



**Summary of civil society submissions at the hearings of the People's
Tribunal on Economic Crime**

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Institute for Justice and Reconciliation (IJR)

1. IJR was established in 2000 in the wake of the Truth and Reconciliation Commission (“TRC”). Its primary mandate is to engage in research and processes that foster the building of a fair, inclusive and democratic South Africa as it transitions from apartheid.
2. IJR’s submission focussed on the relationship between corruption and reconciliation with regard to three factors that hamper reconciliation, namely:
 - 2.1. Inequality;
 - 2.2. Gender inequality; and
 - 2.3. Trust in state and other institutions.
3. Drawing on research from their Afrobarometer and South African Reconciliation Barometer, IJR discussed the state of reconciliation in South Africa. Their statistics show that in 2017, 75% of South Africans desired national unity and reconciliation while only 56% of people believed that South Africa had made any progress on reconciliation.
4. The rupture between the desire for reconciliation and the experience of it could, in part, be explained by the relationship between corruption and reconciliation in South Africa. IJR explained how the corruption caused the three factors in paragraph 2 above, which in turn affected the state of reconciliation in South Africa.

Inequality

5. The primary source of division in South Africa is the grave and structural economic inequality suffered by South Africans along clear racial lines. By 2017, 46% of South Africans believed that inequality has worsened.
6. Corruption is a factor that contributes to inequality and that helps reify the structural nature of inequality. The cyclical nature of corruption means that it benefits a few individuals at the expense of others.
7. There are direct and indirect effects of corruption. In a direct sense, citizens are often required to pay bribes to secure basic services. Often, citizens in poorly serviced areas are more likely to pay bribes than those in better serviced areas. This indicates the cyclical nature of corruption and the nexus between corruption and inequality. The indirect effects of corruption include widespread corruption in the public and private sector that inhibits effective functioning of the economy.

8. Research has proven a direct correlation between corruption and inequality; a worsening corruption index is usually accompanied by an increasing Gini coefficient.
9. Therefore, corruption contributes to rising inequality, which, in turn, results in decreased social cohesion and reconciliation.

Gender and corruption

10. Like inequality, corruption has a disproportionately gendered impact. Women and other marginalised gender identities bear the brunt of corruption and corrupt practices due to them being more exposed to corrupt practices from the state and private sector.
11. There are four areas in which women are more exposed to corruption: first, in accessing basic services; second, when engaging in politics; third, in situations where women's rights are violated e.g. trafficking and sexual exploitation and finally, during public and private sector negligence and mismanagement.
12. Increasing corruption therefore contributes to increasing gender inequality, a further factor that diminishes social reconciliation, particularly from a gendered aspect.

Corruption and trust in state institutions

13. Citizens' perception of corruption is linked to their trust in institutions. Experience of corruption lowers people's trust in institutions and increases people's perception of corruption.
14. The 2015 Afrobarometer statistic indicated that 64% of respondents felt that corruption 'increased a lot' in the last year and 56% felt that government was dealing with corruption 'very badly'.
15. Diminished trust in state institutions due to their irregular expenditure, corrupt tender practices and relationship with private sector entities and mismanagement of state-owned enterprises increases the public's perception of corruption.
16. Lack of legal accountability for multinational corporations also results in public distrust in private institutions, particularly when corporations' often minimally disclosed operations cost the Public Investment Corporation billions of Rands.

Individual impact of corruption

17. IJR discussed the impact of corruption at community level through a case study. In one instance encountered by the IJR, a community-based women's shelter in Oudtshoorn has been struggling to receive funding from national government departments following the shelter's board misappropriating funds and failing to meet auditing requirements.

Recommendations

18. IJR provide that it is important to reckon with structural inequality and our economic and political history in order to further reconciliation.

19. Corruption must be recognised as a pervasive crime in the public and private sector that is built on, feeds off and exacerbates structural inequality.

20. We have to reassert the moral and ethical duty of public and professional services to restore democratic norms and foster an ethos of anti-corruption that could hopefully restore national reconciliation.

21. Steps must be taken in both the private and public sectors to stamp out corruption. Reduced corruption can minimize inequalities and increase interpersonal trust and trust in the public service. In turn, this has the potential to increase reconciliation.

Khulumani Support Group

22. Khulumani spoke to the continued impunity with which multinational corporations, including the financial sector, continue to operate despite the fact that they aided and abetted the apartheid regime.

23. Drawing on evidence submitted on behalf of their members, *Khulumani v Barclays National Bank*, Khulumani provided insight into these corporations and the nature of their crimes.

24. First, it must be noted that the corporations included in this law suit did not appear before the TRC to make full disclosure of their role in apartheid and seek amnesty. Further, the reparations programme provided by the South African government on recommendation of the TRC provided a minimal amount of reparations for only the small number of victims identified by the TRC.

25. This meant that a number of people, including the 100 000 Khulumani members who suffered torture, cruel, inhuman and degrading treatment, forced disappearances and

removals and other human rights violations, did not receive justice. As mentioned above, much of these human rights violations were caused by foreign and domestic corporations aiding and abetting the apartheid regime.

26. To hold these actors to account, Khulumani launched litigation against 87 plaintiffs originally, under the Alien Torts Statute in the United States of America. The claim was filed against corporations who aided and abetted the South African government's perpetration of the crime against humanity of apartheid.

27. It was argued that the defendant's conduct was so integrally linked to the human rights violations in South Africa between 1960 – 1993 that apartheid could not have occurred without their assistance. Further, the plaintiffs' legal team submitted that the defendants acted with deliberate indifference to the well-being of the South African people and the defendants ought to have reasonably known that their conduct endangered the lives of millions of black South Africans.

28. Some of the evidence in the papers in *Khulumani v Barclays National Bank* implicated the following actors:

Oil companies

29. Exxon Mobile Corporation: the largest investor in South Africa, investing at least 426 million dollars. Exxon supplied oil to the South African military and did not deny these sales or justify them.

30. Shell: the largest supplier of oil and petroleum to South Africa. It exported 7.5 million tonnes of oil to South Africa, with roughly 5000 barrels a day to the South African security forces.

31. Chevron Texaco Corporation and Global Energy: violated the 1973 oil embargo against South Africa called for by the African Union by executing a complicated series of swaps that would allow more Iranian crude oil to be allocated to South Africa.

32. BP: sold gas and oil to the South African military and developed an oil refinery in South Africa despite the numerous oil embargoes imposed by bodies such as the United Nations.

33. Total: established a crude oil refinery in Sasolburg, South Africa in 1967 despite the oil embargo. Further, Sasol did not consider withdrawing its business in and services to the apartheid government despite calls from the international community.

Armaments corporations

34. Armscor: in violation of arms embargoes imposed by the United Nations Security Council from 1973 onwards, in 197 alone, Armscor concluded 25 000 contractors with around 1200 private contractors for the trade and development of arms.

35. These contracts were concluded with corporations such as IBM, Shell, Daimler- Benz and Rheinmettal Group.

36. Foreign countries such as the United States of America also traded with Armscor and the South African National Defence Force. For example, during the apartheid regime, the US licensed some 300 000 USD worth of guns and other armaments for exporting to South Africa despite the UN arms embargo.

Financial and banking sector

37. Foreign and domestic banks provided apartheid South Africa with foreign capital in the form of international bonds, direct loans, trade loans and project financing. This enabled apartheid South Africa to achieve economic self-sufficiency despite embargoes and sanctions and economic crises.

38. Some of these banks include Barclays National Bank, German and Swiss bank and the South African Reserve Bank.

Automotive industry

39. The vehicle industry provided apartheid South Africa, particularly its military, with technical skills and technology to develop armaments vehicles and spare parts.

40. For example, Ford trained South African officials on important locomotive skills and refused to hire black South Africans. Daimler- Chrysler equipped the South African National Defence Force with minibuses, Casspirs and Buffels (armoured vehicles).

Technology companies

41. IT companies such as IBM and Fujitsu provided 70% of the military's computers. This and other surveillance technology used by them to monitor and locate anti-apartheid activists.

42. These actors have not been held accountable for their role in aiding and abetting apartheid and indeed, by extension, their contribution to the structural inequality South Africa faces today. To ensure justice, closure, legal accountability and reconciliation, it is vital that the conduct of these corporations be exposed and prosecuted.

South African History Archive (SAHA)

43. SAHA is a human rights archive established in 1988. Its mandate is to document and promote awareness of historical and contemporary struggles for justice. SAHA's Freedom of Information Programme utilises access to information legislation, the Promotion of Access to Information Act ('PAIA'), to ensure realisation of the constitutional right to access to information under section 32 of the Constitution. It submits PAIA requests on behalf of organisations and communities in order to hold public and private sector actors to accounts and to prevent a culture of secrecy.

44. SAHA describes the culture of secrecy within which the apartheid government operated. Through the use of legislation criminalising disclosure of documents, the destruction of archives and intimidation of whistle-blowers, the apartheid regime conducted its affairs in secret. This resulted in a culture of impunity and secrecy in the state which, in turn, allowed corruption to flourish.

45. One possible antidote to secrecy and corruption is greater transparency and access to information. South Africa has signed, ratified and adopted numerous instruments aimed at fostering access to information including the African Union on Preventing and Combatting Corruption and the Electronic Communications and Transactions Act.

46. Some of the challenges to greater access to information in South Africa includes the fact that the record keeping under PAIA and other sector specific legislation is not complied with. Part of the problem is that there are insufficient incentives for legislative compliance; non-compliance with legislative provisions are not penalised.

47. Based on statistics of PAIA requests submitted in 2017/2018 period, SAHA described the poor statistics on disclosure of information under PAIA by public and

private organisations. At least 63% of PAIA requests to public bodies were 'deemed refused' in that these requests were not responded to within the designated legislative period.

48. 22,5% of requests for records were actively refused on the grounds that the records were not found or because they do not exist. However, in these instances, the requested authorities failed to provide an affidavit detailing the steps they took to locate the record.

49. SAHA makes the following recommendations to improve access to information:

49.1. Gaps in sector-specific access to information allowing for proactive disclosure and record-keeping must be remedied and made mandatory;

49.2. Government must provide regular and accessible updates on measures taken to make information more accessible. The public must be provided with equal and adequate opportunities to examine government processes and records, including documents relating to tender processes;

49.3. Access to information documents should include strict sanctions for non-compliance;

49.4. Pro-active disclosure should form part of the targets of companies to incentivize access to information; and

49.5. In respect of public-private partnerships, all relevant information must be made available through various media such as the National Treasury website and newspapers timeously.

Treatment Action Campaign (TAC)

50. The TAC is a membership-based organisation with 6800 members in 250 organisations across seven provinces. The TAC is a health advocacy movement that exposes, protests against and takes action to address poor public health care systems and governance that adversely affects primarily poor black people, particularly women and children.

51. Failure to provide adequate health care and appropriate health care institutions results in the infringement of the right to access to adequate health care. TAC described the relationship between state capture and the health sector by looking at the impact of corruption in the health care sector.

52. Drawing on the evidence before and the findings of the Life Esidemeni arbitration, TAC detailed three factors that cripple the health care sector:

- 52.1. Staffing of government positions and state institutions in accordance with political connections and ambitions, cadre-ship deployment instead of appointment based on appropriate qualifications and experience;
- 52.2. Undue process in tendering and illegal tender practices that allow looting of state resources; and
- 52.3. Irregular expenditure by government and lack of effective accountability for such conduct.

53. Some of the irregular expenditure and unjustified use of resources came to light in the Life Esidemeni case. For example, in defending the Life Esidemeni arbitration, the state spent R60 million on legal fees. This is essentially tax-payers money that can be put towards the public health care system and to realising the right to access to adequate health care.

54. TAC also spoke of the impact of the theft of medicine and shortage in the supply of medication for patients. Further, TAC detailed how politicians use their political power to reserve beds in public hospitals for friends and family members. A case in point is when former MEC of Health, Benny Malakoane, reserved beds for family members of Mosibenzi Zwane.

Unite Behind

1. Unite Behind contextualised the state of public railways under PRASA and the issues relating to the governance and management of state owned enterprises in so far as it relates to the functioning of railway services.
2. United Behind provided oral submissions about irregular procurement in PRASA with a focus on the Siyangena and Sivhambu tenders for coaches and locomotives.
3. Emphasis was placed on the former public prosecutor, advocate Thuli Madonsela's 2015 report about the maladministration and corruption within PRASA and the recommended remedial action proposed. United Behind submitted that these recommendations need to be incorporated into solutions of how trains could be fixed.
4. Moreover, it was articulated that PRASA needed a board that can be trusted and be held accountable for its decisions that affect commuters.
5. It was presented before the Tribunal that PRASA currently does not have a safety emergency plan for rail commuters and Unite Behind has lobbied for a special emergency plan that will include women, children, the elderly and people with disability. Two accounts detailing the deterioration of safety in trains spoke to the lack of police visibility and safety infrastructure such as panic buttons and cameras in stations. High levels of violence experienced in trains, overcrowding, delays and cancellations have direct consequences and implications for commuters, most evidently the unemployed and people who cannot afford taxis and/or other modes of transportation.
6. In the Western Cape, commuters have gone up to five weeks without trains and these levels of malfunction have also affected taxis and buses that have to make up for the shortfall in transportation. The state of PRASA also affects people employed by PRASA not just commuters. A commuter from Athlone who was attempting to escape a robbery by jumping from one carriage to another lost his life as a result. In Khayelitsha, an employee of PRASA was robbed and shot with his work gun.
7. The incidence of such incidents could be influenced by the poorly regulated recruitment patterns of PRASA. For example, in the Western Cape, PRASA has been recorded to recruit people who are not registered with security companies to act as security officers.

8. Overall, PRASA's maladministration and improper governance in the Western Cape has grave effects for ordinary people. Relying on their findings under the PRASA Leaks Report,¹ Unite Behind submitted to the Tribunal that the issues encountered by commuters are a direct result of corruption and multiple levels.
9. Coaches and railway lines are continuously being destroyed and/or stolen and over the years there are lesser carriages to transport commuters. There was an insistence that the media needs a paradigm shift in so far as it relates to the reporting of PRASA's maladministration, governance failures and corruption. More specifically, the media ought to be covering ordinary people's grievances with PRASA, they need to speak to affected people.

Right2Know

10. R2K provided information on the failures of the Seriti Commission on the 1999 Arms Deal.
11. R2K discussed how the Seriti Commission took active measures to discourage public presence and participation and undermined the role of civil society. The Arms Deal has been shrouded in secrecy and the Commission violated the public's right to know and uncover the truth.
12. R2K focused on the following issues:
 - 12.1. Members of the Commission resigned under the circumstances that they believed that there was a second agenda within the Commission;
 - 12.2. The Arms Deal has been shrouded in secrecy and the Commission has violated the right to know and uncover the full truth of what happened in the Arms Deal. The manner in which the Commission led its proceedings and its interaction with the public took away the opportunity for accountability. This was evident in how vital information was dismissed and discounted as inadmissible. It was also evident in how personal interaction with the Commission as members of the public was made difficult – they were not allowed in the proceedings of the Commission;

¹ <https://unitebehind.org.za/wp-content/uploads/prasa-leaks-how-state-capture-happened-at-prasa..pdf>.

- 12.3. There were few journalists at the Commission who fully understood the terrain of procurement and the context leading up to the Arms Deal. This meant that the public had to rely on a few journalists, and their framing of the Commission, to access to Arms Deal hearings;
- 12.4. The public was absent from the proceedings and the topics and procurement material before the Tribunal was inaccessible and the Commission could have done more to get members of the public on board;
- 12.5. Civil society voices were present Commission and led by Lawyers for Human Rights. As far as it could be seen they were being excluded through the manner in which the Commission spoke of its critics, mostly from civil society, as a contingent intent on setting up an adversarial relationship with the Commission.

Alternative Information and Development Centre (AIDC)

13. AIDC focussed on illicit financial flows in South Africa, the largest illicit flow of capital in the African continent, and how it undermines the State's capacity to fund public services because fewer wealthy people and corporations are avoiding paying taxes.
14. AIDC submitted that power is shifting to big multinational companies and the poor are suffering as a result, through low living wages and the state's limited capacity for social spending.
15. Profit shifting begins is a form of illicit financial flow that refers to the strategies implemented by corporations to move money from one country to another where they will have to pay minimal corporation tax. Subsidiaries are used to transfer significant amounts of capital in management fees and similar payments to fellow entities.
16. AIDC portrayed how corporations shift their capital to tax heavens in order to evade paying decent wages and their share of taxes in order to maximise profits.

Equal Education (EE)

17. Equal Education provided information on how corruption has affected the Eastern Cape school infrastructure and education system.

18. Drawing on information disclosed by the national and provincial government, EE highlighted that 81 schools in South Africa without water and 58 of those schools are in the Eastern Cape. There are 571 schools without electricity and 187 of those schools are in the Eastern Cape. Moreover, there are 66 schools with no sanitation, 61 of which are in the Eastern Cape.
19. There are 3245 bucket toilets in South African schools and 1585 are in the Eastern cape.
20. The Department of Education has a massive capacity issue. Its core focus appears to be on teaching and learning while it has delegated the building of schools to state owned agents. These are state owned entities who are given funds to fix schools and who receive management fee and full profit returns despite being state-owned agencies.
21. The Department of Education in the Eastern Cape had intended to build 510 school, however in the last six years these state- owned agents have only built 179 school. The implementing agents in the Eastern Cape have had to re-tender because there has been a poor handling of contracts.
22. Moreover, the implementing agents are extremely slow, they are tasked with monitoring and managing six contracts and procurement is their major focus however they have been inundated with corruption and they are giving contracts to people who do not have the capacity to build schools. Incompetence and over extension have led to projects left incomplete compounded by non-compliance with procurement legislature and irregular and wasteful expenditure.

Unpaid Benefits Campaign (UBC)

23. Unpaid Benefits Campaign members have been trying to claim pension and provident funds due to them, but which have not been paid.
24. These pay-outs have been hankered by administrative failures and the lack of accountability mechanisms. Unpaid beneficiaries are living in poverty with no income and have been trying to find alternative income.
25. The Tribunal heard that workers have faced issues when attempting to secure their benefits. Workers have tried to meet with former employees and fund managers and each

time their memorandums are met with silence. Some workers have been told that their claims have prescribed.

26. There are systematic challenges in the poor administration of pension funds, lack of access to information and the general treatment of unpaid benefits illustrates a lack of political will, accountability and effective communication between employees, employers and fund managers.

27. UBC also disclosed that some workers who had worked and saved for 20 years received a pension fund pay out of R80 000 and there is no avenue for recourse or an accessible mechanism in place for ordinary people to challenge such outcomes. Moreover, the actions of fund administrators show that the Financial Services Board (FSB) has failed to comply with its mandate and Treasury has failed to exercise proper oversight and hold the FSB to account.

28. The following recommendations were put forward by UBC:
 - 28.1. The FSB ought to have satellite offices around the country with the sole purpose of assisting beneficiaries. The FSB has knowledge to determine whether anyone has claims owed to them and how to access these beneficiaries;

 - 28.2. The regulatory capacity of the FSB needs to be expanded in order for them to be able to fulfil their mandate.