



The People's
Tribunal on
**Economic
Crime**

**FINAL REPORT OF THE
PEOPLE'S TRIBUNAL ON
ECONOMIC CRIME**

First Hearings: 3-7 February 2018

Arms Trade

20 September 2018

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Introduction

- 1 This Tribunal delivered an interim report on 7 February 2018 after hearing five days of evidence and argument on various categories of international crime related to the arms trade, and their possible investigation and prosecution. The findings we made were interim, mainly because the allegations made before us had not been shared with those implicated. We therefore concluded that all affected parties should be given an opportunity to respond. All affected parties were given three months to do so. We are satisfied that this period is reasonable. No responses have been received, except one from Kredietbank which we deal with later. Four parties acknowledged receipt, namely the National Prosecuting Authority, the African National Congress, the Presidency of South Africa, and the Belgian Embassy in South Africa.

- 2 We have considered detailed written argument containing effective summaries of the relevant evidence submitted to us by the evidence leaders. We have also carefully considered certain changes in our terms of reference suggested by the organising committee in line with recommendations made by this panel in the Interim Report.

- 3 We are now ready to deliver the final report. It will be recalled that the Interim Report dealt with the material presented to us on crimes in the arms trade under three headings:
 - a. Pre-democracy United Nations sanctions violations;
 - b. The 1999 Arms Deal; and
 - c. State Capture.

- 4 We again use these headings in this report.

Pre-democracy United Nations sanctions violations

- 5 This Tribunal made the following interim findings on economic crime in apartheid-era South Africa:

“6 In consequence of the evidence we have heard as well as our own knowledge and perspectives of history and the development and fall of apartheid, we have no doubt of the following propositions: -

- a. United Nations Sanctions Resolutions were aimed at setting back the evil of apartheid - more especially after apartheid was declared a crime against humanity.*
- b. The trade and contact embargoes, which included an arms embargo against South Africa, were first voluntary in the sense that member states were not obliged to comply with them. Later, sanctions became binding - compliance was then essential and non-compliance was a crime. It is beyond debate that after the heinous apartheid system was declared a crime against humanity, any sanctions-busting operations aimed at propping up apartheid was, at the very least, equal to the crime of aiding and abetting the commission of the crime against humanity.*
- c. There is no doubt that the violations of the United Nations weapons boycott resolutions were either deliberately aimed at helping the apartheid state or inevitably and unarguably had that result. We are satisfied that those who did not expressly intend to support apartheid, or those who say that they did not, are substantially guilty of this crime against humanity.*
- d. For various reasons, which cannot now be ranked or traversed in detail, there was an abysmal failure to investigate and prosecute these crimes. This failure also included the grossly negligent or deliberate lack of investigation of the role and contribution of powerful private actors as well as foreign governments in the process of propping up, helping to develop and strengthening the apartheid regime.*
- e. We also have no doubt that some foreign governments were duplicitous - publicly posturing an anti-apartheid stance and secretly supporting it.*

7 There is in our view enough evidence to warrant at least a thorough investigation into the conduct of a number of entities including the French government and the Kredietbank. They co-operated with the apartheid system, ensuring the unlawful flow of arms and ammunition and facilitating payment through a labyrinth of devious structures and routes. All this was secret. This conduct was in our view at least as dangerous and harmful as the conduct of the apartheid regime in terms of killings, torture, forced removals, wrongful imprisonment and the like. Indeed the regimes conduct would have been more difficult to sustain had it not been for the illegal trade in arms during this period. The forces of evil were strengthened and rendered virtually invincible these sanction-busting entities.

8 We would recommend that the conduct of Kredietbank and French government during the campaign be fully investigated. We also appeal to the Belgian government to facilitate an investigation into Kredietbank and help determine the truth.”

- 6 At the conclusion of the Interim Report, we made the following specific recommendation: *“The conduct of Kredietbank and French government with regard to violations of the United Nations sanctions be fully investigated”*.
- 7 As we said above, appropriate summaries of evidence and allegations were served on all relevant actors. We are satisfied that this has been properly done. Apart from some acknowledgements of receipt, a single response has been received from Kredietbank to the effect that they cannot find their records, but the bank made no effort to deny the allegations. Nor were the allegations denied by anyone else.
- 8 The implications of the absence of responses is that there is now even greater reason to ensure that economic crimes during apartheid be properly investigated, and where appropriate, prosecuted.
- 9 We heard the evidence over five days and have now read the summaries of the evidence. It is our view that the summary of the uncontroverted facts

provided in the legal submissions (in the attached schedule) is accurate. It is therefore not necessary to repeat the evidence here. We also agree with the opinions expressed in the submissions to the extent that they are reflected in this final report.

10 It is necessary to expand on the evidence related to the Truth and Reconciliation Commission (TRC). The TRC did three things. First, it granted a number of people amnesty provided that they had made a full disclosure of all the facts. Secondly it did not grant amnesty to all those people who failed to make a full disclosure. Thirdly, it submitted its report regarding those who had applied for but not been granted amnesty to the National Prosecuting Authority. The only reasonable inference is that the TRC did this because it believed that investigation and possible prosecution were warranted. Inexplicably, despite the fact that the final report of the TRC was made available to the appropriate law enforcement authorities, for the purpose of ensuring appropriate investigation and prosecutions, we know of only one case in which there has been a prosecution. The legislative framework of the TRC envisioned that those who did not apply for amnesty or those who did not make a full disclosure, should be followed up and prosecuted. We are satisfied that the process initiated by the TRC cannot be said to be complete until these investigations and, where appropriate prosecutions, have taken place. We can discern no justification for the absence of further investigation and prosecution, particularly in relation to those who did not make a full disclosure.

11 We reiterate that there has been a terrible failure by state institutions to investigate and prosecute the serious crimes described in the submission. There is an urgent need to institute effective investigations and prosecutions of those accused of aiding and abetting apartheid, as a crime against humanity. This urgency warrants the establishment of a special team of investigators and prosecutors within the NPA for this purpose. This team should be established to investigate the crimes described here and report to parliament every six months on the progress of the investigation, prospective timeframes for their completion, and when proceedings are

likely to be instituted. It is neither necessary nor desirable for this team to reveal any of the evidence because this might work to the prejudice of the State case, the accused persons, or both. This special team should complete its work within two years.

12 We also point out that there appears to be insufficient capacity, focus and expertise in the South African justice system to provide accountability for complicity in crimes against humanity and other human rights violations, particularly because of their international character and implications. This capacity should urgently be harnessed, where it exists, and developed further. We call for a process to establish a commission for the investigation of human rights violations and crimes against humanity and complicity therein by state and non-state actors. A tribunal to prosecute these crimes where the commission concludes that prosecution is appropriate, is also essential. This commission must be adequately skilled and resourced and include relevant expertise like financial accountants. We suggest this in the context of the existence of specialised investigation and adjudication facilities in, for example, the labour and competition adjudication processes. The sooner a commission and tribunal to investigate and prosecute crimes against humanity and human rights violations is established, the better.

13 We thus make the following final recommendations:

A. A special prosecutorial and investigative team, established by the National Director of Public Prosecutions together with the Minister of Justice, should be established within the National Prosecuting Authority urgently to fully investigate and, where appropriate, prosecute allegations of complicity by various state and non-state actors in the crime of apartheid. The work of this team should include:

- i. Investigating the violations by KBL and the French government of United Nations sanctions, and the allegation that KBL, Kredietbank, Thales, Norinco and Ferrostaal aided and abetted the commission of the crime of apartheid, a crime against humanity.

- ii. Initiating prosecutions against KBL, Kredietbank, Thales, Norinco and Ferrostaal for aiding and abetting the commission of the crime of apartheid, a crime against humanity.

- B. We recommend that the National Prosecuting Authority proceed immediately with prosecutions against those who were denied amnesty by the Truth and Reconciliation Commission. Further, a copy of this report should be delivered to all Truth and Reconciliation Commissioners.

- C. The special prosecutorial unit described in recommendation A should gather evidence of state involvement in these crimes and present all evidence to the United Nations and any other appropriate international legal forum, and request further appropriate action.

- D. Should the existing international courts or institutions not investigate the alleged complicity, the South African government is requested to act and negotiate at the United Nations for the establishment of an appropriate international criminal tribunal to prosecute crimes by state and non-state actors.

- E. A body, comprising representatives of the Ministry of Justice, the National Prosecuting Authority, the South African Police Services and members of civil society with appropriate expertise, should be appointed urgently to make recommendations to Parliament on the establishment of a specialised commission to investigate alleged complicity by state and non-state actors in crimes against humanity and other grave violations, and a tribunal to prosecute these crimes where applicable. The commission and tribunal should be empowered to investigate and prosecute all matters within their jurisdiction regardless of when the crimes are alleged to have been committed.

1999 Arms Deal

14 This Tribunal made the following interim findings on economic crimes in the 1999 Arms Deal:

“9 It is common knowledge that the post-apartheid government concluded deals aimed at securing military hardware for South Africa relying on the legend that this equipment was necessary in order to ensure the preservation of South Africa as a safe and secure country. There has been an effort to persuade us that the decision to enter into the arms deal was irrational on the ground of the absence of a relationship between the entry into the Arms Deal on one hand and a legitimate purpose on the other.

10 The stated purpose of entry into these Arms Deals was that South Africa needed the arms for its own security and that the offsets offered by suppliers would benefit the poor people of this country and help improve the quality of their lives. We have not yet been persuaded that there is no connection between the decision to enter into these agreements to acquire arms and the stated purpose. We are satisfied though, that there is reason to believe that the decision was irrational for a more fundamental reason. That reason is that the stated purpose could never have been the real purpose. South Africa, in all probability, did not need the military equipment it purchased as a result of the 1999 Arms Deal. What is more, we are satisfied that any honest and reasonable person would have known this. This fact leads to the irresistible inference that these purchases were made in order to facilitate money making for corrupt people, including politicians. This, in our view was the real purpose of the decision. The purpose was illegitimate. The decision to enter into the Arms Deal therefore must have been irrational.

11 There is also, in our view, enough evidence to raise the strong suspicion that cabinet ministers and others in the state machinery were involved in these operations and gained considerably for themselves.

12 It is a matter of regret that these matters have not been subject to rigorous investigation. And it is our view that this should happen as soon as possible.

13 We say little about this aspect of the matter because the findings of the Seriti commission, which concluded that there was nothing wrong with regard to the Arms Deal, are being taken on judicial review. We are nevertheless of the view that it is necessary for us to express this opinion on the evidence before us, despite the fact that the review is pending. We do not go into too much detail because we do not wish to pre-empt the review proceedings. If the review proceedings have been concluded by the time we are ready to produce a Final Report, we may be able to deal with this in more detail.

14 Finally, we make the point that the 1999 Arms Deal and its corruption may not have been possible had it not been for the previously mentioned, grossly negligent or deliberate approach that facilitated violations of the United Nations sanctions. We are also of the view that the likelihood of this corrupt activity continuing would probably have been considerably reduced had the apartheid sanctions-busting plot been fully investigated and those responsible been prosecuted and punished.

15 There are a number of people who were involved in the Arms Deal at various levels. We do not think that it is essential to serve a summary of the evidence and this Interim Report on every one of them. It will be enough to ensure that the Presidency as representative of the South African government and the African National Congress are served with the necessary documents with the request that they ensure that all the relevant people mentioned in the summary, are given due notice. We do not think that they should be mentioned by name at this stage.”

15 As already indicated, there has been no response to this notice, except those mentioned in paragraph 1. We made no recommendations other than

the procedural requirement for notice to be served on the South African government and the African National Congress (ANC). As they have acknowledged receipt, we are satisfied that this has been done.

16 We were cautious in our interim recommendations because the findings and recommendations of the Seriti Commission of Inquiry into the 1999 Arms Deal was subject to judicial review at the time. These judicial review proceedings are ongoing and so we must tread carefully.

17 It is our view that the judicial review proceedings in respect of the Seriti Commission report do not preclude and cannot bar an investigation into the Arms Deal and the prosecution of those implicated by any evidence that we might have heard. An ex-President is currently being prosecuted for alleged involvement in corruption in the Arms Deal and it would be odd for other actors, also involved, not to be prosecuted.

18 We also emphasise that the recommendations we make are not inconsistent with the findings of the Commission. Our recommendations are based on the evidence before us. The Seriti Commission's recommendations are based on the evidence before it.

19 We do not think that the appointment of a commission of inquiry, that frequently serves political purposes, is necessary or desirable.

20 Neither the South African government nor the ANC have said a word about the serious findings in the interim report that there is an "*...irresistible inference that these purchases were made in order to facilitate money making for corrupt people, including politicians*". The evidence shows that the ANC and the South African government were involved in the conceptualisation and implementation of the Arms Deal. The fact that they have not responded, in our view, increases the need for a full and proper investigation by the independent National Prosecuting Authority as well as the South African Police Services. The National Prosecuting Authority acknowledged receipt of the evidence that was at the disposal of the organising committee, yet have done nothing, as far as we are aware.

21 We thus make the following final recommendation:

- A. The National Prosecuting Authority together with the South African Police Services should investigate each and every transaction conducted by or on behalf of the South African government, or any other party, in relation to the 1999 Arms Deal, to determine whether the arms purchased in that transaction were necessary, whether the price was appropriate, and whether there is any justification for the allegation that these purchases were made in order "...to facilitate money making for corrupt people, including politicians".

- B. Perhaps the South African government would also consider whether it is appropriate to provide that these investigations and prosecutions should also be taken over by the commission and tribunal urged in recommendation E in the section on pre-democracy United Nations sanctions violations.

State Capture

22 This Tribunal made the following interim findings on allegations of state capture at Denel:

16 We have had access to persuasive circumstantial evidence that Denel and a number of associated companies were manipulated so that, as state owned enterprises, they did not perform their functions solely for the public benefit - as should have been the case. Instead, it seems clear, and we emphasise that we have not heard the evidence of those implicated, that the manipulation resulted in benefits to private actors. We are of the view that we are justified in evaluating the information provided to us against the backdrop of the overall political context. We do not find it surprising in the light of our understanding of the political context that the Gupta family together with certain political and administrative office bearers would have been the beneficiaries of this manipulation that has come to be known as “state capture”.

17 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.

18 We recommend a full investigation by relevant authorities. We also recommend that in addition to copies of this Interim Report, summaries of the relevant evidence be served on the South African government, (possibly at the office of the Presidency) and other implicated private actors.”

23 In addition to those entities, notice was served on the Department of Public Enterprises, members of the Gupta family, Denel, VR Laser and the

National Prosecuting Authority. As already indicated, there has been no response to this notice, except those mentioned in paragraph 1.

24 It is important to refer to the work of the Zondo Commission of Inquiry into state capture before we make our recommendations on this aspect. The Commission was gazetted on 25 January 2018 but only started its work in August 2018, after the interim report of this Tribunal was issued.

25 We stress that the events pertaining to state capture are integrally related to the acquisition of arms by the South African democratic government during the 1990s and the early 2000s and the sanctions busting shenanigans during apartheid. It would be a mistake to examine state capture in isolation.

26 We reiterate that the work of the Zondo Commission in no way precludes investigation and prosecution by relevant authorities. It would be entirely inappropriate and cause undue delay if the prosecuting authorities and police services waited for the termination of the Zondo Commission before they started their own investigations.

27 We thus make the following final recommendations:

A. We request that the organising committee:

- i. Ensures that the evidence available to this Tribunal is made available to the Zondo Commission.
- ii. Offers appropriate assistance to the Zondo Commission including, if possible, the presentation of legal argument to the Commission, in particular on the conclusions of this Tribunal that the state capture allegations concerning events which took place after 2009 cannot be seen in isolation.
- iii. Monitor the work of the Commission for the purpose of determining what intervention might be appropriate.

B. Without waiting for the Zondo Commission to conclude its work, the National Prosecuting Authority and the South African Police Services

should as a matter of urgency investigate state capture allegations, considering the evidence before the Zondo Commission.

- C. Perhaps the South African government would also consider whether it is appropriate to provide that these investigations and prosecutions should also be taken over by the commission and tribunal urged in recommendation E in the section on pre-democracy United Nations sanctions violations.

Summary of Recommendations

28 The recommendations of this Tribunal are consolidated below.

Pre-democracy United Nations sanctions violations

- A. A special prosecutorial and investigative team, established by the National Director of Public Prosecutions together with the Minister of Justice, should be established within the National Prosecuting Authority urgently to fully investigate and, where appropriate, prosecute allegations of complicity by various state and non-state actors in the crime of apartheid. The work of this team should include:
- i. Investigating the violations by KBL and the French government of United Nations sanctions, and the allegation that KBL, Kredietbank, Thales, Norinco and Ferrostaal aided and abetted the commission of the crime of apartheid, a crime against humanity.
 - ii. Initiating prosecutions against KBL, Kredietbank, Thales, Norinco and Ferrostaal for aiding and abetting the commission of the crime of apartheid, a crime against humanity.
- B. We recommend that the National Prosecuting Authority proceed immediately with prosecutions against those who were denied amnesty by the Truth and Reconciliation Commission. Further, a copy of this report should be delivered to all Truth and Reconciliation commissioners.
- C. The special prosecutorial unit described in recommendation A should gather evidence of state involvement in these crimes and present all evidence to the United Nations and any other appropriate international legal forum, and request further appropriate action.
- D. Should the existing international courts or institutions not investigate the alleged complicity, the South African government is requested to act and negotiate at the United Nations for the establishment of an appropriate

international criminal tribunal to prosecute crimes by state and non-state actors.

- E. A body, comprising representatives of the Ministry of Justice, the National Prosecuting Authority, the South African Police Services and members of civil society with appropriate expertise, should be appointed urgently to make recommendations to Parliament on the establishment of a specialised commission to investigate alleged complicity by state and non-state actors in crimes against humanity and other grave violations, and a tribunal to prosecute these crimes where applicable. The commission and tribunal should be empowered to investigate and prosecute all matters within their jurisdiction regardless of when the crimes are alleged to have been committed.

The 1999 Arms Deal

- A. The National Prosecuting Authority together with the South African Police Services should investigate each and every transaction conducted by or on behalf of the South African government, or any other party, in relation to the 1999 Arms Deal, to determine whether the arms purchased in that transaction were necessary, whether the price was appropriate, and whether there is any justification for the allegation that these purchases were made in order “to facilitate money making for corrupt people, including politicians”.
- B. Perhaps the South African government would also consider whether it is appropriate to provide that these investigations and prosecutions should also be taken over by the commission and tribunal urged in recommendation E in the section on pre-democracy United Nations sanctions violations.

State Capture

- A. We request that the organising committee:

- i. Ensures that the evidence available to this Tribunal is made available to the Zondo Commission.
 - ii. Offers appropriate assistance to the Zondo Commission including, if possible, the presentation of legal argument to the Commission, in particular on the conclusions of this Tribunal that the state capture allegations concerning events which took place after 2009 cannot be seen in isolation.
 - iii. Monitor the work of the Commission for the purpose of determining what intervention might be appropriate.
- B. Without waiting for the Zondo Commission to conclude its work, the National Prosecuting Authority and the South African Police Services should as a matter of urgency investigate state capture allegations, considering the evidence before the Zondo Commission.
- C. Perhaps the South African government would also consider whether it is appropriate to provide that these investigations and prosecutions should also be taken over by the commission and tribunal urged in recommendation E in the section on pre-democracy United Nations sanctions violations.

Acknowledgements

- 29 We are indebted and thankful to the civil society organisations and members of the public that have contributed their time and energy into making the Tribunal a success. They were not only present at the hearings, but were engaged in much preparation beforehand, including research.
- 30 We commend the member organisations of the organising committee, the Centre for Applied Legal Studies, Corruption Watch, the Foundation for Human Rights, Open Secrets, the Public Affairs Research Institute, and the Right2Know Campaign, for their tireless efforts in coordinating and facilitating all aspects of the work of the Tribunal. This must have entailed both intensive and extensive work.
- 31 We acknowledge and thank the individual experts, whistle-blowers and civil society organisations who took the bold and courageous step of testifying publicly at the Tribunal hearings. Your contributions in terms of context and evidence were essential to the findings and legitimacy of this Tribunal.
- 32 We thank the case coordinators and evidence leaders for their efforts in the collection, collation and presentation of both oral and written evidence to the Tribunal.
- 33 We also extend our gratitude to the public and the media for their participation and engagement with the Tribunal.
- 34 Finally, the members of the panel would like to thank the organising committee and all those involved, for the opportunity to participate in this very important process.

The members of the Panel are:

Retired Justice Zak Yacoob

Retired Judge Navanethem Pillay

Ms Mandisa Dyantyi

Mrs Allyson Maynard-Gibson QC

Mr Dinga Sikwebu

20 September 2018