



## **INTERIM FINDINGS OF THE PEOPLE'S TRIBUNAL ON ECONOMIC CRIME - 7 February 2018**

### **Introduction**

- 1 The Tribunal has heard extensive evidence and argument over five days from a number of experts, writers, researchers, civil society and other witnesses. We have also been referred to voluminous material to establish essentially three interrelated aspects and the consequential effects.<sup>2</sup>
  - a. Extensive violations of United Nations sanctions that amounted to serious breaches of International Criminal Law during the apartheid era, and in particular, during the period 1977 – 1994.
  - b. Allegations of serious and punishable economic crimes in the process of the conceptualisation and the implementation of the Arms Procurement Package (“Arms Deal”). There was also extensive argument on the issue of the rationality of the Arms Deal itself.
  - c. Allegations of state capture involving Denel and its associated companies in the acquisition, distribution and manufacture of arms and ammunition.

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<sup>1</sup> We point out that wider related issues of civil society concern were also helpfully referred to.

<sup>2</sup> Referred to as continuities

- 2 We made an opening statement at the beginning of the proceeding's that is annexed, marked "A".
- 3 The Tribunal was constituted by the terms of reference attached, marked "B". We will refer to the terms relevant to this report when appropriate.
- 4 We wish to dispose of certain procedural issues before considering the substance of the evidence before us. On the basis of the motivation contained in annexure "C", we cannot produce a Final Report without more. We therefore propose the following procedure after this report has been delivered.
  - a. This Interim Report together with summaries and evidence relating to particular entities or persons who are implicated be sent to them as soon as possible.
  - b. That these entities or persons be requested to respond on a specified date more or less three months after the dispatch of the material in terms of paragraph a.
  - c. After the three month period has expired, the evidence leaders and the organising committee must determine what further information they need to give to us. They must also decide on a date by which this information and the detailed written argument, fully motivated, can be submitted to us.
  - d. When we receive all this information we will inform the organising committee as soon as possible, if it is appropriate, for us to produce a Final Report and if so by when it will be ready. We might even require further information.
- 5 Having disposed of these procedural issues we can now get into the substance.

## **Pre-democracy United Nations sanctions violations**

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

- e. We also have no doubt that some foreign governments were duplicitous - publicly posturing an anti-apartheid stance and secretly supporting it.
- 7 There is in our view enough evidence to warrant at least a thorough investigation into the conduct of a number of entities including the French government and the Kredietbank. They co-operated with the apartheid system, ensuring the unlawful flow of arms and ammunition and facilitating payment through a labyrinth of devious structures and routes. All this was secret. This conduct was in our view at least as dangerous and harmful as the conduct of the apartheid regime in terms of killings, torture, forced removals, wrongful imprisonment and the like. Indeed the regimes conduct would have been more difficult to sustain had it not been for the illegal trade in arms during this period. The forces of evil were strengthened and rendered virtually invincible these sanction-busting entities.
- 8 We would recommend that the conduct of Kredietbank and French government during the campaign be fully investigated. We also appeal to the Belgian government to facilitate an investigation into Kredietbank and help determine the truth.

### **1999 Arms Deal**

- 9 It is common knowledge that the post-apartheid government concluded deals aimed at securing military hardware for South Africa relying on the legend that this equipment was necessary in order to ensure the preservation of South Africa as a safe and secure country. There has been an effort to persuade us that the decision to enter into the arms deal was irrational on the ground of the absence of a relationship between the entry into the Arms Deal on one hand and a legitimate purpose on the other.
- 10 The stated purpose of entry into these Arms Deals was that South Africa needed the arms for its own security and that the offsets offered by suppliers would benefit the poor people of this country and help improve the quality

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

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

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

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

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

apartheid sanctions-busting plot been fully investigated and those responsible been prosecuted and punished.

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

### **State Capture**

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

17 We would also emphasise that state capture is to some extent also a result of the corrupt activities that had gone before it. Absent the violation of United Nations sanctions, and the corrupt Arms Procurement Package, the kind of state capture described in the evidence would probably not have occurred. The examples of state capture mentioned here are the tip of the ice-berg.

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

## **General**

19 A person described as a whistle blower gave evidence before this tribunal. We had no choice in the circumstances but to put his honesty to the test. We address the issue of whistle-blowers briefly in Annexure C.

20 We recommend that a copy of the papers, a copy of this Report and the summary of the evidence be served on the National Director of Public Prosecution, the National Commissioner of Police, the Minister of Justice and the Minister of Safety and Security, with the request that a full and thorough investigation of all the allegations and the legally required consequential action be pursued as matter of urgency.

## **Conclusion**

21 We have been honoured to be part of this process and thank the organising committee for the opportunity to participate in ensuring that our society will ultimately be rid of corruption and that the improvement of the quality of life of all people, as mandated by the Constitution, is assured.

22 We thank all participants, the evidence leaders and the organising committee. Of great importance was the evidence of non-governmental organisations who do important work to ensure that the promise of the Constitution becomes a reality. Indeed, they will contribute to a stronger civil society, which will ensure appropriate change. In this context it is crucial for us all to remember that legal processes, actions by law enforcement authorities and criminal charges are not the only way in which societal change can occur. These are not necessarily the most effective ways either. The most effective long term way is to develop a strong civil society who

would contribute towards the change of our culture to one of care, consideration, honesty and humanity. The use of the legal machinery deals simply with the symptoms, the abolition of root causes is a much longer and more difficult process. We appreciate the work that civil society has done thus far and trust that they will continue this work in the future. Without this effort a Constitutional order can hardly be achieved.

### **Recommendations**

- A. The Interim Report containing the findings of the panel, together with summaries and evidence relating to particular entities or persons who are implicated be sent to them as soon as possible.
- B. The entities or persons referred to in paragraph A of these recommendations be requested to respond on a specified date, more or less three months after the dispatch of this material.
- C. After the three month period has expired, the evidence leaders and the organising committee must determine what further information they need to give to the Panel as well as the date by which this information and the detailed written argument, fully motivated, will be submitted.
- D. The conduct of Kredietbank and French government with regard to violations of the United Nations sanctions be fully investigated.
- E. With regard to the 1999 Arms Deal, the Panel recommends that the necessary documents and summaries be served on those implicated, the Presidency (as representing the South African government) and the African National Congress.
- F. With regard to state capture, the Panel recommends a full investigation by the relevant authorities. The Panel also recommends that copies of this Report be served on the South African government (possibly at the office of the Presidency) and on other implicated private actors.
- G. The Panel recommends further that a copy of the papers, this report and the summary of the evidence be served on the National Director of Public Prosecution, the National Commissioner of Police, the Minister of Justice and the Minister of Safety and Security with the request that a full and thorough investigation of all the allegations and the legally required consequential action be pursued as matter of urgency.

**The members of the Panel are:**

Retired Justice Zak Yacoob

Retired Judge Navanethem Pillay

Ms Mandisa Dyantyi

Mrs Allyson Maynard-Gibson QC

Mr Dinga Sikwebu