



**Summary of witness evidence at the hearings of the People's Tribunal on  
Economic Crime**

**31 August 2018**

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## TESTIMONY ON CONTEMPORARY ALLEGATIONS OF STATE CAPTURE

### Prof Ivor Chipkin

1. Professor Chipkin provided a theoretic framework through which to analyse state capture. His definition of state capture includes, but goes beyond, corruption and economic crime.
2. He shared his theory that contemporary state capture arises out of a particular political environment that pushes back against constitutional constraints in order to pursue economic transformation. He explained, however, that state capture is not an isolated incidence involving the Gupta family and the Zuma administration. Rather, even now, there are multiple players seeking to use state resources and power to benefit themselves.
3. The state and particularly state owned enterprises remain vulnerable this influence regardless of the particular administration. For this reason, civil society must remain vigilant and demand strict compliance to the constitutional constraints on state power and the oversight mechanisms.
4. He provided the following observations and recommendations:
  - 4.1. Trade Unions are a key civil society network at the centre of SOEs. In certain cases, however, it is the unions themselves that are implicated in corrupt conduct or deliberately turn a blind eye.
  - 4.2. South Africa's political system places party members in Parliamentary Committees where their loyalties are ultimately divided between the party line and properly questioning and exploring questionable conduct in SOEs.
  - 4.3. Despite this, we have recently seen parliament come to life and demonstrate a willingness to ask questions and hold the Executive to account.
  - 4.4. The mechanisms that have appeared to work are the judiciary and civil society.

## **Mr Khaya Sithole**

5. Mr Sithole provided opinion evidence on corruption and economic crime in both the private and public sector.
6. He explained that complex eco systems and hegemonies allow private sector corruption to thrive. Unchecked private sector economic crime will spill into the public sector, and vice versa. The majority of public sector corruption occurs in conjunction with private actors.
7. Mr Sithole focussed on the importance of fully functional state-owned enterprises in South Africa and the damage that arises when the SOE's operate for private interests.
8. He offered the following observations and recommendations in respect of economic crime in SOE's:
  - 8.1. A lack of capacity, skills and resources require SOEs to outsource key functions. This renders SOE's vulnerable.
  - 8.2. The public trusts regulatory bodies and agencies to monitor the conduct of private actors. Where these bodies take no action or fail to make meaningful findings, the public simply accepts that there was no wrongdoing. All players, in both the public and private sphere, should be treated with scepticism and safeguards to monitor cashflows should be imposed.
  - 8.3. Members of the public are not always aware of the scale and impact of private sector corruption and fraud. Often the conduct itself is far removed from daily lived experiences of people. The real effect of a drastic drop in a shareprice as a result of directors' fraudulent conduct is difficult to comprehend at the time, but the impact will be felt in job losses and reduced pensions in the years to come.
  - 8.4. Despite the powerful reach of the Promotion of Access to Information Act, it remains a challenge to procure information from public and

private organisations. This information is essential to ensure accountability.

### **Mr Ben Theron**

9. Mr Ben Theron provided the factual basis for the particular allegations of state capture in Denel.
10. The Organizing Committee of the Tribunal approached a number of people with direct, personal knowledge of these events to appear before the Tribunal as witnesses. They all declined. In these circumstances, Mr Ben Theron presented and relied upon the following categories of documentary evidence:
  - 10.1. A copy of an affidavit deposed to by Mr Theron in the litigation between OUTA and Mr Mantsha. The factual allegations regarding the VR Laser deal are contained in that affidavit. This is evidence on oath.
  - 10.2. A copy of an affidavit by Mr Lungisa Fuzile the Director General of the Department of National Treasury – deposed to in the litigation between Denel and Treasury on 11 May 2017. That is also evidence on oath. The affidavit attaches a number of documents which are confirmed as authentic by Mr Fuzile.
  - 10.3. Official documents such as Annual Reports or media statements issued by Denel or state departments.
  - 10.4. The final category of documents are documents provided to OUTA or uncovered by OUTA during its investigation. Mr Theron did not purport to testify as to the authenticity or the truth of all of the documents nor can he reveal their source.
11. As canvassed in more detail in the evidentiary submission before the Tribunal, Mr Theron detailed steps taken by the then Minister of Public Enterprises, Lynn Brown to replace the Denel Board on 24 July 2014. Daniel Mantsha was appointed as the Chairperson and non-executive director of the board of directors.

12. In constituting the new board, Minister Lynn Brown suspended senior officials of Denel. Denel's then Chief Executive Officer, Riaz Salooji, Chief Financial Officer, Fikile Mhontlo and Company Secretary, Elizabeth Africa were suspended. Board members recommended by Department of Public Enterprises which included many of the existing members. The only existing member that was retained by the former Minister is Mr Johannes Motseki.
13. Mr Theron provided evidence of Mr Motseki's links to the Gupta family and his majority shareholding in the Gupta-owned company, Shiva Uranium. Mr Theron discusses the fact that board replacements in state owned enterprises usually precipitate irrational and improper contracting between the state-owned enterprises and other entities. .
14. In this instance, OUTA maintains that the board was replaced so as to facilitate the conclusion of a joint venture with Denel to establish Denel Asia. As canvassed in the evidentiary bundle, the Joint Venture was pursued despite the fact that it was not commercially viable.
15. Mr Theron proceeded to take the Tribunal through the illicit activities conducted by Dan Mantsha in his dealings with the Guptas, this includes travelling to Dubai on the purse the Gupta family as well as the sharing of confidential Department of Public Enterprises information to Ashu Chawla and other Guptas. The information shared related to the bidding processes around the joint venture.
16. Finally, Mr Theron indicated that VR Laser would not be suited to enter into a joint venture with Denel due to its limited capacity to provide necessary goods and services to Denel. As detailed in the evidentiary submission, Denel would be providing the majority of the financial and arms capital the Joint Venture.
17. OUTA has laid charges of corruption and improper conduct against Dan Mantsha, however, Mr Theron reports that the NPA are still investigating these charges and there have, at the time of the Tribunal, been no substantial developments in this regard.

## **Mr Zackie Achmat**

18. Mr Zackie Achmat provided testimony on the history of state capture and drew the links between apartheid state capture, the arms deal, and contemporary state capture. He also pointed out that a number of private entities are involved in capture – for example, property developers who promote private interests in state land.
19. Mr Achmat provided insight into the human impact of state capture in state owned enterprises. He explained how the Arms Deal and the funds used and lost through alleged bribery and corruption cost the health industry millions of lives. This is as a result of the money that ought to have been used to address the AIDS epidemic in South Africa being redirected towards the Arms Deal.
20. Mr Mbeki, Aleck Erwin, Ronny Casrils, Trevor Manual, Terror Lekota, Dr Frene Ginwala, Jacob Zuma were implicated by Mr Achmat as actors who pushed the Arms Deal with foreign companies at the cost of South Africa's public health system.
21. Mr Achmat explained that state capture increases state debt which pulls finances away from capacitating the health care system. At the time of the conclusion of the Arms Deal, the Treatment Action Campaign was struggling to secure state – funded access to treatment for HIV patients.