2015. <http://www.theguardian.com/world/2015/sep/11/attacks-state-tunisia-truth-commission-crisis-democracy>.

system of apartheid. This shall be explored further in the following section. Yet - largely uninterrogated in the democratic transition - these networks have survived and becoming intimately connected with corruption and economic crime in a democratic South Africa. They remain a fundamental obstacle to economic justice.

### **3. Corruption and continuities in South Africa's deep state**

#### ***Apartheid's shadow state***

The apartheid regime was globally condemned as a crime against humanity, and in terms of formal diplomacy could find few friends. The United Nations reflected this in its condemnation of the regime in resolutions from the 1960s, culminating in a compulsory arms embargo in 1977. The arms embargo was intended to make the survival of the white minority military state impossible by cutting off its access to the weapons and weapons technology it needed to wage war on its borders and terrorise South Africans domestically. The irony is that it was around the arms embargo that the interests of a conservative network of deep state actors coalesced. Here was an opportunity for arms companies, banks and middlemen to profit from the significant premiums the regime was willing to pay; while conservative politicians around the world could maintain a secretive strategic alliance from arm's length, relying on intelligence agencies and corporations to do the dirty work.

Before we examine the murky international dimensions of this machinery however, it should be noted that the illicit system was anchored in the deep state in South Africa. The central player was the military and, linked to it, the state-owned arms company, Armscor. These entities relied heavily on Military Intelligence, which had ascended to far greater power and influence under PW Botha. In turn, business people and the international banking sector were willing to assist with absolute discretion.<sup>9</sup> The military industrial complex in South Africa profited handsomely from the military state. Many of the largest private corporations were involved. In its submission to the TRC, the Centre for Conflict Resolution recorded that 'there was a high degree of integration between the public and private sectors... Three industrial groups, namely Reunert, Altech and Grintek, dominated the private sector defence industry. These groups were

<sup>9</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017) 23-24.

in turn owned or controlled by one of the six large financial, mining and industrial conglomerates. Reunert was controlled by Old Mutual, Altech by Anglo American, and Grintek by Anglovaal.<sup>10</sup> Tellingly, these corporations did not have to answer for this role nor the profits derived from these activities in support of the regime.

This booming domestic industry has helped feed a narrative – popular with many South Africans but deeply inaccurate – that the apartheid state was self-sufficient when it came to the production of weapons. Archival research undertaken by *Open Secrets* over a 5-year period provides unparalleled insight into how this is not the case. In over 1 million pages spread across 25 archives in 7 countries, we discovered the details of how a global clandestine network operated to supply the weapons and associated technology to apartheid during the sanctions period.<sup>11</sup> The findings from this research was published in the book – *Apartheid Guns and Money: A tale of profit* (Jacana: 2017)

These records reveal that the permanent five members of the United Nations Security Council did not only fail to enforce the arms embargo. Rather, in many instances, every one of those members (including China and the Soviet Union) willfully violated the embargo or encouraged their agents to do so. Such behaviour trickled down throughout the international system. Pretoria could call on the support of dozens of states across the globe that acted as clandestine supporters providing weapons and intelligence. These included but were not limited to other ‘pariah’ countries notorious for being apartheid allies, Chile, Taiwan, Israel and Argentina. In total, *Apartheid Guns & Money: A Tale of Profit* identified illicit weapons trade to apartheid from over 30 countries. If one includes oil and other sanctions, this number rises over 50.<sup>12</sup>

The centre of this network was a secret Armscor office housed on the top floor of the South African embassy in Paris. Hosting anywhere up to 40 Armscor officials at any one time, the office became the central node of Armscor’s illicit trading activities, serving as a thoroughfare for all trade with France and other Western European

<sup>10</sup> Submission to the TRC Business Hearings by the Centre for Conflict Resolution, University of Cape Town, October 1997, SAHA FOIP Collection, AL2878, A2.2.14.4.

<sup>11</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

<sup>12</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

countries. As is evidenced by the records of trade with Communist China, Armscor officials based there played a role in far beyond this sphere of influence. The office grew in importance as the arms embargo kicked in despite the fact that the personnel were reduced to those officials with responsibility for procurement and the management of secret channels. At the same time the nature of the operation changed: it became more clandestine, more secretive and more significant given its role in sanctions busting and money laundering.<sup>13</sup>

Those housed there were tasked with placing orders and maintaining relationships with Western arms corporations on the one hand and managing the banks that facilitated the illicit money flows on the other.<sup>14</sup> Officials based in Paris travelled regularly to Luxembourg to meet with officials at Kredietbank Luxembourg (KBL). KBL and its sister bank in Belgium – Kredietbank – were together the most important node in the conservative network propping up apartheid. They helped Armscor manage a network of around 130 front companies and over 800 bank accounts that were used to obscure the nature and origin of weapons trades with apartheid. Most of the front companies' bank accounts were at Luxembourg banks, and the majority of those were KBL accounts. By way of example, 76 front companies identified in Liberia held a total of 198 bank accounts at KBL alone.<sup>15</sup>

How could apartheid agents operate so freely from Europe without being detected? The obvious answer is that they did not. French intelligence services not only were aware of the presence of the Armscor office in the embassy, but met regularly with South African military intelligence to manage secret weapons deals and promise other assistance to the regime. Complicity went right to the top of French politics. A memorandum of a secretive 1987 meeting between the respective military intelligence agencies in Paris shows that French officials were willing to provide mirage fighter jets spare parts at any time and were not opposed to a clandestine plan to supply new aircraft to South Africa via Chile and Argentina. In fact, the Conservative Jacques Chirac's (then Prime Minister of France) chief of staff Michel Roussin had confirmed

<sup>13</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

<sup>14</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

<sup>15</sup> Open Secrets, *The Arms Money Machine: Apartheid's Sanctions Busting Bank*, Submission to the People's Tribunal on Economic Crime, 2018, Available: <https://corruptiontribunal.org.za/evidence/apartheidbank/>

to the South Africans that ‘Mr Roussin personally and the advisors to Chirac would do their best to ensure the successful implementation of such a scheme should South Africa be interested.’<sup>16</sup>

Such documents reveal the extent to which French securocrats were willing to assist their South African counterparts. Yet ultimately it was French companies that were the perennial embargo busters and the channel through which French support for apartheid was delivered. None was closer to the South African military elite than Thomson-CSF. This relationship was entrenched as early as the 1960s when PW Botha (then Minister of Defence) visited Bordeaux to meet with Thomson’s senior executives during missile testing.<sup>17</sup> The support extended through the 1970s and 1980s at the height of the embargo. Records reveal that in 1987, Thomson-CSF’s Chief Executive visited South Africa for a meeting with, amongst others, the Minister of Economic Affairs, Danie Steyn. In a letter following the visit, the arms company’s CEO thanked Steyn and confirmed that Thomson-CSF was ready to accept a military delegation to France for a ‘European high technology scanning mission’.<sup>18</sup>

Thomson-CSF was thus a long-standing supplier of military material to South Africa, no doubt with the explicit or tacit support of the French state. In return, it would have drawn significant profits from the trade. Yet, as with most of apartheid’s corporate accomplices, Thomson was never held to account or questioned by French or South African authorities for its willingness to violate the arms embargo.<sup>19</sup>

### ***The more things change...***

It should come as no surprise that Thomson-CSF, albeit under a different name, continued to do business as usual in democratic South Africa. It now operates as Thales, a fortune 500 company in France that earns around R250 billion a year in revenue. Thales is a name at the forefront of South Africa’s imagination as it stands

<sup>16</sup> Report on Meeting between Director Intelligence Operations and Mr Roussin, 24 July 1987, DOD/SANDF (DI Onder-Afdeling Inligting Operasies, Gp 26, Box 13, AMI/IO/311/1/69, Hulpverlening en samewerking met Ivoorkus, 1, 04/08/86–18/05/90).

<sup>17</sup> Itinerary of PW Botha’s Visit to Thomson-CSF in France, June 1969, University of the Free State, Archive for Contemporary Affairs (PV 203, 1/W1/4, 1969 June, PW Botha).

<sup>18</sup> Letter from Alain Gomez to DW Steyn, 10 February 1987, DW Steyn Private Papers.

<sup>19</sup> Open Secrets, *The Arms Money Machine: Apartheid’s Sanctions Busting Bank*, Submission to the People’s Tribunal on Economic Crime, 2018, Available: <https://corruptiontribunal.org.za/evidence/apartheidbank/>.

as co-accused with former President Jacob Zuma in the Durban High Court. The charges related to allegations of bribes paid to Zuma by Thales during the 1999 Arms Deal. An Armscor fixer turned whistle-blower has infamously alleged that Zuma accepted a bribe from the French company with the code-words “I see the Eiffel tower lights are shining today”.<sup>20</sup> The reference to the famous French tower is because the company alleged to have paid the bribe was none other than Thales, the French company formerly known as Thomson-CSF.<sup>21</sup>

The deal was a defining corruption scandal of South Africa’s early democracy and has had a dire impact in terms of weakening institutions tasked with tackling corruption. One of the allegations to have done the most damage is the alleged bribes paid to then Deputy President Jacob Zuma. This is not the first time the allegations have been heard in South Africa’s courts. Schabir Shaik, brother of the chief of acquisitions for the Arms Deal Chippy Shaik, was found guilty of having a corrupt relationship with Jacob Zuma and given a 15 year sentence. The judgment, which was upheld by the Supreme Court of Appeal and the Constitutional Court, found Shaik guilty on two counts of corruption. One of these counts involved soliciting a bribe from the French arms firm Thomson-CSF in return for protection from investigation from Zuma. The company supplied the combat systems for the warships called corvettes.<sup>22</sup>

Thales ultimately made a significant profit from the deal, winning a R2.7 billion contract to provide equipment to be fitted on the new navy frigates. This story is possibly the clearest display of the consequences of failing to challenge networks that facilitate and commit economic crimes. Thomson-CSF was intimately tied to the illicit and illegal supply of weapons to apartheid for three decades, yet this posed no challenge to the company in terms of doing business with democratic South Africa. In the 1999 Arms Deal, the company showed a same willingness to ignore legal requirements in order to secure a deal that would be highly profitable.<sup>23</sup>

<sup>20</sup> The Sunday Times, *Exposed: How arms dealer bankrolled Zuma*, 28 September 2014.

<sup>21</sup> Open Secrets, *The Arms Money Machine: Apartheid’s Sanctions Busting Bank*, Submission to the People’s Tribunal on Economic Crime, 2018, Available: <https://corruptiontribunal.org.za/evidence/apartheidbank/>.

<sup>22</sup> See full judgment: *S v Shaik and Others* (CCT 86/06) [2007] ZACC 19; 2008 (2) SA 208 (CC); 2007 (12) BCLR 1360 (CC); 2008 (1) SACR 1 (CC) (2 October 2007).

<sup>23</sup> Open Secrets, *The Arms Money Machine: Apartheid’s Sanctions Busting Bank*, Submission to the People’s Tribunal on Economic Crime, 2018, Available: <https://corruptiontribunal.org.za/evidence/apartheidbank/>.

It is not the only example however. Many of West Germany's largest corporations did business with the apartheid regime. Yet it is again in the weapons trade that we see the clearest continuities between apartheid era illegality and corruption in democratic South Africa. In 1999, two state-owned German companies – HDE and IKL, today trading as a subsidiary of ThyssenKrupp, won the bid together with fellow German company Ferrostaal to supply the South African Navy with new submarines. These companies have also faced substantial allegations of corruption in the deal. A report by US law firm Debevoise & Plimpton, commissioned by Ferrostaal itself, reported a number of apparent irregularities. These included that Ferrostaal made up to \$40 million in payments to agents in South Africa at the time of the deal. The report also alleges that Ferrostaal employees had told investigators that the much spoken of offset program, was merely a means of paying bribes rather than generating proper economic benefits for South Africa.<sup>24</sup> Unfortunately, these allegations have not been tested properly in any court.

Not examined to any great degree in the public is the fact that Both HDW and IKL were controversially linked to the sale of blueprints and technology to equip the apartheid military with new submarines during the mid-1980s.<sup>25</sup> There are other curious connections too. Ferrostaal's consultant in the 1999 deal, tasked with engaging people with 'political connection', was Jeremy Mathers whose agreement controversially included a 'success fee' in the event that the deal was awarded to Ferrostaal.<sup>26</sup> Mathers' expertise stems from his long career in the Navy, including as project manager for Project Tamboeryn, which involved the successful acquisition of submarine blueprints from West Germany, in contravention of the UN arms embargo.<sup>27</sup>

The apartheid-era sanctions busting deal was signed off at the highest level in a meeting between PW Botha and Conservative West German Chancellor Helmut Kohl,

<sup>24</sup> Ferrostaal Final Report, Compliance Investigation, Debevoise & Plimpton LLP, 13 April 2011.

<sup>25</sup> Open Secrets, *The Arms Money Machine: Apartheid's Sanctions Busting Bank*, Submission to the People's Tribunal on Economic Crime, 2018, Available: <https://corruptiontribunal.org.za/evidence/apartheidbank/>.

<sup>26</sup> Ferrostaal Final Report, Compliance Investigation, Debevoise & Plimpton LLP, 13 April 2011.

<sup>27</sup> Report by CSAN, 28 September 1984, DOD/SANDF (DI, GP 13, Box 64, 520/3/4/4, Besoek aan die Buiteland: Duitsland, 5, 05/07/84– 25/05/85).

who promised Botha that he would ensure the deal happened in a secret meeting in 1984.<sup>28</sup> The deal would eventually grow to include the submarine blueprints, electronic components and human expertise. This resulted in a contract worth DM423 million (R3.5 billion in today's value) and meant profit for a range of German companies.<sup>29</sup> Being experts in naval ship-building, HDW and IKL provided the all-important submarine plans, while the German electronics companies Siemens and Zeiss provided expertise for the equipment required by the vessels. In addition, two Krupps subsidiaries supplied torpedoes and sonar.<sup>30</sup>

The deal was eventually scuppered when the German Green Party leaked information about the embargo-busting deal. The delay, coupled with South Africa's move towards a democracy and the end of the Angolan War, meant that the submarines were no longer required and the plans were quietly shelved despite a hefty financial investment. Despite the nature of the crime, effectively aiding and abetting the apartheid regime, there was little punishment for the corporations and within a decade the same German companies were again bidding for the sale of submarines to a new democratic administration, allegedly paying bribes along the way.<sup>31</sup>

Similarly to the case of Thomson-CSF/Thales, this story is one of unchecked corporate power, a lack of adequate investigation or accountability, and the ability of networks to move between regimes on either side of a complex transition. These examples provided above provide just a window into the continuity of practice and characters across South Africa's history when it comes to the murky world of arms trading. In both cases, it is clear that the failure to adequately investigate and prosecute those actors for the crimes of the past has allowed them to continue to profit from illicit activity in the future. While the political elites often shift, the corporate players often remain the same.<sup>32</sup>

<sup>28</sup> Report on the Meeting between PW Botha and Chancellor Helmut Kohl in Bonn, 5 June 1984, University of the Free State, Archive for Contemporary Affairs (PV 203, PS 12/27/1, 1984, PW Botha).

<sup>29</sup> 'West Germany/South Africa: Secret ships deal goes ahead', *Africa Confidential*, 29, 6 (18 March 1988).

<sup>30</sup> 'West Germany/South Africa: Secret ships deal goes ahead', *Africa Confidential*, 29, 6 (18 March 1988).

<sup>31</sup> Open Secrets, *The Arms Money Machine: Apartheid's Sanctions Busting Bank*, Submission to the People's Tribunal on Economic Crime, 2018, Available: <https://corruptiontribunal.org.za/evidence/apartheidbank/>.

<sup>32</sup> Open Secrets, *The Arms Money Machine: Apartheid's Sanctions Busting Bank*, Submission to the People's Tribunal on Economic Crime, 2018, Available: <https://corruptiontribunal.org.za/evidence/apartheidbank/>.

However, until we understand grand corruption in South Africa today as continuity from our past, we cannot hope to tackle it. The economic crimes and state capture that confront us today is largely a result of our failure to dismantle the criminal networks that thrived under apartheid. Not only have actors in these networks repeated their conduct in different contexts, but they have undermined any attempts to hold them to account, destroying institutions in the process. The damage wrought by Zuma in trying to avoid prosecution for accepting bribes from an apartheid era ally is a case in point of this. Addressing these networks remain “another kind of ‘unfinished business’ of the transition: the ghosts of our tortured past will continue to haunt us until they are exorcised fully and publicly”.<sup>33</sup>

#### **4. Tackling the deep state**

What is so striking about the above examples is the ease with which corporations and middlemen were able to work effortlessly with two successive South African governments that on the surface should have been radically different. In many ways, this is a reflection of a failure of truth telling and accountability in South Africa when it comes to the role of these deep state actors. This allowed them to move between elites unchecked and to continue with the modus operandi that had worked for so long; profit at all costs.

In the absence of a process to actively dismantle such networks, they survive. In South Africa under Jacob Zuma’s administration, the deep state’s presence became ever more apparent. Nowhere was this more evident than in the use of the state security apparatus to protect the interests of a corrupt elite. The use of the security apparatus, particularly the SSA, is an incredibly powerful instrument in the hands of politicians. The apartheid regime of the 1980s is an example of what awaits ordinary citizens when securocrats are allowed unchecked power.<sup>34</sup>

So what is the antidote? There are two fundamental ways in which we can tackle the pernicious role of the deep state. The one is to extend the public conversation and narrative on economic crime to include them. A fundamental limitation of the South

<sup>33</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017) 506.

<sup>34</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017) 505.

African Truth and Reconciliation Commission's (TRC) focus on torture and physical violence is the manner in which it obscured the role of economic crime and the deep state in maintaining the system of apartheid. We know of the police operative Eugene de Kock as the quintessential perpetrator of apartheid's crimes. However, we know comparatively little of the corruption and sanctions busting that funded apartheid's police state, and that facilitated the mass theft of money from the public purse. This undermines our understanding of our own past. Truth Commissions have the power to reveal but also to obscure, and this shortcoming has left deep state actors hidden from our gaze and critique. Bringing the evidence available into the public domain is the first step at addressing this.

The second crucial step is to institute prosecutions and – where possible – civil litigation against those private actors identified as complicit in serious economic crimes. Those responsible for the economic crimes described above have never faced prosecution or sanction in South Africa, encouraging a culture of impunity and allowing networks of corruption to survive and draw in new politicians and businessmen. Particularly for these individual and corporate interests, the 'South African transition' was actually just business as usual.<sup>35</sup>

There is obvious value to pursuing criminal trials for economic crimes wherever possible. The power of such an approach lies in the ability to demand accountability for actions, and thus end any culture of impunity which may exist in a society. Criminal proceedings are also best suited to disrupting deep state and other criminal networks, and making it more difficult for such networks to compromise ongoing justice processes.

What should give hope to South Africans is that the passing of time does not preclude such attempts at achieving justice. The power and hold of the deep state is an important reason that hard justice at times of transition is so difficult. To take these steps requires fiercely independent and principled institutions, particularly the National Prosecuting Authority and key investigative agencies. It is in large part due to the fight back of the deep state that these institutions have been gutted of capacity and will to

<sup>35</sup> Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017) 506.

tackle the often complex financial and economic crimes that define state capture. As such, any struggle against the deep state must start with empowering those institutions, and fiercely guarding their independence. South Africa's powerful civil society is well-placed to do so.

## **5. Conclusion**

As more staggering and disturbing details emerge from the Zondo Commission of Inquiry into state capture, there is a collective gasp in South Africa which seems to say; 'how did it get this bad?'. Here we suggest that this cannot be answered without a longer view of South Africa's history and the deep state networks that have operated at the core of its worst crimes. The impunity of the networks over time has emboldened the actors who profit hugely from grave injustice. In turn, these networks are able to use their leverage to undermine the very constitutional framework and institutions that we rely on to keep them in check. The arms trade in South Africa – and the corporations, individuals, banks and spies that support it – provides perhaps the clearest insight into the survival of these networks.

This was affirmed by the findings of the first Peoples Tribunal on Economic Crime read out by Advocate Zac Yacoob on 20 September 2018. The panel said that:

*“We would also emphasise that state capture is to some extent also a result of the corrupt activities that had gone before it. Absent the violation of United Nations sanctions, and the corrupt Arms Procurement Package, the kind of state capture described in the evidence would probably not have occurred. The examples of state capture mentioned here are the tip of the ice-berg.”*

However, as the work of civil society organisations such as Open Secrets has shown, it is only by opening all of these secrets – particularly those that are uncomfortable for the political elite and their narratives, and demanding accountability and justice for crimes both past and present, that we will begin to shake the deep state.