

# Corruption & State Capture: What Can Citizens Do?

*Sarah Bracking*

*Abstract: Given South Africa's recent history of corrupt state capture, the country faces two possible futures: a further decline into spoils politics or a return to an improved constitutional democracy. This essay argues that the latter is more likely in the long run, but is by no means guaranteed. Achieving such a future requires public administrators, citizens, the private sector, and top lawmakers to insist on a public-focused social order. This essay suggests that a coalition of anticorruption agents must be built across the public and private sectors, and that this effort will be successful to the extent that it can link people across traditional class and race divides.*

The Machiavellian behavior of political elites in modern Africa, as elsewhere, often attracts little prosecutorial response due to the widespread practice of granting immunity to current and former officeholders. Former President Jacob Zuma of South Africa is no exception: he was able to secure his first term in office despite previous charges of rape and 783 counts of fraud, corruption, and racketeering. After this inauspicious start, Zuma continued throughout his tenure (from 2009 to 2018) to accrue more corruption accusations while continuing to evade prosecution.<sup>1</sup> While political corruption is not new in postapartheid South Africa, the ten-year Zuma administration marked a shift from political corruption in the form of kickbacks and contracts for relatives to a more structural pattern of systematic state capture pursued with impunity. Since Zuma's forced resignation in February 2018, his deputy, Cyril Ramaphosa, has served as president. However, the degree to which the deeper "shadow state" will persist remains to be seen. The corrupt clique run by Zuma (and the Gupta family, Zuma's close associates) is essentially defunct, but weak and porous state structures governing con-

SARAH BRACKING is Professor in the School of Global Affairs at King's College London. She is the author of *The Financialisation of Power: How Financiers Rule Africa* (2016) and *Money and Power: Great Predators in the Political Economy of Development* (2009).

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tracting and procurement remain for others to exploit, potentially including many Zuma-era persons who remain in place in the shadow state.

*State capture* refers to the process of obtaining, or capturing, state regulatory authority without democratic authorization. The persons capturing state powers can be private or – as in South Africa – a mix of politicians and private actors who have gained influence over regulatory processes to serve private interests. State capture of the South African government under the Zuma regime proceeded in large part through control of the contracting authorities for lucrative state-owned enterprises (SOEs). More recently, the power elite also consolidated state control by capturing the prosecuting authorities responsible for pursuing redress for criminal corruption within SOEs.

Economist Haroon Borhat and colleagues have argued that the Zuma-centered power elite staged a silent coup during the ten-year period from 2007 to 2017. This operation was not the result of isolated acts of corruption, but a systematically pursued “political project of a well-organised network.”<sup>2</sup> Journalist and political adviser Sarah Chayes has noted that, in many countries, high levels of political corruption lead to the criminalization of the state and a corresponding deterioration of security. However, the case of South Africa is not one of state capture by a criminal network, but an insider “political project at work to repurpose state institutions to suit a constellation of rent-seeking networks.”<sup>3</sup> To accomplish this political project, Zuma and his cronies established a symbiotic relationship between holders of political office and private actors, causing power to shift increasingly to a “shadow state,” where “deniability is valued, culpability is distributed (though indispensability is not taken for granted) and where trust is maintained through mutually binding fear.”<sup>4</sup> This shadow state also ensures that co-opted security and intelligence ap-

paratuses intimidate any political person who resists.

While the contractual relationships of the South African “shadow state” are complex, during the Zuma era, they all tended to involve associates of the Zuma family, members of the Gupta family (hence the moniker “Guptagate” for recent corruption revelations), and the families’ relatives or close associates. Those close to the former president aimed “to convert political leverage into commercial gain” by fashioning themselves as “brokers-cum-fixers” in contracts involving state enterprises.<sup>5</sup> They would set up a legitimate commercial vehicle, usually with Zuma family members as beneficiaries, and then “bully” other players into the contract, arguing that without their high-level political connections, the deal would never go through. Using this negotiating position, they would then change the rules of the contract, often to extract huge fees and service costs, which they subsequently sent to offshore tax havens.<sup>6</sup> For example, the Guptas used a shell company called Homix to broker a deal between Transnet (the national rail and port authority) and the telecom company Neotel, netting themselves more than ZAR100 million (about \$8.4 million) simply for ensuring that Neotel got the Transnet deal. The “success fees” from the deal were then funneled to tax havens such as the United Arab Emirates and Hong Kong through the Gupta-related intermediaries YKA International Trading Company and Morningstar International Trade.<sup>7</sup> Using this *modus operandi*, Zuma-Gupta cronies secured inflated procurement contracts with the largest state-owned enterprises, including aerospace conglomerate Denel, rail companies Transnet and Passenger Trains, electricity utility Eskom, and the Departments of Social Security and Mineral Resources.

This economic project began with the state-owned enterprises but, critically, evolved into state institutional capture.

Beginning in about 2012, the clique began to capture key sites of financial control, ultimately including the National Treasury itself. Other captured institutions included the Financial Intelligence Centre, which regulates illicit financial flows; the Chief Procurement Office, which regulates and raises the alarm in procurement activities; the Public Investment Corporation; the boards of development finance institutions; and the guarantee system, which raises finances for state entities – without parliamentary oversight.<sup>8</sup> The March 2017 cabinet reshuffle that ousted Finance Minister Pravin Gordhan is cited as the moment when the network finally gained control of the National Treasury. The network also simultaneously captured key judicial institutions, such as the National Prosecuting Authority.

With the highest echelons of the state captured – seemingly including the National Prosecuting Authority, the Directorate for Priority Crime Investigation (also known as the Hawks), the Chief of Police, and the Public Protector's Office – there was no one left to indict President Zuma as corruption revelations emerged en masse in 2017. There were also sinister signs of wrongdoing within the state itself, indicating that rogue elements of the intelligence services or a private mafia may be interfering with law enforcement. For example, 2017 saw a spate of crimes seemingly linked to corruption scandals, including the theft of fifteen computers from Chief Justice Mogoeng Mogoeng's offices in March; the June death of a secretary at Eskom connected to corrupt CEO Brian Molefe's fraudulent pension payout; and three burglaries in July in which computers were stolen from the offices of the Hawks, the National Director of Public Prosecutions, and the chief prosecutor. Intelligence services also allegedly produced spurious reports about foreign interference in South African financial and political affairs; in fact, President Zuma insinuated

that such a report influenced his decision to fire Gordhan.<sup>9</sup>

As the state-capture project progressed, so too did public opposition, culminating in a watershed moment of confrontation between Zuma allies and the opposition in 2017. As mounting evidence of the Zuma administration's cronyism emerged in the public sphere in 2016 and 2017, the opposition rallied to accuse Zuma of corruption. The term "state capture" appeared in accusations leveled by opposition parties, watchdog organizations such as Right to Know and Corruption Watch, investigative journalists, and even some elements of the ANC itself. Most ANC members, however, countered with rhetorical maneuvers designed to draw attention away from Zuma's malfeasance. They invoked "white monopoly capital" as the real culprit, referring to the continued hold of White-owned business in the South African economy, and cynically repurposing the language of the radical agenda of anti-apartheid. ANC members suggested that all societal and economic ills affecting the country could be traced back to White business owners, and issued a new clarion call for "radical economic transformation." This motif was intended to lend an air of legitimacy and moral righteousness to a grey area of graft by suggesting that if White capital will not change voluntarily, then it is acceptable for political leaders to pursue extralegal means of redistributing wealth, even if these elites are themselves the primary beneficiaries. Thus, Zuma's defenders attempted to obscure and explain away a material pattern of endemic graft and fraud.

However, the 2016 publication of then-Public Protector Thuli Madonsela's *State of Capture* report, Bhorat's *Betrayal of the Promise*, and numerous reports of corruption in the critical press added substantially to the base of evidence against Zuma and his "silent coup."<sup>10</sup> These timely reports com-

plemented the actions of whistleblowers and public protesters, weakening Zuma's clique. Indeed, as the full extent of political corruption became apparent beginning in May 2017, the state-capture project appeared to be unraveling: the country exploded in the largest public demonstrations since 1994, demanding that the president step down; and a succession of persons connected to the capture of procurement budgets in SOEs resigned. While President Zuma initially dismissed the demonstrators as disgruntled "White people," it became clear from social media and a stream of senior ANC stalwarts defaulting from the party line that a wide swath of Black ANC support also no longer saw economic transformation in Zuma's agenda, but graft instead. By Workers' Day (May 1), huge crowds of trade unionists and workers were chanting anti-Zuma slogans in the streets and demanding his resignation. Apparently, public shaming was still possible, which came as a surprise to many political commentators.

Resignations and firings resulted, including those of Brian Molefe (fired) and Ben Ngubane (resigned) from Eskom in May and June 2017, respectively. Even the Gupta family lawyer Gert van der Merwe turned state witness in June 2017 to avoid prosecution for money laundering relating to a 2010 case in Limpopo. Brian Molefe, who seemed like the personification of state enterprise takeover, filed papers to overturn a court order banning him from entering Eskom property and petitioned for reinstatement to his position. Both petitions were unsuccessful, proving Molefe's disposability to the clique. In short, by 2017, Zuma's twenty-year project of corruption and state capture was looking decidedly shabby. However, despite the turnover of key clique members and increased pushback from an outraged public, the shadow state remained after the dust settled. Indeed, the new finance minister, Malusi Gigaba, is a powerful clique member in his own right.

In his former role as minister of social enterprises, he endorsed inflated and corrupt locomotion deals with a Gupta-connected firm at Transnet, while also assisting in reshuffling the boards of state-owned enterprises to include key clique cronies.<sup>11</sup> The fact that corrupt individuals ascend to empty seats in office indicates that structural corruption may not be so easy to eradicate in South Africa. South Africa's current president, Cyril Ramaphosa, is currently enjoying a "honeymoon period" in which he claims to be in the process of "cleaning up" the government's corrupt upper echelons with the assistance of Pravin Gordhan (who was fired by Zuma but reappointed by Ramaphosa in February as minister of public enterprises). However, there remain many persons in political and administrative office associated with the prior regime and its networks of corruption.

There appear to be two possible futures diverging from 2017's watershed moment in the state-capture process. The first is based on political scientist Chris Allan's model of "terminal spoils politics," wherein corruption becomes endemic and systematic, putting the liberal state at risk of collapse.<sup>12</sup> This resembles Chayes's criminalization model, in which the shadow state deteriorates into a dominant criminal network. However, extreme and prevalent criminal corruption may not mean full state collapse. That an apparently liberal state can survive such an onslaught has been previously demonstrated in several Anglophone ex-colonies such as Zimbabwe, Nigeria, and Kenya. The flexibility of the liberal institutional form means that empty democratic rituals, such as rigged elections, can continue while the center of the establishment serves only a crony faction. The faction's power is particularly strong when it controls the uniformed services (and perhaps also a privatized extralegal force) and is prepared to perpetrate atrocities against those who challenge its

power.<sup>13</sup> The recent “coup” in Zimbabwe illustrates this pattern: state military personnel, part of the powerful Joint Operations Command structure, were able to depose an aging president in favor of their preferred candidate, enabling the continuation of a criminalized clique’s power.

The second possible future is that the post-Zuma era will mark a true change in the state’s corrupt practices, the clique in charge will rotate, and the rule of law will strengthen. The many points of resistance to corruption in South Africa suggest that a return to a more constitutional order is still possible. Given that South Africa has a free and fair system of elections, a sophisticated free press, and a robust business sector, the question is just how far a concerted plot to capture the state can progress before it is countered by some sort of resistance. Let us now explore these two possible futures in turn, before assessing the strength of the anticorruption coalition already in place.

In 2013, development scholar Karl von Holdt wrote presciently about a possible transition to what he termed “violent democracy” in South Africa – involving the capture of the prosecuting authorities and a regression into localized violence at ward level. In this model, democracy and violence, instead of being mutually exclusive as many assume, may be configured into a symbiotic relationship such that violence plays a key role in social disputes and reorderings. Thus, it is not that democracy has broken down, but that violence becomes part of the systematic deployment of power.<sup>14</sup> Von Holdt has noted that his analysis is similar to that of political economist Mush-taq Khan, who argued that democratization processes in developing countries did not so much replace patron-client relationships as accommodate them.<sup>15</sup> “Violent democracy” builds on this observation, positing that democracies can accommodate and be propped up by violence as well.

Certainly, the concept of violent democracy, in which violence is distributed to groups beyond the state, maps well onto the South African transition.<sup>16</sup> Even protests concerning everyday matters such as service delivery failure or student fees are generally marked by a high level of violence and repression. Events such as the infamous Marikana Massacre of 2012, when thirty-four miners were shot and killed by police, demonstrate that law-enforcement agents are willing and able to kill large numbers of demonstrators. In a highly unequal society such as South Africa’s, violence is used to maintain, challenge, or change the distribution of power.<sup>17</sup> Once a regime has proven its brutality, citizens live in constant fear of the credible threat of violence should they stray from the party line. In short, disobedience toward the ruling party is accompanied by a permanent threat of potentially lethal retaliation. This is a reality in countries such as Zimbabwe, where the Gukurahundi massacres in the mid-1980s, Operation Marambatsvina in 2005, and election-linked political assassinations and torture in 2009 have made political violence and intimidation a matter of course. This norm has fast taken hold in South Africa, particularly in the province of KwaZulu-Natal, where those targeted include political and NGO officeholders who protest against corruption. For example, a number of those protesting mining companies’ cozy relationships with local chiefs and the ruling party have been murdered or assassinated, such as Sikhosphi “Bazooka” Rhadebe, a vocal opponent of potential uranium mining on South Africa’s Wild Coast, whose execution-style killing in March 2017 delivered a strong political warning.

Elite factions often fight within the state for control of its sites of wealth accumulation, which can generate transfer of formal power.<sup>18</sup> These smaller skirmishes are often linked to internecine contests within the security services and may lead to the de-

ployment of personnel to assassinate opponents. In the case of South Africa, cliques compete for political office, but also for resources that may be useful in a holistic strategy of graft, including political enablers and access to violence. To this end, cliques attempt to capture the intelligence agencies, police, and the National Prosecuting Authority to dictate the selective application of the rule of law, sparing faction members from investigation or prosecution and targeting opponents when needed. In this respect, von Holdt notes that

these attempts are not necessarily successful, as they run into resistance both from those state officials who do take seriously the impartial procedures that are central to the rule of law, as well as from allies of opposing factions who attempt to protect or reinstate investigations, or leak sufficient information to force application of the law.<sup>19</sup>

However, President Zuma's latter years in office make a convincing case for his successful capture of prosecuting authority and undue influence over the judiciary. This influence dates back to a corrupt arms deal in 1997 in which Zuma was implicated when he was deputy president. The arms-deal cases against Zuma were thrown out of court in 2006, dismissed due to procedural irregularities. (The ruling judge left open the possibility for *another* judge to reopen and hear the case, and these charges were the grounds for Zuma's April 2018 summons.) Judges in South Africa generally remain free and independent, but there is a clear tendency to behave differently in cases involving the president. Those procedural irregularities during the arms deal, for example, are alleged to have arisen from Chief Judge President John Hlophe improperly approaching Constitutional Court Judges Bess Nkabinde and Chris Jafta to influence that Court's ruling on the lawfulness of search and seizures of Zuma's home. Zuma is also renowned for what has been

termed his "Stalingrad Strategy" of stalling, delaying, and posting counter-cases involving procedure in order to delay appeals indefinitely, get cases dismissed, or prevent cases from coming to court at all. After the spy-tape saga,<sup>20</sup> 786 corruption charges against President Zuma were dropped in April 2009, and even the revelation of the ZAR246 million in state funds he spent on upgrading his private home from 2013 to 2016 could not unseat him.

More recently, Madonsela's *State of Capture* report recommended that a commission of inquiry be set up to examine Zuma's wrongdoings. Zuma demanded that a court review the claim, citing concern that it would set a bad precedent to have the chief justice appoint a judge to head the inquiry, as it is usually the president's prerogative to establish and staff commissions of inquiry. However, Zuma's close implication in this case would have made it farcical to follow the usual procedures, and most believed his review request to be another example of his delaying tactics. In response to Zuma's complaint, the Democratic Alliance filed a declaratory order that the president had failed to implement the public protector's remedial actions, but Zuma countered that if he were to implement the remedial actions first, his review application would have been simply "academic"; so the review was permitted to go forward. Indeed, Zuma's notorious Stalingrad Strategy successfully delayed the work of the Commission until his departure from office in February 2018; the fate of the Commission's investigation is now unclear.

This story is typical of an administration in which very few cases of corruption were ever prosecuted, and those that were ended in plea bargains. The Anti-Corruption Task Team (ACTT), which unites the Hawks, the National Prosecuting Authority (NPA), the South African Revenue Service (SARS), the Independent Police Investigative Directorate (IPID), and the Financial Intelligence

Centre (FIC), oversees processing corruption cases, but has a poor record of seeing cases through to prosecution. ACTT recently reported to parliament's watchdog on public spending, the Standing Committee on Public Accounts (SCOPA), that some cases in its purview date back over a decade. Overall, ACTT had 284 outstanding cases related to provincial government (supported by a 111-page dossier) and 244 pages on municipal cases. ACTT also admitted that of thirty-one cases at national departments, only one was in court and two were before the NPA for a decision; twenty-eight were still under investigation. Even when perpetrators are processed and found guilty, they receive suspended sentences and plea bargains. SCOPA chairperson Themba Godi said the committee was "shocked and disappointed" to learn that all finalized cases had been settled through plea bargains: "None of the cases were fully prosecuted through convictions, meaning that all of them are outcomes where corrupt people have negotiated their way out of prison, which largely defeats the objective of using sentencing as a deterrent against corruption."<sup>21</sup> Clearly, the executive benefits from the added protection of an NPA head unlikely to prosecute, despite a flurry of countersuits from the opposition.

Prosecutorial stagnancy and judicial manipulations have severely impaired efforts to hold the executive branch accountable. However, certain courageous and brilliant officeholders defy any description of the South African judiciary as entirely captured or without democratic checks and balances. For example, the last public protector, Thuli Madonsela (who served from 2009 to 2016), still managed to publish the *State of Capture* report in 2016, among other reports on corruption; and the surprising independence of Chief Justice Mogoeng Thomas Reetsang Mogoeng (appointed in 2011) has prevented any clique from controlling the judiciary in its entirety, while

contributing to a better demarcation between politics and the courts. Additionally, while many authors have written about the collapse and demise of South Africa, there are natural opponents to corruption: 1) other members of political parties that succeed in free and open elections; 2) the majority of citizens, who do not benefit from corruption and thus would not vote for a party that sanctions it; 3) public servants, including honest members of the prosecuting agencies, whose portfolios are designed to produce public goods; and 4) actors within the private sector who are frustrated by the actions of the government and its cronies when they adversely affect them.

Despite the multiple scandals outlined above, the ANC did not recall President Zuma until February 2018, when it finally forced him to resign. However, the scandals came at great political cost to the party, causing the collapse of the historic tripartite alliance between the ANC, the Congress of South African Trade Unions (COSATU), and the South African Communist Party (SACP). The alliance fell apart in early 2017 over the issue of whether Zuma should stay or go. COSATU asked him to step down and denied him participation in their rallies, while the SACP withdrew their support completely. Increasingly, factions within the ANC itself became more apparent as several senior officials also echoed growing opposition to the president. COSATU, once an alliance member, held a national strike against corruption on September 27, 2017. This is without precedent, as historically anticorruption protest was the preserve of the Democratic Alliance (DA) and "White" NGOs. Such is the crisis of the state that the Economic Freedom Fighters (EFF), COSATU, and the SACP have increasingly endorsed and supported anticorruption events and protests.

These coalitions of opposition within the ANC and its close partners have the poten-

tial to spark an elite transition to a more democratic future and a more transparent, open political order for the South African polity. This will only work, however, if the trend toward the use of violence is reversed and the electoral system and independent judiciary are protected. Nonetheless, the possibility of a shake-up in the leading factions is evidenced by shrinking majority support of the ANC, which led them to lose elections to the DA in Pretoria, Nelson Mandela Bay, Gauteng, and other metropolises; and rural seats to the Inkatha Freedom Party in Northern KwaZulu-Natal. There remains the possibility, therefore, that the ANC could lose in a national election, which motivates the party to attempt to discipline those who conducted the state capture project.

This anticorruption coalition also includes government ministers and sections of the ANC that remain more in the tradition of “transformational liberalism” associated with the Mbeki period. These politicians believe in pragmatic change within the parameters of the constitution rather than the permissibility of extralegal redistribution of resources executed through corruption. The existence of dissenting factions within the ANC suggests that rotating power is still a possibility within the party and potentially in the government and polity more broadly. Economist Douglass North and colleagues, in their research on configurations of elite competition, argue that when corrupt regimes are moving toward greater democracy, there begins an interchanging of elite factions in power, slowly leading to a freely competitive election process, transforming a limited-access order into an open-access democracy.<sup>22</sup> According to this model, South Africa’s constitutional imperative that presidents may only serve two terms obliged the ANC to plan the replacement of President Zuma in December 2017. This law provided momentum for forcing his departure before the

2018 election. Thus term limits contribute to elite rotation, if not more fundamental changes to governance norms. Still more elite competition and a higher frequency of replacement of officeholders would be required to resoundingly unsettle the networks capturing procurement contracts.

When in April 2017 demonstrations and a national shutdown demanded that Zuma step down, the ANC initially closed ranks. The ANC Youth League and Umkhonto we Sizwe (MK) resistance fighters and veterans made a show of strength, accusing opponents of the president of treason in violent language. MK fighters turned out in battle fatigues to “defend” Luthuli House, the national headquarters of the ANC, from the “counterrevolutionaries.” These images and rhetoric are reminiscent of ZANU-PF’s post-2000 turn to populist nationalism to shore up Robert Mugabe’s rule after he lost a referendum on the constitution. Such national populism, or “patriotic nationalism,” is also associated with a rise in xenophobia (observed in bouts of violence in Durban and Pretoria) and a desire to tighten the nation’s borders.<sup>23</sup> Zuma’s “radical economic transformation” was one such manifestation of his patriotic-nationalist push.

President Zuma leveraged these ideas to extend his power base by reaching out to politicians on the provincial, municipal, and local levels. He made sure that he had supporters in lower levels of government while reshuffling his cabinet to include only loyalists. However, this entailed what appeared to be a sharp rise in the number of officeholders removed by violent means or death in the provinces and local wards. In KwaZulu-Natal, for example, the municipal elections of August 2016 were accompanied by the deaths of six councilors as one faction of the ANC in the province was removed to make way for a pro-Zuma leader. More officeholders were killed after the elections, including ex-ANC Youth League

leader Sindiso Magaqa. More recently, an elected councilor in Umthimkhulu was assassinated for allegedly preparing an anti-corruption speech for the December 2017 elective conference. Resisting corruption from within the ANC, despite recent electoral losses, can be a dangerous decision.

Given this increasing violence, the North model may not well explain the South African situation, in which democracy appears to be regressing to more violence and systemic corruption in such a way that the incoming elite may behave similarly to the old. For example, the change in political elite factions and accompanying violence in KwaZulu-Natal in 2016 did not lead to greater transparency: rather, it was simply seen as time to change who was “eating” from an older Mbeki faction to a new Zuma-loyalist faction. In this case, competition among elites led to political instability, which is just as likely to deteriorate the quality of democracy as it is to improve it. Furthermore, a change of elites at the provincial and municipal levels may actually assist in the centralization of authoritarian power at the center, as it arguably did in this case.

However, it is possible that an opportunity for a more effective anticorruption coalition exists, even in the midst of widespread violence. What emerged in 2017 was a greater number of councilors from all parties prepared to embark on the risky mission of resisting corruption at the local ward level. However, these individuals face grave potential repercussions for their principled resistance. While there is no systematic study on the implications for civil servants of resisting corruption, most political violence appears to be related to office-holding, and many deaths appear to be retaliation for corruption, or for resisting it. Protesting civil servants and provincial leaders are thus also at risk. However, traditional ANC supporters now seem much more willing to attend anticorruption ral-

lies (and anti-Zuma rallies, prior to his resignation), particularly when they are called by the SACP or COSATU. What is missing are the critical bridges between the politics of the poor when integrity is being defended at a local level and the movement politics of the middle classes, which is mostly articulated in documents, legal challenges, and city-based rallies. This divide is highly racialized and exacerbated by historical mistrust and by resource disparities that condition the means and ability to protest.<sup>24</sup>

Administrative accountability on the part of public officials remains a widespread check on political wrongdoing in South Africa, and in the face of political corruption, more work is required to support the honest public servant. Corruption contradicts civil servants’ agendas and briefs, creating a tension between functional line ministries and the needs of state capturers. Perhaps for this reason, there is an increasing number of persons in public administration who are prepared to come forward as whistleblowers. In one example from KwaZulu-Natal, Umgeni Water Authority employees raised the alarm continuously about a senior executive’s procurement fraud until the board finally agreed to launch a graft probe. Also in KwaZulu-Natal, whistleblower Fikile Hlatshway-Rouget was unfairly dismissed from the provincial Treasury in 2013 after making a protected disclosure notification to her management concerning contracts and fees she believed to be fraudulent, including a ZAR25 million payment for a jazz festival that never took place. Her concerns were later confirmed by a forensic audit and Special Investigation Unit (SIU) investigation and her case was adopted by the public protector, who upheld her charge of unfair dismissal.<sup>25</sup> While no subsequent action was taken against those involved in the corruption – perhaps as a result of the change in the public protector to a more pro-Zuma

figure – provincial-level whistleblowing is on the rise. It is this organic anticorruption constituency that generates the evidence supporting thousands of corruption cases, whether prosecuted or not, in South Africa.

President Zuma's efforts were often frustrated by employees in the revenue service and in departments who contested his "deployees" and procurement policies. Given this resistance, he attempted to repurpose government, establishing ad hoc interministerial committees at the executive level that did not have to report to parliament and which often bypassed other tiers of government. These committees clearly pursued an accumulation agenda, focusing on sectors associated with large procurement contracts, such as telecommunications and infrastructure. However, the core civil service remained an arena of contestation between the honest and the corrupted, and administrative accountability proved a powerful restraint to political power. For example, there are cases in which the core civil service has launched successful challenges against these interministerial committees. The conflicts of interest between political deployees and public servants is so acute that one senior-level respondent to a 2015 survey of public-administration officials in eThekweni observed that finishing a five-year term in office as director general of a public works department at provincial level was not possible if one was honest. She stated that if director generals did not sign off on certain deals, a fake industrial tribunal would be convened to remove them from their positions. Civil servants often feel that the law is on their side when resisting corruption, but because of this abuse of HR regulations, they also accept that they may have to engage in a costly – and perhaps losing – battle with a labor tribunal in order to keep their jobs. Thus, building ethical universalism in the public service must be done in the context of real fears – not just of unfair dismissal, but of

violence from cliques – which can only be ameliorated through a well-funded whistleblower program.

The private sector, including international finance institutions, is another potential ally in the fight against corruption. While there are allegations of illegal direct transfers of cash to the president, mostly in the form of direct deliveries to his home in Nkandla in KwaZulu-Natal province, the spoils from state capture are channeled primarily through the modern network of offshore finance in ways that make them difficult to trace. Transfers move repeatedly from one to another Gupta-related company account and eventually to companies in foreign tax havens. While the owners of these accounts are not always known, the management service companies and transit financial companies involved in SOE deals have been linked to clique members, and some companies at the end of these transactional chains are in jurisdictions (such as Dubai) where the president is known to own luxurious properties. To all appearances, a president of an apparent democracy is becoming personally wealthy without answering to an effective domestic accountability mechanism. Examples of such individuals in other countries include former Democratic Republic of Congo President Mobutu Sese Seko, former Zimbabwe Prime Minister Robert Mugabe, former Nigerian President Olusegun Obasanjo, and retired Algerian Army General Ibrahim Babangida. However, what is perhaps more novel in the South African case is that graft is undertaken using the most sophisticated financial networks, rather than suitcases packed with money transferring through airports.

Therefore, the private sector has substantial power to assist in anticorruption work. There are already many examples of auditors, banks, and other executives raising red flags and taking legal action against corrupt procurement schemes. One is regula-

tory authorities' intervention in the corrupt coal-supply contracts of the state-owned energy enterprise Eskom. Eskom moved the contracts from a coal mine, Optimum (initially owned by the international company Glencore), to the Zuma/Gupta coal supplier Tegeta Exploration and Resources. This transfer was effected using several anticompetitive practices that were ultimately flagged by the private sector. Initially, Optimum was forced into bankruptcy by Eskom, then helmed by CEO Brian Molefe and Minister of Public Enterprises Malusi Gigaba. Eskom refused to renegotiate coal-supply deals that were causing Optimum to make a loss, and then fined Optimum handsomely for delivering supposedly substandard coal. Once Optimum was subjected to this forced bankruptcy, Tegeta was able to buy it at a basement price. To make sure the transition occurred, Eskom, under state capture, also provided Tegeta with a highly subsidized loan, ostensibly for coal expansion but used to purchase the failing Optimum. (Tegeta is jointly owned by Duduzane Zuma, son of the president; Gupta family members; Gupta proxy Salim Essa; and two offshore companies registered in the United Arab Emirates for which ownership details are unavailable.<sup>26</sup>)

However, business rescue practitioners initially appointed by Glencore filed a report to the Directorate of Priority Crime Investigation under Section 34 of the Prevention and Combating of Corrupt Activities Act alleging that the Eskom "prepayment" loan to Tegeta was not used to expand operations as specified, and was improperly used to fund the purchase of the Optimum mine. Thus, it was a private-sector auditor who raised the red flag on corruption. In a similar case, auditors at Deloitte questioned the "commerciality" of the "fees" paid to the Gupta-associated offshore firm Homix by Neotel for its success in winning a tender with Transnet. The Neotel board of directors had apparently approved the payment

despite not knowing "who this [Homix] entity is."<sup>27</sup> Within the private sector, there is an emerging pattern wherein legitimate directors and owners of firms have used legal means to attempt to protect their own interests against those of state capture, such as in cases of locomotive procurement.<sup>28</sup> This is because state-captured contracts represent a cost to noncorrupt businesses, either because they are excluded from public procurement or because to participate requires the payment of extralegal rents that hurt their bottom line. This implies that in countries such as South Africa, which enjoys a highly capitalized and modern economy, a majority of persons in the private sector are naturally positioned to oppose corruption simply because it is a rent and cost to their own interests, moral issues aside.

The anticorruption and whistleblowing cases mentioned here were brought by specific persons whose interests were damaged by the state-capture elite, for example through loss of assets or contracts. These persons are important allies in anticorruption work and are joined by many more who lose business because they refuse to pay rents to corrupt brokers in order to be successful in public procurement. Also, persons who do pay rents but consequently see their profit margins squeezed can also be persuaded to oppose corruption. In general, the need to pay rents, "success fees," or other management service fees in order to secure a procurement deal represents costs to businesses that are not in the winning clique. The resentment generated by these fees can thereby motivate business associations, like the South African Chamber of Commerce, to help restore integrity by reporting corrupt payments that flow among its members and refusing to harbor corrupt brokers.

For some time now, there has been a consensus in the academic literature on corruption that donor-sponsored anticorruption

interventions do not have much effect on political corruption. Alina Mungiu-Pippidi has argued that individualized anticorruption interventions do not work when there is endemic corruption, because such corruption constitutes a collective-action problem.<sup>29</sup> A series of studies and evidence reviews from donor governments in the early 2000s showed that much of their anticorruption intervention had little (measurable) result.<sup>30</sup> It may be that, because many of these interventions focus predominantly on public-sector reform, they fail to address the “symbiotic relationship” between the constitutional and shadow states.<sup>31</sup> South Africa’s case suggests that to be successful, anticorruption interventions must simultaneously prosecute businesspeople committing economic fraud in the economy and political persons facilitating it in the shadow state. This is difficult when the clique operating state capture has some control over prosecuting authorities, but because state-capture networks are international, there is nothing to prevent prosecution in other sovereign jurisdictions or the intervention of private banks to prevent the movement of “success fees” as illicit financial flows. The recent successful case of HSBC pursued by France for facilitating the tax avoidance of its nationals demonstrates that private-sector corruption on a massive scale can be prosecuted. In this case HSBC paid €300 million to the French government to settle these claims – just in time to face allegations of “possible criminal complicity” in facilitating money-laundering for the Gupta/Zuma state-capture project.<sup>32</sup>

The account above shows that private-sector companies who are adversely affected by corruption are a weak link in the state-capture project. Van der Merwe, the Gupta attorney who turned state witness, admitted that he used his trust fund to launder payments between Limpopo Department of Health official Miriam Seg-

butla and businessman Johnny Lucas of some ZAR16 million in kickbacks to secure tenders in 2010. Indeed, all such deals require bank accounts, which are regulated and thus can and should be subject to oversight. Involving international financial institutions in the fight against corruption will require further research on how individual payments within this lattice of exchanges are explained, accounted for, and audited; and why they go undetected or unreported by banking staff and regulatory authorities. In the so-called Guptagate scandal, banks themselves invoked FIC regulations and closed the family’s bank accounts. Finance Minister Gordhan faced pressure from members of the state-capture clique to force the banks to reopen these accounts, but instead filed a suit detailing the ZAR6.8 billion in suspicious payments that the banks had found and asked the courts to rule that he had no power to interfere with their decision. National legislation to prevent companies domiciled in secrecy jurisdictions (that is, tax havens) from operating in national economic space, accompanied by a move from a domiciliary to a contributory principle of tax calculation (which would help make secrecy jurisdictions redundant), would reduce illicit financial flows of corruptly acquired funds.

The state-capture project also illustrates that members of the ANC, particularly at the local level, can remain anticorruption allies. Not only do party members worry about the future electability of the ruling party, but they are also adversely affected by the decline in public services that corruption causes. Civil servants and public-sector workers are also likely to be part of an anticorruption coalition if they struggle to meet their formal briefs and obligations due to the conflicting demands of corrupt elites. In this respect, it is not a surprise that trade-union members in the public sector were at the forefront of pressuring COSATU out

of the tripartite alliance with the ANC. Policy is required to facilitate a return to constitutionalism, ethical universalism, and the 2012 National Development Plan recommendation that South Africa “focus relentlessly on building a professional public service and a capable state.”<sup>33</sup> In turn, this requires a reduction in citizens’ fear of political violence at the ward level so that public servants are not afraid to blow the whistle, and so that a new leadership with a commitment to public service can emerge. Political violence must be monitored, resisted, and prosecuted. In confronting political violence, the police must assume their role as a public-service authority rather than as a tool of the ruling party.

That effective states are still associated with modernity and freedom helps in building a coalition to advocate for anticorruption policies, as social media is replete with the outrage of the young over the state of the South African nation and the elites’ broken promises of development and democracy. But the major challenge – restoring the

prosecuting power of the Hawks and the police, and the integrity of the National Prosecuting Authority – remains. In this task, the potential of a multiracial anticorruption coalition has not yet been realized, despite its manifestation in virtual space on social media, expressed through satire and vernacular appeals to solidarity. The postapartheid generation is rejecting the ideological cover of patriotic nationalism in favor of a modern state with improved service delivery. The predominantly White middle-class activism of the NGO sector needs to connect with and extend solidarity to this new generation of social activists, assisting in the in situ activism of those defending their neighborhoods and services against corruption by monitoring political violence and providing legal services. But NGOs must also connect with the white-collar public servants who are defending their public mandates: the costs of taking positions of integrity – not limited to the loss of life or employment – cannot be borne exclusively by activists and the young.

#### ENDNOTES

<sup>1</sup> Jacob Zuma was president of South Africa from February 9, 2009, to February 14, 2018, when his deputy Cyril Ramaphosa took over. Since resigning the presidency under pressure from the ANC, the national director of public prosecutions, alongside a Judicial Commission of Inquiry, decided in March 2018 that prosecution of the former president would move forward beginning with a summons to the KwaZulu-Natal High Court on April 6, 2018. However, with multiple appeals processes and remaining political support, this course could be extremely lengthy or eventually aborted.

<sup>2</sup> Haroon Bhorat, Mbongiseni Buthelezi, Ivor Chipkin, et al., *Betrayal of the Promise: How South Africa is Being Stolen* (Stellenbosch, South Africa: Stellenbosch University, 2017), 3.

<sup>3</sup> *Ibid.*, 2.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, 36.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, 31.

<sup>8</sup> *Ibid.*, 2.

<sup>9</sup> Govan Whittles, “ANC Has to Adapt or Die, Says Gordhan,” *The Mail and Guardian*, July 2, 2017, <https://mg.co.za/article/2017-07-01-anc-has-to-adapt-or-die-says-gordhan>.

- <sup>10</sup> Thulisile Madonsela, *State of Capture* (Pretoria: Office of the Public Protector, 2016); and Borat et al., *Betrayal of the Promise*, 3.
- <sup>11</sup> Borat et al., *Betrayal of the Promise*, 13, 25 – 28.
- <sup>12</sup> Chris Allen “Understanding African Politics,” *Review of African Political Economy* 22 (65) (1995): 301 – 320.
- <sup>13</sup> Sarah Bracking, “Development Denied: Autocratic Militarism in post-election Zimbabwe,” *Review of African Political Economy* 32 (104 – 105) (2005): 341 – 357; Sarah Bracking, “Political Economies of Corruption beyond Liberalism: An Interpretative View of Zimbabwe,” *Singapore Journal of Tropical Geography* 30 (1) (2009): 35 – 51; and Lloyd Sachikonye, *When a State Turns on its Citizens: 60 Years of Institutionalised Violence* (Harare, Zimbabwe: Weaver Press, 2011).
- <sup>14</sup> Karl von Holdt, “South Africa: The Transition to Violent Democracy,” *Review of African Political Economy* 40 (138) (2013): 590.
- <sup>15</sup> Mushtaq Khan, “Markets, States and Democracy: Patron-Client Networks and the Case for Democracy in Developing Countries,” *Democratization* 12 (5) (2005): 704 – 724.
- <sup>16</sup> Daniel M. Goldstein and Enrique Desmond Arias, eds., *Violent Democracies in Latin America* (Durham, N.C.: Duke University Press, 2010).
- <sup>17</sup> Michael Burawoy and Karl von Holdt, *Conversations with Bourdieu: The Johannesburg Moment* (Johannesburg: Wits University Press, 2011), 94 – 96.
- <sup>18</sup> Von Holdt, “South Africa: The Transition to Violent Democracy.”
- <sup>19</sup> *Ibid.*, 596.
- <sup>20</sup> In April 2009, the Acting National Director of Public Prosecutions, Mokotedi Mpshe, announced that because of an “abuse of process,” the corruption charges against Zuma related to the arms deal would have to be dropped. He was referring to a taped conversation of an improper discussion between the then-head of the Directorate of Special Operations Leonard McCarthy and then-National Prosecuting Authority head Bulelani Ngcuka. For a full account, see Helen Suzman Foundation, *Understanding the Spy Tapes Saga* (Parktown, South Africa: Helen Suzman Foundation, 2014), <http://hsf.org.za/resource-centre/hsf-briefs/understanding-the-spy-tapes-saga>.
- <sup>21</sup> Themba Godi, quoted in Marianne Merten, “Reporter’s Parliamentary Notebook: It’s Corporate Capture, States Ramaphosa, Now Let People Clear their Names,” *Daily Maverick*, June 15, 2017, <http://www.msn.com/en-za/news/other/reporters-parliamentary-notebook-its-corporate-capture-states-ramaphosa-now-let-people-clear-their-names/ar-BBCGh5B?li=BBqfP3n&ocid=UP97DHP>.
- <sup>22</sup> Douglass C. North, John J. Wallis, and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Understanding Recorded Human History* (Cambridge: Cambridge University Press, 2009).
- <sup>23</sup> Amanda Hammar and Brian Raftopoulos, “Zimbabwe’s Unfinished Business: Rethinking Land, State and Nation,” in *Zimbabwe’s Unfinished Business: Rethinking Land, State and Nation in the Context of Crisis*, ed. Amanda Hammar, Brian Raftopoulos, and Stig Jensen (Harare, Zimbabwe: Weaver Press, 2003), 1 – 47.
- <sup>24</sup> Tom Lodge and Shauna Mottiar, “Protest in South Africa: Motives and Meanings,” *Democratization* 23 (5): 819 – 837.
- <sup>25</sup> Thulisile Madonsela, *Rocking the Boat* (Pretoria: Office of the Public Protector, 2016), [http://www.pprotect.org/sites/default/files/legislation\\_report/Rocking\\_the\\_Bout\\_Final\\_Report.pdf](http://www.pprotect.org/sites/default/files/legislation_report/Rocking_the_Bout_Final_Report.pdf).
- <sup>26</sup> Susan Comrie, “On the Trail of Tegeta’s Offshore Shareholder,” *City Press*, May 17, 2016, <https://city-press.news24.com/News/on-the-trail-of-tegetas-offshore-shareholder-20160507>; and Warren Thompson, “A Multi-Million Rand Pay Day for the Zuma(s),” *Moneyweb*, August 23, 2017,

<https://www.moneyweb.co.za/news/companies-and-deals/a-multi-million-rand-pay-day-for-the-zumas/> Sarah Bracking

<sup>27</sup> Bhorat et al., *Betrayal of the Promise*, 31.

<sup>28</sup> *Ibid.*, 29.

<sup>29</sup> Alina Mungiu-Pippidi, "Corruption, Diagnosis and Treatment," *Journal of Democracy* 17 (3) (2006): 86 – 99; Bo Rothstein, *Quality of Government: Corruption, Social Trust and Inequality in an International Perspective* (Chicago: University of Chicago Press, 2011); and Anna Persson, Bo Rothstein, and Jan Teorell, *The Failure of Anti-Corruption Policies: A Theoretical Mischaracterization of the Problem*, Quality of Government Working Paper 19 (Gothenburg: University of Gothenburg, 2010).

<sup>30</sup> Persson et al., *The Failure of Anticorruption Policies*; Jesper Johnsen, Nils Taxell, and Dominik Zaum, *Mapping Evidence Gaps in Anti-Corruption: Assessing the State of the Operationally Relevant Evidence on Donors' Actions and Approaches to Reducing Corruption*, U4 Issue 7 (Bergen: Chr. Michelsen Institute, 2012); Department for International Development of the United Kingdom, *DFID's Governance Portfolio Review: Summary Review of DFID's Governance Portfolio, 2004 – 2009* (London: Her Majesty's Stationary Office, 2011); Department for International Development, *Joint Evaluation of Support to Anti-Corruption Efforts 2002 – 2009* (London: Her Majesty's Stationary Office, 2013); and The Norwegian Agency for Development Cooperation, *Contextual Choices in Fighting Corruption: Lessons Learned*, ed. Alina Mungiu-Pippidi, Masa Loncaric, Bianca Vaz Mundo, et al. (Oslo: Norwegian Agency for Development Cooperation, 2011).

<sup>31</sup> Bhorat et al., *Betrayal of the Promise*, 3.

<sup>32</sup> Rob Davies, "HSBC 'Complicit' in South Africa Scandal, House of Lords Told," *The Guardian*, November 1, 2017, <https://www.theguardian.com/business/2017/nov/01/hsbc-investigated-fund-transfers-south-africa-corruption-row-zuma-gupta>.

<sup>33</sup> National Planning Commission, *National Development Plan: Vision 2030* (Pretoria: National Planning Commission, 2012).