

BAD COPS BAD LAWYERS


**THE OFFICIALS AT THE NPA
AND HAWKS DELAYING
JUSTICE FOR STATE
CAPTURE CRIMES**


An Open Secrets
Investigation




Published by Open Secrets in August 2022

 Second Floor, Community House
41 Salt River Road
Salt River, Cape Town 7925

 +27 21 447 2701

 +27 72 565 0173


 www.opensecrets.org.za


 researcher@opensecrets.org.za


 @OpenSecretsZA

 @OpenSecrets.org.za

 @opensecrets_za

 YouTube: Open Secrets

 LinkedIn: OpenSecretsZA

 To communicate with us securely visit our
website for more details:
www.opensecrets.org.za

 NPC Number: 2017/078276/08

Research by Ra'eesa Pather and Tabitha Paine
Copy Editor: Kudrat Virk | www.inksmartediting.com
Designer: Gaelen Pinnock | www.polygram.co.za
Copyright of Text: Open Secrets
Copyright of Images: Respective Rights Holders,
Getty Images, Gallo Images.

The publication of this report has been made possible by Open Secrets' funders. They are the Heinrich Böll Foundation (Southern Africa office), Luminate, Open Society Foundation Human Rights Initiative, Open Society Foundation for South Africa, Sigrid Rausing Trust, and individual donors.

BAD COPS BAD LAWYERS

THE OFFICIALS AT THE NPA
AND HAWKS DELAYING
JUSTICE FOR STATE
CAPTURE CRIMES

An Open Secrets
Investigation



**open
secrets**

power & profit | truth & justice

NUMBERS AT A GLANCE:

5473

PAGES OF EVIDENCE AND FINDINGS HAVE BEEN PUBLISHED BY THE ZONDO COMMISSION.

9 YEARS

SINCE THE GUPTA PLANE LANDED AT WATERKLOOF AIR FORCE BASE.

52%

THE VACANCY RATE AT THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (THE HAWKS).



HAWKS

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION



THE DECLINE IN THE NUMBER OF PROSECUTORS EMPLOYED BY THE NATIONAL PROSECUTING AUTHORITY (NPA) BETWEEN 2014 AND 2019:

22%

86

INVESTIGATIONS HAVE BEEN DECLARED BY THE INVESTIGATING DIRECTORATE OF THE NPA.

THE NUMBER OF STATE CAPTURE CONVICTIONS:

8

7 YEARS HAVE PASSED
SINCE THE HAWKS BEGAN
INVESTIGATIONS INTO
CORRUPTION AT PRASA.

THE NUMBER OF STATE
CAPTURE MATTERS
HAVE BEEN ENROLLED
IN COURT:

ACCUSED PERSONS
HAVE APPEARED IN
COURT ON ALLEGED
STATE CAPTURE
CRIMES:

65

21



110

THE NUMBER OF
CASES ESKOM
HAS REFERRED TO
POLICE SINCE 2018.

60

THE NUMBER OF
ESKOM CASES
REFERRED TO THE
NPA BY THE SIU.



TABLE OF CONTENTS

ABBREVIATIONS
PAGE 06

ABC

KEY TERMS
PAGE 07



INTRODUCTION
PAGE 08

1

**THE NATIONAL POSTPONEMENT
AUTHORITY: THE NPA'S
FAILURE TO ACT**
PAGE 12





CAPTURING THE HAWKS

PAGE 36



PROSECUTIONS AND ACCOUNTABILITY

PAGE 52



CONCLUSION

PAGE 64



RECOMMENDATIONS

PAGE 67



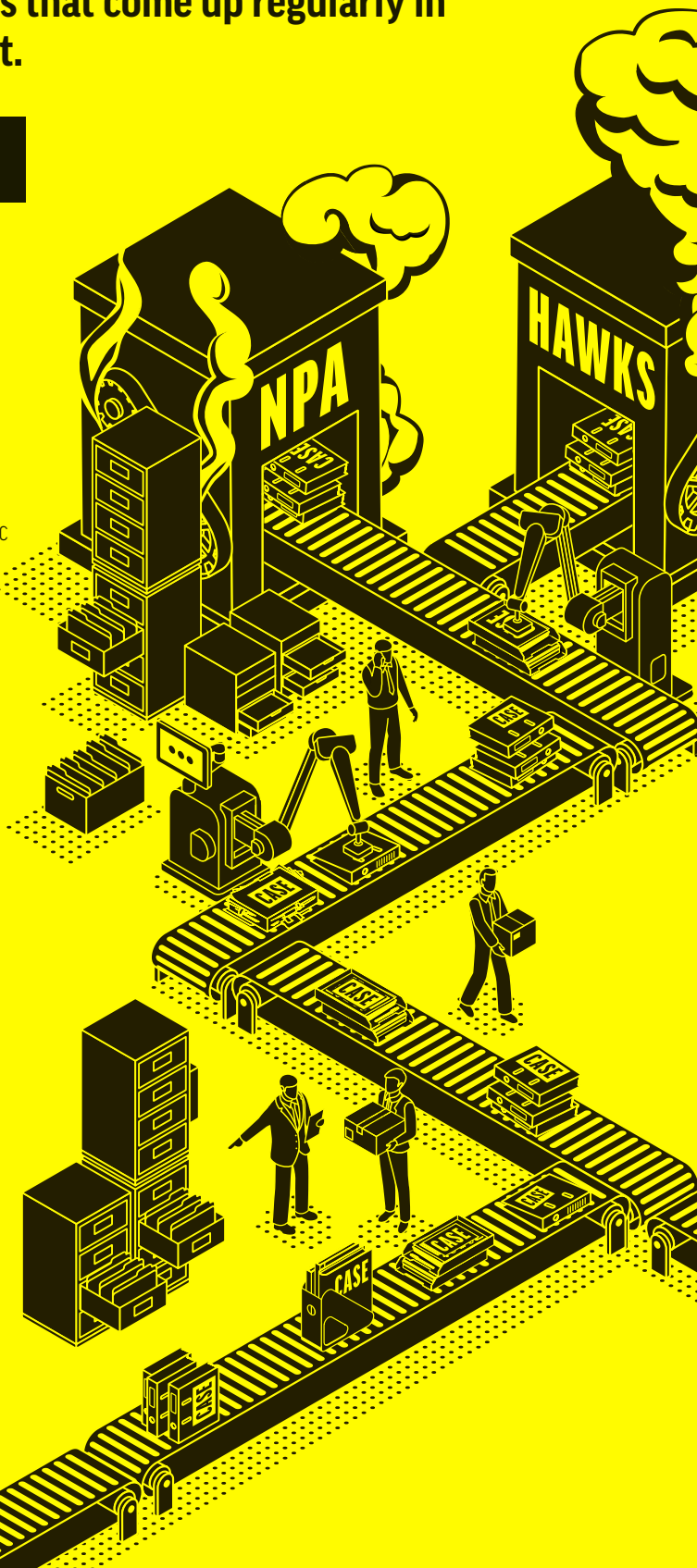
ENDNOTES

PAGE 68

One of the major challenges for investigators and activists who work with complex financial and legal issues is the technical language that can seem intimidating and impenetrable. Here are some of the terms and abbreviations that come up regularly in this investigative report.

ABBREVIATIONS

ACTT	Anti-Corruption Task Team
AFU	Asset Forfeiture Unit (NPA)
ANC	African National Congress
CATS	Crimes Against the State
CEO	Chief Executive Officer
DA	Democratic Alliance
DDPP	Deputy Director of Public Prosecutions
DNDPP	Deputy National Director of Public Prosecutions
DPA	Deferred Prosecution Agreement
DPCI	Directorate for Priority Crime Investigation
DPP	Director of Public Prosecutions
DSO	Directorate of Special Operations
FIFA	Fédération Internationale de Football Association
FUL	Freedom Under Law
HSF	Helen Suzman Foundation
ID	Investigating Directorate (NPA)
IPID	Independent Police Investigative Directorate
MP	Member of Parliament
NDPP	National Director of Public Prosecutions
NPA	National Prosecuting Authority
PCLU	Priority Crimes Litigation Unit
SANEF	South African National Editors' Forum
SARS	South African Revenue Service
SCA	Supreme Court of Appeal
SIU	Special Investigating Unit
SOEs	State-Owned Enterprises
TRC	Truth and Reconciliation Commission



KEY TERMS

DE KOCK REPORT

An internal investigative report completed by the NPA into the decisions made by former NDPPs Shaun Abrahams and Nomgcobo Jiba to authorise racketeering charges against former KwaZulu-Natal Hawks boss Johan Booysen and 27 other policemen.

GINWALA INQUIRY

A 2008 presidential inquiry into the fitness of then NDPP Vusi Pikoli to hold office.

HAWKS

The Hawks is another name used to refer to the DPCI, which is a specialised police agency within the South African Police Service that was established in 2009. The Hawks are responsible for the combating, investigation, and prevention of national priority crimes such as serious organised crime, serious commercial crime and serious corruption.

MOKGORO INQUIRY

A presidential inquiry into the fitness of former NDPP Nomgcobo Jiba and former senior NPA prosecutor Lawrence Murebe to hold office.

NON-TRIAL RESOLUTIONS

Non-trial resolutions are out of court settlement agreements. The agreements are often made between prosecutors or regulators and corporations who are implicated in financial crimes. They allow for corporations to settle legal disputes without being prosecuted.

PRIMA FACIE

A legal term which is used to describe civil and criminal cases where there is sufficient evidence for the case to proceed to trial, unless the evidence is successfully refuted.

PROSECUTION MEMORANDUM

A document prosecutors provide to the NDPP which summarises the evidence in a case so that the NDPP can make a decision on whether to authorise a prosecution.

PROSECUTION POLICY

A formal policy of the NPA that provides guidance on the requirements needed for prosecutors to prosecute cases.

SATCHWELL INQUIRY

An inquiry commissioned by the South African National Editors' Forum to investigate a series of articles published in the *Sunday Times* newspaper between 2011 and 2016. It raised questions about the reporting, newsroom processes, media ethics and stances adopted by the media house on corruption allegations.

SARS 'ROGUE UNIT'

An alleged clandestine unit within the South African Revenue Service that was accused of unlawfully spying on the Scorpions and the National Prosecuting Authority. The spurious allegations have since been debunked.

SCORPIONS

The Scorpions is another name used to refer to the Directorate of Special Operations, which was an investigative body established inside the NPA to investigate and prosecute high-profile priority crimes, including corruption and organised crime. The Scorpions were disbanded in 2009.

ZONDO COMMISSION

A presidential inquiry established to investigate allegations of state capture in South Africa. The Commission was established in 2018 and completed its work in 2022.

“There can be no gainsaying that corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence and imperils the capacity of the state to fulfil its obligations to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk.”

**~ Constitutional Court Judgement, March 2011,
Glenister v The President of the Republic of South Africa and Others**

INTRODUCTION

There are Hawks officials and NPA prosecutors who continue to work in senior positions—including on state capture cases—despite serious allegations of misconduct against them. They are the bottlenecks who have obstructed progress on high-profile cases, and it is time they were investigated to determine if they are fit to remain in office.

For almost a decade, there have been public calls for the Hawks and the National Prosecuting Authority (NPA) to reform, following years of political meddling and delays to act to obtain justice for state capture crimes. This report investigates why the Hawks and the NPA have struggled to investigate and prosecute state capture corruption. In a follow-up to our first report on state capture, released in June—which identified the perpetrators of grand corruption at the Passenger Rail Agency of South Africa (Prasa), South African Airways (SAA), Denel, and South African Revenue Service (SARS)—this newest investigation focuses on the law enforcement agencies that are grappling with reform after the Zuma era, and as a result, are failing in their duties to uphold the law.

The NPA and the Hawks are still scrambling to rebuild after almost a decade of interference and capture. Public trust in both these institutions has been deeply eroded, and despite changes in their leadership under President Cyril Ramaphosa, these agencies have yet to regain public confidence. This report uses evidence submitted to the Zondo Commission, confidential NPA documents, court judgements, and investigative reports to tell the story of how the Hawks and the NPA have failed to take on state capture cases. It also recommends that true reform in these agencies will not be possible unless they hold their own to account.



Above: Newly appointed NDPP Shamila Batohi and President Cyril Ramaphosa in 2018.

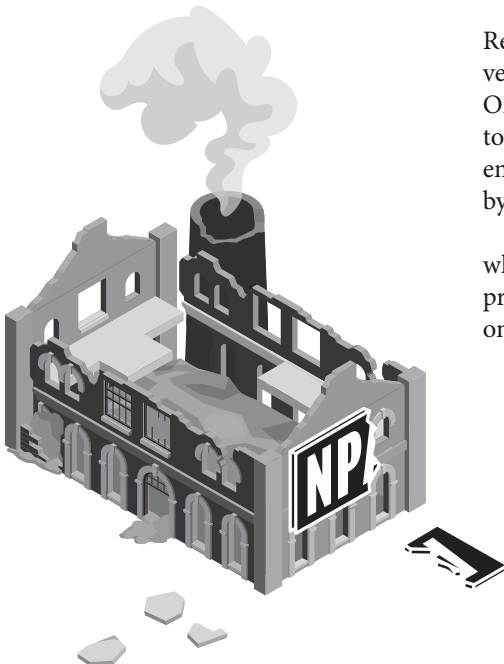
THE UNDOING OF THE NPA AND THE HAWKS

When Shamila Batohi was appointed National Director of Public Prosecutions (NDPP), in 2018, hope grew that public trust in the NPA could be restored. In the NPA's 2019–2020 annual report, the NDPP noted that prosecutors at the authority had been implicated in state capture allegations and

that the NPA was struggling with a dire skills shortage to prosecute grand corruption.¹ Yet, almost four years after Batohi's appointment, the leadership of the NPA has done little to restore the authority's integrity and has failed to take responsibility for the challenges it continues to face.

Data analysed by Africa Criminal Justice Reform (ACJR), a project housed at the University of the Western Cape and the Dullah Omar Institute, shows that from 2014–2015 to 2019–2020, the number of prosecutors employed by the NPA declined significantly by 22 per cent or nearly a quarter.²

In the NPA's Asset Forfeiture Unit (AFU), which is responsible for finding and seizing proceeds from crimes, the ACJR found that one in two positions remain vacant. The





institute also found ‘worrying trends’ that the NPA is struggling to prosecute financial crime cases, particularly grand corruption, as it relies on minor offences and guilty pleas to secure its conviction success rate.

Similarly, the Hawks remain in crisis. Hawks boss Godfrey Lebeja was appointed to the embattled post in 2018, just nine months before Batohi’s appointment was announced. Lebeja inherited a dysfunctional police force and has struggled to rebuild it. In 2021, Lebeja told Parliament that the Hawks were operating at 47 per cent of their required staff capacity, indicating a dire staff shortage that Lebeja admitted affected the Hawks’ investigating abilities.³ At the time, Lebeja said that the Hawks had a caseload of 21,000 and just 2,000 investigators.⁴

The Hawks’ head made the statement to Parliament in March 2021, just three months before a devastating insurrection swept through parts of Gauteng and KwaZulu-Natal (KZN). To date, no one has been convicted, and the current Investigating Directorate (ID) boss, Andrea Johnson, confirmed in March 2022 that the NPA would not be prosecuting the leaders of the insurrection because it did not have enough evidence.⁵

The Zondo Commission investigated, and heard evidence on, interference in these criminal justice agencies. At the commission, the Civil Society Working Group, an umbrella organisation of interest groups that challenge state capture, submitted recommendations that called for urgent reforms in the criminal

justice sector.⁶ However, the commission made no findings or recommendations on the NPA and the Hawks in its final report, despite the significance of these agencies for ensuring accountability and justice for state capture crimes.

At both the Hawks and the NPA, strategic appointments were made to capture these agencies for Zuma and his acolytes. The Zondo Commission noted that this was a modus operandi of capture that took place in state agencies including Denel, SARS, and SAA, which were discussed in Part One of this report series. As a result of the devastating decisions made by Zuma-favoured appointees, South Africa is still struggling to hold the perpetrators of grand corruption and serious crime to account. At the Hawks, Berning Ntlemenza’s appointment to head the police force led to internal upheaval, with Hawks officers targeting their colleagues for investigation, which obstructed the state capture cases these investigators were scrutinising. At the NPA, Nomgcobo Jiba became the acting NDPP and made decisions that favoured Zuma’s interests. She used her powers to instruct prosecutors who would do her bidding to prosecute cases that ultimately delayed state capture prosecutions. Zuma’s chosen appointees may have long departed from these bodies, but the damage they did remains.

Ntlemenza and Jiba created what we refer to as bottlenecks in two of South Africa’s most important law enforcement agencies. These bottlenecks are the officials who stand accused of instituting charges against corruption fighters without sufficient evidence and unduly delaying important high-profile cases.⁷ In this report, Open Secrets identifies the bottlenecks in the NPA and the Hawks.

For South Africa’s broken law enforcement system to be rehabilitated, these officials need to face investigation and sanction, where necessary. If they do not, then the public perception that compromised officials remain employed at these important agencies will linger, and investigations into state capture cases may never be completed.



out for

lun

back in
15mins



THE NATIONAL POSTPONEMENT AUTHORITY: THE NPA'S FAILURE TO ACT

Since its establishment in 1998, the NPA has been embattled by allegations of political interference. The NPA was formed as the post-apartheid law enforcement agency tasked with fearlessly and fairly prosecuting wrongdoing—attributes which are protected both in the National Prosecuting Authority Act and in the Constitution. However, the NPA's ability to achieve its goal of being an institution free from political interference dwindled early on.

The authority's first and longest-serving NDPP, Bulelani Ngcuka, was accused of being an apartheid spy by a group of supporters of Jacob Zuma—primarily former intelligence boss Mo Shaik and Mac Maharaj, Zuma's former spokesperson when he was president. Ngcuka was the subject of a gruelling judicial commission of inquiry after he was accused of being an apartheid-era spy. While his name was cleared by the commission, Ngcuka resigned as NDPP, in 2004, after six years in office.

This smear campaign coincided with the NPA's investigation into the Arms Deal, which also implicated Zuma.¹ In 2003, Ngcuka said that the NPA had a prima facie case against Zuma but declined to prosecute on the basis that there was a slim prospect of successful prosecution. He faced public outcry and controversy when the statement came to light, as it meant that the NPA believed Zuma was guilty, yet it somehow did not have the evidence to prove it.²

Here today...

Before Batohi's arrival, South Africa had seen six permanent and three acting NDPPs since the NPA was established in 1998. An NDPP term is supposed to be 10 years, but no NDPP has lasted the full 10-year period in office.



Bulelani Ngcuka
1998-2004
Resigned



Vusi Pikoli
2005-2007
Dismissed,
challenged in court,
settled out of court.



Mokotedi Mpshe
2007-2009
Acting NDPP



Menzi Simelane
2009-2012
Constitutional Court
found appointment
irrational.



Nomgcobo Jiba
2012-2013
Acting NDPP



Mxolisi Nxasana
2013-2015
Resigned



Shaun Abrahams
2015-2018
Resigned



Silas Ramaite
2018-2018
Acting NDPP



Shamila Batohi
2018-



His successor, Vusi Pikoli, also left the NDPP's office after facing controversy. At the time, Pikoli had issued an arrest warrant for then Police Commissioner Jackie Selebi—a close ally of then President Thabo Mbeki. Mbeki appointed the Ginwala inquiry, led by Frene Ginwala, to consider Pikoli's fitness to hold office after Pikoli had issued the warrant

of arrest. Despite the inquiry finding that he was a 'person of unimpeachable integrity',³ Pikoli left the NDPP's office after reaching a R7.5 million settlement with the government to vacate the post.⁴ Selebi was later convicted on corruption charges.

While political interference had caused instability within the NPA's leadership from its earliest days, the arrival of Jacob Zuma in the Presidency only accelerated interference at the NPA and posed an even greater danger to its integrity.

UNDER ZUMA'S AUTHORITY

In the Zuma years, public trust in the NPA declined even further. Among Zuma's first acts after he assumed the Presidency, in 2009, was to appoint Menzi Simelane, then the director general of the justice department, to the position of NDPP. The Ginwala inquiry had made findings that Simelane had unduly interfered in the Selebi case and that he had made misrepresentations under oath.⁵ The Public Service Commission later confirmed the Ginwala findings in its own investigation.⁶ Yet, despite public uproar and concerns raised by civil society, Simelane was appointed to the post. Once in office, Simelane swiftly abandoned a preservation order to freeze a Lichtenstein bank account held by Arms Deal fixer Fana Hlongwane in 2010.⁷ At the time, NPA spokesperson Bulelwa Makeke said, 'Whilst there was and still is room to argue for the retention of the preservation order, the evidence available does not support this approach.'⁸

The former NDPP's actions would have ramifications for the Arms Deal investigation into Zuma and other powerful politicians and corporations. Simelane's predecessor, Mokotedi Mpshe, had also decided to drop corruption charges against Zuma and Thales—a French multinational arms corporation implicated in the scandal and facing prosecution in South Africa—over the alleged 'spy tapes' claims. The claims related to recorded phone conversations between former Scorpions boss Leonard McCarthy and Ngcuka, who were alleged to have conspired to charge Zuma. Mpshe's decision to drop the charges was later declared irrational by the Supreme

Court of Appeal (SCA), which also found that the authenticity of the so-called 'spy tapes' could not be verified and questioned whether the tapes had been legally obtained.⁹

In 2012, the SCA ruled that Simelane's appointment must be set aside as Zuma had not properly considered Simelane's fitness to hold office.¹⁰ After Simelane left his position, the next two Zuma appointments to the NDPP position would prove to be the most destructive. Nomgcobo Jiba became Acting NDPP in 2012. She was succeeded by Shaun

Abrahams, who took over the post in 2015. **Under their leadership, prosecutions in the Booysen case involving former Kwa-Zulu-Natal Hawks boss Johan Booysen, the SARS 'rogue' unit and pension payout sagas, the rendition case, and the case against former Independent Police Investigative Directorate (IPID) head Robert McBride were pursued with fervour despite flimsy or non-existent evidence, while prosecutions for high-level corruption and economic crimes faltered or faced endless delays.**

CASE

THE BOOYSEN CASE

Period: 2012 and 2015-2021

- **The accused:** Former KwaZulu-Natal Hawks' head Johan Booysen and 27 other policemen
- **The charges:** Racketeering and murder charges were brought against Booysen and his colleagues, after the *Sunday Times* published claims, in 2011, of an alleged 'death squad' within the Hawks that had been implicated in extrajudicial killings and other alleged criminal incidents that had occurred between September 2008 and September 2011.¹¹
- **The political links:** At the time that the charges were authorised, Booysen was investigating corruption allegations against Thoshan Panday—a dubious businessman linked to Jacob Zuma's son, Edward—which involved a R60 million corruption scandal.¹² Panday and members of his family were finally charged with corruption, money laundering, fraud, and racketeering in 2020.
- **Who authorised the case:** Then Acting NDPP Nomgcobo Jiba authorised the charges in 2012. Shaun Abrahams, Jiba's successor, reinstated the charges in 2015.
- **Dropping the charges:** The Durban High Court set aside Jiba's decision to prosecute Booysen in 2015, finding there was insufficient evidence to support the racketeering charges. Later, in 2019, an internal NPA investigation, led by the current Deputy National Director of Public Prosecutions, Rodney de Kock, found that neither Abrahams nor Jiba had sufficient evidence before them to authorise the racketeering charges.¹³ The de Kock report recommended that the racketeering charges Abrahams had reinstated be dropped,¹⁴ and in 2019, NDPP Shamila Batohi decided to withdraw the charges.¹⁵

CASE

THE SARS PENSION PAYOUT CASE

Period: 2016

- **The accused:** Former SARS Commissioner and Finance Minister Pravin Gordhan and former Deputy SARS Commissioner Ivan Pillay
- **The charges:** Fraud charges were brought against Gordhan and Pillay. The charges related to Gordhan's approval of a R1.1 million early retirement payout, allegedly without due process, to Pillay. Gordhan was also accused of improperly approving a five-year contract for Pillay when he had only been granted a three-year extension.
- **The political links:** The charges were largely believed to be politically motivated because Gordhan occupied a significant position as finance minister, from 2015 to 2017, and was vocal in his opposition to state capture at the time.
- **Who authorised the case:** Then NDPP Shaun Abrahams
- **Dropping the charges:** The charges were eventually dropped at the end of 2016, after the NPA found there was no criminal intent.¹⁶

CASE

THE RENDITION CASE

Period: 2016

- **The accused:** Former national Hawks boss Anwa Dramat and former Gauteng Hawks boss Shadrack Sibiya
- **The charges:** Dramat and Sibiya were charged for the alleged illegal rendition of Zimbabwean nationals in 2010.
- **The political links:** The charges were laid after Dramat had decided to investigate upgrades to Jacob Zuma's Nkandla homestead in 2015. Sibiya, at the time, was also investigating a case that involved politically connected, former crime intelligence boss Richard Mdluli.
- **Who authorised the case:** Then NDPP Shaun Abrahams
- **Dropping the charges:** The charges against the two Hawks officials were dropped in 2018 after they made representations to the NPA. Dramat left the Hawks in 2015, but Sibiya was reinstated by a court order, in May 2022, after then Hawks' head Berning Ntlembeza had dismissed him for his alleged role in the alleged illegal repatriations.¹⁷

CASE

THE SARS 'ROGUE UNIT' CASE

Period: 2016-2020

- **The accused:** Former SARS officials Johann van Loggerenberg, Ivan Pillay, and Andries Janse van Rensburg
- **The charges:** The charges related to allegations that a unit within SARS had unlawfully spied on the Scorpions and the NPA at their former offices in Silverton, Pretoria.
- **The political links:** The tax officials were members of the enforcement department at SARS—namely, the High Risk Investigation Unit—which had powers to investigate the tax compliance of wealthy, high profile and politically connected individuals, as well as those linked to organised crime and industries like tobacco. Former SARS Commissioner Tom Moyane had “ordered the disbandment of the High Risk Investigation Unit, and the termination of surveillance of those who were under investigation by the unit,” according to the first interim report of the Nugent Commission – a presidential commission of inquiry which investigated wrongdoing at SARS in 2018.¹⁸
- **Who authorised the case:** Then NDPP Shaun Abrahams
- **Dropping the charges:** In 2020, the NPA decided to withdraw the charges on the basis that there was no reasonable prospect of a successful prosecution.

CASE

THE MCBRIDE CASE

Period: 2016

- **The accused:** Former Independent Police Investigative Directorate (IPID) boss Robert McBride and his two colleagues, Matthews Sesoko and Innocent Khuba.
- **The charges:** The charges of fraud and defeating the ends of justice were brought by the NPA over amendments that were made under McBride's supervision to an IPID report, which had initially implicated former national Hawks boss Anwa Dramat and Gauteng Hawks' head Shadrack Sibiya of wrongdoing in relation to allegations that they illegally renditioned Zimbabwean nationals. The amendments to the report cleared Dramat and Sibiya of the charges they faced.
- **The political links:** Dramat and Sibiya had investigated upgrades to Jacob Zuma's Nkandla homestead and other politically-linked matters. By clearing them of wrongdoing, McBride disrupted attempts to remove Dramat and Sibiya from their positions. McBride had also been involved in investigating allegations of corruption against former SAPS Commissioner Khomotso Phahlane.
- **Who authorised the case:** Then NDPP Shaun Abrahams
- **Dropping the charges:** The charges against McBride were dropped in 2016, after the NPA said it did not have enough evidence to prosecute the case successfully.¹⁹



CAPTURING THE NPA: THE JIBA YEARS

Jiba's rise to the NDPP post accelerated the decay at the NPA, which ultimately led to the crisis that the NPA is now struggling to overcome. Booysen confirmed Jiba's destructive power in his affidavit to the Zondo Commission, stating that she was 'at the heart of all the nefarious activities' that led the NPA to prosecute law enforcement officers who were attempting to tackle state capture crimes.²⁰ Booysen claimed to have been unfairly prosecuted by the NPA for his role in the now debunked 'death squad' case. The *Sunday Times* first reported the allegations, and it was found to have published similar 'invented stories' in relation to the SARS 'rogue unit' saga and the rendition case involving former senior Hawks officials Anwa Dramat and Shadrack Sibiyi by the Satchwell inquiry commissioned by the South African National Editors' Forum (SANEF).²¹ Some of the prosecutors who prosecuted the 'rogue unit' case and the rendition case also prosecuted the Booysen matter and the case against former Independent Police Investigative Directorate boss Robert McBride.

Above: NDPP Shaun Abrahams and his deputy, Nomgcobo Jiba, at a media briefing in 2016.

One of Jiba's most controversial decisions was to authorise racketeering charges against Booysen in connection with a so-called 'death squad' he allegedly led within the Hawks in Durban. Booysen and 27 of his colleagues faced several allegations, including extrajudicial killings and racketeering. Booysen denied the allegations, saying they were concocted to stall his corruption investigation into politically connected businessman, Thoshan Panday.

A judgement by the Durban High Court vindicated Booysen by finding that there was no evidence based on which Jiba could have authorised the racketeering charges. Judge Trevor Gorven also found in favour of Booysen's argument that Jiba had misrepresented the evidence before her office. The former NDPP told the court that she had relied upon valid evidence, which included sworn statements, to authorise the prosecution.²² However, at the time that she made the racketeering authorisation, a statement by one witness, Ari Danikas, was unsigned and

undated, meaning it was not the sworn statement that Jiba had described to the court.²³ In his judgement, Gorven said, 'It is not even signed by anyone. It is not dated. Even if it can be attributed to the named person and even if it was a sworn statement as claimed by the NDPP, the contents do not cover the period dealt with in the indictment except for one event which does not relate to Mr Booysen.'²⁴

Gorven also found that Jiba did not have a statement from another witness, Colonel Rajendran Aiyer, at the time that she made the decision to prosecute, even though in her statement to the court she had stated that she had the document. Jiba's misrepresentation of the Danikas and Aiyer statements led the court 'to draw an inference adverse to the NDPP'.²⁵

An internal NPA investigation—led by the Deputy National Director of Public Prosecutions (DNDPP), Rodney de Kock—also found that Jiba had authorised racketeering charges without following due process and without any evidence to substantiate the charges.²⁶ According to the NPA's Prosecution Policy—which is a guideline that informs how prosecutors should make prosecutorial decisions—a prosecution should only be initiated if there is sufficient evidence and a reasonable prospect of success.²⁷ In the Booysen case, there was neither evidence nor a reasonable prospect of successful prosecution, indicating that the NDPP had violated the policy.

After the Booysen case became widely discredited, Jiba faced an inquiry into her fitness to hold office, which ultimately found that she was not a fit and proper person to be in her position. At the time, she had been replaced by Abrahams as NDPP and appointed Deputy National Director of Public Prosecutions. The inquiry, which was led by Justice Yvonne Mokgoro, said that Jiba 'allowed, and in fact enabled, the independence of the National Prosecuting Authority (NPA) to be compromised' during the prosecution of the Booysen case.²⁸

Jiba faced perjury and fraud charges because of her conduct in the saga, but in 2015, then NDPP Abrahams withdrew the charges.

In September 2021, Open Secrets received information that the state attorney had appointed Jiba

to represent the NPA on a matter related to the Truth and Reconciliation Commission (TRC). The NPA confirmed the appointment to Open Secrets but stated that 'upon realisation that there was a conflict of interest', the authority had approached the state attorney and Jiba's offer had been revoked.

However, the confirmation of Jiba's initial appointment is a stark indication that there are gaps in accountability, even in the case of an official whose conduct has been criticised in a court judgement, an internal NPA investigation, and a judicial inquiry.

SHAUN ABRAHAMS: FOLLOWING THE CAPTURE MODUS OPERANDI

Under Abrahams' watch, the NPA pursued further questionable prosecutions, namely the rendition case, the fraud charge against McBride, the SARS 'rogue unit' prosecution, and the fraud charges against former Finance Minister Pravin Gordhan in relation to former SARS Deputy Commissioner Ivan Pillay's early retirement payout.

The work of Abrahams and Jiba has been identified as a 'modus operandi' of capture at the NPA by Karen van Rensburg, the authority's former chief executive officer (CEO) and current head of administration.²⁹

Van Rensburg submitted two affidavits to the Zondo Commission. The first, which was signed in December 2020, dealt with numerous issues, including the key NPA officials implicated in capturing the NPA.³⁰ Van Rensburg's second affidavit, which was signed in June 2021, detailed the conduct of certain NPA prosecutors linked to state capture, who are discussed later in this report.³¹ As CEO (a position now known as head of administration) of the NPA, van Rensburg has access to internal documents at the NPA or under its purview, which she used as evidence to



support her claims. She also relied on court judgements, information from criminal dockets, and submissions made to the Zondo Commission.

Significantly, in her December 2020 affidavit to the Zondo Commission, van Rensburg unequivocally stated that the NPA had been captured and named Jiba and Abrahams among those responsible for the corruption at the authority.³² She stated that the NPA had succumbed to a pattern of capture in which investigators working on grand corruption cases were targeted by their colleagues. This pattern involved ‘leaking’ sensitive information that allegedly implicated officials investigating politically linked cases in serious wrongdoing. The next step of the modus operandi was to criminally charge or discipline these officials.³³ If these officials did not permanently leave their positions, the cases against them were then ‘pursued with unusual vigour’, sometimes reaching as far as the Supreme Court of Appeal.³⁴ According to van Rensburg, a ‘more pliable person was then appointed to take over the investigation or prosecution’ of the high-profile corruption cases that could not proceed while investigators were facing criminal charges or disciplinary processes, as part of the modus operandi.³⁵ The final steps in the pattern of capture then included withdrawing the

Above: NDPP Shaun Abrahams during an appearance before The Portfolio Committee on Justice and Correctional Services in Parliament in 2016.

charges against those who were accused of wrongdoing once their reputations had been smeared.

She listed Booysen, Sibiya, Dramat, McBride, Gordhan, Pillay, and van Loggerenberg as being among those officials who had been removed from their posts and targeted for prosecution.³⁶ The Booysen, Sibiya and Dramat, and the SARS ‘rogue unit’ cases—which involved van Loggerenberg and Pillay—followed the pattern that van Rensburg described. In each case, a report was leaked to the *Sunday Times*, in which these officials—who were investigating upgrades to Zuma’s homestead in Nkandla, Panday, and other politically connected cases—were implicated in serious wrongdoing. They were then criminally charged and removed from their positions. Later, the charges were dropped in each case. Once the Satchwell inquiry made its findings, it was publicly confirmed that the *Sunday Times* stories—which had spread the Booysen, renditions, and rogue-unit smear narratives—were baseless.³⁷

Each of the matters that van Rensburg referred to was authorised by Abrahams. To pursue these cases, Abrahams—and in the Booysen case, Jiba—relied on several



experienced prosecutors who wittingly or unwittingly prosecuted these cases that protected the interests of state capture and obstructed investigations into the fixers, politicians, and private elites who enabled and benefitted from it. Jiba instructed the prosecutors who took on the Booysen case, and this accelerated the decline of the NPA as public trust dwindled. Abrahams built on her work, relying on willing prosecutors to take on cases without the necessary evidence, including the McBride and SARS ‘rogue unit’ cases. Under Abrahams’ watch, the Gordhan pension payout case was also pursued, though he later withdrew the case, stating that there had been no criminal intent on the part of Gordhan and his co-accused.³⁸ Today, the authority has yet to be rid of the legacy that these former NDPPs created, and which still confronts the NPA.

While Jiba and Abrahams have faced public censure for their decisions, there are prosecutors at the NPA who executed their orders and have yet to be held to public account. Batohi has acknowledged that there are prosecutors at the NPA who have been accused of wrongdoing, but they remain in senior positions. They are the bottlenecks in the NPA, and the time has come for their questionable decisions and undue delays in high-profile cases to be investigated.

THE BOTTLENECKS

When Jiba instituted criminal charges against Booysen and his colleagues, the matter was prosecuted in KwaZulu-Natal, where the case originated. The NPA consists of various structures and sub-structures. At the top of the hierarchy is the NDPP, and underneath that post are the Deputy National Directors of Public Prosecutions. At the regional level, each province has its own NPA structure, which is led by a Director of Public Prosecutions (DPP). In the office of the DPP, there are Deputy Directors of Public Prosecutions (DDPP) who assist the DPP. While the NDPP has overarching authority, the DPP in each region has oversight of the local cases that are to be prosecuted in the high court of that region. Gauteng is unique in that it is split into two regions: North Gauteng (Pretoria) and South Gauteng (Johannesburg). Each of these two jurisdictions has its own high court, with a DPP in Pretoria and another in Johannesburg.

A DPP can only carry out their duties in the jurisdictions in which they are appointed. They need the explicit approval of the NDPP to carry out duties in a different region where a sitting DPP has been appointed.

Paid for by the People

Sunday Crimes

R20.50 Ecl.VAT www.sundaycrimes.co.za

350217
4 293042

TOTAL VALUE OF ESTIMATED JACKPOTS

R39 MILLION

TUESDAY 21 AUGUST 2016 BUY YOUR TICKETS NOW!

The NPA

Th Modus

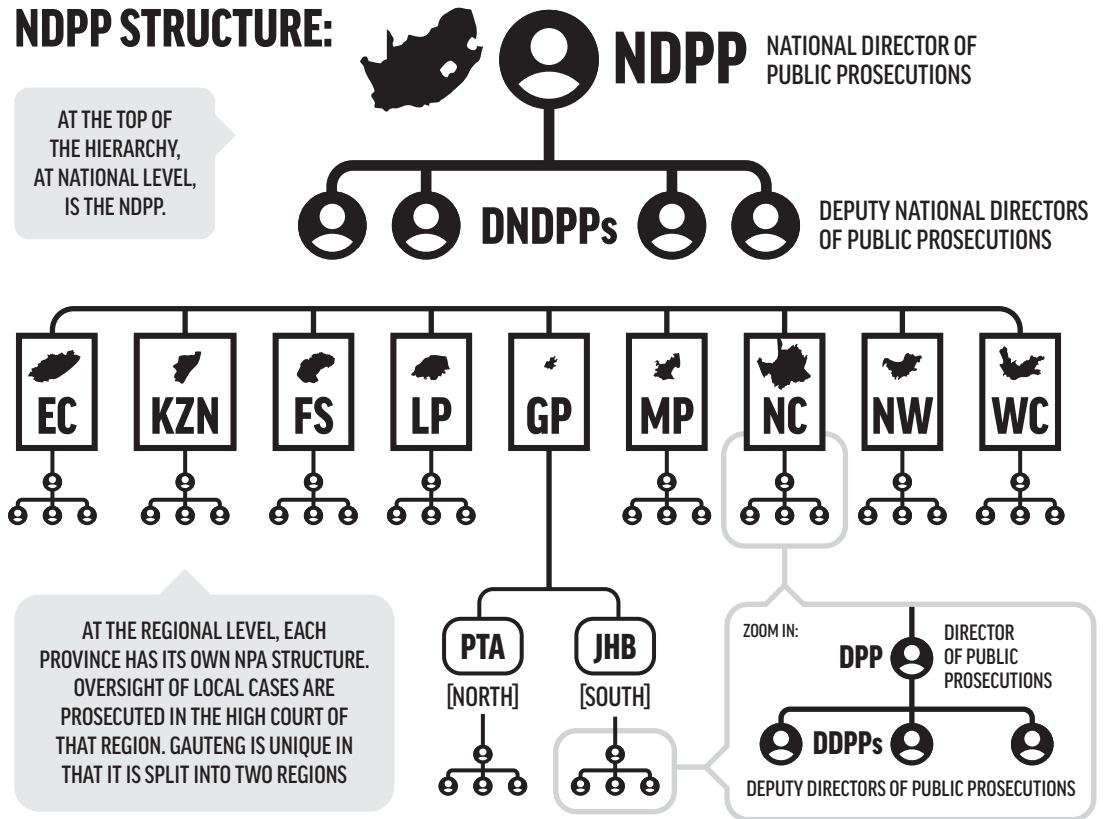
Mc Operandi

Op A Pattern

of

- 1 Leaking sensitive information that seemingly implicated officials investigating corruption cases in serious wrongdoing.
- 2 Criminally charging or disciplining these officials.
- 3 If these officials did not leave their positions, the cases against them were aggressively pursued.
- 4 More pliable officials were appointed to take over high profile corruption cases from these officials.
- 5 Charges against corruption busters were withdrawn once their reputations had been smeared.

NDPP STRUCTURE:



Understanding the structure of the NPA is important, as Jiba and Abrahams took advantage of appointments in this structure to make poor prosecutorial decisions that weakened the NPA. The NDPP and DPP posts are filled by presidential appointment. Thus, officials who neglect their duties in these roles cannot be subject to conventional internal disciplinary inquiries and instead must face a commission of inquiry appointed by the president and agreed to by Parliament.

When Jiba authorised the Booysen prosecution, she appointed the Johannesburg Director of Public Prosecutions, Andrew Chauke, as the coordinator of the prosecution team that dealt with the matter.³⁹ The team—which consisted of senior prosecutors Raymond Mathenjwa, Anthony Mosing, and Sello Maema—was brought into KwaZulu-Natal, despite a DPP—Simpiwe Mlotshwa—having been appointed in KZN.⁴⁰

The Booysen case is but one in a series of cases in which Chauke has been criticised for questionable conduct. In recent years, the Johannesburg DPP has come under even closer scrutiny for major delays in significant cases of which his office has oversight.

1. ANDREW CHAUKE: JOBURG'S KING OF PUBLIC PROSECUTIONS

Chauke is perhaps the most senior official at the NPA with allegations of misconduct against him. As the NPA's Johannesburg DPP since 2011, Chauke has faced a string of controversies that have been publicly documented in the media.

The most discredited case to which Chauke is linked is the Booysen case. In



2012, then NDPP Jiba assigned Chauke to a team of prosecutors who would be parachuted into KZN to handle the case.⁴¹ At the time, Jiba had urged KZN DPP

Simpiwe Mlotshwa to enrol the case 'due to pressure', according to the de Kock report, though Jiba had failed to clarify who was 'pressuring' her.⁴² In June 2012, Chauke and Mlotshwa clashed via email over the indictment. Chauke, in emails sent by his assistant, insisted that Mlotshwa sign the indictment, while Mlotshwa adamantly refused without a report on the evidence.⁴³ Chauke never sent the report, but at the Zondo Commission, he blamed his assistant for the oversight, failing



The Chauke Cases

Andrew Chauke remains in his position as the Joburg prosecutions boss despite a track record of questionable decision-making and unjust delays in high-profile cases.



Booyesen case
2012 and 2015–2021

LACK OF EVIDENCE



Mabula case
2017–

DELAYS



Hlongwa case
2011–

DELAYS

to recognise that he had the ultimate responsibility for ensuring the report was shared with Mlotshwa.⁴⁴

Chauke submitted an affidavit to the Zondo Commission in 2021, saying that he had resolved the issues related to his email exchange with Mlotshwa and had mistakenly thought the prosecution memorandum had been included in the draft indictment emailed to Mlotshwa to sign.⁴⁵ He ultimately denied that he had any involvement in capture at the NPA, or that the Booyesen case was improperly pursued.⁴⁶

In the affidavit, Chauke also denied that he had detailed knowledge of the Booyesen-related evidence on which the charges were brought and stated that he was a ‘co-ordinator’ on the case, who was distanced from

the day-to-day operations.⁴⁷ However, the de Kock report contradicts Chauke’s claim that he was unaware of the evidence in the case. Between 2012 and 2014, Chauke received four documents that dealt with evidence from the prosecution team, indicating he was aware of some of the evidence in the case.

The Mokgoro inquiry—a 2019 presidential inquiry into allegations of wrongdoing against Jiba and former senior NPA prosecutor Lawrence M wrebi—also made findings that contradict Chauke’s claims.⁴⁸ According to the Mokgoro report, Chauke was responsible for signing and submitting a memorandum, in 2012, for the charges against Booyesen to be authorised.⁴⁹ The application would have contained details of the evidence in the case. The Mokgoro inquiry also cast doubt on Chauke’s role as a mere distanced supervisor, stating that prosecutors had reported to him on their daily operations and that he had signed the 2012 prosecution memorandum on the case. This signifies that he was involved in important details of the case, beyond merely coordinating staff members.

The findings of the Mokgoro inquiry and the de Kock report are significant because all prosecutors are bound by the NPA’s Prosecution Policy, which states that there must be sufficient evidence and a reasonable prospect of successful prosecution for a case to proceed.⁵⁰ In the Booyesen case, both the Durban High Court in 2015 and the de Kock report in 2019 found that neither of these requirements had been met. While Chauke was not the lead prosecutor on the case and was not responsible for making the decision to prosecute, he still had a duty as a prosecutor to abide by the NPA’s Prosecution Policy.

While the NPA has been slow to act on allegations of misconduct involving its prosecutors in the Booyesen case, its regional communications manager, Phindi Mjonondwane, confirmed to Open Secrets in June 2022 that Chauke, along with the other prosecutors assigned to the case, is currently facing an internal NPA investigation for his role in the Booyesen prosecution.

‘The NPA instituted internal proceedings regarding the role played by the DPP and the prosecutors in this matter and it is prudent to wait for the finalisation of such internal processes,’ Mjonondwane said.

The NPA's confirmation that it is investigating Chauke and other prosecutors assigned to the Booysen case, is an indication that there are serious concerns within the prosecuting authority about the conduct of these prosecutors. Yet, Chauke has not been placed on precautionary suspension pending the outcome of the investigation and retains his position as Joburg DPP, where he has oversight of high-profile cases, including state capture cases. **Chauke should be placed on precautionary suspension until the NPA's investigation is concluded. If the NPA's investigation finds he is guilty of misconduct, then the NPA's leadership must recommend that the Presidency establish a commission of inquiry into his fitness to hold office.** It is time to determine if Chauke is fit to enforce justice as he is required to do in his position as Joburg DPP.

However, Chauke's role in questionable prosecution decisions is not limited to the Booysen case. Recently, Chauke has caused chagrin within the NPA over his delay in prosecuting the former South African Police Service (SAPS) North West deputy commissioner and Hawks officer, Jan Mabula, whose conduct is detailed later in this report and who stands accused of authorising and overseeing the kidnapping and torture of detainees in police custody. In a throwback to the violent and vicious apartheid-style abuses of



the Security Branch, Mabula, along with seven of his colleagues, is facing charges of kidnapping, assault, and extortion in a case dating back almost 16 years to 2006.⁵¹

Senior officials at the NPA have criticised Chauke's handling of the case, which includes an agreement he made with the lawyers for the accused that would add further delays. Open Secrets has seen correspondence between BDK Attorneys, who represent the policemen, and Chauke confirming that the parties agreed to postpone the case pending a review by the NDPP. In an email, dated 10 June 2019, Chauke told BDK Attorneys that the indictment would 'not be served on the accused pending your application for review by the office of the NDPP as well as your intended application to the high court.'⁵² One year later, in 2020, *News24* reported that Chauke wrote in a prosecution memorandum that he had provisionally withdrawn the summonses against Mabula and his co-accused, pending the finalisation

of the indictment and a review of the case, as requested by the policemen's lawyers.⁵³ The concern that officials at the NPA raised about the deal was that it would add significant delays to the case.

In November 2020, Rodney de Kock reportedly blasted Chauke's decision in papers submitted to the Johannesburg High Court, stating that Chauke had acted 'contrary to the instructions you [he] received from this office [the Deputy National Director of Public Prosecutions]'.⁵⁴ De Kock also pointed out the crushing effect such an agreement would have: 'This would bring the wheels of justice to a dramatic halt and would hold the NPA to ransom for many years to come'.⁵⁵

Sixteen years after the allegations emerged, the state's case against Mabula has finally begun. Mabula and his co-accused appeared in the Johannesburg High Court in May 2022, as trial proceedings commenced with Paul Kgoedi giving testimony.⁵⁶ **The lengthy delay, however, is an injustice for which Chauke should be held to account.** The Joburg prosecutions boss, meanwhile, has also faced criticism over his handling of a case that involves another high-profile former official: Brian Hlongwa.

The 10-year delay in prosecuting Hlongwa, Gauteng's former Member of the Executive Council (MEC) for health, has been widely documented in the media. Hlongwa faces allegations of tender corruption amounting to a staggering R1.2 billion in a case that dates to 2006.⁵⁷



The Hlongwa case was at the heart of capture involving healthcare investment advisory firm Regiments Health in the years before its partner company, Regiments Capital, became a key player in state capture.

The Special Investigating Unit (SIU) first

handed the matter over to the Anti-Corruption Task Team (ACTT)—an inter-ministerial unit which includes members of the NPA and the Hawks—in 2011. In its investigation, the SIU revealed that the Gauteng health department had awarded corrupt tenders for the establishment of an internal project management unit in 2007.⁵⁸ According to the SIU, Regiments Health Director Niven Pillay had paid R1 million towards the purchase of Hlongwa's R7 million home in Bryanston, Johannesburg,⁵⁹ while 3P Consulting boss Richard Payne, who is widely implicated in the scandal, had paid a further R1.6 million.⁶⁰ This is just one example of how Hlongwa benefited from irregularly awarding the tender to 3P and Regiments Health.

Chauke's office has been working with the NPA's Specialised Commercial Crime Unit on the Hlongwa prosecution.

According to NPA documents from 2019, officials at the NPA were struggling to understand the delays in the case. An NPA report on the case, in 2019, stated, 'The [matter] is to date still to be enrolled and it is not clear as to what has been the cause of the delay'.

A separate memorandum on the case, dated 4 June 2019, stated that a forensic auditor contracted to help investigate the financial details of the case in 2011 had still not delivered their findings in 2013. The memorandum said that 'the charges could not be finalised' without the forensic report, which meant that the NDPP could not authorise the prosecution. Eventually, the auditor submitted a report in November 2013, but it was incomplete and insufficient, and could not be used as expert evidence in court, according to the NPA memorandum.⁶¹

In November 2014, another forensic audit specialist was contracted to produce an expert investigative report. However, owing to delays in handing over the necessary evidence, a breakdown of communication with the police, and a time lapse in the contract, the new forensic auditor was unable to deliver the report in a reasonable time frame. Significantly, the NPA memorandum mentioned that Chauke only escalated the matter in February 2016, requesting the NDPP's intervention to help finalise the case. This

means that Chauke waited for a significant period before he took serious action to stem the delays. Eventually, in August 2018, the new forensic auditor submitted the report. However, the NPA memorandum stated that the new report was still 'incomplete'.

During this time, warrants of arrest were authorised for Hlongwa and others in the case. However, in a strange turn of events, the NPA memorandum stated that 'after the matter was discussed with the DPP, Adv. Chauke, and the ACTT, an instruction was issued for the warrants of arrest to be cancelled for everyone except Richard Payne'. According to the Criminal Procedure Act, only the authority which authorised the arrest warrant—such as a magistrate—can revoke it. Unless a warrant is revoked, it must be acted upon and executed.

Hlongwa finally appeared in the Johannesburg Magistrates Court, in December 2021, on charges related to violating the Prevention of Organised Crime Act—10 years after the case landed with the NPA. Chauke, meanwhile, remains in his position as the Joburg prosecutions boss despite a significant track record of questionable decision-making and unjust delays. His position is appointed by the president, who can also remove him. This track record is enough for the NPA to call for the Presidency to institute a commission of inquiry into Chauke's fitness to hold office. It is time to determine if Chauke is fit for office.

However, Chauke is not the only prosecutor in the Booysen case who has faced criticism. Sello Maema, who also played a significant role in the case, has been in the spotlight over allegations of misconduct in a series of cases, including the SARS 'rogue unit' matter and the case against Robert McBride. He was, therefore, a central figure in controversial cases that the NPA prosecuted under Jiba and Abrahams' leadership and which led to decreased public trust in the authority.

2. SELLO MAEMA: THE NPA'S DEPUTY PROSECUTIONS BOSS IN THE NORTH WEST

Maema's résumé spans a notorious list of some of the NPA's most questionable prosecutions. The current deputy director of public prosecutions in North West, whose prosecutorial history dates to 1995, led prosecutions on three high-profile cases that weakened public confidence in the NPA. They include the Booysen prosecution, the prosecution



The Maema cases

Sello Maema has led three high-profile prosecutions which the NPA dropped over a lack of evidence.



Booyesen case

2012 and 2015–2021

LACK OF EVIDENCE



SARS 'rogue unit' case

2016

LACK OF EVIDENCE



McBride case

2016

LACK OF EVIDENCE

of fraud charges against former IPID boss Robert McBride, and the prosecution of former SARS officials falsely implicated in the alleged 'rogue unit' fiasco.

Maema played a key role in the Booyesen prosecution as the lead prosecutor on the case.⁶² According to the de Kock report, he was involved in the daily operations of the case and had access to the evidence.⁶³ His role in preparing a prosecution memorandum for then NDPP Shaun Abrahams has come under particular scrutiny.



On 17 August 2015, Maema signed a prosecution memorandum that recorded detailed evidence in the case to motivate Abrahams to approve racketeering charges against Booyesen.⁶⁴ The memorandum was

submitted to Abrahams on 19 August 2015. At the time, however, Abrahams stated there was insufficient evidence to bring charges against Booyesen and instructed the prosecutors to investigate the case further.⁶⁵

A new memorandum was submitted to Abrahams in October 2015, but still dissatisfied, the NDPP instructed Maema and a colleague, Dawood Adam, to interview a witness and former policeman, Ari Danikas, who resided in Greece. Danikas' statement was about incidents of police violence that preceded the Booyesen charges, but which prosecutors hoped would help prove the Booyesen case.⁶⁶ Upon returning to South Africa, Maema and Adam verbally briefed Abrahams on the trip and the NDPP approved racketeering charges against Booyesen in February 2016.⁶⁷

However, the de Kock report noted that there were numerous failures in this process. Maema was in an important position to access evidence in the case. After Abrahams dismissed the August 2015 memorandum, it was Maema, assisted by another prosecutor on the case, who compiled a list of the additional evidence that was needed based on Abrahams' feedback. In an affidavit, summarised in the de Kock report, Maema stated that some of the evidence on the list was obtained and handed to the NDPP, and both Abrahams and Maema stated that the October 2015 memorandum was amended to include the new evidence. The de Kock report found that no new evidence had been included in the October 2015 memorandum. This contradicts the claim that Maema found new and sufficient evidence to prosecute Booyesen on racketeering charges. The de Kock report states, 'We are of the view that these changes to the October Memorandum were merely cosmetic changes made to the memorandum based on information and evidence already in possession of the prosecution.'⁶⁸

Abrahams stated that the October 2015 memorandum, specifically Maema's inputs into the report, and the Danikas statement were among the key documents that he relied upon to authorise the racketeering charges against Booyesen. However, Maema, in an email to Danikas' lawyer, stated that he was concerned the Greek national had not made full disclosures in his statement and that the South African prosecuting authorities were unconvinced that Danikas' evidence would 'assist the state[s] case in any way'.

It is, therefore, clear that Maema knew that Danikas' evidence might not be sufficient to support the charges, yet the statement was still used to ostensibly substantiate the Booysen charges.

In addition, Danikas' statement in Greek was only signed in October 2016—eight months after Abrahams had authorised the racketeering charges.⁶⁹

According to the de Kock report, Maema made another vital admission in an email dated 24 April 2019: a statement in English from Danikas had never been lawfully obtained. Instead, Danikas' signature had been 'superimposed' on the English version.⁷⁰ In his email, Maema noted that the Greek national had refused to sign the English translation because it contained errors, according to the report.

Maema's conduct in obtaining the Danikas evidence alone provides a strong basis for the NPA to investigate him for violating its Prosecution Policy. The policy states that a prosecutor can only proceed with a case if there is sufficient and admissible evidence, and a reasonable prospect of successful prosecution. Owing in part to Maema's representation of the evidence, Abrahams decided to authorise charges of racketeering against Booysen, saying the Danikas statement was a key piece of new evidence. Yet, details contained in the de Kock report show that Maema would have known that the Danikas statement was incomplete and inadmissible, and therefore, could not be used to prove the charges. Despite the emergence of these details in the de Kock report, the NPA leadership under NDPP Shamila Batohi has failed to take action to investigate Maema's conduct in the case and to publicly state whether any wrongdoing by him has been found. It is time an investigation was completed into his fitness to hold office as the North West DDPP.

Maema might also face criminal investigations because of his conduct. Booysen—the subject of the racketeering charges brought by Maema—opened a case against Maema with the Hawks in 2016 and referred the matter to the NPA's ID unit in 2019.

In his complaint to the Hawks and the ID, Booysen stated that Maema should be charged with fraud for his role in misrepresenting evidence to Abrahams in the prosecution memoranda he signed in August 2015 and October 2015. In 2021, Booysen wrote to the NPA to request feedback on the status of the complaints he had made. To date, it remains unclear whether the Hawks or the ID have investigated the complaints.

In an affidavit to the Zondo Commission, Maema stated that he was aware a case had been opened against him, but he had not been approached by any investigating officers and did not know the status of the investigation.⁷¹ Maema's affidavit and Booysen's correspondence with the NPA are clear indications that the NPA is aware a criminal case has been opened against one of their most senior prosecutors in North West. Yet the prosecuting authority has still not moved to suspend Maema pending an outcome of the investigation.

Lawyers representing prosecutors accused of being captured at the NPA submitted a document recording their version of events at the Zondo Commission. The document was submitted after the prosecutors, including Maema, withdrew an application to cross-examine Booysen and instead opted to have their version of events read into the record of the commission. The document stated that the department of justice was dealing with the Danikas statement at the time the signature may have been superimposed, as it was the justice department that had arranged for the statement to be translated from Greek into English. The document read: 'The allegations sought to be imputed to Maema in this regard demonstrate the extent to which Booysen can go in placing untruthful information before the Court'.⁷²

In an affidavit submitted to the Zondo Commission, Maema denied Booysen's allegations, saying that they were 'without merit' and that there 'still is prima facie evidence' implicating Booysen in the racketeering charges.⁷³ Maema went on to say that NDPP Batohi's decision to drop the charges against Booysen and his co-accused was 'unlawful', 'irrational', and 'subvert[ed] the rule of law'.⁷⁴

He added that Booysen's claim about his role in writing the prosecution memoranda was misleading as several prosecutors and investigators were involved in the process. While Maema confirmed he signed the

documents, he said that it was only in his capacity as the team leader.⁷⁵

However, Maema may now be the subject of an internal NPA investigation for his role in the Booysen saga. NPA regional communications manager Phindi Mjonondwane confirmed to Open Secrets via email that prosecutors who worked on the Booysen case were being investigated by the NPA. However, Maema declined to respond to questions from Open Secrets about the cases he has prosecuted and the NPA investigation. 'Section 41(6) of the NPA Act 32 of 1998 requires written authorization from the National Director before disclosure of any information that came to your knowledge in the performance of your functions, I have no such authorization & cannot do so, until there is authorization, I cannot assist you,' Maema said.

The NPA's investigation gives impetus to questions raised over Maema's conduct in the Booysen prosecution. Yet, despite the concerns raised at the NPA, Maema has not been placed on precautionary suspension and remains in his position as North West DDPP.

It is vital that the NPA take action to suspend Maema pending the outcome of the investigation and that Maema be dismissed if he is found guilty of misconduct. The NPA is struggling to get convictions in high-profile corruption cases, and prosecutors of questionable conduct cannot be trusted to properly prosecute these cases.

Maema has been accused of similar misconduct in the McBride prosecution, in which former IPID boss Robert McBride was accused of fraudulently amending a report that cleared senior Hawks officials Anwa Dramat and Shadrack Sibiyi of wrongdoing in relation to the alleged illegal rendition of Zim-



babwean nationals. He has also faced charges of defeating the ends of justice. McBride told the Zondo Commission that there was no basis for the fraud charges against him in relation to his amendments to the IPID report. Maema was the lead prosecutor on the case.

In an affidavit to the Zondo Commission, McBride said, 'I have already expressed my concern that Advocate Sello Maema ("Maema") saw fit to prosecute us in respect of the rendition matter, as I know that there was not a shred of evidence to substantiate his decision to charge us with fraud and defeating the ends of justice (or any other charges).'⁷⁶

In 2016, the NPA announced it was dropping the charges against McBride. At the time, NPA spokesperson Luvuyo Mfaku said that the state could not prove a case of fraud against McBride. Mfaku said, 'The charges have been withdrawn after consultation with witnesses. The state would be unable to prove its case beyond any reasonable doubt'.⁷⁷

The NPA's statement showed the McBride case to be yet another example of a prosecution led by Maema that was not supported by sufficient evidence, in violation of the NPA's Prosecution Policy. Maema, however, told the Zondo Commission that at the time the decision was taken to prosecute McBride and his co-accused, it had been 'justified'.⁷⁸ Maema stated in his affidavit that McBride and his co-accused made changes to the IPID report 'solely with the intention of exonerating Dramat and Sibiyi'.⁷⁹ This formed a large part of the reason the prosecution went ahead, according to Maema. But his bosses at the NPA clearly thought differently when they decided to drop the charges.

The timing of the investigation into the McBride matter is significant as it occurred in a politically charged environment. Dramat and Sibiyi had been working on cases that posed a challenge to Jacob Zuma's interests. They had been investigating the case against Richard Mdluli, and Dramat had taken a decision to investigate upgrades to Zuma's Nkandla homestead. The rendition charges against them were brought in this context, and McBride's amended report posed a challenge to these seemingly trumped-up charges to push Dramat and Sibiyi out of the Hawks and pave the way for Ntlemenza's appointment. This report later discusses how Ntlemenza's tenure at the Hawks helped dismantle the institution and capture it to protect officials

accused of corruption—such as former SAPS Acting Commissioner Khomotso Phahlane and former crime intelligence boss Richard Mdluli—from facing justice. McBride was also leading the investigation into the Phahlane corruption case.

TWO POLITICALLY- LINKED CASES

McBride had worked on important cases that were politically charged. The NPA's prosecution against him resulted in delays in sensitive matters on which he worked. These include the Phahlane and Mdluli cases.

THE PHAHLANE CASE

In 2016, IPID under McBride began an investigation into former SAPS Acting Commissioner Khomotso Phahlane. The top cop was accused of receiving benefits from police service provider Keith Keating and his company, Forensic Data Analysts (FDA). FDA has allegedly received R5 billion in SAPS contracts since 2010. The original complaint regarding Phahlane's corruption was made by private investigator Paul O'Sullivan to IPID.⁸⁰ IPID raided seven properties, including Phahlane's Sable Hills home, in connection with the case in 2017, suspecting that Phahlane had illicitly received vehicles and home upgrades as a result of doing business with Keating. The Phahlane investigation took place in the same year McBride was charged.

THE MDLULI CASE

The Mdluli case here refers to the Hawks' investigation into former crime intelligence boss Richard Mdluli on charges of murder, kidnapping, and assault in relation to the murder of Oupa Ramogibe in 1999. At the time, Anwa Dramat and Shadrack Sibiya were part of the investigation. Ramogibe had been romantically involved with Mdluli's customary law wife and had received death threats from Mdluli. Mdluli is currently serving a five-year jail term for kidnapping and assaulting Ramogibe. In a separate case, Mdluli is also accused of looting the secret service account (SSA)—a crime intelligence fund. The Hawks' investigation into the Mdluli matter is discussed later in this report. The decision to charge McBride meant that Dramat and Sibiya were prevented from working on the Mdluli cases pending the finalisation of the IPID investigation into the charges against them. This resulted in delays in the prosecution of the Mdluli matters.

In addition to the Booysen and McBride cases, Maema was also the lead prosecutor on the SARS ‘rogue unit’ case, in which SARS officials Ivan Pillay, Johann van Loggerenberg, and Andries Janse van Rensburg were



accused of operating an illegal clandestine unit in SARS that bugged the NPA’s offices. The charges have since been debunked, and in 2020, Batohi announced she was dropping the case against the trio after they made representations to the NPA. While Maema defended the case as legitimate at the Zondo Commission, NPA spokesperson Bulelwa Makeke confirmed, in 2020, that an internal NPA panel had reviewed the case and found the evidence would not support a successful prosecution.⁸¹ Makeke said, ‘After a careful assessment of the evidence and other relevant material, the unanimous conclusion of the panel in respect of all counts, is that there are no reasonable prospects of a successful prosecution.’⁸²

The SARS and McBride matters were important cases that defined a loss of public trust in the NPA as speculation mounted that these cases were pursued for ulterior motives. In both cases, the NPA has admitted that the evidence did not support the charges that Maema attempted to bring against the accused, who at the time were investigating important corruption cases.

There is little doubt that these prosecutions have had dire consequences for those who attempted to investigate and prosecute corruption. Booysen and McBride are no longer employed by their former agencies, and many of the important cases they were working on have taken years to reach court. Both Panday and Phahlane are facing charges in court in connection with allegations of impropriety that Booysen and McBride had been investigating. But these cases have faced delays because of the now debunked and dropped charges against Booysen and McBride.

The persistent attempts to push for the prosecution of Booysen, McBride, and the SARS officials indicate that Maema abused his role, and he should be fully investigated for repeatedly prosecuting cases without sufficient evidence. The NPA’s internal investigation must determine whether Maema violated the authority’s Prosecution Policy. In addition, it should also pressure the Hawks

to investigate the case opened by Booysen to determine whether Maema violated criminal law. While these investigations take place, Maema should be placed on precautionary suspension from his position as DDPP in North West until it is clear he is fit to remain in office. It is unclear why the NPA has not already taken such steps, when it is in the urgent interests of justice for it to do so, given the weight of corruption cases it must prosecute. There can be no more delays in determining whether Maema is fit to retain the office he continues to hold.

Shaun Abrahams while NDPP promoted Maema to the NPA’s Priority Crimes Litigation Unit (PCLU), and it was during his time at the PCLU that Maema prosecuted the McBride and SARS-related cases. The PCLU has become an important role-player in the NPA’s decline. Abrahams made several appointments to the unit, including promoting experienced NPA advocate Torie Pretorius to serve as the acting head of the unit. These appointments, according to evidence submitted to the Zondo Commission, would later erode the PCLU and its mandate.

3. TORIE PRETORIUS: THE EROSION OF THE PCLU

Advocate Torie Pretorius has been accused of contributing to the degradation of the Priority Crimes Litigation Unit at the NPA. The PCLU is tasked with investigating serious crimes, yet its members, including Pretorius, have been accused of targeting smaller, high-profile cases that have led to decreased public trust in the NPA and eroded the mandate of the PCLU.

Pretorius, who retired from the NPA in May 2022, has worked for the prosecuting authority since 1976 and obtained the prestigious status of senior counsel. He was promoted to acting head of the PCLU, in 2015, at a time when Zuma was strategically placing lieutenants in key positions to capture public institutions. Zuma’s strategy of using appointments to capture agencies—such as SAA, Denel, and SARS—was discussed in Part One of this report series and was confirmed by the Zondo Commission. Under Pretorius’ leadership as acting head of the PCLU, numerous prosecutions moved swiftly ahead despite a lack of evidence. They included the prosecutions of Johan Booysen, Robert McBride, and the SARS ‘rogue unit’ case. While the PCLU has been the subject



Following the PCLU mandate?

Cases that Shaun Abrahams referred to the PCLU, which Pretorius wilfully executed:



SARS 'rogue unit' case
2016

LACK OF EVIDENCE



McBride case
2016

LACK OF EVIDENCE



Justice threatened:

Offences that previous NDPPs had assigned to the PCLU show the contrast in what the PCLU worked on in these different periods.

Abrahams' predecessors referred offences related to the following to the PCLU:

Non-Proliferation of Weapons of Mass Destruction Act

National Conventional Arms Control Act

Armaments Development and Production Act

Nuclear Energy Act

Intelligence Services Act

of media scrutiny in recent times, it was at the Zondo Commission where some of the key evidence emerged to show how Abrahams and Pretorius repurposed the PCLU to prosecute these cases, despite them not being within the PCLU's mandate.

In August 2022, the NPA confirmed to Open Secrets via email that Pretorius had taken early retirement from the organisation and 'is no longer with the NPA'. Pretorius was the Senior Deputy Director of Public Prosecutions at the time he retired. NPA head of communications Bulelwa Makeke confirmed that the NPA is investigating Pretorius. 'The investigation against him continues, despite his exit from the organisation,' Makeke said.

Open Secrets sent detailed questions to Pretorius related to the various cases under his watch as the acting head of the PCLU but received no response at the time of writing. The NPA, at the time of writing, had also not yet clarified the specific allegations which formed the basis for their investigation against Pretorius. However, the confirmation that the NPA is investigating Pretorius gives strong credence to concerns that he has been implicated in serious wrongdoing.

The NPA's head of administration, Karen van Rensburg, submitted an affidavit to the Zondo Commission in June 2021 detailing how then NDPP Abrahams removed the then PCLU acting head, Andrea Johnson, to make way for Pretorius. Johnson, who is the current Investigating Directorate head, became aware of her removal in a meeting with Pretorius, Abrahams, and Jiba in 2015. At the time, Jiba was head of the NPA's prosecutions service, which is responsible for prosecutions. Johnson submitted a supplementary affidavit to the Zondo Commission that confirmed the details in van Rensburg's affidavit.

At the meeting, Abrahams, according to van Rensburg's affidavit, described Pretorius as 'the best man but never the groom'. The affidavit went on to say that Jiba 'thanked Pretorius for being there for her during trying times'.

Van Rensburg stated, 'Johnson said she was surprised by this. Pretorius had worked under her throughout her acting appointment. Johnson states that she had no idea what Jiba was referring to; she could only infer that Jiba and Pretorius had worked together behind her back'.⁸³

Later, Johnson overheard Pretorius speaking on the telephone to a person she assumed was Abrahams.

Johnson heard Pretorius say,

'I can never thank you enough.

Had it never been for you, I would not have seen this acting [appointment] in my lifetime'.⁸⁴

These details were recorded in van Rensburg's affidavit and confirmed by Johnson. The conversation and the meeting revealed that Pretorius may have been closely connected to both Jiba and Abrahams—two of the NDPPs who have been accused of capturing the NPA.

According to van Rensburg's affidavit, once Pretorius became the acting head of the PCLU, the mandate of the unit eroded. Before Abrahams came into office, previous NDPPs had directed cases that involved high treason and contraventions of the Non-Proliferation of Weapons of Mass Destruction Act and the Nuclear Energy Act, and other related cases that affected the security of the state to the PCLU.⁸⁵ However, once Abrahams became NDPP, he directed cases such as the McBride matter, the SARS 'rogue unit' investigation, and the Booysen case to the PCLU.⁸⁶ According to van Rensburg, this was a notable departure from the instructions of previous NDPPs, who had referred cases that affected state security to the PCLU. While the NDPP is empowered by a presidential proclamation to direct 'any other priority crimes' to the PCLU, van Rensburg stated that there are restrictions on what these cases can be—namely that they must be of utmost importance and that they must fall under the categories of crimes that affect state security, rather than be individual cases. Van Rensburg told the Zondo Commission, 'Abrahams' referral of most of the "matters" did not meet any one of these standards'.⁸⁷

Pretorius submitted a different view to the commission in an affidavit though. He stated that the PCLU had legitimate reason to investigate the cases referred to it by the NDPP as these matters had been allocated to the PCLU in terms of relevant policies. He also stated that the referred cases had serious security implications for the NPA and the state.⁸⁸ Van Rensburg's affidavit, however, also showed another questionable decision that was carried out by the PCLU under Pretorius' watch.

Explosively, van Rensburg revealed the origins of the fraud charge against Pravin Gordhan at the Zondo Commission. Gordhan was accused of fraudulently approving an early pension payout to former SARS Deputy Commissioner Ivan Pillay.



Van Rensburg attached a memorandum from Pretorius to Abrahams, dated 21 April 2016, to her affidavit, in which Pretorius updated Abrahams on developments in the 'rogue unit' case and made a significant observation: he suggested that the NPA criminally charge Gordhan and Pillay in relation to Pillay's pension payout. Van Rensburg wrote, 'This appears to be the commencement of the investigation into Gordhan and Pillay in relation to the pension pay-out'.⁸⁹

In the memorandum, Pretorius gave an overview of the 'rogue unit' case to Abrahams.⁹⁰ He detailed how the 'rogue unit' allegations had emerged and stated that prosecutors were still reviewing the KPMG report that verified the existence of the unit (KPMG later withdrew the findings, recommendations, and conclusions of its report in 2017). In a section of the memorandum titled 'outstanding investigations', Pretorius suggested that Gordhan and Pillay be charged with fraud in relation to Pillay's R1.2 million pension payout and the additional five-year contract he was granted when only three years had been approved.⁹¹

The charges against Gordhan were believed to be driven by the ulterior political motive of bringing him to court to suppress his vocal criticism of Zuma and state capture. Freedom Under Law (FUL) and the Helen Suzman Foundation (HSF) submitted a court application for the charges to be dropped shortly after they had been made in 2016. The organisations said in a statement that the charges were baseless and that in the worst case, the matter would confirm suspicions that 'the criminal justice system is being undermined to serve particular political interests'.⁹² Van Rensburg's affidavit is the first to show where the idea to charge Gordhan originated.

In addition to the Gordhan charges, Pretorius has also faced criticism for his prosecution of the 'rogue unit' case. In a 2016 court application, the same year in which Pretorius recommended Gordhan be charged, and while the 'rogue unit' matter was on-



going, Freedom Under Law and the Helen Suzman Foundation applied pressure on then President Jacob Zuma to suspend Abrahams and hold an inquiry into his fitness to hold office. Law firm Webber Wentzel, which represented FUL and HSF, wrote to Zuma highlighting how flagrantly improper the conduct of Pretorius and his team was in the prosecution of the SARS officials. In November 2016, on behalf of FUL and HSF, Webber Wentzel wrote, 'It is plain that the prosecution of the charges was pursued either for ulterior purposes or in a breath-taking reckless fashion, without proper investigation or any regard to the evidence and proper legal analysis.'⁹³

According to FUL and HSF's heads of argument in the matter, Pretorius and his team charged ahead in their pursuit of targeting the SARS accused despite not having any evidence of wrongdoing.⁹⁴ Pretorius and his team, the heads of argument read, went on to make charges of fraud and theft against the embattled SARS officials when even the basic prerequisites of proving the case had not been met.⁹⁵ Consequently, FUL and HSF accused Pretorius of pursuing the SARS case with ulterior motives, bringing the NPA into disrepute. The case, however, was struck from the roll after Judge Dunstan Mlambo found a lack of urgency, and the merits of the accusations were not considered by the court. The fraud charges against Gordhan were dropped in 2016.

Despite reading the messages sent to him, Pretorius declined to respond to questions from Open Secrets about his tenure at the PCLU. The NPA, however, confirmed to Open Secrets that Pretorius officially retired from the prosecuting authority on 31 May 2022. The NPA's head of communications, Bulelwa Makeke, said that while the NPA would cooperate with investigations into Pretorius's conduct, it has not completed an internal investigation into the allegations against him to determine if he is guilty of misconduct.

'Adv Pretorius is no longer in the employ of the NPA and no longer a public servant. The NPA will cooperate with any criminal investigation against him relating to the NPA's submissions to the Zondo Commission and will pursue any relevant criminal charges as a result of the investigation,' Makeke said in an email to Open Secrets.

Pretorius continues to believe, according to his statement at the Zondo Commission, that these matters were legitimately pursued by the PCLU. Despite that many of the cases on which he worked impacted public trust in the NPA and have been publicly discredited, Pretorius not only continues to defend these matters as legitimate but has also enjoyed senior positions in the PCLU despite the allegations against him. The NPA must conduct an internal investigation to determine whether he is guilty of misconduct and if so, Pretorius must be held to account. While he is no longer in the employ of the NPA, Pretorius should face consequences for any wrongdoing he has done in his role as a public servant and an officer of the law. Pretorius has previously admitted to political interference in prosecutorial decisions involving TRC matters, signifying that the PCLU has a history of politically motivated decision-making.⁹⁶

Chauke and Maema, meanwhile, are comfortably employed in senior positions at the NPA despite having clear track records of questionable decision-making. The NPA must take action to determine whether these officials are fit to remain in the senior offices that they occupy. It is time for the NPA leadership to restore public trust and to ensure that it has the most competent prosecutors to take on state capture cases.

Ramaphosa appointed Shamila Batohi to lead the NPA after the troubling years in which Jiba and Abrahams led the institution. Batohi inherited an agency that was battling allegations of political interference and had lost some of its most senior and experienced prosecutors. Simpiwe Mlotshwa, the skilful former DPP in KZN, was among those who left the authority during the Zuma era. Willie Hofmeyr, the NPA's former Asset Forfeiture Unit head, and Gerrie Nel, the NPA advocate who helped launch right-wing group Afriforum's private prosecution unit, also left the authority. Nel had been assigned the Panday case that Booysen had investigated. Both he and Hofmeyr were removed from their positions until they eventually left the NPA.

The ID's newest boss, Johnson, has spoken of her own experiences under a compromised leadership. Johnson had been the acting PCLU head before Abrahams removed her to appoint Pretorius to the position, as discussed earlier in this chapter. In an interview with *News24*, Johnson said that she had seen the impact of state capture first-hand in her time at the NPA during the Zuma era. She said, 'I was a victim of those circumstances. I had been shuffled around so many times, when Gerrie [Nel] was there we were removed from cases, so many times.'⁹⁷ Despite the instability within the authority at the time, Johnson said she maintained a belief that it

was important to serve the NPA and to act in the institution's best interests. She added, 'It was the ability to say that the institution is who we serve. So the individuals will shuffle us around and will victimise us, but what do we do in the new spaces they push us into? We do what we have always done.'

While Johnson's statements show belief that the NPA can be an institution that serves justice, the authority is facing mounting public scrutiny over its failure to act decisively on grand corruption cases. Batohi promised to turn the authority around. But after nearly four years in office, the NDPP has done little to restore credibility to the NPA.

The NPA has yet to successfully convict perpetrators in a single state capture matter since Batohi came into office.

While Batohi has attempted to reassure the country that the NPA is not in crisis, she has also admitted that the authority lacks the necessary financial skills to prosecute grand corruption. So what will happen now that the Zondo Commission's work has ended?



INACTION AND DELAYS: BATOHI'S FAILED PROMISES

The arrival of Shamila Batohi has been seen as a disruption of past failures to restore the NPA to an agency that will prosecute fearlessly and impartially, as it is guided to do by the NPA Act and the Constitution.

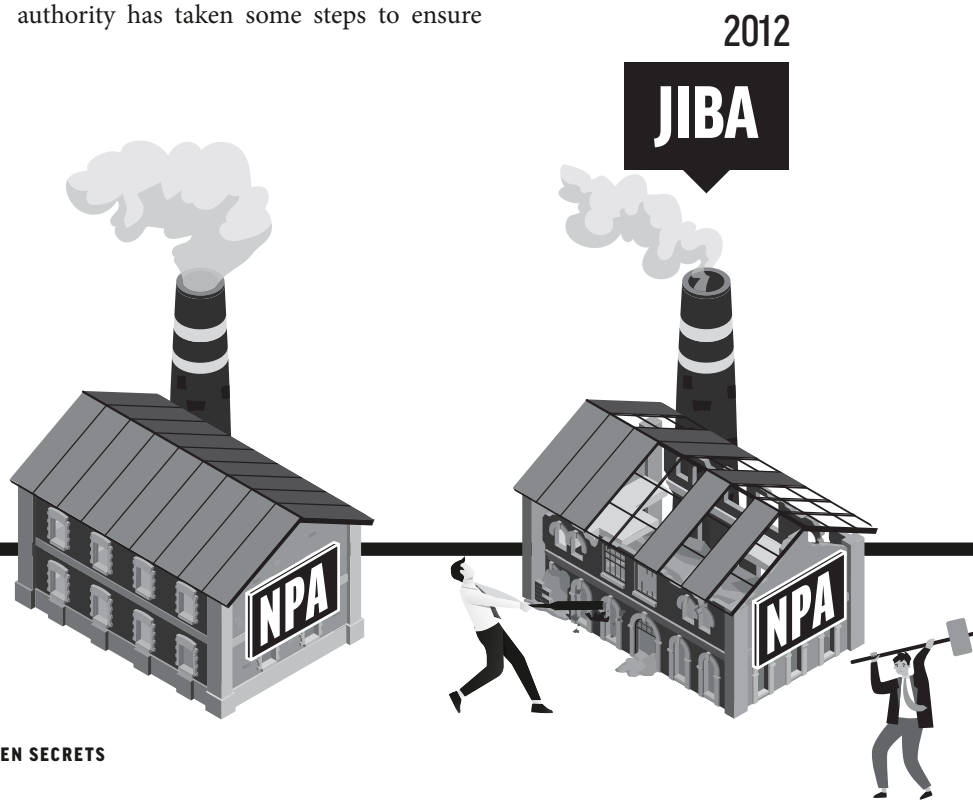
Batohi is aware of the allegations of misconduct and impropriety against her own senior prosecutors. In the NPA's 2019–2020 annual report, she admitted that prosecutors at the authority had been implicated in 'aiding and abetting' state capture crimes.

In 2021, in a press briefing, Batohi stated that investigations into the conduct of these prosecutors were at an 'advanced stage', but she failed to state which prosecutors were being investigated and what the outcome of these investigations has been.⁹⁸ Mjonondwane's confirmation that the prosecutors involved in the Booyesen case are facing an NPA investigation is an indication that the authority has taken some steps to ensure

its staff members are fit for office. But it has been three years since the de Kock report's findings were made and no one has been held to account.

The NPA's slowness to act has meant that these prosecutors have not yet faced consequences for their roles in questionable prosecutions. In the meantime, they remain employed at the NPA. **It is remarkable that after almost four years in office, Batohi has yet to publicly announce which prosecutors are being investigated, what the allegations are against them in terms of the NPA's investigations, and what accountability they will face if they are found guilty of misconduct.** It remains unclear when these investigations began and when they will be finalised.

Van Rensburg told the Zondo Commission in an affidavit that Abrahams, Jiba, Chauke, Maema, and Pretorius were among the 'people who were involved in state capture' due to their role in certain cases that have been discussed in this chapter.⁹⁹



Chauke, Maema, and Pretorius have denied that they were captured and stated their conviction to the Zondo Commission that the cases they had pursued were legitimate and supported by evidence. The opposing views of the NPA's head of administration and the prosecutors should, however, be cause for concern for the NDPP, who has so far been slow to act.

In addition, the NPA has yet to successfully convict perpetrators in a single state capture matter since Batohi came into office. While Batohi has attempted to reassure the country that the NPA is not in crisis, she has also admitted that the authority lacks the necessary financial skills to prosecute grand corruption. So what will happen now that the Zondo Commission's work has ended? There are already doubts that the NPA will be able to extradite the Gupta brothers, Rajesh and Atul, to South Africa following their arrest by Dubai authorities in June 2022. The NPA has not yet publicly indicated the status of extradition proceedings or the lawyers who have been assigned to the case, creating public distrust in its ability to successfully bring the Gupta brothers to justice.

If the NPA is to prosecute state capture cases fairly and fearlessly, then it needs

to ensure that it has reliable prosecutors to handle these cases. Chauke and Maema have displayed questionable track records at the NPA. They each should be placed on precautionary suspension until investigations into their conduct have been finalised. Instead, they remain in office, where they still have influence over high-profile corruption cases, including state capture cases. The NPA's leadership must take action if they are found to have violated its Prosecution Policy. Determinations should also be made as to whether either of them should face criminal investigations and whether Chauke should face a presidential inquiry into his fitness to hold office. In addition, the NPA should conduct an internal investigation into Pretorius's conduct at the PCLU. Pretorius may have retired from the NPA, but he should be held to account if he has abused his role as a public servant. If the NPA cannot do these tasks, then civil society must apply pressure for action to be taken.

Addressing the bottlenecks is a necessity for the right of South Africans to access a reliable and competent justice system that can prosecute high-profile corruption.

2015

ABRAHAMS



2022

BATOH







CAPTURING THE HAWKS

The Hawks are arguably an institution born of political interference and a desire to ensure impunity for corruption. At the African National Congress' (ANC) infamous elective conference in 2007, the party decided that the Directorate of Special Operations (DSO)—a predecessor of the Hawks—would be disbanded, and a new police investigative body would take its place.¹ The decision was undoubtedly political.

The DSO, dubbed the Scorpions, was established, by then President Thabo Mbeki, as an investigative body in the NPA to investigate and prosecute high-profile priority crimes, including corruption and organised crime. In the first year of their work, in 2001, the Scorpions began investigating corruption allegations against then Deputy President Jacob Zuma and his financial advisor, Shabir Shaik, for crimes linked to the notoriously corrupt 1999 Arms Deal.² In the eight years that they operated, the Scorpions proved to be highly effective. They had an excellent conviction success rate in high-profile corruption cases, which was backed by a relentless prosecutions-led investigations team.

Some of the unit's most notable wins included the successful prosecution of Winnie Madikizela-Mandela on fraud charges in 2003³ and the arrest of Mark Thatcher, former British Prime Minister Margaret Thatcher's son, in 2004, in connection with a coup attempt in Equatorial Guinea.⁴ Thatcher pleaded guilty to contravening anti-mercenary laws by funding a helicopter that was used in the attempted coup.



SCORPIONS' STINGING CASES



Successful conviction of Shabir Schaik and ANC MP Tony Yengeni on fraud and corruption charges related to the Arms Deal in 2005.



Arrest of Mark Thatcher, former British Prime Minister Margaret Thatcher's son, in 2004, in connection with a coup attempt in Equatorial Guinea.



Arrest and conviction of more than 30 MPs in 2005 for fraud and theft related to a travel scam.



In 2005, the Scorpions went on to arrest 40 Members of Parliament (MPs), most of them from the ANC benches, in relation to fraud and theft charges originating from a travel scam that involved several travel agencies.⁵ More than 30 MPs, including Bathabile Dlamini, were convicted on fraud or other related charges.

But, while the Scorpions' successes were in the interests of South Africa, they proved to be a threat to Zuma, as well as several other ANC politicians, corporations, and middlemen who were at the centre of the Arms Deal allegations. They were also alleged to have been used by Mbeki in a proxy war between rival ANC factions led by Mbeki and his successor, Zuma.⁶ With prosecutions looming against senior ANC officials and their associates, a decision was taken at the ANC's 2007 elective conference in Polokwane to disband the Scorpions. It was at that same conference that Zuma became the ANC president, ousting Thabo Mbeki. Mbeki had already played a role himself in politicising the police through his close relationship with former top cop Jackie Selebi,⁷ but the Zuma era was the beginning of much more foreboding capture.

Amid much controversy, the Scorpions were formally dissolved and replaced by the Directorate for Priority Crime Investigation (DPCI)—otherwise known as the Hawks—in 2009.⁸ The Scorpions had been a specialised

Above: The Hawks headquarters in Pretoria.

Right: Berning Ntlemenza at a church gathering in 2017.

corruption-busting unit based within the NPA, whose main oversight authority was Parliament—not the government.⁹ Unlike the Scorpions, which were established outside the police organisation to maintain their independence, the Hawks were placed in the police organogram, answering to the police commissioner and minister.¹⁰ This allowed an opening for government manipulation as the minister is ultimately a political party member, who at times serves the interests of their party. In democratic South Africa, the police minister has always been an ANC member.

In 2011, the Constitutional Court found in favour of Johannesburg businessman Hugh Glenister, who had challenged the constitutional validity of the Cabinet's amendments to the National Prosecuting Authority Act that had allowed for the Hawks to be established.¹¹ The changes the Cabinet made to the Act allowed for the disbandment of the Scorpions and the establishment of the Hawks.

The court found that the nature of the Hawks and their position within the police could not guarantee the independence the police unit required. In its judgement, the Constitutional Court said, 'What independence requires is freedom from the risk of political oversight and trammelling, and it is this very risk that the statutory provisions at issue create'.¹²

These warnings proved prescient, and the Hawks have suffered because of political interference. At their inception in 2009, Hawks officials reported directly to Jackie Selebi, the police commissioner at the time, who had himself been under investigation for corruption by the Scorpions.¹³ The Hawks' first boss, Anwa Dramat, was infamously pushed out of his post in 2015 after he took the decision to investigate Jacob Zuma's Nkandla homestead upgrades.¹⁴ In 2016, Dramat was charged for illegally renditioning Zimbabwean nationals, but the charges were dropped in 2018 after Dramat and his fellow accused, Hawks senior official Shadrack Sibiya, made representations to the NPA.

Shortly after Dramat left office, Ntlemenza was made the Hawks' national head in 2015. His arrival, as this report will show, accelerated the decline of the Hawks and the scourge of corruption within the police body. Johan Booysen—the former KZN Hawks boss who was accused number one in a now debunked racketeering prosecution—also told the Zondo Commission that Ntlemenza was responsible for the collapse of the Hawks.¹⁵ In his affidavit to the commission, Booysen said, 'Ntlemenza destroyed the Hawks. He immediately took charge of all processes relating to promotions'.¹⁶

While the Hawks had a shaky start from their inception, in Dramat they initially found a leader willing to take on high-profile corruption. But with Ntlemenza's appointment, the Hawks came crashing down, partly because of the bottlenecks Ntlemenza appointed in the police structure.



THE BOTTLENECKS

In his affidavit to the Zondo Commission, Booysen detailed the appointments Ntlemenza made that allowed corruption to flourish, as willing police officers flouted their duties to protect those at the heart of state capture. His claims are supported by a source close to the matter, who confirmed to Open Secrets that Ntlemenza strategically placed individuals who would follow his instructions in senior positions. One of these strategic appointments, discussed in detail in Booysen's affidavit, was Major-General Alfred Khana, who was made the national head of Commercial Crime.

Khana's promotion took place despite him having been forced to leave SAPS after facing criminal charges for a false reimbursement claim he had submitted for a trip to attend a meeting in Pretoria.¹⁷ Khana had been investigated by the Hawks' Commercial Crime Unit after the fraud complaint emerged. The unit found evidence that Khana had lied on the claim form. Glynnis Breytenbach, the head of the Commercial Crime Unit at the time, took over the case but withdrew it when Khana took his discharge.¹⁸ Despite this history, Ntlemenza still saw fit to promote Khana to a new, top job.¹⁹ Since then, Khana has played a key role in the investigation of corruption at South African railway parastatal, Prasa, where allegations have emerged of undue delays.

1. MAJOR-GENERAL ALFRED KHANA: FAILING PRASA AND ITS COMMUTERS

Soon after Ntlemenza took office, Khana was promoted to be the national head of Commercial Crime, the Hawks unit that had previously investigated him for a fraudulent reimbursement claim.²⁰ From there, Khana became the Hawks leader handling the 26 criminal charges related to impropriety at Prasa, taking over from Major-General Senaba Mosipi, his predecessor as Commercial Crime boss.²¹ Prasa had laid 26 criminal charges, in late 2015, with the Hawks, following revelations of widespread corruption in the Public Protector's *Derailed* report, which had recommended further investigations. Khana was appointed head of the Prasa investigation, where he was involved particularly in the Siyangena and Swifambo



investigations—discussed extensively in Part One of this report series.²² In his affidavit at the state capture inquiry, Booysen pinpointed Khana's replacement of Mosipi as one of the strategic moves deployed by Ntlemenza to make the Hawks defunct.²³ His allegation was supported by Popo Molefe, then chairperson of Prasa, who, in a 2017 affidavit, said that Mosipi's departure from the Hawks was 'to the detriment' of the Prasa investigation.²⁴

Molefe submitted the affidavit in a court application that Prasa launched to compel the Hawks to investigate corruption at Prasa after it had become apparent that these cases were being stalled.²⁵ Molefe outlined meetings with the Hawks, the NPA, and Werksmans—who had investigated allegations emanating from the Swifambo and Siyangena contracts—in which Prasa had offered to make two private prosecutors available to the NPA, given the resource constraints the authority was grappling with.²⁶ According to Molefe, Khana declined the offer and 'emphasised he wanted the DPCI to retain full control of the investigation.'²⁷ But, with the DPCI in full control, no progress seemed to be made on the cases.

Since Khana became the lead, the Prasa investigations have been encumbered with setbacks. Khana, according to Molefe, insisted on reviewing the Swifambo and Siyangena investigations, which prolonged the delay.²⁸ Changes to the Hawks' investigative team also added delays as members were transferred and replaced until the investigations in their entirety were transferred to the Serious Economic Offences Unit.²⁹ Khana, owing to his senior position, retained oversight of the cases, and as Molefe detailed, further disrupted the investigations by cancelling meetings, failing to timeously take witness statements, failing to properly plan the investigations, and making little or no attempt to work with the NPA to recover assets.³⁰

The Hawks, under Khana's watch, repeatedly cancelled meetings with Horwath—the forensic firm that had done initial forensic analysis in the Swifambo case—despite the latter's access to evidence on Swifambo that could 'preserve state assets', according to Molefe.³¹ Importantly, as Molefe explained, by cancelling the meetings, the Hawks blocked Horwath from handing over its investigative report on Swifambo, which detailed information that may have been acted on to seize and protect assets.

Molefe also showed that the Hawks lacked a plan for the investigation as there had been no progress. Prasa's Swifambo complaint had been filed in September 2015, and almost two years later, there was no movement, according to Molefe. The former Prasa chair pointed out Khana's role in particular in this outcome: 'DPCI investigators had conducted substantial investigative planning as at January 2016. However, such planning as had been done was jettisoned without explanation by Maj Gen Khana.'³² Molefe, therefore, believed that prior to Khana's involvement in the case, there had been progress. Yet Khana had scrapped whatever plans had been made to further the case.

Top left: Alfred Khana has been accused of delaying investigations into corruption at Prasa.

Below: Security guards protest their employer, Prasa, in Kempton Park, Gauteng, in 2020.

SWIFAMBO: A TIMELINE

MAY 2011

Vossloh España makes recommendations for Prasa to develop its fleet.

JULY 2011

Daniel Mthimkhulu recommends that the Prasa board approve R5 billion to source 100 locomotives.

NOVEMBER 2011

Prasa publishes a request for proposals to lease 100 locomotives.

FEBRUARY 2012

Auswell Mashaba acquires Mafori Finance Vryheid. The company partners with Vossloh España to bid for the Prasa contract.

MARCH 2012

Mafori Finance Vryheid is renamed Swifambo Rail Leasing.

JULY 2012

The Prasa board approves Swifambo's bid.

MARCH 2013

Prasa and Swifambo conclude a contract for the purchase of 70 locomotives valued at R3.5 billion.

JULY 2015

Rapport newspaper publishes an investigation revealing that the purchased Afro 4000 locomotives are too tall for South African railways.

JULY 2015

Lucky Montana leaves Prasa.

JULY 2015

The South Gauteng High Court orders the Swifambo contract to be set aside in its judgement.

NOVEMBER 2015

The Prasa board launches a court action at the South Gauteng High Court for the Swifambo contract to be set aside.



Prasa launched a court action to compel the Hawks to investigate corruption, but judgement has yet to be delivered in this case. The lack of updates and arrests in the Prasa corruption cases indicate that there has been little progress from the Hawks on these investigations despite the court action by Prasa.

Khana's role has also been criticised by Ryan Sacks, a forensic investigator who studied Swifambo's financial transactions.³³ In an affidavit to the Zondo Commission, Sacks said that under Mosipi's command, his investigative team at Crowe Forensics was asked to assist in investigating the Siyangena case. But Khana's entry into the investigation halted this progress.³⁴

As Sacks said, '[S]ubsequent to General Khana taking over the command of the investigation from General Mosipi, no further appointments were made by the DPCI for Crowe Forensics to conduct any further cash flow analysis'.³⁵

Khana did not appear before the Zondo Commission and made no submission to respond to the allegations made against him there. However, in a March 2018 meeting with Parliament's Standing Committee on Public Accounts (SCOPA), Khana confirmed that Prasa had furnished the Hawks with information, but he stated that this information 'lacked supporting documents, which were not useful in launching investigations'.³⁶ His response was recorded in the SCOPA meeting minutes. Later, in May 2018, reports emerged that Khana had filed responding papers to Prasa's court application to compel the Hawks to investigate the Siyangena and Swifambo matters.³⁷ Khana stated that Prasa was attempting to 'dictate' to Hawks investigators who they should investigate and who they should add to their witness list.³⁸ The Hawks investigator added that Prasa's application presented a conflict of interests as its own employees, who he said remained currently employed, were the subject of the Hawks' investigation. Khana said, 'It is unheard of that a complainant, who has a direct interest in the outcome of the investigation, is the one who is controlling and managing the investigations'.³⁹

In 2021, a new board was appointed to reform Prasa into a capable and proud parastatal that could support millions of commuters in need of affordable transport. The railway network is part of the state infrastructure that is meant to help disenfranchised South Africans overcome apartheid spatial planning and access economic opportunities in elite urban centres. But the new board has failed to transform Prasa, and according to whistle-blower testimony, which was discussed in Part One of this report series, it continues to protect corruption. Law enforcement agencies can prevent corruption by holding perpetrators of crime to account. But the Khana-led team is failing to do its job at the Hawks.

Open Secrets sent detailed questions to the Hawks regarding Khana's conduct in the Prasa case and to confirm if the Hawks had reported Khana to the Independent Police Investigative Directorate to investigate allegations Khana had stalled the Prasa investigation. The Hawks declined to respond.

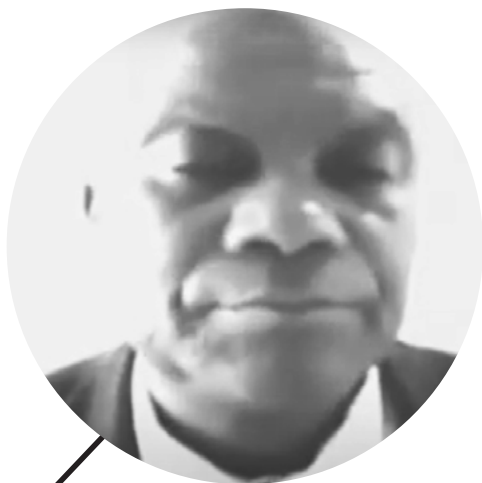
The Hawks' leadership, under Lebey, must urgently recommend that police watchdog IPID investigate Khana's fitness to hold office as a Hawks investigator. The Hawks should also suspend Khana from investigative work in the interests of justice until his fitness is determined.

There should be detailed questions posed to Khana about the delays in the Prasa investigations, and he must be held to account for any failures that are identified on his part.

Khana was only one of Ntlemenza's strategic deployments: the former Hawks boss also repurposed the Crimes Against the State (CATS) Unit in the Hawks, which led to internal upheaval in one of the state's most important police units.

2. BRIGADIER NYAMEKO XABA: CAPTURING THE CATS

There are strong allegations suggesting that Ntlemenza repurposed the Crimes Against the State Unit inside the Hawks for a nefarious agenda. Johan Booysen and Robert McBride—the embattled former Independent



Crimes against the CATs

Under Nyameko Xaba, the CATs worked on various cases which were allegedly not within their mandate.



SARS pension payout case
2016



SARS 'rogue unit' case
2016



McBride case
2016

Police Investigative Directorate boss who faced charges of fraud and defeating the ends of justice in a since debunked prosecution—submitted affidavits to the Zondo Commission, which detailed concerns that the CATs was compromised. The unit is tasked with investigating serious crimes related to treason and other high-level state offences. Under Ntlemenza's leadership, the CATs began investigating the so-called SARS 'rogue unit' saga and the McBride case.

Neither the SARS case nor the McBride case appeared to fit the CATs' mandate. At the time, Brigadier Nyameko Xaba, who was the CATs' head, took the lead in these investigations. Xaba joined the Hawks in 2009 and became the CATs' head in 2011.⁴⁰ He was promoted by Ntlemenza from detective to brigadier. In June 2021, the CATs boss confirmed to the Zondo Commission that the unit's mandate was to investigate crimes impacting the security of the state.

However, in response to allegations that the IPID and SARS investigations were outside of the CATs' mandate, he insisted that no crime was too trivial for the CATs. Xaba told the Zondo Commission, 'CATs' mandate is about investigating any case, irrespective of triviality—even if it is minor, as long as it is a crime.'⁴¹ Police documents, however, state that the CATs and the NPA's Priority Litigation Crimes Unit share the same mandate, which means they are vested in crimes that affect state security.⁴²

Both Booysen and McBride raised concerns that Xaba's investigations into the SARS 'rogue unit' case and the McBride case were not within the mandate of the CATs.⁴³ McBride told the Zondo Commission that charges of fraud and defeating the ends of justice appeared unusual for a unit tasked with investigating matters of state security. In his affidavit, McBride said, 'I can only conclude that this unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture.'⁴⁴

In addition to his role in the SARS 'rogue unit' and McBride investigations, Xaba was involved in the investigation into former SARS Deputy Commissioner Ivan Pillay's pension payout. Former SARS Commissioner and Finance Minister Pravin Gordhan was charged with fraud, in 2016, for approving a R1.1 million early retirement payout, allegedly without due process, for Pillay's benefit. Xaba was in command of the CATs during the investigation.

When questioned by state capture evidence leader Garth Hulley about why the CATs had investigated the SARS-related cases and the McBride case, Xaba said that these cases fell under the mandate of the CATs.⁴⁵ In the SARS-related cases—which included the 'rogue unit' and Gordhan pension payout allegations—Xaba said that there were serious charges of espionage, money laundering, racketeering, and corruption, which justified the cases being handed to his unit.⁴⁶ In terms of the McBride matter, Xaba stated that the case was correctly assigned to the CATs because it emanated from the renditions case, which the unit was tasked with investigating.⁴⁷ The CATs boss also explained that if a case, such as the McBride matter, was handed to him by a superior then he was bound to follow those orders. Xaba said, 'So, if I am even now asked by my superior—at the police

services, you do not defy the instruction. As long [as] they are lawful, we have to comply. I complied and I have seen that the case was in the right unit to be investigated'.⁴⁸

Xaba has faced no accountability for the investigations undertaken by the CATS under his command. He remains employed as the CATS boss, retaining significant power in the Hawks despite the allegations that he has faced of abusing the CATS. It is imperative that the Hawks recommend an IPID investigation into Xaba's conduct to determine if he is fit to remain in the position he holds.

The Hawks declined to confirm to Open Secrets whether Xaba has faced an investigation into his conduct as the head of CATS.

The capture of the CATS and dubious appointments were defining elements of Ntlemenza's damaging leadership. But the former Hawks boss also has a history of undue interference in investigations. Colonel Kobus Roelofse, a former Hawks investigator, told the Zondo Commission of Ntlemenza's destructive power at the Hawks.⁴⁹ Roelofse had been part of the Hawks team, along with Dramat and Sibiyi, who investigated former crime intelligence boss Richard Mdluli on charges of murder, kidnapping, and assault in relation to the murder of Oupa Ramogibe in 1999. Mdluli was granted parole in July 2022, after serving less than two years of his five-year sentence for kidnapping, assault, and assault with intent to cause grievous bodily harm.⁵⁰ He was sentenced in September 2020.

According to Roelofse's testimony at the Zondo Commission, Mdluli used R3.15 million from the secret service account to purchase five vehicles—which included three Mercedes, one BMW, and one Lexus—and around R190,000 from the account on 'security upgrades' to his private residence.⁵¹ The Mdluli cases are central to corruption both in the Hawks and in the NPA, as police officers and prosecutors have made questionable decisions in these cases. Currently, Mdluli is facing prosecution on charges of fraud, corruption, and theft in relation to the SSA looting in the Pretoria High Court.

3. LIEUTENANT-GENERAL BERNING NTLEMEZA: THE MDLULI CASE AND THE ANTI-CORRUPTION TASK TEAM

In his affidavit, Hawks investigator Roelofse detailed how Ntlemenza acted in ways that delayed the investigator from gaining access to classified information that could assist the SSA investigation. Once Roelofse obtained the necessary records that had been declassified for the investigation, Ntlemenza wrote to the police commissioner, raising concerns about Roelofse's security clearance and therefore casting doubt on his access to the documents needed to investigate the case.⁵² Then NDPP Shaun Abrahams later struck the SSA case from the roll, and Roelofse was summoned to a meeting by Ntlemenza, at which the Hawks boss instructed him to halt the investigation and threatened an investigation against Roelofse if he continued.⁵³ Roelofse's testimony about his experiences investigating the Mdluli case reveal how Ntlemenza interfered in the Mdluli investigation, and delayed it. This is a stark indication of how Ntlemenza may have captured the Hawks to protect Mdluli, thereby undermining the ability of the Hawks to investigate corruption and other serious charges affecting the safety and security of the general public.

Roelofse also told the Zondo Commission that once Ntlemenza became the Hawks boss, he attempted to gain control over the Anti-Corruption Task Team, a multi-organisation corruption busting unit that is tasked with handling sensitive investigations into high-profile corruption.

At the time, in 2014, Roelofse was the head of the ACTT. He said that in a meeting of the ACTT at the end of 2014, Ntlemenza threatened to suspend anyone who challenged his decisions. In his affidavit, Roelofse said, 'It was clear to me that General Ntlemenza wanted to have control over sensitive and, at times, politically sensitive cases'.⁵⁴

Ntlemenza held the top Hawks post until April 2017, when he was removed by Police Minister Fikile Mbalula. The Pretoria High Court had found Ntlemenza's appointment by then Police Minister Nathi Nhleko, a Zuma

ally, to have been unlawful and invalid in an application brought by the Helen Suzman Foundation and Freedom Under Law.⁵⁵ The High Court reasoned that Ntlemenza's appointment should be set aside because he was not a fit and proper person for the post.⁵⁶ The Supreme Court of Appeal upheld the earlier decision after Ntlemenza lodged an appeal. Ntlemenza did not participate at the state capture commission and has not yet responded to the allegations made at the inquiry by Booysen and Roelofse. Despite his removal, the Hawks have continued to struggle to transform into an effective corruption busting organisation.

Corruption undermines democracy, and the allegations against Ntlemenza are an indication that the Hawks were compromised under his leadership. In the ACTT, Prasa, and Mdluli matters, investigations have been compromised, affecting the ability of an elite corruption busting unit and the state railway agency to deliver services needed to protect the public. The impact of Ntlemenza's reach at the Hawks has had dire consequences on the public's right to access justice.

Below: Former North West deputy police commissioner Jan Mabula has retired from SAPS without facing accountability for his role in the Phahlane case. He also led the investigation into the Booysen case.

But, so far, the former Hawks boss has faced no accountability, and those he appointed to senior positions remain in office despite the allegations they face. They continue to investigate high-profile corruption cases, without having faced accountability or investigations into their own alleged misconduct.

There is one other case that highlights the extent to which corruption has thrived at the Hawks. IPID launched an investigation into money laundering and corruption allegations against former Acting Police Commissioner Khomotso Phahlane in 2016. But, while Phahlane was under investigation, it emerged that a unit of the Hawks was also investigating the case with the alleged motive of protecting the top cop.⁵⁷

4. MAJOR-GENERAL JAN MABULA: THE PHAHLANE CASE

The corruption case against Phahlane, as well as the police officers involved in the matter, provides further evidence of how the Hawks were weaponised to target individuals and institutions investigating high-level corruption.

In 2016, McBride became aware of the complaint lodged at IPID by O'Sullivan against Phahlane.⁵⁸ McBride began looking into the allegations, and an investigation was launched into Phahlane's conduct.⁵⁹ The investigation focussed on Phahlane's Sable Hills house and cars. The house was said to have been constructed using funds from Keating and FDA. The Sable Hills home, the cars,



and the infamous music sound system in the house became the subject of a widely publicised search operation, and they were indicators that Phahlane had been corrupt in his relationships with SAPS service providers.⁶⁰

However, in response to the IPID investigation, it appears that the Hawks launched an investigation of their own. According to McBride, Phahlane ‘used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation against the IPID investigation team.’⁶¹ **Mabula, in this case, refers to one Major-General Jan Mabula, a Hawks officer in North West who has been a SAPS member since 1984 and who is accused by McBride and IPID of spearheading Phahlane’s fightback.** He is also the figure mentioned earlier in this report who is being prosecuted for kidnapping and assaulting a detainee in detention.

In order to involve themselves in the Phahlane matter, the North West-based Mabula squad ‘concocted’ a report about a security breach against Phahlane and arrived in Gauteng, in 2016, to begin work on the ground, as McBride submitted in an affidavit to the Zondo Commission.⁶² A charge of defeating the ends of justice was laid against Mabula and his colleagues by IPID for their role in allegedly obstructing investigations in the case.⁶³

Below: Former acting national police commissioner Khomotso Phahlane during his appearance at the Specialised Commercial Crimes Court for fraud and corruption charges in 2018

In an affidavit to the Zondo Commission, in response to McBride’s evidence, Mabula stated that it was Crime Intelligence that compiled a ‘security threat assessment’ report after suspicions were raised when O’Sullivan and his associate, Sarah-Jane Trent, approached Phahlane’s Sable Hills home.⁶⁴ After the report was completed, Mabula and a team from North West were assigned by the then North West police commissioner on an ‘ad hoc’ basis to investigate ‘the security threat against Phahlane’, according to Mabula.⁶⁵ The alleged security threat was related to O’Sullivan and Trent attempting to access Phahlane’s Sable Hills home. The Hawks investigator stated that O’Sullivan had also sent emails to Phahlane, in which he threatened to go after Phahlane on corruption charges. In one email, which Mabula quoted in his affidavit, O’Sullivan wrote to Phahlane that he would ‘enjoy putting you [Phahlane] away, and when I am done with you, I’m going after your wife.’⁶⁶ Currently, both Phahlane and his wife are facing corruption charges for unduly benefitting from contracts with SAPS service providers.

Once the Mabula cohort arrived in Gauteng at the end of 2016, according to McBride, they began work to discredit the investigations done by IPID. McBride told the Zondo Commission that the Mabula group also attempted to tamper with evidence by contacting witnesses who had implicated Phahlane in corruption and trying to convince them to change their statements.⁶⁷

Mabula, though, maintained before the Zondo Commission that the group’s investigation was above board. In his affidavit, he



told the commission that the Hawks' investigation team held a meeting with the NPA upon its arrival in Pretoria to confirm that the case would not be 'construed as interference' in the IPID investigation.⁶⁸ The current ID head, Andrea Johnson, according to Mabula, was present at the meeting, at which it was unanimously decided that the case was legitimate.⁶⁹ Mabula did not attach a confirmatory affidavit from Johnson to verify his version of the meeting. In addition, he denied that there was any counter-investigation conducted by his team.

The fighting between IPID and the Hawks in the matter remains an indication of the havoc wreaked in law enforcement agencies. Investigations into the Mabula team's conduct are still ongoing, despite Mabula's assurances that his investigation was legitimate.

In an update to Parliament, in June 2021, IPID confirmed that Mabula was accused of conspiring with Phahlane to derail the IPID investigation.⁷⁰ IPID also confirmed McBride's allegations that Phahlane 'allegedly abused his power as Acting National Commissioner' and 'conspired with [the] Mabula team to defeat the ends of justice and interfere with [the] IPID investigation'.

In terms of the Phahlane investigation, the deputy national police commissioner, General Sindile Mfazi, wrote an undertaking, in 2018, for the Mabula team to stand down.⁷¹ The undertaking stated that Mabula and four other policemen would be removed from the investigation team. **The damaging impact of the investigation, however, demonstrates the extent of Mabula's involvement in causing widespread upheaval within the Hawks and IPID, by pursuing a potentially malicious investigation to the detriment of public safety and for the protection of a senior official implicated in corruption.**

The case was referred to the director of public prosecutions in Pretoria, who declined to prosecute. IPID then referred the case to the NDPP for review, and it is now being investigated by the Investigating Directorate of the NPA.

The Phahlane case is not the only instance in which Mabula has been accused of targeting police investigators working on corruption cases. Notably, Mabula also led the Hawks team that investigated the allegations against former KZN Hawks' head Johan Booysen.

Booyesen told the Zondo Commission, 'It was clear that I was the intended target of Mabula's investigation.'⁷² Booysen also told the inquiry that Mabula had tried to 'coerce' a witness to change their statement in order to implicate Booysen in the murder of Bongani Mkhize, a taxi operator who was investigated by the police before he died.⁷³ Captain Sibusiso Zungu, who had been investigating Mkhize for alleged illicit activity in the taxi industry, provided a sworn statement that detailed how Mabula had attempted to influence him to produce a statement saying Booysen had issued an instruction for police to kill Mkhize.⁷⁴ **In his sworn statement, Zungu wrote, 'One [policeman] identify [sic] as General Mabula said that I must change my statement so that it will mentioned [sic] that General Booysen gave the said instruction.'**⁷⁵

Mabula, however, responded to Booysen's claims at the Zondo Commission, saying that he had been assigned to the case by then Hawks boss Dramat and that the investigation had been 'lawful, [and] no one was targeted'.⁷⁶ He also stated that the claims made by Zungu and Booysen about witness tampering were 'totally devoid of any truth'.⁷⁷

In two separate cases, Mabula is alleged to have attempted to influence witness statements. While the allegations have yet to be proven, it is significant that the Hawks have not publicly stated whether there was any investigation into Mabula's conduct, particularly considering the string of questionable cases to which he has been linked.


While the Hawks remain silent on the allegations around Mabula in the Phahlane case, there are other serious allegations that Mabula faces, which raise concerns over his conduct as an officer of the law.

Continued on page 50...

IPID INVESTIGATES

IPID is investigating allegations of torture and murder in detention against Mabula. It is also investigating Mabula for unduly interfering in the Phahlane investigation. In 2021, IPID presented a report to Parliament on the status of the Mabula investigations. These are the excerpts related to Mabula from IPID's presentation.



 INVESTIGATION	
General Mabula, Brigadier Kgorane, Col Manamela (Deceased), Col Dawood, Captain Mdluli, W/O Moahloli, Captain Makutu, Capt Makhubu and W/O Kutumela	DETAILS OF THE CASE: Investigation into an allegation of murder against General Mabula and his team relating to Akasia CAS 123/06/2006. After the theft of 14 million rand from Benoni as per Benoni Cas 860/05/2006, the Organised Crime Unit from the North West province under General Mabula was deployed by General Richard Mdluli to investigate the case. The Unit arrested Solomon Nengwana with the view of interrogating him. Solomon Nengwana was taken to Mmakau SAPS where he was interrogated and subsequently tortured until he died. Members took the deceased to hospital and allegedly informed the doctor that the deceased was breathing when they brought him in. The doctor contradicted their version and stated that the deceased died two to three hours before he was brought to the hospital since rigor mortis was at an advanced stage.
	STATUS: The NPA decided that a formal inquest should be held on the 14 April 2021 at Brits Magistrate court. The inquest has now been postponed to 20 to 23 September 2021 for hearing.
	This matter is now handled by the Investigating Directorate (ID) of the NPA
CCN 2006060342	



INVESTIGATION

DETAILS OF THE CASE:

**General Mabula,
General Makhele,
General Motswenyane,
Brigadier Moyane,
Brigadier Kgorane,
Col Dawood.**

During the investigation into allegations of corruption and money laundering against Lt General Phahlane, Lt General Phahlane allegedly abused his power as Acting National Commissioner and conspired with the Mabula team to **defeat the ends of justice and interfere** with the IPID investigation (Sinoville CAS 534/05/2017).

This investigation is linked to a 96 million rand investigation of corruption and money laundering against General Phahlane and service providers at the FSL.

OUTSTANDING:

STATUS:

Outcome of the review is still outstanding

The case was resubmitted to the DPP for decision after an initial decision was taken not to prosecute the matter. IPID submitted this matter to the NDPP for review. This matter is now handled by the Investigating Directorate (ID) of the NPA.

Sinoville CAS 534/05/2017



INVESTIGATION

DETAILS OF THE CASE:

**General Mabula,
Brigadier Kgorane,
Col Manamela
(Deceased), Col Dawood,
Captain Mdluli,
W/O Moahloli,
Captain Makutu,
Capt Makhubu and
W/O Kutumela**

Investigation into **allegation of torture** against General Mabula and his team. Hillbrow CAS 988/06/2018.
The case is connected to Akasia CAS 123/06/2006.

STATUS:

The DPP decided to prosecute and that the matter must be heard in the High Court.

The defense made representations to the DPP, but the representations were declined by the DPP.

The case appeared in court for the first time on 20 December 2020.

The case was postponed to 16 April 2021 for pre-trial hearing and for the outcome of further representations to NDPP to be made. The NDPP declined the representations, and the case has been postponed to 08 November to 10 December 2021 for trial. This matter is now handled by the Investigating Directorate (ID) of the NPA.

Hillbrow CAS 988/06/2018
CCN 2006060062

IPID is investigating Mabula in relation to charges of kidnapping and torturing suspects in detention.⁷⁸ The case relates to a 2006 multimillion-rand heist from a police evidence locker in Gauteng, in which a suspect, Paul Kgoedi, was detained by Mabula's team. In the indictment, Kgoedi stated that he had suffered electric shock torture at the hands of Mabula's squad. Mabula has been charged and the case is enrolled in court, but the matter has faced numerous delays with Johannesburg prosecutions boss Andrew Chauke in charge—as discussed earlier in this report. While a decision was made to prosecute the case in 2019, 13 years after Kgoedi had suffered assault in detention, Mabula said the decision was 'totally irrational' and that it would be taken on review at the NPA and high court.⁷⁹ Mabula did admit, however, that he was the commander in charge at the time Kgoedi was assaulted. The trial began in May 2022, 16 years after Kgoedi was assaulted.

THE TORTURE VICTIM WHO WAS KILLED IN POLICE DETENTION

Mabula has faced additional allegations of torturing detainees in detention. Two other suspects arrested in connection with the Gauteng heist have alleged Mabula's team assaulted them in detention. Solomon Nengwane, an additional suspect in the case, was arrested by Mabula's team and 'taken to Mmakau SAPS where he was interrogated and subsequently tortured until he died', according to an IPID presentation to Parliament in 2021 on the Mabula-related cases.⁸⁰ Mmakau SAPS is located in North West. **Police officers took Nengwane to hospital, telling a doctor that he was still breathing upon their arrival at the hospital. However, the doctor came to a different conclusion. The IPID presentation stated, 'The doctor contradicted their version and stated that the deceased died two to three hours before he was brought to the Hospital since rigor mortis was in an advanced stage'.**⁸¹ The NPA declined to prosecute the Nengwane matter, following which right-wing group Afriforum is now privately prosecuting the case. The formal inquest into Nengwane's death has been postponed to October 2022.⁸²

Though these matters are unrelated to state capture, Mabula should still be held accountable for seemingly continuing the violent police atrocities that defined the apartheid-era Security Branch. Torture and death in detention are horrific violations of human rights, and every policeman should face consequences for their involvement in these brutal acts. The NPA took 13 years to enrol the Kgoedi matter in court, but the police should also explain what steps they took to ensure that Mabula was fit for duty during the years he was still active. They should explain why he was never suspended while IPID investigated the allegations against him. The Hawks declined to respond to detailed questions by Open Secrets regarding Mabula's conduct and the steps the police agency has taken to hold him to account.

Notably, at the time that he filed his affidavit at the Zondo Commission, in 2020, Mabula was the deputy police commissioner in North West—a remarkably senior position. Mabula has since retired from the police, but he is likely still benefiting from his state pension.

The former cop should be brought to justice urgently, and investigations into his role in the Phahlane and Booysen cases should be concluded to hold him accountable for his actions.

Ultimately, the conduct of Mabula and his team signals the extent to which Hawks officers may have misused their authority, and in doing so, wreaked havoc on one of law enforcement's most important agencies. But, to date, these Hawks officers have yet to face any justice for their role in capture and for the way in which their members were instrumental in allowing questionable cases to proceed against the interests of justice. It has been four years since Zuma left the Presidency, but the 'New Dawn' has not yet led to accountability and reform in South Africa's most important law enforcement agencies.

Right: Godfrey Lebeya in 2018. Lebeya was appointed Hawks boss in 2018, but has struggled to reform the struggling police agency.

THE TIME FOR ACCOUNTABILITY IS NOW

In recent years, allegations of corruption have dogged the Hawks, SAPS, and other law enforcement agencies that are meant to uphold justice and fairness. Instead, the Hawks were effectively captured to protect the interests of corrupt police officers like Richard Mdluli and Khomotso Phahlane. They had every opportunity to hold these offenders to account, but instead they undermined the law and democracy by allowing corruption to thrive unabated. The capture of the Hawks is the capture of an elite police force that is meant to protect the safety of South Africans and encourage lawfulness. Lebeaya, the new Hawks boss, is struggling to reform the organisation, and with a mounting number of cases emerging from the Zondo Commission, it is unclear whether the Hawks have the capacity to effectively investigate state capture crimes. It is a failure of the Hawks'

leadership that Khana, Xaba, and Mabula have not faced investigations for their roles in delaying and obstructing justice. Ntlemenza should also be held to account for his role in damaging the Hawks. It is also a failure of Police Minister Bheki Cele, who retains oversight of the Hawks. It is Cele's duty to ensure that the Hawks' leadership is effective, and if they are not doing their job responsibly, then the minister must intervene and ask whether they are the most competent people for their positions.

The Hawks' leadership, under Lebeaya, and Cele should investigate policemen like Alfred Khana who have been accused of delaying cases that affect the interests of millions of people who are vulnerable, in need of affordable public transport, and among the most impacted by corruption. They should investigate why Mabula has been allowed to continue to be a free man despite being implicated in torture allegations, abusing the power of the Hawks to conduct a rogue investigation, and tampering with witness evidence. They should also hold Nyameko Xaba to account for allowing the CATS to be misused in investigations that were not reasonably pursued.

It is time for accountability!





4

PROSECUTIONS & ACCOUNTABILITY

There is a question about what will happen now that the Zondo Commission has ended its work. Will the spotlight on corruption fade and the fate of the crooks implicated at the commission follow the trend of unaccountability in South Africa's history? This report has identified corrupt businesspeople, government officials, fixers, and the bottlenecks who have captured state-owned enterprises (SOEs) and held the NPA and the Hawks hostage. But now it is time for accountability. So how do we do it?

DEFERRED PROSECUTION AGREEMENTS: JUSTICE DEFERRED, JUSTICE DENIED

In the first part of its report, the Zondo Commission recommended that the National Prosecuting Authority use deferred prosecution agreements as a mechanism to hold corporations to account for their complicity in state capture crimes.¹ Deferred prosecution agreements—commonly referred to as DPAs—are out of court settlement agreements often made between prosecutors and companies implicated in corporate crimes. The Zondo recommendation comes at a time when the NPA is battling capacity woes and a skills shortage to tackle complex grand corruption cases.



While DPAs have been offered as a solution to the NPA's resource troubles, the Zondo Commission added a caveat to its recommendation: individuals implicated in state capture can still be prosecuted; it is only corporations who may enter into the agreements.

The commission also said that the agreements must be subject to judicial oversight via a tribunal to 'curb the potential for prosecutorial overreach and ensure the terms of the DPA adequately address the violations'.²

Even before the Zondo Commission made its recommendation, the NPA was gearing up to develop a policy around DPAs that would allow them to be implemented for the first time in South Africa. While the promise of DPAs to hold corporations to account has been widely lauded in the South African public arena, the international reputation of these agreements is a warning that they may not be the answer the Zondo Commission, the NPA, and other pundits are hoping for.

THE PLAN AFTER ZONDO

The Zondo Commission started almost as a dream. After years of allegations involving Zuma, his friends the Guptas, the Sun City

Above: Former Free State Department of Agriculture Head Peter Thabethe, Dr Limakatso Moorosi, from the Department of Agriculture, Seipati Dhlamini, who was the department's financial officer and former Transnet board member Iqbal Sharma appear at the Bloemfontein Magistrate's Court in 2021. They were arrested in connection with the infamous failed R288 million Estina dairy project.

luxury wedding, and the systematic looting of SOEs, an imagining of an investigation into allegations of state capture began to form in the public consciousness. After Public Protector Thuli Madonsela released the *State of Capture* report, the dream became an angry demand.

Now that the Zondo Commission has completed its work, there is still an imagining of what will happen. Imagine Zuma, Sifiso Buthelezi, Daniel Mantsha, Vito Massone, and the SAA auditors getting hauled to court and facing jail time, or other consequences, for their transgressions if found guilty. If this happens, perhaps corruption can finally be disrupted.

But accountability is difficult to achieve in South Africa's current climate.

The Hawks, under General Lebeja's leadership, are still struggling. Beyond just the possibility of unfit police officials like Major-General Alfred Khana and Brigadier Nyameko Xaba in their ranks, the Hawks are facing numerous difficulties that hamper their ability to conduct investigations in the

public interest. These difficulties include a chronic shortage of investigators and the key skills required to undertake investigations into complex corruption and economic crimes.

The NPA, meanwhile, is battling to let go of the bottlenecks obstructing crucial investigations. Even though complaints have been laid, in particular against North West Deputy Director of Public Prosecutions Sello Maema, the NPA has taken at least three years to investigate prosecutors who have been accused of wrongdoing in the Booysen case. No other concrete action has been publicly taken to assure South Africans that the NPA is fixing its problems, and these prosecutors remain active in office, instead of being placed on precautionary suspension pending the outcome of the NPA's investigations.

In addition, the NPA is also experiencing staff shortages, and its NDPP, Shamila Batohi, has admitted that the authority does not have the skills to prosecute complex financial crimes, such as those emanating from state capture.

Its inability to hold its own to account and its lack of resources mean that the NPA may never be able to prosecute high-profile corruption outside its doors.

These factors, which the authority has failed to address, entrench the public perception that one of the country's most important law enforcement agencies cannot do its job properly, further eroding public trust.

In addition, many SOEs have yet to be fully rehabilitated after years of looting, mismanagement, and crookery without consequence. Prasa has crumbled, losing commuters while showing no signs of recovering, and instead, continually targeting whistle-blowers for raising red flags about corruption. Denel continues to struggle, battling to pay workers and starved of any real support, with employees now requesting in court that it be placed under business rescue.³ SAA, freshly launched into the skies, has milked the South African fiscus and is continuing to do so, relying on bailouts to keep itself barely afloat. SARS, meanwhile, is the only agency that has shown improvement, exceeding its revenue collection targets. In November 2021, the revenue service confirmed it was

outperforming the targets it had set in February 2021, with Finance Minister Enoch Godongwana increasing revenue estimates from R1,365.1 billion to R1,485.4 billion.⁴ But, despite SARS' improvement, Bain and Company, and others who enabled capture at the agency have yet to face consequences for their conduct.

The result is that no one has been held to account for the state of the country's most important SOEs. The ideal way forward would be for the NPA to begin prosecutions urgently, but instead, after years of political interference and poor leadership, the authority says that it is unable to cope with the sheer number of cases it is buckling under. In addition, the departure of Hermione Cronje as head of the NPA's Investigating Directorate has meant that her successor, Andrea Johnson, must settle into new territory under the weight of the Zondo Commission's extensive recommendations for the NPA to prosecute state capture cases.

In a presentation to Parliament's Justice and Correctional Services Committee, the NPA gave an update on its performance in the 2020–2021 period. The NPA stated that overall, it had only been 50 per cent successful in terms of meeting its annual performance targets.⁵ Seven of its 14 target indicators had not been fully reached. These included the conviction rate for commercial crime (the NPA had a 90.2 per cent conviction rate, which covered 277 out of 305 cases, against a target of 93 per cent); number of persons convicted for private sector corruption (the NPA had planned to convict 150 people but fell short and convicted 147); number of government officials convicted of corruption (the NPA missed its target, convicting only 86 people when it had planned to convict 220); and number of cases involving money laundering (the NPA had set a target of 90 cases but only reached 44).⁶

Significantly, the high conviction rates mentioned in the NPA's presentation can be deceiving. Research by the Africa Criminal Justice Reform project, mentioned earlier in this report, shows that the NPA uses guilty pleas, minor offences, or alternative dispute processes to help bolster its success rates.⁷ This means that the NPA is actually failing to prosecute high-profile, complex crime cases and is instead relying on guilty pleas and minor offences to boost its conviction rates, according to the ACJR. In order for the NPA's

MASSAGING THE NUMBERS: HOW THE NPA MEASURES ITS PERFORMANCE

Research by the Africa Criminal Justice Reform project shows that the NPA uses guilty pleas, minor offences, or alternative dispute processes to help bolster its success rates.



CONVICTIONS

[ACHEIVED / TARGET]

COMMERCIAL CRIME:

277 / 305

PRIVATE SECTOR CORRUPTION:

147 / 150

GOVERNMENTAL CORRUPTION:

86 / 220

MONEY LAUNDERING:

44 / 90

0

CONVICTIONS
FOR STATE CAPTURE
CRIMES.

statistics to be trusted, it therefore needs to detail what cases it has successfully prosecuted and who were the accused that were held to account.

The reasons the NPA gave for not reaching its targets included capacity issues. In its presentation, the NPA said, 'Lack of skill and capacity to dedicate staff to highly complex and voluminous matters still plagues the organisation and CJS [Criminal Justice System]'.⁸ The ACJR likewise said that the NPA is facing staff shortages, with its capacity having been reduced by almost a quarter between 2014 and 2021.

Members of Parliament on the Justice and Correctional Services Committee also emphasised the need for the Investigating Directorate to grow the skills needed to investigate complex economic crimes. As a solution, a new position was created for a digital forensic specialist, and a budget was requested for 20 additional prosecutors with specialist skills to join the authority.⁹ The committee meeting summary noted, 'The Committee was concerned about the stability of the Investigative Directorate (ID). The shortage of skills remained a challenge for the ID and was exacerbated by the lack of experience in South Africa with regard to complex commercial crimes'.¹⁰

The NPA has advertised an extraordinary 700 vacancies in its ranks: an indication of the dire need to fill positions.¹¹ In an earlier chapter, this report detailed examples of how competent prosecutors were reshuffled in their positions to make way for favoured appointees who would carry out questionable prosecutions. This has been the impact of capture on the loss of competence within the prosecuting authority. From 2020 to March 2021, the NPA hired 950 new permanent staff and increased its capacity from 4,198 to 4,500. It also placed a keen emphasis on hiring competent people in the commercial crime field. In its presentation, the NPA said, 'In addition, 233 fixed-term contract appointment[s] were made, focusing mainly on increasing capacity for commercial crimes in the AFU, SCCU (Specialised Commercial Crimes Unit) & ID'.¹²

However, despite decreasing its overall vacancies by 4 per cent, the NPA still has a capacity problem. It has a 20 per cent vacancy rate for prosecutors, which will likely impact its ability to work on the tsunami of state capture cases that is rising on NDPP

Batohi's desk.¹³ The NPA has set up a task team to deal with the flood of cases it knows is coming, but it remains unclear as to what the authority's strategy is and as to why a task team was necessary when the ID was established especially to deal with cases emanating from state capture. Would whatever funding the NPA is spending on the task team not be better utilised by capacitating the AFU, the ID, and other needed units? Ultimately, it is unclear how the task team is addressing the fundamental capacity and competency troubles that continue to leave the NPA fumbling and delaying state capture prosecutions.

In response to these myriad challenges facing the prosecuting authority, there have been growing calls for the NPA to do something that has never been done before in South Africa, in order for it to take on state capture cases effectively.¹⁴ It would have to change the law and enter into deferred prosecution agreements with those companies that enriched themselves from the looting of state infrastructure.¹⁵

So far, the idea of DPAs has been met with much optimism as a solution to the NPA's capacity woes. Organisations like the Organisation for Economic Cooperation and Development (OECD)¹⁶ and Corruption Watch¹⁷ have been vocal in their support for DPAs as an alternative and effective option to timely and costly prosecutions. Many believe that it will offer a way for those implicated in state capture to feel the pinch while helping the ailing NPA to enforce the law and to hold people to account, even as it struggles under capacity constraints.

Recently, NDPP Batohi confirmed that DPAs would become a reality. She was quoted in *Business Day* as saying, 'We hope that this will also be able to assist us in bringing back more effectively some of the stolen assets and some of the money that the country has lost through corruption.'¹⁸

But are DPAs really the shining solution to the country's unaccountability problems?

THE CASE AGAINST DEFERRED PROSECUTIONS

In South Africa, the NPA—following in the steps of the OECD—has coined a new term to refer to DPAs: non-trial resolutions.¹⁹ In November 2021, the NPA confirmed that it would be drafting a policy to implement non-trial resolutions in response to corruption cases.²⁰ Earlier in the year, the

Investigating Directorate's former boss, Cronje, emphasised the need for DPAs as the NPA faces a lack of resources and competent staff to tackle complex corruption cases. Cronje said, 'The real issue is the capacity of the criminal justice system to do the basics.'²¹

While DPAs are being ushered into South Africa as a solution for its depleted justice system, it remains uncertain whether these agreements will be an appropriate accountability measure for those implicated in state capture. **Internationally, DPAs have been a cause for concern as they often do not involve transparent processes. Instead, the agreements are kept confidential, which makes it unclear as to what type of settlement was reached, if any funds were paid back, and if the amounts paid truly corrected the social harm done.**

This is significant to consider in the South African context, where a corruption-riddled, ailing economy has been battered by pandemic conditions, impacting the government's ability to deliver on basic necessities like water, electricity, housing, and transport, and even a basic grant to address the harsh economic impact of Covid-19 on people who have no other option except government grants for dignity and sustenance. This is the reality of state capture. While corporations like Bain, auditors at KPMG, and Gupta-linked firms like VR Laser have profited from corrupt contracts with government agencies, the looting has left millions of South Africans more impoverished and the government grappling with balancing debt, rescuing SOEs, and its duty to protect its most vulnerable people.

If justice is to be done, then it must address the social harms of state capture perpetuated by corporate crime. In the context of DPAs, corporations that pay back the proceeds of crime often apply for tax breaks for paying funds to the state. The fines are also easily absorbed as the cost of doing business, without any real consequences for the companies, particularly wealthy multinational companies.

This fails to address social harm, and it may even show a lack of remorse on the part of the companies, while failing to prevent recidivism. Linked to this, DPAs also do not require an admission of guilt—such as in a plea agreement—which means that there is no requirement to admit wrongdoing. Importantly, there is also no judicial oversight over these agreements, and regulation is not always required or enforced. This is significant, as it means the agreements can be made between the parties with no regulatory oversight to ensure they are in the interests of justice.

In the United States (US) and the United Kingdom (UK), DPAs have so far had a poor track record of holding big businesses liable for their actions, while failing to prevent them from repeating the criminal conduct they have been implicated in.

DPAS IN THE UNITED STATES AND THE UNITED KINGDOM

The United States, in particular, has seen growing scepticism about the efficacy of DPAs in recent years. The policy began as a mechanism to address cases where first-time and underage offenders were facing potential prosecutions. However, the agreements slowly came to be increasingly used to settle cases involving big corporations to the point where US judges now feel pressured to use DPAs, even when they may not be the appropriate legal remedy.

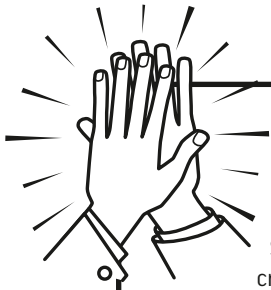
In 2011, the US Securities and Exchange Commission (SEC) entered into a settlement agreement with Citigroup, a major multinational investment bank headquartered in New York, after fraud by the bank's executives had resulted in a \$700 million loss to its investors.²² The agreement did not require Citigroup to admit any wrongdoing and included a fine that presiding US District Judge Jed Rakoff described as 'very modest'.²³ In the end, in 2014, Rakoff was forced to approve the agreement when the 2nd US Circuit Court of Appeals ruled that he had overreached in his decision to reject the settlement agreement in 2011.²⁴ Rakoff had been attempting to undo any action by regulators, such as the SEC, that would allow for agreements which failed to produce 'meaningful oversight'.²⁵

Citigroup went on to incur another \$400 million fine after US regulators, the Federal

Reserve and the Office of the Comptroller of the Currency, found, in February 2021, that it had failed to address long-standing issues that had resulted in further substantial losses to its investors.²⁶ The bank's lack of reform is one example of how out-of-court settlements open the way for big corporations to continue dubious practices while providing scant motivation for reform.

In the UK, meanwhile, challenges have mounted against DPAs, including against those involving British arms contractor BAE Systems. The UK's Serious Fraud Office entered into agreements with the company. In 2010, BAE Systems negotiated a deal that involved a £30 million fine in the UK and a \$400 million fine in the United States for a bribery scheme spanning several countries, including Tanzania, Saudi Arabia, Hungary, and the Czech Republic.²⁷ The UK settlement only required BAE Systems to admit vaguely that it had failed to keep proper accounting records for its activities in Tanzania, while in the United States, BAE made an admission of guilt in relation to charges of 'conspiring to make false statements to the US Government in connection with regulatory filings and undertakings', according to Transparency International UK.²⁸ The anti-corruption association slammed the agreement, saying that it offered no disclosures about the details of the charges levelled against BAE, that no individuals responsible for unlawful misconduct were to be prosecuted, and that BAE had been offered a chance to avoid debarment from public contracts. Worryingly, Transparency International UK also noted that the agreement would not prevent similar criminal behaviour from repeating.

In the United States, the failure of DPAs to promote tangible justice has led to widespread demand for greater restrictions on their use. A former chief of the public corruption and government fraud section at the US Attorney's Office in the District of Columbia stated that 'their excessive use is undermining the criminal justice system'.²⁹ Even the *Financial Times* has described their use in the United States to deal with banks implicated in the financial crash of 2008 as 'the most blatant expression of the failure to rein in the financial industry'.³⁰ So how will they work in South Africa, and why does the NPA think they are the best solution?



DPAS, HSBC, AND THE GUPTA MONEY LAUNDERERS

The cases of Citigroup and BAE Systems are not isolated. Similar criticism has been levelled against

DPAs involving luxury car retailer Rolls-Royce³¹ and banking giant HSBC,³² among others. HSBC entered into a five-year DPA with the US Department of Justice, in 2012, for money laundering and sanctions violations that allowed the Sinaloa cartel, the Notre Del Valle cartel, and countries on the US sanctions list to move money through HSBC. The bank agreed to pay \$1.9 million to US regulators. Under the DPA,

HSBC committed to undertake enhanced anti-money laundering compliance obligations and structural changes within its entire global operations 'to prevent a repeat of the conduct that led to this prosecution'.³³ However, HSBC went on to repeat this conduct and was fined several more times during the 2012–2017 period. HSBC's movement of money for the Guptas' shell companies, laundering the proceeds of state capture, occurred during the period of its DPA.³⁴

REPEAT OFFENDERS

In the United States (US) and the United Kingdom (UK), DPAs have so far had a poor track record of holding big businesses liable for their actions, while failing to prevent them from repeating the criminal conduct they have been implicated.



First offense: 2012: HSBC enters into a five-year DPA with the US Department of Justice for money laundering and sanctions violations that allowed Mexican drug cartels—the Sinaloa cartel and the Notre Del Valle cartel—and countries on the US sanctions list to move money through HSBC. The bank agreed to pay \$1.9 million to US regulators.

Repeat offense: 2017: UK regulator, the Financial Conduct Authority, fines HSBC £63.9 million for deficient transaction monitoring controls, which led to a failure to identify financial crimes.

Repeat offense: The FCA fines HSBC \$85 million for failings in its anti-money laundering processes.



First offense: 2011: Citigroup enters into agreement with the US Securities and Exchange Commission (SEC) to pay a \$95 million fine.

Repeat offense: 2021: Citigroup is fined \$400 million after US regulators, the Federal Reserve and the Office of the Comptroller of the Currency, found that it had failed to address long-standing issues that had resulted in further substantial losses to its investors

BAE SYSTEMS

First offense: 2010: BAE Systems is fined £30 million in the UK and a \$400 million fine in the United States for a bribery scheme spanning several countries, including Tanzania, Saudi Arabia, Hungary, and the Czech Republic.

Repeat offense: 2011: BAE Systems is fined \$79 million in an agreement with the US State Department for violating military export rules.

DPAS AND STATE CAPTURE

South Africa is already facing an accountability problem, which has eroded public trust in institutions meant to work in the public interest. The social harm of state capture is widespread. In his 2022 budget speech, Finance Minister Enoch Godongwana announced that big business would get a 1 per cent tax cut, while government spending on early childhood development, public healthcare, and basic education would be reduced.³⁵ What Godongwana's speech meant is that the government is still implementing austerity measures to slash public spending. In his speech, the finance minister conceded that the government's aim is to keep its debt under control.³⁶ Godongwana said, 'Our debt burden remains a matter of serious concern. This year, government debt has reached R4.3 trillion and is projected to rise to R5.4 trillion over the medium-term'.³⁷

The country's rising debt inevitably limits public spending.

Currently, 46 per cent of South Africans—27.8 million people in the country—rely on social grants to keep themselves and their families safe. The social distress grant, an emergency response to help vulnerable people during the Covid-19 pandemic, has faced the risk of being scrapped, potentially leaving 9.5 million people in financial and social desperation.³⁸ Impunity for corruption allows financial crimes like state capture to be repeated, which disproportionately affects the most vulnerable in South Africa.

Added to this, cash-strapped SOEs, looted by greedy interests, continue to struggle and to need cash injections. The government has spent more than R308 billion on bailing out SOEs, but more is still needed.³⁹ Yet Godongwana's budget speech confirmed that the Presidential State-Owned Enterprises Council would determine which SOEs would be retained and which would be consolidated.⁴⁰ In his mid-term budget speech last year, Godongwana acknowledged that state capture had had a significant impact on the ailing performance of SOEs and their precarious financial conditions. He said, 'In many instances they have also been devastated by state capture, making them increasingly reliant on government support'.⁴¹

The track record of DPAs has increasingly come under scrutiny and criticism in the countries that have used it in notably big cases against corporate elites: the United States and the UK. If South Africa follows this same trajectory, then corruption may continue uninterrupted, and social harm will increase. There is dire and urgent need for accountability in South Africa. Law enforcement agencies should be adopting mechanisms that prevent recidivism and encourage lawfulness.

RECOMMENDATIONS FOR A BETTER JUSTICE

In 2021, Open Secrets and Shadow World Investigations submitted a list of recommendations to the Zondo Commission, offering alternative avenues for holding state capture enablers to account that do not include secretive and ineffectual DPAs.⁴²

For starters, there is a pressing need to convict companies as well as senior executives and to debar them from bidding for government contracts for periods of time that reflect the severity of the harm they perpetrated. A measure like this makes powerful corporations and their bosses feel the consequence of their actions, as opposed to offering half-hearted apologies as part of secretive settlements where no admission of guilt is required. The NPA and SAPS should follow through on these cases with urgency, instead of relying on DPAs to offer a solution that may not be guaranteed.

In terms of out-of-court settlements generally, these should only be entered into when clear minimum standards have been laid out in legislation. These standards should include that out-of-court settlements are only used in civil, and not criminal, cases; that the settlements often take the form of a publicly disclosed plea agreement where a perpetrator must admit to guilt; that there is judicial oversight and review of these settlements; and that repayment of profits is necessary, and not tax deductible.

This is just a start to how we can hold state capture perpetrators to account without letting them enter secretive agreements. Ultimately, the process should be victim-centred and focussed on reparations for social harm. Fines generated from out-of-court settlements should be brought back into significant state institutions—like the NPA and the Hawks—to address the consequences of state capture: capacity woes, mismanagement, and incompetence, for starters.

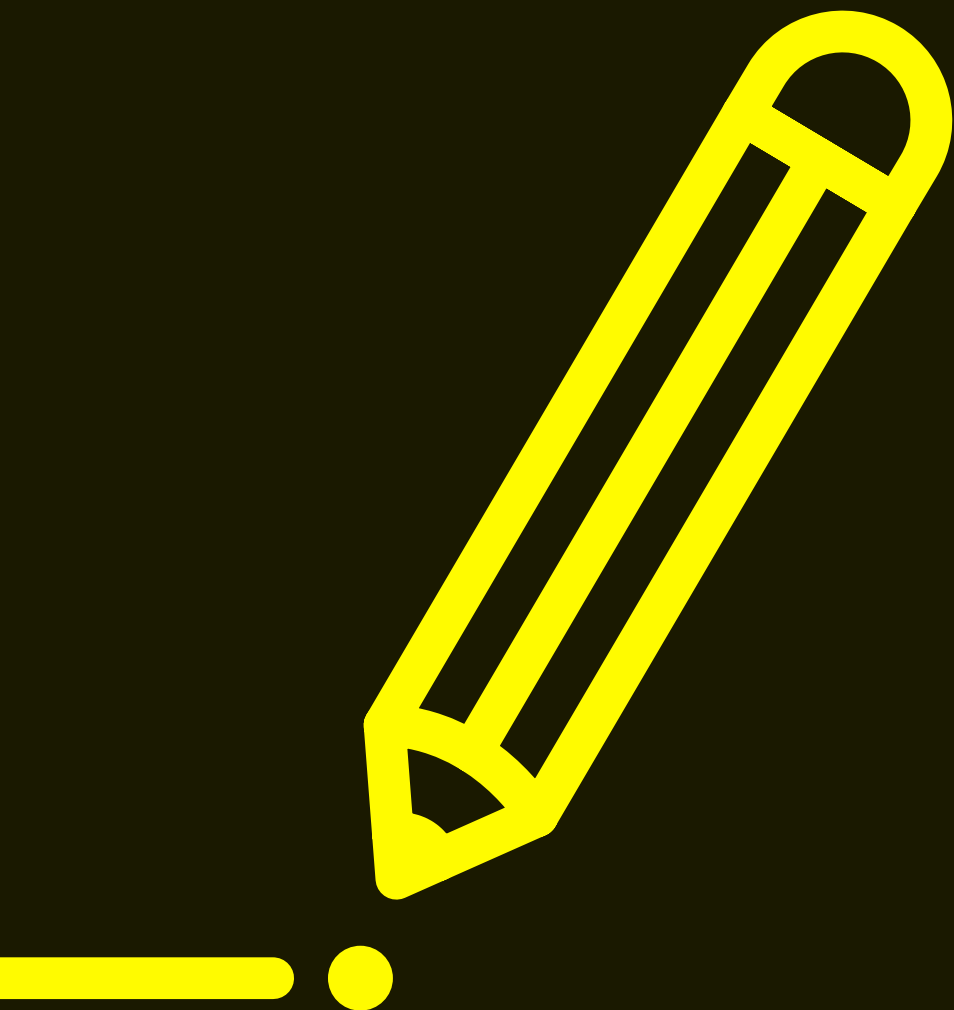
While the NPA may be struggling with poor capacity, there are ways to deal with corruption in South Africa that do not require repeating a policy that has failed to meet the bar internationally and that allows for impunity. It is time to disrupt networks of patronage and force them to face justice.

HOLDING COPORATIONS TO ACCOUNT

DPAs do not help eradicate the harm caused by corrupt corporations. But there are better ways to ensure the private sector faces justice for financial crimes. These are the recommendations Open Secrets and Shadow World Investigations submitted to the Zondo Commission.

RECOMMENDED ACTION:	RESPONSIBLE DEPARTMENT / INSTITUTION:
DPAS	
Move beyond these largely meaningless settlements and convict companies, and senior executives and debar them from bidding for government contracts for periods of time that reflect the severity and size of the malfeasance they perpetrated.	SAPS and the NPA, with a clear policy stance from the Department of Justice and Constitutional Development.
OUT-OF-COURT SETTLEMENTS	
<p>Guidance and minimum standards should be legislated in line with the above discussion, and in particular, set out the following:</p> <ul style="list-style-type: none">• Out-of-court settlements for criminal actions should be prohibited. Prosecution policy should be amended to provide that plea agreements are preferable and should always be disclosed.• Out-of-court settlements should be made publicly available and be subject to judicial oversight and review.• Repayment of profits cannot be negotiated out of.• Settlements are not tax deductible.• <i>Locus standi</i> for setting aside unlawful contracts and the recovery of profits for SOEs and state institutions should be explicitly broadened to include members of the public.• Guidelines should be developed for out-of-court settlements in civil cases, including factors to be considered when a judge is deciding whether or not to make such an agreement a court order.	Department of Justice and Constitutional Development

PROFITS VS COMPENSATION	
Enact guidelines that provide for criminal and civil approaches to corporate accountability, including possible minimum sentencing/apportionment of fines.	Department of Justice and Constitutional Development
CORPORATE PROSECUTION AND DEBARMENT	
Promulgate guidelines for the NPA for corporate prosecution and debarment. Provisions and guidelines for individual and corporate prosecution for economic crimes should have a practical and meaningful (deterrent) effect. Conflicts of interest and non-disclosure of interests should also attract higher penalties.	Department of Justice and Constitutional Development
Companies implicated in state capture and other serious economic crime should be debarred. A directive to this effect should be issued from Treasury to relevant departments and municipalities.	National Treasury
Companies involved in state capture should be delisted or have their listings suspended. This should not be an optional consequence or one that can be negotiated out of. Amendments to the Companies Act and Johannesburg Stock Exchange (JSE) Listing Requirements should be made to reflect this.	Department of Justice and Constitutional Development and Financial Sector Conduct Authority
FINES AND OTHER PUNITIVE REMEDIES	
The state should disinvest in any company found to have acted unlawfully and take strong, practical anti-corruption stances against corporates, including termination of business dealings with such corporations, which includes debarring the corporations from bidding for future state contracts. We therefore recommend that guidelines on the prosecution of corporations be included in the NPA's Prosecution Policy and be included in the Labour Relations Act and the Companies Act (providing that monies collected on behalf of the state in the prosecution of a company should come from the company's profits and or director[s], and provide for the protection of lower-level employees).	Parliament and/or Department of Justice and Constitutional Development. Parliament should introduce or amend legislation that gives effect to this. Alternatively, this should be introduced in the NPA's prosecution guidelines.
As a result of the austerity budget and the massive cuts to essential services, including institutions like SAPS and the NPA, we recommend introducing a model whereby any fines or settlements be used to fund law enforcement (SAPS, the NPA, SIU, etc.). Institutions like the NPA and others must be properly funded to enable them to act against corporations, which often requires technical expertise and resources.	National Treasury
Fines should be linked to and commensurate with profits made from state capture and other economic crimes, as a percentage, and should be imposed in addition to the repayment of such profits.	Regulators, like the Prudential Authority, SARB, and the Financial Sector Conduct Authority.





CONCLUSION

The NPA and the Hawks are two of South Africa's most important law enforcement agencies. They are responsible for delivering justice in a country that is struggling to hold corrupt officials to account. Yet these agencies are failing to do their job. Rather, they have become the enablers of further corruption through their delays in important cases and their questionable prosecutorial and investigative decisions, while the ways in which they have conducted themselves for almost a decade has decreased public trust in their abilities and willingness to pursue justice.

At the NPA, there is reasonable evidence that prosecutors at the authority have abused the NPA's Prosecution Policy and—in some cases, like the Maema matter—may be criminally charged with fraud. The NPA's leader, Shamila Batohi, has been aware of these allegations since she took office in 2018, and yet there has been no conclusive public statement from the authority on whether these prosecutors are fit to hold the offices they occupy. In the meantime, Andrew Chauke, Sello Maema, and Torie Pretorius have enjoyed considerable influence over important cases despite their questionable track records.

At the Hawks, investigators like Alfred Khana and Nyameko Xaba remain employed in senior positions despite the severe delays in the Prasa corruption cases and the abuse of the Hawks' senior investigative unit, the CATS, under Xaba's watch. Hawks boss Godfrey Lebeya and Police Minister Bheki Cele need to take action to hold these officers to account. In addition, the misconduct of Jan

Mabula should be treated with urgency. The Hawks should recommend that IPID investigate whether Mabula was fit for his office and which cases may have been botched because of his questionable decision-making, and they should take action, both through criminal and civil procedures, to ensure that he faces proper sanction. The Hawks should be supporting the victims of Mabula's alleged

abuses, like Kgoedi and Nengwane's families, instead of maintaining silence on the horrific actions of their own members.

This report has identified some of the individuals in these agencies and has produced detailed evidence to show their wrongdoing. It is time that they were investigated and held to account.

South Africa's law enforcement agencies need to reform. The Zuma era is over, but the appointments Zuma made still affect the efficiency and competency of these institutions. If South Africa is to hold state capture perpetrators to account, then incompetent officials within these agencies must be removed and brought to justice.



RECOMMENDATIONS

1

INVESTIGATE INCOMPETENT AND CORRUPT PROSECUTORS.

The NPA leadership can investigate prosecutors who face allegations of violating the NPA Prosecution Policy and hold them to account if there are findings made against them. In addition, criminal charges can be laid against prosecutors who have been accused of committing fraud or other criminal acts in the course of their work. There is no reason for the NPA to delay taking action to ensure its members are fit for office, and its failure to do so is a failure of justice.

2

INVESTIGATE INCOMPETENT AND CORRUPT POLICE OFFICERS.

The Hawks and the police minister must recommend that IPID investigate police officers who have failed in their duties through incompetence or abusing their powers. Police officers can face disciplinary proceedings or criminal investigations depending on the severity of the allegations against them. Competent and reliable policemen are a necessity for justice, but the Hawks' leadership and the police minister have failed in their duties to hold their members to account.

Left: Workers at Optimum Coal Mine protest against their bosses, the Guptas, in 2018.

3

COMPETENT INVESTIGATORS AND PROSECUTORS MUST BE RECRUITED.

Both the Hawks and the NPA are facing a shortage of skills and staff members to investigate and prosecute grand corruption cases. They must recruit competent and resourceful investigators and prosecutors into their agencies. Incentives and other initiatives can be considered to attract highly skilled investigators and lawyers.

4

THE HAWKS AND THE NPA MUST BE TRANSPARENT.

The public has a right to access justice and to know whether criminal justice agencies are able to do their work effectively. The Hawks and the NPA must communicate transparently with the public on the challenges that they face and how they are dealing with incompetence or corruption among their members. This is important for public trust to be restored.

5

INVESTIGATE AND PROSECUTE CORRUPTION CASES.

The Hawks and the NPA need to successfully prosecute state capture and other grand corruption cases. Without these convictions, corruption will continue in South Africa. The most effective deterrent that there is to prevent financial crimes is justice. The Hawks and the NPA must act urgently to prosecute and to get convictions in these cases, and if they are unable to do so, they should be transparent about their challenges.



NOTES:

INTRODUCTION

- 1: Shamila Batohi. (2020). NPA Annual Report. National Prosecuting Authority. [Report]. https://www.npa.gov.za/sites/default/files/annual-reports/NPA%20Annual%20Report%202019-2020_0.pdf
- 2: Lukas Muntingh. (2022). Key Issues in the NPA: Knowledge, Skills, and Human Resources. [Issue Paper 2]. Africa Criminal Justice Reform and Dullah Omar Institute. <https://acjr.org.za/acjr-publications/npa-issue-paper-human-resources.pdf>
- 3: Claudi Mailovich. (2021). Hawks firing on half its cylinders, says Godfrey Lebeya. *Business Day*. <https://www.businesslive.co.za/bd/national/2021-03-16-hawks-firing-on-half-its-cylinders-says-godfrey-lebeya/>
- 4: Claudi Mailovich. (2021). Hawks firing on half its cylinders, says Godfrey Lebeya. *Business Day*. <https://www.businesslive.co.za/bd/national/2021-03-16-hawks-firing-on-half-its-cylinders-says-godfrey-lebeya/>
- 5: Karyn Maughan. (2022). Saturday profile | ID head Andrea Johnson: 'We can't prove there were July unrest masterminds'. *News24*. <https://www.news24.com/news24/analysis/saturday-profile-id-head-andrea-johnson-we-cant-prove-there-were-july-unrest-masterminds-20220305>
- 6: Civil Society Working Group. (2020). Agenda for Action. [Submission to the Zondo Commission]. https://47zhcvti-0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2020/02/An-Agenda-for-Action_A-Joint-Submission_Civil-Society-Working-Group-on-State-Capture-.pdf
- 7: T.F. Mathibedi, L. Vilakazi, K. Ramaimela, and Z. Madlanga. (2021). Recordal of the Versions of Dr Jacobus Petrus Pretorius ("Dr Pretorius"), Advocates George Baloyi ("Baloyi"), Khehla Masenyani Andrew Chauke ("Chauke"), Gladstone Sello Maema ("Maema"), Khulekani Raymond Mathenjwa ("Mathenjwa"), Anthony Mosing ("Mosing"), Marshall Mokgathe ("Mokgathe"), and Michael Mashuga ("Mashuga") ("The Implicated Prosecutors"), in Response to Allegations Implicating Them in State Capture Made to the Commission by Witnesses Who Can No Longer Be Cross Examined Due to the Commission's Operational Constraints. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_\(448_MB_0.5_GB\).pdf](https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_(448_MB_0.5_GB).pdf)
- 8: Bulelwa Makeke. (2010). NDPP's Decision to Abandon the Preservation Order Against Mr Fana Hlongwane. [Media statement]. https://www.npa.gov.za/sites/default/files/media-releases/NDPP-Decision-On-Abandon-The-Preservation-Order-Against-Mr-Fana-Hlongwane_19-March-2010.pdf
- 9: Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another (771/2016, 1170/2016). [2017]. <http://www.saflii.org/za/cases/ZASCA/2017/146.html>
- 10: Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another (771/2016, 1170/2016). [2017]. <http://www.saflii.org/za/cases/ZASCA/2017/146.html>
- 11: Sunday Times. (2018). The death squad that wasn't. *Sunday Times*. <https://www.timeslive.co.za/sunday-times/news/2018-10-13-the-death-squad-that-wasnt/>
- 12: Franny Rabkin. (2019). Booyesen: I was prosecuted because I got in Edward Zuma's way. *Mail & Guardian*. <https://mg.co.za/article/2019-02-04-00-booyesen-i-was-prosecuted-because-i-got-in-edward-zumas-way/>
- 13: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(f) (e) and (f) of the Prevention of Organised Act, 121 of 1998, p. 6. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 14: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(f) (e) and (f) of the Prevention of Organised Act, 121 of 1998, p. 6. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 15: NPA. (2019). NDPP to Withdraw Racketeering Charges in the Matter of State vs Booyesen and Others Following a Review Process. <https://www.npa.gov.za/media/ndpp-withdraw-racketeering-charges-matter-state-vs-booyesen-and-others-following-review>
- 16: Al Jazeera. (2016). South Africa drops charges against Pravin Gordhan. *Al Jazeera*. <https://www.aljazeera.com/economy/2016/10/31/south-africa-drops-charges-against-pravin-gordhan>
- 17: Jeanette Chabalala. (2022). Victory for General Shadrack Sibiya as court orders police to reinstate him. *News24*. <https://www.news24.com/news24/southafrica/news/victory-for-general-shadrack-sibiya-as-court-orders-police-to-reinstate-him-20220516>
- 18: Judge Robert Nugent. (2018). Commission Of Inquiry into Tax Administration and Governance: First interim report. <https://static.pmg.org.za/190213interimreport.pdf>
- 19: Mail & Guardian (2016). Charges against Ipid head Robert McBride dropped. *Mail & Guardian*. <https://mg.co.za/article/2016-11-01-charges-against-ipid-head-robert-mcbride-dropped/>
- 20: Johan Booyesen. (2019). Affidavit and Annexures of Johan Wessel Booyesen. [Submission to the Zondo Commission]. P. 29. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)

THE NATIONAL POSTPONEMENT AUTHORITY: THE NPA'S FAILURE TO ACT

- 1: Andrew Meldrum. (2003). Apartheid spy clears prosecutor. *The Guardian*. <https://www.theguardian.com/world/2003/oct/22/southafrica.andrewmeldrum>
- 2: Jean Redpath. (2012). Failing to Prosecute? Assessing the State of the National Prosecuting Authority in South Africa. Institute for Security Studies. <https://www.files.ethz.ch/isn/145403/Mono186Full.pdf>
- 3: Frene Ginwala. (2008). Report of the Enquiry into the Fitness of Advocate VP Pikoli to Hold the Office of National Director of Public Prosecutions. [Inquiry Report]. p. 69. https://www.justice.gov.za/commissions/2008_ginwala.pdf
- 4: The Presidency of RSA. (2009). Government and Adv. Vusi Pikoli Reach Out-of-Court Settlement. [Statement]. <https://www.thepresidency.gov.za/content/government-and-adv-vusi-pikoli-reach-out-court-settlement>

- 21: Kathleen Satchwell, Nikiwe Bikitsha, and Rich Mkhondo. (2021). Independent Panel Report: Inquiry into Media Ethics and Credibility. [Report commissioned by Sanef]. p.176. <https://sanef.org.za/wp-content/uploads/2021/04/Satchwell-Report.pdf>
- 22: Booyesen v Acting National Director of Public Prosecutions and Others (4665/2010). [2014]. <http://www.saflii.org/za/cases/ZAKZDHC/2014/1.html>
- 23: Booyesen v Acting National Director of Public Prosecutions and Others (4665/2010). [2014]. <http://www.saflii.org/za/cases/ZAKZDHC/2014/1.html>
- 24: Booyesen v Acting National Director of Public Prosecutions and Others (4665/2010). [2014]. <http://www.saflii.org/za/cases/ZAKZDHC/2014/1.html>
- 25: Booyesen v Acting National Director of Public Prosecutions and Others (4665/2010). [2014]. <http://www.saflii.org/za/cases/ZAKZDHC/2014/1.html>
- 26: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(f) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 27: NPA. Prosecution Policy. Attached to the Affidavit of Karen van Rensburg. [Submission to the Zondo Commission].
- 28: Mokgoro Panel. (2019). Enquiry in terms of section 12(6) of the National Prosecuting Act 32 of 1998, p. 327. <http://www.thepresidency.gov.za/content/mokgoro-commission-enquiry-report>
- 29: Karen van Rensburg. (2020). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. pp. 203-206.
- 30: Karen van Rensburg. (2020). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission].
- 31: Karen van Rensburg. (2021). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission].
- 32: Karen van Rensburg. (2020). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. pp. 203-206.
- 33: Karen van Rensburg. (2020). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. pp. 203-206.
- 34: Karen van Rensburg. (2020). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. pp. 203-206.
- 35: Karen van Rensburg. (2020). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. Pp. 203-206.
- 36: Karen van Rensburg. (2020). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. pp. 203-206.
- 37: Kathleen Satchwell, Nikiwe Bikitsha, and Rich Mkhondo. (2021). Independent Panel Report: Inquiry into Media Ethics and Credibility. [Report commissioned by Sanef]. <https://sanef.org.za/wp-content/uploads/2021/04/Satchwell-Report.pdf>
- 38: News24. Watch: NPA withdraws charges against Gordhan. [Video]. News24. <https://www.facebook.com/news24/videos/watch-npa-withdraws-charges-against-gordhan/10154868752771842/>
- 39: Andrew Chauke. (2021). Application to Cross-Examine Booyesen and Mlotshwa at the State Capture Inquiry. [Submission to the Zondo Commission]. p. 31. [https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_\(448_MB_0.5_GB\).pdf](https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_(448_MB_0.5_GB).pdf)
- 40: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(f) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 41: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(f) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 42: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(f) (e) and (f) of the Prevention of Organised Act, 121 of 1998. p. 6. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 43: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(f) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 44: Andrew Chauke. (2021). Application to Cross-Examine Booyesen and Mlotshwa at the State Capture Inquiry. [Submission to the Zondo Commission]. p. 31. [https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_\(448_MB_0.5_GB\).pdf](https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_(448_MB_0.5_GB).pdf)
- 45: Andrew Chauke. (2021). Application to Cross-Examine Booyesen and Mlotshwa at the State Capture Inquiry. [Submission to the Zondo Commission]. p.31. [https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_\(448_MB_0.5_GB\).pdf](https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_(448_MB_0.5_GB).pdf)
- 46: Andrew Chauke. (2021). Application to Cross-Examine Booyesen and Mlotshwa at the State Capture Inquiry. [Submission to the Zondo Commission]. p.31. [https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_\(448_MB_0.5_GB\).pdf](https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_(448_MB_0.5_GB).pdf)
- 47: Andrew Chauke. (2021). Application to Cross-Examine Booyesen and Mlotshwa at the State Capture Inquiry. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_\(448_MB_0.5_GB\).pdf](https://www.statecapture.org.za/site/files/documents/528/Day_423_-_23_Jul_2021_NPA_Additional_docs_relating_to_NPA_Matters_(448_MB_0.5_GB).pdf)
- 48: Justice Yvonne Mokgoro. (2019). Enquiry in terms of section 12(6) of the National Prosecuting Authority Act 32 of 1998. <https://www.thepresidency.gov.za/sites/default/files/Section%2012%286%29%20Enquiry%20report%20-%20Unabridged%20version.pdf>
- 49: Mokgoro Panel. (2019). Enquiry in terms of section 12(6) of the National Prosecuting Act 32 of 1998, p. 327. <http://www.thepresidency.gov.za/content/mokgoro-commission-enquiry-report>
- 50: NPA. Prosecution Policy. Attached to the Affidavit of Karen van Rensburg. [Submission to the Zondo Commission].
- 51: Jeff Wicks. (2020). Kidnappings, beatings and torture: Prosecution of ex-Hawks general stalls. News24. <https://www.news24.com/news24/southafrica/news/kidnappings-beatings-and-torture-prosecution-of-ex-hawks-general-stalls-20201006-2>
- 52: Andrew Chauke. (2019). Email correspondence.
- 53: Jeff Wicks. (2020). Kidnappings, beatings and torture: Prosecution of ex-Hawks general stalls. News24. <https://www.news24.com/news24/southafrica/news/kidnappings-beatings-and-torture-prosecution-of-ex-hawks-general-stalls-20201006-2>
- 54: Jeff Wicks. (2020). Gauteng DPP Andrew Chauke called to heel by NPA prosecutions boss over 'torture cops' bungle. News24. <https://www.news24.com/news24/southafrica/investigations/gauteng-dpp-andrew-chauke-called-to-heel-by-npa-prosecutions-boss-over-torture-cops-bungle-20201118>

- 55: Jeff Wicks. (2020). Gauteng DPP Andrew Chauke called to heel by NPA prosecutions boss over 'torture cops' bungle. *News24*. <https://www.news24.com/news24/southafrica/investigations/gauteng-dpp-andrew-chauke-called-to-heel-by-npa-prosecutions-boss-over-torture-cops-bungle-20201118>
- 56: Julia Evans. (2022). Former SAPS 'rogue' cops accused of extortion, assault and kidnapping listen to gruesome torture testimony. *Daily Maverick*. <https://www.dailymaverick.co.za/article/2022-05-10-former-saps-rogue-cops-accused-of-extortion-assault-and-kidnapping-listen-to-gruesome-torture-testimony/>
- 57: Citizen Reporter. (2021). NPA boss reportedly on warpath against Joburg head over his prosecution decisions. *The Citizen*. <https://www.citizen.co.za/news/2514344/npa-boss-reportedly-on-warpath-against-joburg-head-over-his-prosecution-decisions/>
- 58: Special Investigating Unit. (2010). Investigation into Certain Affairs of the Gauteng Department of Health. <https://www.corruptionwatch.org.za/wp-content/uploads/2018/06/SIU-Report-on-Proclamation-R21-of-2010-002.pdf>
- 59: Special Investigating Unit. (2010). Investigation into Certain Affairs of the Gauteng Department of Health. <https://www.corruptionwatch.org.za/wp-content/uploads/2018/06/SIU-Report-on-Proclamation-R21-of-2010-002.pdf>
- 60: Special Investigating Unit. (2010). Investigation into Certain Affairs of the Gauteng Department of Health. <https://www.corruptionwatch.org.za/wp-content/uploads/2018/06/SIU-Report-on-Proclamation-R21-of-2010-002.pdf>
- 61: Advocate J Barnard. (2019). Report on State vs 3P and Others. [Confidential NPA memo].
- 62: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 63: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 64: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 65: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 66: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 67: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 68: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. p. 31. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 69: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 70: Rodney de Kock et al. (2019). Reconsideration of authorisations in terms of section 2(1) (e) and (f) of the Prevention of Organised Act, 121 of 1998. p. 39. <https://www.dailymaverick.co.za/article/2020-08-05-confidential-npa-report-exposes-senior-officials-who-lied-about-johan-booyesen-yet-they-are-still-employed/>
- 71: Sello Maema. (2021). Application for Condonation and Leave to Cross-Examine. State Capture Inquiry. [Submission to the Zondo Commission]. https://www.statecapture.org.za/site/files/documents/472/Day_423_-_23_Jul_2021_07_SEQ_29.2021_Maema.pdf
- 72: T.F. Mathibedi, L. Vilakazi, K. Ramaimela, and Z. Madlanga. (2021). Recordal of the Versions of Dr Jacobus Petrus Pretorius ("Dr Pretorius"), Advocates George Baloyi ("Baloyi"), Khehla Masenyani Andrew Chauke ("Chauke"), Gladstone Sello Maema ("Maema"), Khulekani Raymond Mathenjwa ("Mathenjwa"), Anthony Mosing ("Mosing"), Marshall Mokgathe ("Mokgathe"), and Michael Mashuga ("Mashuga") ("The Implicated Prosecutors"), in Response to Allegations Implicating Them in State Capture Made to the Commission by Witnesses Who Can No Longer Be Cross Examined Due to the Commission's Operational Constraints. [Submission to the Zondo Commission]. p. 32. https://www.statecapture.org.za/site/files/documents/465/Day_423_-_23_Jul_2021_00_NPA_LEA_Summary_Presentation.pdf
- 73: Sello Maema. (2021). Application for Condonation and Leave to Cross-Examine. State Capture Inquiry. [Submission to the Zondo Commission]. https://www.statecapture.org.za/site/files/documents/472/Day_423_-_23_Jul_2021_07_SEQ_29.2021_Maema.pdf
- 74: Sello Maema. (2021). Application for Condonation and Leave to Cross-Examine. State Capture Inquiry. [Submission to the Zondo Commission]. p. 7. https://www.statecapture.org.za/site/files/documents/472/Day_423_-_23_Jul_2021_07_SEQ_29.2021_Maema.pdf
- 75: Sello Maema. (2021). Application for Condonation and Leave to Cross-Examine. State Capture Inquiry. [Submission to the Zondo Commission]. p. 12. https://www.statecapture.org.za/site/files/documents/472/Day_423_-_23_Jul_2021_07_SEQ_29.2021_Maema.pdf
- 76: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. p. 29. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 77: Kingdom Mabuza. (2016). NPA drops fraud charges against Robert McBride. *TimesLive*. <https://www.timeslive.co.za/politics/2016-11-01-npa-drops-fraud-charges-against-robert-mcbride/>
- 78: Sello Maema. (2021). Application for Condonation and Leave to Cross-Examine. State Capture Inquiry. [Submission to the Zondo Commission]. p. 12. https://www.statecapture.org.za/site/files/documents/472/Day_423_-_23_Jul_2021_07_SEQ_29.2021_Maema.pdf
- 79: Sello Maema. (2021). Application for Condonation and Leave to Cross-Examine. State Capture Inquiry. [Submission to the Zondo Commission]. pp. 203-204. https://www.statecapture.org.za/site/files/documents/472/Day_423_-_23_Jul_2021_07_SEQ_29.2021_Maema.pdf

- 80: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. p. 21. [https://www.statecapture.org.za/site/files/documents/95/Y._Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y._Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 81: Matthew Savides. (2020). Criminal charges to be dropped in Sars 'rogue unit' case. *TimesLive*. <https://www.timeslive.co.za/news/south-africa/2020-02-07-criminal-charges-to-be-dropped-in-sars-rogue-unit-case/>
- 82: Matthew Savides. (2020). Criminal charges to be dropped in Sars 'rogue unit' case. *TimesLive*. <https://www.timeslive.co.za/news/south-africa/2020-02-07-criminal-charges-to-be-dropped-in-sars-rogue-unit-case/>
- 83: Karen van Rensburg. (2021). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. p. 108.
- 84: Karen van Rensburg. (2021). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. p. 108.
- 85: Karen van Rensburg. (2021). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission].
- 86: Karen van Rensburg. (2021). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. p. 115.
- 87: Karen van Rensburg. (2021). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. p. 115.
- 88: Jacobus Pretorius. (2020). Affidavit and Annexures. Submission to the Zondo Commission.
- 89: Karen van Rensburg. (2021). Affidavit Regarding the National Prosecuting Authority. Submission to the Zondo Commission. p. 124.
- 90: Jacobus Pretorius. (2021). Briefing Summary: Alleged Establishment of the High Risk Unit at SARS. [Internal NPA memorandum]. Attached to the Affidavit of Karen van Rensburg (2021). [Submission to the Zondo Commission].
- 91: Jacobus Pretorius. (2021). Briefing Summary: Alleged Establishment of the High Risk Unit at SARS. [Internal NPA memorandum]. Attached to the Affidavit of Karen van Rensburg (2021). [Submission to the Zondo Commission]. p. 5.
- 92: African News Agency. (2016). Urgent application to drop Gordhan charges. *IOI*. <https://www.ioi.co.za/capetimes/news/urgent-application-to-drop-gordhan-charges-2082818>
- 93: Webber Wentzel. (2016). Impropriety and unfitness for the office of the National Director of Public Prosecutions. [Letter to President Jacob Zuma]. <https://hsf.org.za/litigation/national-prosecuting-authority/files/correspondence/1-november-2016-letter-to-the-president>
- 94: Webber Wentzel. (2016). Impropriety and unfitness for the office of the National Director of Public Prosecutions. [Letter to President Jacob Zuma]. <https://hsf.org.za/litigation/national-prosecuting-authority/files/correspondence/1-november-2016-letter-to-the-president>
- 95: Helen Suzman Foundation and Freedom Under Law vs The President of the Republic of South Africa. (2016). Head of Argument. p. 62. https://hsf.org.za/litigation/national-prosecuting-authority/files/urgent-high-court-application/heads-of-argument/applicants_-_heads-of-argument-18112016-final.pdf
- 96: Raeesa Pather. (2019). NPA admits to political interference in prosecutorial decisions. *M&G*. <https://mg.co.za/article/2019-02-06-npa-admits-to-political-interference-in-prosecutorial-decisions/>
- 97: Karyn Maughan. (2022). Saturday profile | ID head Andrea Johnson: 'We can't prove there were July unrest masterminds'. *News24*. <https://www.news24.com/news24/analysis/saturday-profile-id-head-andrea-johnson-we-cant-prove-there-were-july-unrest-masterminds-20220305>
- 98: Eyewitness News. (2021). NPA boss Batohi on Cronje's resignation: We are not in a crisis, there is no infighting. [Video]. *Eyewitness News*. <https://www.youtube.com/watch?v=xLiMAZj7U>

- 99: Karen van Rensburg. (2020). Affidavit Regarding the National Prosecuting Authority. [Submission to the Zondo Commission]. pp. 8-9.

CAPTURING THE HAWKS

- 1: Wendell Roelf. (2008). South Africa's Scorpion crimefighters to be disbanded. *Reuters*. <https://www.reuters.com/article/us-safrica-scorpions-idUSLI223114320080212>
- 2: James de Villiers. (2020). Explainer: What happened to the Scorpions, and what should come in its place? *News24*. <https://www.news24.com/news24/analysis/explainer-what-happened-to-the-scorpions-and-what-should-come-in-its-place-20200811>
- 3: Guardian. (2003). Winnie Mandela found guilty of fraud. *The Guardian*. <https://www.theguardian.com/world/2003/apr/24/southafrica>
- 4: News24. (2004). Scorpions arrest Mark Thatcher. *News24*. <https://www.news24.com/news24/scorpions-arrest-mark-thatcher-20040825>
- 5: Riaan Wolmarans. (2005). Travelgate: Scorpions pounce on MPs. *M&G*. <https://mg.co.za/article/2005-01-21-travelgate-scorpions-pounce-on-mps/>
- 6: Alec Russell. (2008). Mbeki scrambles to protect Scorpions' sting. *Financial Times*. <https://www.ft.com/content/c1bd-7cb0-db35-11dc-9fdd-0000779fd2ac>
- 7: Thabo Mbeki. (2016). Behind the Narrative of the Abuse of State Power was a Larger Goal. [Media statement]. <https://www.sahistory.org.za/archive/behind-narrative-abuse-state-power-was-larger-goal-thabo-mbeki-8-february-2016>
- 8: M Montesh Berning. (2012). Countering corruption in South Africa: The rise and fall of the Scorpions and Hawks. *South African Crime Quarterly* 39. <http://www.ajol.info/index.php/sacq/article/view/101416/90604>
- 9: M Montesh Berning. (2012). Countering corruption in South Africa: The rise and fall of the Scorpions and Hawks. *South African Crime Quarterly* 39. <http://www.ajol.info/index.php/sacq/article/view/101416/90604>
- 10: M Montesh Berning. (2012). Countering corruption in South Africa: The rise and fall of the Scorpions and Hawks. *South African Crime Quarterly* 39. <http://www.ajol.info/index.php/sacq/article/view/101416/90604>
- 11: Glenister v President of the Republic of South Africa and Others (CCT 48/10). [2011]. <http://www.saflii.org/za/cases/ZACC/2011/6.html>
- 12: Glenister v President of the Republic of South Africa and Others (CCT 48/10). [2011]. <http://www.saflii.org/za/cases/ZACC/2011/6.html>
- 13: Karen Allen. (2010). Selebi case like a crime novel. *BBC*. <https://www.bbc.com/news/10490191>
- 14: Rebecca Davis. (2015). Blackened hawk down: The fall of Anwa Dramat. *Daily Maverick*. <https://www.dailymaverick.co.za/article/2015-04-22-blackened-hawk-down-the-fall-of-anwa-dramat/#>
- 15: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. ([https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf))
- 16: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. p. 46. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 17: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 18: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)

- 19: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\).&\(b\).Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a).&(b).Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 20: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\).&\(b\).Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a).&(b).Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 21: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority.
- 22: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority.
- 23: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\).&\(b\).Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a).&(b).Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 24: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority. p. 63.
- 25: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority.
- 26: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority.
- 27: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority. p. 64.
- 28: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority.
- 29: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority.
- 30: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority.
- 31: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority. p. 75.
- 32: Popo Molefe. (2017). Affidavit of Popo Molefe in Prasa vs Directorate for Priority Crime and the National Prosecuting Authority. p. 64.
- 33: Ryan Sacks. (2020). Affidavit and Annexure of Ryan Sacks. [Submission to the Zondo Commission].
- 34: Ryan Sacks. (2020). Affidavit and Annexure of Ryan Sacks. [Submission to the Zondo Commission].
- 35: Ryan Sacks. (2020). Affidavit and Annexure of Ryan Sacks. [Submission to the Zondo Commission]. p. 6.
- 36: Standing Committee on Public Accounts in Parliament of the Republic of South Africa. (2018). Hawks Current Cases. [Meeting minutes]. <https://pmg.org.za/committee-meeting/25963/>
- 37: Baldwin Ndaba. (2018). Prasa and Hawks derail R14-bn fraud inquiry. *Sunday Independent*. <https://www.pressreader.com/south-africa/the-sunday-independent/20180513/281530816664771>
- 38: Baldwin Ndaba. (2018). Prasa and Hawks derail R14-bn fraud inquiry. *Sunday Independent*. <https://www.pressreader.com/south-africa/the-sunday-independent/20180513/281530816664771>
- 39: Baldwin Ndaba. (2018). Prasa and Hawks derail R14-bn fraud inquiry. *Sunday Independent*. <https://www.pressreader.com/south-africa/the-sunday-independent/20180513/281530816664771>
- 40: Gauteng Transcribers. (2021). Commission of Inquiry into State Capture. Day 415. [Transcription]. https://www.statecapture.org.za/site/files/transcript/432/Day_415_-_2021-06-23.pdf
- 41: Brian Sokutu. (2021). 'No crime too minor,' ex-head of controversial police unit tells Zondo inquiry. *The Citizen*. <https://www.citizen.co.za/news/south-africa/state-capture/2546808/no-crime-too-minor-ex-head-of-controversial-police-unit-tells-zondo-inquiry/>
- 42: SAPS. (2017). Back to Basics: Toward a Safer Tomorrow. [Powerpoint presentation]. https://www.saps.gov.za/resource_centre/publications/presentation_maj_gen_pc_jacobs.pdf
- 43: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\).&\(b\).Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a).&(b).Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 44: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. p. 30. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 45: Gauteng Transcribers. (2021). Commission of Inquiry into State Capture. Day 415. [Transcription]. https://www.statecapture.org.za/site/files/transcript/432/Day_415_-_2021-06-23.pdf
- 46: Gauteng Transcribers. (2021). Commission of Inquiry into State Capture. Day 415. [Transcription]. https://www.statecapture.org.za/site/files/transcript/432/Day_415_-_2021-06-23.pdf
- 47: Gauteng Transcribers. (2021). Commission of Inquiry into State Capture. Day 415. [Transcription]. p. 124. https://www.statecapture.org.za/site/files/transcript/432/Day_415_-_2021-06-23.pdf
- 48: Gauteng Transcribers. (2021). Commission of Inquiry into State Capture. Day 415. [Transcription]. p. 125. https://www.statecapture.org.za/site/files/transcript/432/Day_415_-_2021-06-23.pdf
- 49: Kobus Roelofse. (2019). Affidavit and Annexures of Kobus Roelofse. [Submission to the Zondo Commission]. https://www.statecapture.org.za/site/files/documents/251/Day_165_17_September_2019_KK_2_1_Roelofse_KD_-_Affidavit_Annexures.pdf
- 50: Vincent Cruywagen. (2022). Ex-spy boss Richard Mdluli gets parole – now for the long-delayed slush-fund abuse case. *Daily Maverick*. <https://www.dailymaverick.co.za/article/2022-07-05-ex-spy-boss-richard-mdluli-gets-parole-now-for-the-long-delayed-slush-fund-abuse-case/>
- 51: Kobus Roelofse. (2019). Affidavit and Annexures of Kobus Roelofse. [Submission to the Zondo Commission]. p. 33. https://www.statecapture.org.za/site/files/documents/251/Day_165_17_September_2019_KK_2_1_Roelofse_KD_-_Affidavit_Annexures.pdf
- 52: Kobus Roelofse. (2019). Affidavit and Annexures of Kobus Roelofse. [Submission to the Zondo Commission]. https://www.statecapture.org.za/site/files/documents/251/Day_165_17_September_2019_KK_2_1_Roelofse_KD_-_Affidavit_Annexures.pdf
- 53: Kobus Roelofse. (2019). Affidavit and Annexures of Kobus Roelofse. [Submission to the Zondo Commission]. https://www.statecapture.org.za/site/files/documents/251/Day_165_17_September_2019_KK_2_1_Roelofse_KD_-_Affidavit_Annexures.pdf
- 54: Kobus Roelofse. (2019). Affidavit and Annexures of Kobus Roelofse. [Submission to the Zondo Commission]. p. 64. https://www.statecapture.org.za/site/files/documents/251/Day_165_17_September_2019_KK_2_1_Roelofse_KD_-_Affidavit_Annexures.pdf
- 55: Helen Suzman Foundation and another v Minister of Police and Others. [2017]. <https://hsf.org.za/litigation/cases/hsf-and-another-v-minister-of-police-and-others-2017-3-all-sa-253-gp-17-march-2017/judgments/2-hsf-and-another-v-minister-of-police-and-others-2017-3-all-sa-253-gp-10-may-2017.pdf>

- 56: Helen Suzman Foundation and another v Minister of Police and Others. [2017]. <https://hsf.org.za/litigation/cases/hsf-and-another-v-minister-of-police-and-others-2017-3-all-sa-253-gp-17-march-2017/judgments/2-hsf-and-another-v-minister-of-police-and-others-2017-3-all-sa-253-gp-10-may-2017.pdf>
- 57: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 58: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 59: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 60: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. p. 21. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 61: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. p. 21. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 62: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. p. 21. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 63: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 64: Jan Mabula. (2020). Affidavit and Annexures of Jan Mabula. [Submission to the Zondo Commission]. p.8. https://www.statecapture.org.za/site/files/documents/326/Day_253_20_August_2020_Y16_Mabula_NJ.pdf
- 65: Jan Mabula. (2020). Affidavit and Annexures of Jan Mabula. [Submission to the Zondo Commission]. p.8. https://www.statecapture.org.za/site/files/documents/326/Day_253_20_August_2020_Y16_Mabula_NJ.pdf
- 66: Jan Mabula. (2020). Affidavit and Annexures of Jan Mabula. [Submission to the Zondo Commission]. p.8. https://www.statecapture.org.za/site/files/documents/326/Day_253_20_August_2020_Y16_Mabula_NJ.pdf
- 67: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 68: Jan Mabula. (2020). Affidavit and Annexures of Jan Mabula. [Submission to the Zondo Commission]. https://www.statecapture.org.za/site/files/documents/326/Day_253_20_August_2020_Y16_Mabula_NJ.pdf
- 69: Jan Mabula. (2020). Affidavit and Annexures of Jan Mabula. [Submission to the Zondo Commission]. p. 8. https://www.statecapture.org.za/site/files/documents/326/Day_253_20_August_2020_Y16_Mabula_NJ.pdf
- 70: Independent Police Investigative Directorate. (2021). Ipid Presentation to the Sec 100 Ad-Hoc Committee. Slide 5.
- 71: Robert McBride. (2019). Affidavit and Annexure of Robert McBride. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_\(Part_1\).pdf](https://www.statecapture.org.za/site/files/documents/95/Y_Robert_John_McBride_Affidavit_&Annexure_(Part_1).pdf)
- 72: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. p. 63. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 73: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. p. 63. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 74: Johan Booysen. (2019). Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 75: Sibusiso Zungu. (2018). Sworn Statement. p. 4. Attached as JWB 27 to the Affidavit and Annexures of Johan Wessel Booysen. [Submission to the Zondo Commission]. [https://www.sastatecapture.org.za/site/files/documents/98/Z\(a\)_&\(b\)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf](https://www.sastatecapture.org.za/site/files/documents/98/Z(a)_&(b)_Johan_Wessel_Booyesen_-_Affidavit_&Annexure.pdf)
- 76: Jan Mabula. (2020). Affidavit and Annexures of Jan Mabula. [Submission to the Zondo Commission]. [https://www.statecapture.org.za/site/files/documents/395/Day_253_-_Z\(n\)_Mabula_re_Booyesen_\(20.08.2020\).pdf](https://www.statecapture.org.za/site/files/documents/395/Day_253_-_Z(n)_Mabula_re_Booyesen_(20.08.2020).pdf)
- 77: Jan Mabula. (2020). Affidavit and Annexures of Jan Mabula. [Submission to the Zondo Commission]. p.12. [https://www.statecapture.org.za/site/files/documents/395/Day_253_-_Z\(n\)_Mabula_re_Booyesen_\(20.08.2020\).pdf](https://www.statecapture.org.za/site/files/documents/395/Day_253_-_Z(n)_Mabula_re_Booyesen_(20.08.2020).pdf)
- 78: Independent Police Investigative Directorate. (2021). Ipid Presentation to the Sec 100 Ad-Hoc Committee.
- 79: Jan Mabula. (2020). Affidavit and Annexures of Jan Mabula. [Submission to the Zondo Commission]. p.21. https://www.statecapture.org.za/site/files/documents/326/Day_253_20_August_2020_Y16_Mabula_NJ.pdf
- 80: Independent Police Investigative Directorate. (2021). Ipid Presentation to the Sec 100 Ad-Hoc Committee.
- 81: Independent Police Investigative Directorate. (2021). Ipid Presentation to the Sec 100 Ad-Hoc Committee.
- 82: Afriforum. (2022). Nengwane inquest in which police officials are implicated postponed to October. <https://www.polity.org.za/article/nengwane-inquest-in-which-police-officials-are-implicated-postponed-to-october-2022-02-28>

PROSECUTIONS AND ACCOUNTABILITY

- 1: Zondo Commission. (2022). Judicial Commission of Inquiry into State Capture Report: Volume 1. p. 838. <https://www.thepresidency.gov.za/download/file/fid/2357>
- 2: Zondo Commission. (2022). Judicial Commission of Inquiry into State Capture Report: Volume 1. p. 838. <https://www.thepresidency.gov.za/download/file/fid/2357>
- 3: Greg Nicholson. (2021). Denel employees ask court to impose business rescue. *Daily Maverick*. <https://www.dailymaverick.co.za/article/2021-09-09-denel-employees-ask-court-to-impose-business-rescue/>
- 4: SARS. (2021). SARS Welcomes the MTBPS Revenue Announcement. <https://www.sars.gov.za/media-release/sars-welcomes-the-mtbps-revenue-announcement/>
- 5: National Prosecuting Authority. (2021). Overview Oof NDPP and PFMA Annual Report 2020/21 & 2021/22 Year-to-Date Performance. [Powerpoint presentation submitted to Parliament]. <https://pmg.org.za/committee-meeting/33786/>
- 6: National Prosecuting Authority. (2021). Overview of NDPP and PFMA Annual Report 2020/21 & 2021/22 Year-to-Date Performance. [Powerpoint presentation submitted to Parliament]. <https://pmg.org.za/committee-meeting/33786/>
- 7: Lukas Muntingh. (2022). Key Issues in the NPA: Knowledge, Skills, and Human Resources. [Issue Paper 2]. Africa Criminal Justice Reform and Dullah Omar Institute. <https://acjr.org.za/acjr-publications/npa-issue-paper-human-resources.pdf>

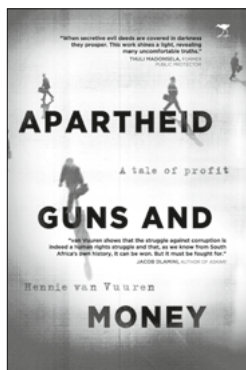
- 8: National Prosecuting Authority. (2021). Overview of NDPP and PFMA Annual Report 2020/21 & 2021/22 Year-to-Date Performance. [Powerpoint presentation submitted to Parliament]. Slide 9. Accessible via: <https://pmg.org.za/committee-meeting/33786/>
- 9: DoJ&CD & NPA 2020/21 Annual Report, with Deputy Minister. [Meeting summary]. <https://pmg.org.za/committee-meeting/33786/>
- 10: Justice and Correctional Services Committee. (2021). DoJ&CD & NPA 2020/21 Annual Report, with Deputy Minister. [Meeting summary]. <https://pmg.org.za/committee-meeting/33786/>
- 11: National Prosecuting Authority. (2021). Overview of NDPP and PFMA Annual Report 2020/21 & 2021/22 Year-to-Date Performance. [Powerpoint presentation submitted to Parliament]. <https://pmg.org.za/committee-meeting/33786/>
- 12: National Prosecuting Authority. (2021). Overview of NDPP and PFMA Annual Report 2020/21 & 2021/22 Year-to-Date Performance. [Powerpoint presentation submitted to Parliament]. Slide 22. <https://pmg.org.za/committee-meeting/33786/>
- 13: National Prosecuting Authority. (2021). Overview of NDPP and PFMA Annual Report 2020/21 & 2021/22 Year-to-Date Performance. [Powerpoint presentation submitted to Parliament]. <https://pmg.org.za/committee-meeting/33786/>
- 14: Petrus Marais, Karam Singh, and Kaede Wildschut. (2021). Deferred prosecution agreements: A solution to backlog at the prosecutor. *Business Day*. <https://www.businesslive.co.za/bd/opinion/2021-06-03-deferred-prosecution-agreements-a-solution-to-backlog-at-the-prosecutor/>
- 15: Petrus Marais, Karam Singh, and Kaede Wildschut. (2021). Deferred prosecution agreements: A solution to backlog at the prosecutor. *Business Day*. <https://www.businesslive.co.za/bd/opinion/2021-06-03-deferred-prosecution-agreements-a-solution-to-backlog-at-the-prosecutor/>
- 16: OECD. (2019). Resolving Foreign Bribery Cases with Non-Trial Resolutions: OECD Data Collection Questionnaire Results. <https://www.oecd.org/corruption/anti-bribery/Country-Data-Tables-from-Resolving-Foreign-Bribery-Cases.pdf>
- 17: FTI Consulting and Corruption Watch. (2021). Deferred Prosecution Agreements: A Solution to Prosecuting Backlog. [Webinar]. <https://www.fticonsulting.com/emea/insights/webinars/deferred-prosecution-agreements-solution-prosecuting-backlog>
- 18: Linda Ensor. (2021). NPA looks to resolution of disputes without trial. *Business Day*. <https://www.businesslive.co.za/bd/national/2021-11-14-npa-looks-to-resolution-of-disputes-without-trial/>
- 19: Petrus Marais, Karam Singh, and Kaede Wildschut. (2021). Deferred prosecution agreements: A solution to backlog at the prosecutor. *Business Day*. <https://www.businesslive.co.za/bd/opinion/2021-06-03-deferred-prosecution-agreements-a-solution-to-backlog-at-the-prosecutor/>
- 20: Linda Ensor. (2021). NPA looks to resolution of disputes without trial. *Business Day*. <https://www.businesslive.co.za/bd/national/2021-11-14-npa-looks-to-resolution-of-disputes-without-trial/>
- 21: FTI Consulting and Corruption Watch. (2021). Deferred Prosecution Agreements: A Solution to Prosecuting Backlog. [Webinar]. <https://www.fticonsulting.com/emea/insights/webinars/deferred-prosecution-agreements-solution-prosecuting-backlog>
- 22: Joseph Ax. (2014). U.S. judge reluctantly approves SEC-Citigroup \$285 million deal. *Reuters*. <https://www.reuters.com/article/us-citigroup-sec-idUSKBN0G510C20140805>
- 23: Joseph Ax. (2014). U.S. judge reluctantly approves SEC-Citigroup \$285 million deal. *Reuters*. <https://www.reuters.com/article/us-citigroup-sec-idUSKBN0G510C20140805>
- 24: Joseph Ax. (2014). U.S. judge reluctantly approves SEC-Citigroup \$285 million deal. *Reuters*. <https://www.reuters.com/article/us-citigroup-sec-idUSKBN0G510C20140805>
- 25: Joseph Ax. (2014). U.S. judge reluctantly approves SEC-Citigroup \$285 million deal. *Reuters*. <https://www.reuters.com/article/us-citigroup-sec-idUSKBN0G510C20140805>
- 26: Emily Flitter. (2020). Citigroup is fined \$400 million over 'longstanding' internal problems. *New York Times*. <https://www.nytimes.com/2020/10/07/business/citigroup-fine-risk-management.html>
- 27: Transparency International UK. (2010). Settlement of BAE Systems Corruption Cases: Significant Issues of Concern. https://www.transparency.org/files/content/pressrelease/TI-UK_Note_BAE_Corruption_Cases_settlements_Financial_11-2-10.pdf
- 28: Transparency International UK. (2010). Settlement of BAE Systems Corruption Cases: Significant Issues of Concern. https://www.transparency.org/files/content/pressrelease/TI-UK_Note_BAE_Corruption_Cases_settlements_Financial_11-2-10.pdf
- 29: Randall Eliason. (2008). We need to indict them. *Legal Times XXXI*, no. 38.
- 30: FT View. (2015). Misbehaving banks must have their day in court. *Financial Times*. <https://next.ft.com/content/f26a9acc-e515-11e4-a02d-00144feab7de>
- 31: Jeffrey Davidson. (2017). The implications of the Rolls-Royce DPA. <https://iclg.com/cdr/expert-views/7535-the-implications-of-the-rolls-royce-dpa>
- 32: US Department of Justice. (2019). Justice Department Announces Deferred Prosecution Agreement with HSBC Private Bank (Suisse) SA. <https://www.justice.gov/opa/pr/justice-department-announces-deferred-prosecution-agreement-hsbc-private-bank-suisse-sa>
- 33: US Department of Justice. (2012). HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement. <https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations>
- 34: Rob Davies. (2017). HSBC shut down accounts linked to Gupta scandal. *The Guardian*. <https://www.theguardian.com/business/2017/nov/10/hsbc-shut-down-accounts-linked-to-gupta-scandal>
- 35: Enoch Godongwana. (2022). 2022 Budget Speech. <https://www.gov.za/speeches/minister-enoch-godongwana-2022-budget-speech-23-feb-2022-0000>
- 36: Enoch Godongwana. (2022). 2022 Budget Speech. <https://www.gov.za/speeches/minister-enoch-godongwana-2022-budget-speech-23-feb-2022-0000>
- 37: Enoch Godongwana. (2022). 2022 Budget Speech. <https://www.gov.za/speeches/minister-enoch-godongwana-2022-budget-speech-23-feb-2022-0000>
- 38: Enoch Godongwana. (2021). 2021 Medium-Term Budget Policy Statement. [Submitted to Parliament]. <https://www.gov.za/speeches/minister-enoch-godongwana-2021-medium-term-budget-policy-statement-11-nov-2021-0000>
- 39: Enoch Godongwana. (2021). 2021 Medium-Term Budget Policy Statement. [Submitted to Parliament]. <https://www.gov.za/speeches/minister-enoch-godongwana-2021-medium-term-budget-policy-statement-11-nov-2021-0000>
- 40: Enoch Godongwana. (2022). 2022 Budget Speech. <https://www.gov.za/speeches/minister-enoch-godongwana-2022-budget-speech-23-feb-2022-0000>
- 41: Enoch Godongwana. (2021). 2021 Medium-Term Budget Policy Statement. [Submitted to Parliament]. <https://www.gov.za/speeches/minister-enoch-godongwana-2021-medium-term-budget-policy-statement-11-nov-2021-0000>
- 42: Open Secrets and Shadow World Investigations. (2021). Recommendations on Corporations Implicated in State Capture. [Submission to the Zondo Commission].

OUR PUBLICATIONS

Most of our publications are available for free download on our website. Just visit:
www.opensecrets.org.za/publications



OUR INVESTIGATIONS:



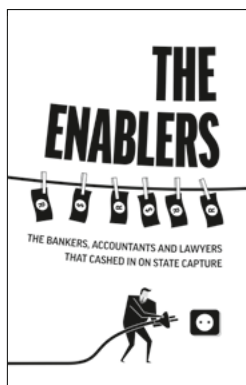
APARTHEID GUNS AND MONEY: **A TALE OF PROFIT**

Published in 2017, this exposé draws on extensive archival research and interviews to reveal the global covert network of corporations, spies, banks, and politicians in nearly 50 countries that operated in secret to counter sanctions against the apartheid regime, and profit in return.



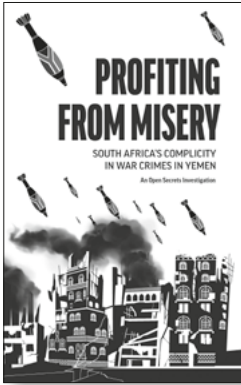
THE BOTTOM LINE : **WHO PROFITS FROM UNPAID PENSIONS?**

This investigative report is the culmination of a year-long investigation by Open Secrets into the role of corporations in the erroneous cancellation of pension funds between 2007 and 2013. The Bottom Line focusses on the role played by the big corporations who administer these funds, such as Liberty Corporate and Alexander Forbes. The report also looks into the role of the regulator in creating an enabling environment for the 'Cancellations Project'.



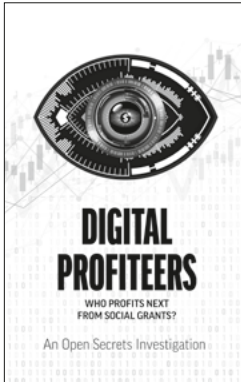
THE ENABLERS: **THE BANKERS, ACCOUNTANTS AND LAWYERS** **THAT CASHED IN ON STATE CAPTURE**

This investigative report focuses on the role of banks, accounting firms, consultants, and lawyers in facilitating criminal conduct that formed part of the state capture enterprise. The report shows that the systems that enable grand corruption and state capture are global in nature, and that private sector elites are central to the problem. It was intended to provide evidence and analysis to assist Justice Zondo and the State Capture Inquiry with their pressing task in 2020.



PROFITING FROM MISERY: SOUTH AFRICA'S COMPLICITY IN WAR CRIMES IN YEMEN

This investigative report reveals the South African arms companies that have cashed in on the sale of weapons to Saudi Arabia and the United Arab Emirates (UAE), two central parties to the Yemeni conflict.



DIGITAL PROFITEERS: WHO PROFITS NEXT FROM SOCIAL GRANTS

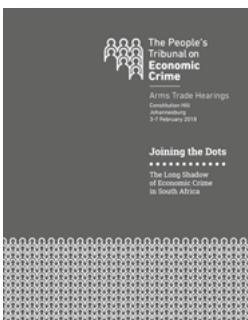
This investigative report focuses on how the digitalisation of state services offers opportunities for corporations to generate excessive profits from digital systems that can harm vulnerable people.



WANTED: THE STATE CAPTURE CONSPIRATORS

This investigative report traces the networks of capture and corruption at the Passenger Rail Agency of SA, SA Airways, Denel and the SA Revenue Service, and identifies the looters, fixers and politicians who should now be held to account.

OUR REPORTS:

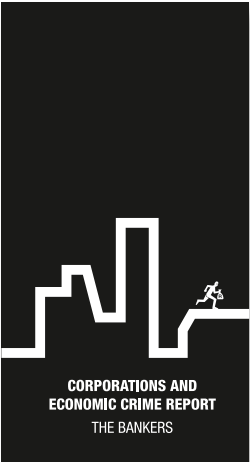


JOINING THE DOTS: THE LONG SHADOW OF ECONOMIC CRIME IN SOUTH AFRICA

Prepared for the first People's Tribunal on Economic Crime, this report examined continuities in economic crime and corruption in South Africa related to the arms trade, from apartheid to contemporary state capture. In doing so it highlighted the powerful deep state networks that have facilitated these crimes.

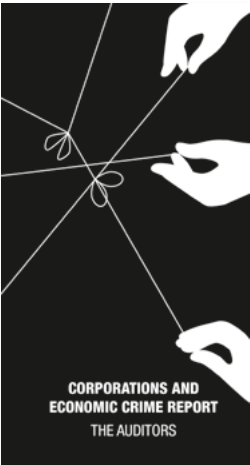
OUR REPORTS:

[CONTINUED]



CORPORATIONS AND ECONOMIC CRIME REPORT (VOLUME 1)

The Corporations and Economic Crime Reports (CECR) explores the most egregious cases of economic crimes and corruption by private financial institutions, from apartheid to the present day. In doing so, we aim to highlight the key themes that link corporate criminality across these periods of time, focusing on the role of the private sector, a critical blind spot in the discourse around economic crime. This first volume of the series focuses on the role of banks and other financial sector actors in corporate criminality.



CORPORATIONS AND ECONOMIC CRIME REPORT (VOLUME 2)

This second volume in our Corporations and Economic Crime Reports (CECR) series focusses on the big four auditing firms- PWC, KPMG, Deloitte and EY and their role in some of the most egregious examples of economic crime



JOINT SUBMISSION TO THE ZONDO COMMISSION: AN AGENDA FOR ACTION

This Agenda for Action is based on detailed submissions made to the Zondo Commission by organisations of the Civil Society Working Group on State Capture (CSWG) covering the widespread impact of state capture on lives of people in South Africa. Open Secrets acts as the secretariat of the CSWG. Editors: Naushina Rahim, Zen Mathe and Hennie van Vuuren.



SUPPORT OPEN SECRETS

We are building a community that actively supports our work through small financial donations and pro-bono work. We investigate difficult issues, treading where it is hard to go, and challenge powerful banks, arms companies, and regulators who operate with impunity. We do so fearlessly and do not accept funds from governments and corporations, which ensures our independence. Your support means we can do more work to challenge the powerful.

**JOIN US ON THIS JOURNEY, SHOW YOUR
SOLIDARITY, SUPPORT OPEN SECRETS:**
WWW.OPENSECRETS.ORG.ZA/SUPPORT



open secrets

power & profit | truth & justice