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LEGAL GYMNASTICS, PASSING THE BALL AND FALSE STARTS – POLITICAL INTERFERENCE AND THE ORCHESTRATED FAILURE OF THE NATIONAL PROSECUTING AUTHORITY IN SOUTH AFRICA TO ENSURE ACCOUNTABILITY AND JUSTICE FOR POLITICALLY-CONNECTED PERSONS IN CORRUPTION AND RELATED CASES

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ABSTRACT

Political corruption, where individuals in positions of trust and authority illicitly exploit public resources, has become deeply entrenched in South Africa, threatening the foundational constitutional values of accountability, transparency, and the rule of law. This outcome was evident in recent events. Although the Constitutional Court has repeatedly affirmed that corruption undermines human dignity and erodes the State's capacity to fulfil socio-economic rights, politically connected persons have continued to manipulate public institutions with relative impunity. This article critically examines the structural and systemic failures within the criminal justice system, particularly the South African Police Service and the National Prosecuting Authority, that have allowed corruption to flourish. Despite the judiciary's commendable performance and its resistance to political interference, widespread manipulation of investigative and prosecutorial processes has created a persistent gap between detection, prosecution, and conviction of corrupt actors. Recent inquiries, including the Commission of Enquiry led by Justice Madlanga, reveal extensive interference, incompetence, and deliberate obstruction within law-enforcement

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agencies, often facilitated by corrupt deployments to key leadership positions. Drawing on recent case studies, institutional performance data, and emerging evidence on state capture dynamics, the article argues that South Africa risks devolving into a “shadow State”¹ in which corruption becomes socially normalised and self-reinforcing. It concludes by reflecting on the constitutional implications of this crisis and the urgent need to strengthen institutional independence, accountability mechanisms, and civil society oversight to restore integrity to the criminal justice system.

“As long as corruption continues to go largely unchecked, democracy is under threat around the world because corruption chips away at democracy to produce a vicious cycle, where corruption undermines democratic institutions, weak institutions are less able to control corruption, over and above this, with many democratic institutions under threat across the globe often by leaders with authoritarian or populist tendencies – we need to do more to strengthen checks and balances and protect citizens’ rights.”²

Keywords: *Corruption, National Prosecuting Authority, State capture, Accountability*

1. INTRODUCTION

Instances in which persons and their associates in fiduciary or privileged positions (politically connected persons) illegally monopolise the use of public funds to their advantage (political corruption) have become so endemic in South Africa that it is described as entrenched.³ The Constitutional Court of South Africa (CC)⁴ commented that political corruption is inconsistent with the rule of law and the fundamental values of the Constitution of the Republic of South Africa, 1996 (the Constitution). This crime is the antithesis of the open, accountable, democratic government guided by fundamental values of human dignity, freedom, and the rule of law. The CC

1 See in general Wicks J (2025) “The Shadow State: Why Babita Deokaran had to die” MB Publishers.

2 Transparency International (2019) “Corruption Perceptions Index 2018” at 1.

3 Lannegren O & Ito H (2017) “The End of the ANC Era: An Analysis of Corruption and Inequality in South Africa” 10(4) *Journal of Politics & Law* 55 – 59 at 56.

4 *South African Association of Personal Injury Lawyers v Heath* 2001 (1) SA 883 (CC), see also *Glenister v President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) at paras 166–177.

further stated that political corruption “undermines the ability of the government to meet its commitment to fight poverty and to deliver on other social and economic rights guaranteed in our Bill of Rights”.⁵ Socio-economic rights are at the heart of human dignity, especially in South Africa, where most indigent victims of corruption depend on state resources.

In response to rampant and entrenched political corruption and in compliance with its international law and constitutional obligations, South Africa has established various institutions and mechanisms to detect and prosecute those responsible for political corruption. Nonetheless, it has been argued that the initiatives to combat political corruption have been reduced to mere rhetoric or that politicians have actively obstructed these processes.⁶ This negative political attitude has adversely impacted the availability of resources and expertise within the criminal justice system. There is thus a disconnect between the detection, prosecution, and successful conviction of political corruption cases and those responsible for them, despite the high incidence of these crimes. This challenge is attributed to the ability of politically connected persons involved

5 *Glenister v President of the Republic of South Africa* 2011 (3) SA 347 (CC) para 57.

6 The legal definition of political corruption refers to the intentional abuse of authority or power to gain a benefit or advantage to which the recipient or beneficiary is not legally entitled. Political corruption typically manifests in gross financial misadministration, fraud, political interference in the recruitment of public sector employees, fraudulent representations by executive members of their qualifications, procurement irregularities, bribery, the manipulation of procurement processes, misuse of resources, and improper, unlawful, dishonest, unauthorised and fraudulent activities by public officials, politicians and private persons: Rothstein B (2011) “The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective” Chicago, Ill.: University of Chicago Press in Philp M (2014) “Routledge Handbook of Political Corruption” Routledge at 3; Levine V (1975) “Political Corruption: The Ghana Case” Stanford University Press; Organisation for Economic Co-operation and Development Corruption (OECD) (2007) *A Glossary of International Standard in Criminal Law* OECD Publications at 19 – 20, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2008/03/corruption_g1gh8d6f/9789264027411-en.pdf (accessed 5 December 2025); Open Government Partnership (2014) “Independent Reporting Mechanism: South Africa Progress Report 2013-2014: Second Progress Report”, available at [https://www.opengovpartnership.org/sites/default/files/IRMReportSouthAfrica final.pdf](https://www.opengovpartnership.org/sites/default/files/IRMReportSouthAfrica%20final.pdf) (accessed 5 December 2025). There is also a moral dimension to political corruption that transcends mere rule-breaking by public officials. Political corruption requires moral choice based on moral depravity, perversion and lack of personal integrity. Political corruption results in extensive looting of public funds, has devastating consequences for democratic institutions and public service delivery, and undermines the integrity of financial institutions, the financial intelligence regime, and the police and judicial system. Political corruption ultimately impacts the rule of law and social justice, leaving the public to bear the cost and those vulnerable in society as its most affected victims – Lekubu BK & Sibanda OS (2021) *Moral Values and Ethics as Antidotes for Corruption in the South African Public Service and Administration* vol.86, n.1 at 1-12. In 2020, rating agencies downgraded South Africa’s credit rating below investment grade, and in February 2023, the Financial Action Task Force grey-listed South Africa, thereby warning members of the international community that conducting business in South Africa could facilitate terrorism financing and money laundering. Political corruption in government facilitates money laundering, illicit financial flows, and tax evasion, which compromises the well-being of a State.

in corruption to establish control and influence over institutions within the criminal justice system, enabling them not only to continue their criminal activities but also to evade accountability effectively. The recent press conference by the KwaZulu-Natal Lieutenant General Mkhwanazi of the South African Police Service (SAPS) confirms this challenge.⁷ Given the gravity of the matter, the President suspended the Minister of Police and established a Commission of Inquiry, led by Justice Madlanga, to determine the veracity and duration of these allegations.⁸ To date, evidence has led to serious claims of corruption in SAPS, the justice system, and some government departments. Several persons have been further placed on leave pending investigations.⁹

The failure of the criminal justice system to hold those responsible for political corruption, however, cannot be attributed to the judiciary. Research shows that during the 2021/22 period, the judiciary achieved ten of its 13 performance targets, while only three were not fully accomplished.¹⁰ The judiciary demonstrated a general commitment to holding the NPA to account, to deciding political corruption cases without fear or favour, and to rendering timely and impartial decisions according to the law.¹¹ The independent and impartial performance of judicial officers inevitably displeased some politically connected persons.¹² As a result, judicial officers were subjected to numerous attacks, threats, insults and intimidation. In response, Chief Justice Raymond Zondo, in presenting the Judiciary's Annual Report for 2021/22, warned that judicial officers would "not be intimidated by anybody, no matter his or her position in society".¹³ The judiciary was thus generally not susceptible to political interference and performed its adjudicative functions admirably regarding matters placed before it. The independent and impartial

7 Government Gazette (23 July 2025) Proclamation Notice 269 of 2025 GG 53048, Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System Arising from the Specific Allegations Made Public by Lieutenant General Nhlanhla Mkhwanazi on 6 July 2025.

8 Government Gazette (23 July 2025) Proclamation Notice 269 of 2025 GG 53048.

9 Njilo, N (15 December 2025) "Madlanga interim report stays private, but Ramaphosa greenlights immediate criminal" referrals" Daily Maverick, <https://www.dailymaverick.co.za/article/2025-12-15-madlanga-interim-report-stays-private-but-ramaphosa-greenlights-immediate/> (accessed 18 December 2025).

10 The Judiciary, Republic of South Africa (2022) "Annual Judiciary Report 2021/22" at 10.

11 The Judiciary (2022) at 34. This commitment was especially apparent when the CC held former President Jacob Zuma in contempt of court for his failure to comply with an order made by the CC – *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma* 2021 (5) SA 327 (CC); *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State v Zuma (Council for the Advancement of the South African Constitution, Ngilwana SC, the Helen Suzman Foundation Amicus Curiae)* [2021] ZACC 2, see also *Democratic Alliance v President of South Africa* 2013 (1) SA 248 (CC).

12 As required by sec 165 of the Constitution of the Republic of South Africa, 1996.

13 Rabkin F (24 February 2023) "The judiciary will not be intimidated", says Zondo: Chief Justice Raymond Zondo presents judiciary's annual report" *TimesLive*, available at <https://www.timeslive.co.za/news/south-africa/2023-02-24-the-judiciary-will-not-be-intimidated-says-zondo/> (accessed 6 December 2025).

performance of the judiciary was complemented by courageous interventions by civil society and principled persons within the criminal justice system.

Politically connected persons could nonetheless maintain control over the criminal justice system, despite the judiciary's admirable performance of its official duties.¹⁴ Many instances of corruption were never detected or, when reported, were not adequately investigated by SAPS. Matters investigated and referred to the National Prosecuting Authority (NPA) were not placed before the criminal courts for adjudication.¹⁵ The underperformance of these institutions within the criminal justice system has partly been attributed to economic and skill shortages, as well as logistical challenges, such as prolonged power cuts and insufficient resources.¹⁶ These factors already imply a measure of political interference and the effects of endemic corruption. However, research suggests that the NPA's failures cannot merely be attributed to a lack of resources. Instead, the evidence points to institutional inefficiency and the inappropriate exercise of the NPA's discretion not to prosecute¹⁷ instances of political corruption due to political interference. This underperformance is revealed in patterns of bias, as well as in extraordinary delays and failures by the NPA in effectively prosecuting politically connected persons when credible evidence of political corruption existed. These challenges were exacerbated when the NPA, at times, instituted prosecutions against law enforcement officials investigating political corruption where there was insufficient evidence or where they were in contravention of the NPA's Prosecution Policy. The inefficiency, questionable decisions, and poor leadership within SAPS and the NPA, including various National Directors of Public Prosecutions (NDPPs), were strategically employed to delay and obstruct prosecutions, allowing politicians and their accomplices to remain in power and act with impunity. The reality is that persons were corruptly deployed into positions of authority to facilitate further corruption.¹⁸

The NPA's inability to challenge and hold politically connected individuals who commit political corruption to account has contributed to South Africa's reduction to a "shadow State".¹⁹ The extent of the corruption has, in turn, encouraged, morally justified, and socially legitimised the

14 Government Gazette (23 July 2025) Proclamation Notice 269 GG 53048.

15 Including the Directorate for Priority Crime Investigation (DPCI) and the Anti-Corruption Task Team; the Special Investigating Unit (SIU); the Independent Police Investigative Directorate (IPID); and the Military Police Division (MPD) (of the South African National Defence Force (SANDF)).

16 Bernstein A (29 September 2024) "A weak NPA needs to be cleaned out and bolstered" Sunday Times, <https://cde.org.za/a-weak-npa-needs-to-be-cleaned-out-and-bolstered/> (accessed 18 December 2025).

17 Redpath J (2012) "Failing to prosecute? Assessing the state of the National Prosecuting Authority in South Africa" Institute for Security Studies Monograph 186 at vi-vii.

18 Pather R (2022) "Bad Cops Bad Lawyers - The Officials at the NPA and Hawks Delaying Justice for State Capture Crimes" Open Secrets at 15 & 24.

19 See in general Wicks J (2025) "The Shadow State: Why Babita Deokaran had to die" MB Publishers.

illegal actions of politically connected persons. Systemic corruption creates enabling factors that incrementally facilitate and entrench interests, values, knowledge, and expectations favouring the expansion of corruption through vicious circles of self-reinforcing activities. This orchestrated and “engineered project” ultimately enabled enduring improper and corrupt power relationships between politically connected persons that influenced government policy, the legal environment, and the economy for their own benefit (State capture).²⁰

This article analyses what society may expect from a well-functioning NPA. It will also provide an account of the premeditated and coordinated scheme that weakened, realigned and repurposed the NPA to ensure that the politically connected accused of political corruption could escape accountability and continue to act with impunity to support the “shadow State”.²¹ The extent to which the NPA was compromised and repurposed to protect politically connected persons’ financial and power interests will also be assessed.²² This assessment will be followed by a description and assessment of the methods used to hold the NPA accountable, and, by implication, those politically connected persons who committed political corruption, including numerous court judgments and other quasi-judicial bodies that found the NPA’s failure to act in accordance with its mandate.

20 “Mcebisi Jonas, former Deputy Finance Minister, has observed that South Africa has experienced a ‘silent coup’ and become a ‘shadow state’ riddled with corruption, while others say that the country is on the verge of becoming a ‘Mafia state’ and a recipe for a failed state” in Budhram T & Geldenhuys N (2018) “Combating Corruption in South Africa: Assessing the Performance of Investigating and Prosecuting Agencies” 31(2) *Acta Criminologica: Southern African Journal of Criminology* 23 – 46; see also Transparency International (TI) 2016a. Anti-Corruption Glossary State Capture available at: https://www.transparency.org/glossary/term/state_capture (accessed 5 Dec 2025). State capture is a form of political corruption wherein private interests meaningfully influences State decision-making processes with the goal of securing an advantage through extensive illegal networks – Søreide, T (2014) *Drivers of Corruption: A Brief Review* World Bank Studies. Washington, DC: World Bank doi:10.1596/978-1-4648-0401-4 at 2.

21 Government Gazette (23 July 2025) Proclamation Notice 269.

22 Sec 195(1)(f) of the Constitution of the Republic of South Africa, 1996.

2. CORRUPTION: LEGAL FRAMEWORK

The international community and the South African government introduced numerous instruments and institutions to combat corruption. The United Nations (UN) Guidelines on the Role of Prosecutors²³ and the International Association of Prosecutors' Standards of Professional Responsibility require that prosecutors be independent and accountable in the execution of their duties. As a result, prosecutors play a crucial role in upholding the principles of equality before the law, the presumption of innocence, and the right to a fair and public hearing by an independent and impartial tribunal. States must ensure that prosecutors can "perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability".²⁴ Prosecutors with discretionary functions must be subject to "the law or published rules or regulations" that "provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution".²⁵ The government should, therefore, not have the power to issue "instructions not to prosecute in a specific case".²⁶

The UN Convention Against Corruption of 2003 (UNCAC) requires states parties to strengthen their legal frameworks and administrative measures to address corruption.²⁷ The public sector should practice and affiliate itself with the standard of practice anticipated by the UNCAC and the relevant domestic legal system.²⁸ The UNCAC further foresees the development and implementation of effective, coordinated anti-corruption policies that promote societal participation and exemplify the principles of the rule of law, proper management of public affairs, and integrity, transparency, and accountability. Elected public officials must respect domestic law, promote transparency, and avoid conflicts of interest.²⁹ Public officials are required to perform their duties properly and maintain the credibility and integrity of the public office.

23 United Nations (UN) (1990), Guidelines on the Role of Prosecutors, Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990.

24 UN Guidelines on the Role of Prosecutors (1990) Guideline 4.

25 UN Guidelines on the Role of Prosecutors (1990) Guideline 17.

26 Council of Europe Committee of Ministers (2000), Recommendation 19/2000 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system, adopted on 6 October 2000.

27 UN General Assembly, United Nations Convention Against Corruption, A/58/422, 31 October 2003 (UNCAC), art 5(3).

28 UNCAC, arts 7, 8 and 9.

29 UNCAC, art 7(4); art 8(1), UNCAC provides that, to fight corruption, a state party must promote, *among other things*, integrity, honesty and responsibility among its public officials.

The African Union (AU) Convention on Preventing and Combating Corruption of 2003 deals with corruption in the public and private sectors.³⁰ The Preamble to this Convention recognises that corruption undermines accountability and transparency in the management of public affairs as well socio-economic development. The Convention defines corruption and related offences as including the offering of illicit payments, acts or omissions by government officials to obtain a bribe, the fraudulent diversion by a public official or any other person of any property belonging to the State, the offering or giving, promising, soliciting or accepting, an undue advantage to or by any person in a private sector entity, the use or concealment of proceeds derived from the acts enumerated in the Convention, and participation as a principal, co-principal, agent, instigator, accomplice, accessory after the fact, in a conspiracy to commit enumerated acts.³¹ In this regard, it should be instructive that the Convention guides the development, implementation, and enforcement of domestic laws, as well as efforts to eradicate corruption in South Africa.

The Constitution is the grundnorm which also provides for an accountable, efficient and transparent public sector in South Africa.³² This fact is evident from section 195 of the Constitution, which, among other things, outlines the basic values and principles governing public administration, emphasising professionalism, efficiency, transparency, accountability, and public participation.³³ The National Anti-Corruption Forum (NACF) is the formal mechanism for bringing together the public, business, and civil society sectors to fight corruption across all aspects of society. The Anti-Corruption Task Team (ACTT) comprises the Directorate for Priority Crime Investigation (DPCI), the South African Revenue Services (SARS), the Special Investigative Unit (SIU), the NPA, and the Assets Forfeiture Unit (AFU). SAPS primarily investigates corruption in collaboration with the Special Investigative Unit (SIU),³⁴ the Independent Police Investigative Directorate (IPID),³⁵ the Public Protector (PP)³⁶ and the Military Police Division.³⁷ Section 205(3) of the Constitution places a legal obligation on SAPS to prevent, combat and investigate crime. The further relevant legislative interventions are the Prevention and Combatting of Corrupt Activities

30 African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003.

31 AU Convention on Preventing and Combating Corruption (2003), art 4.

32 See Dillard, C (2021) "Constituting Over Constitutions" *University of Bologna Law Review*, 6(1), 48–75, <https://doi.org/10.6092/issn.2531-6133/13299> (accessed 15 December 2025).

33 Section 195 of the Constitution (1996).

34 Established in terms of the Special Investigating Units and Special Tribunals Act 74 of 1996.

35 See sec 28 of the Independent Police Investigative Directorate Act 1 of 2011.

36 See the Public Protector Act 23 of 1994.

37 See sec 30 of the Defence Act 42 of 2002.

Act,³⁸ the South African Police Service Act,³⁹ the Criminal Procedure Act,⁴⁰ the Public Finance Management Act (PFMA),⁴¹ the Local Government: Municipal Finance Management Act (MFMA),⁴² Public Administration Management Act,⁴³ Financial Intelligence Centre Act (FICA),⁴⁴ and the International Co-operation in Criminal Matters Act.⁴⁵ The government has issued National Treasury regulations, guidelines, instructions, delegations, practice notes and circulars that relate to public procurement, finance and resource management. Lastly, corruption may also be regulated by relevant common law offences such as fraud, theft, embezzlement, forgery and uttering.⁴⁶

3. THE ROLE OF THE NATIONAL PROSECUTING AUTHORITY

A credible prosecution service is critical to the operation of the criminal justice system.⁴⁷ Prosecutors represent the public interest in prosecuting crime in the Republic. The prosecution service must, as a result, be independent, impartial, fair, consistent, effective, and accountable for its actions and decisions. The NPA states on its website that “all citizens have a right to enjoy a life free from fear and crime”.⁴⁸ The primary function and mandate of the NPA are to efficiently, equitably, and effectively manage criminal prosecutions on behalf of the State and to carry out any necessary functions incidental to the institution of criminal proceedings.⁴⁹ The NPA, therefore, has a special relationship with the Constitution, especially in cases involving public officials implicated in criminal conduct. The NPA is the primary custodian of the constitutional imperative of accountability. The South African legislative framework, while emphasising independent (neutral, non-political, non-arbitrary) prosecutorial decision-making, does provide for executive involvement in policy-setting and financial control. A ten-year tenure counterbalances the presidential appointment of the NDPP.⁵⁰

38 Act 12 of 2004.

39 Act 68 of 1995.

40 Act 51 of 1977.

41 Act 1 of 1999.

42 Act 56 of 2003.

43 Act 11 of 2014.

44 Act 38 of 2001.

45 Act 75 of 1996.

46 Budhram & Geldenhuys (2018) at 28.

47 Muntingh, L (2021) “The prosecution service and the Provinces” Dullah Omar Institute at 5.

48 <https://www.npa.gov.za/> (accessed 6 December 2025).

49 Sec 179(2) of the Constitution (1996) read with sec 20 of the NPA Act.

50 Redpart J (2012) “Failing to prosecute? Assessing the state of the National Prosecuting Authority in South Africa” Institute for Security Studies at 1.

The NPA was established in terms of section 179 of the Constitution and Chapters 2 and 4 of the National Prosecuting Authority Act (NPA Act),⁵¹ which ratifies section 179 of the Constitution and endorses the NPA as the State's only prosecuting authority. It has the power to institute, conduct, and discontinue criminal proceedings on behalf of the State. The Constitution further requires national legislation to "ensure that the prosecuting authority exercises its functions without fear, favour or prejudice".⁵² The NPA Act states, "[t]he prosecuting authority shall be accountable to Parliament in respect of its powers, functions and duties under this Act, including decisions regarding the institution of prosecutions".⁵³

The legislative framework centralises the prosecution service under the NDPP's authority. The NDPP is appointed by the president "the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority".⁵⁴ The NDPP and the four Directors of Public Prosecutions (DPPs) are responsible for ensuring compliance with their constitutionally mandated obligation. The NDPP, in consultation with the Minister of Justice and Constitutional Development, determines the prosecution policy and policy directives, which all DPPs and prosecutors must observe.⁵⁵ The NDPP is also authorised to review decisions to prosecute or not to prosecute and to intervene in a prosecution if directives are not complied with. The Minister of Justice and Constitutional Development is required to have oversight over the NDPP, who, in turn, must, at the request of the Minister, provide reports or information relating to any case, matter or subject dealt with by the NPA, including policy directives and provide reasoning behind any official decision taken by the NDPP.⁵⁶

The Asset Forfeiture Unit was established in 1999 as a business unit of the NPA under the NDPP to apply asset recovery, confiscation, and forfeiture procedures in respect of property that is an instrumentality of certain offences, the proceeds of unlawful activities, or associated with terrorist and related activities.⁵⁷ The Criminal Assets Recovery Account⁵⁸ is intended to receive, among other things, the proceeds of asset confiscations and forfeitures and may be used to allocate funds to specific law enforcement agencies.⁵⁹ The Directorate of Special Operations was

51 Act 32 of 1998.

52 Sec 179(4) of the Constitution (1996).

53 NPA Act, sec 35.

54 Sec 179(6) of the Constitution (1996).

55 Sec 179(5) of the Constitution (1996).

56 Sec 33 of the NPA Act.

57 Prevention of Organised Crime Act 121 of 1998, Chapters 5 and 6; National Prosecuting Authority (nd) "Asset Forfeiture Unit", available at <https://www.npa.gov.za/asset-forfeiture-unit> (accessed 6 December 2025); Asset Forfeiture Unit, <https://www.npa.gov.za/asset-forfeiture-unit> (accessed on 19 December 2025).

58 Prevention of Organised Crime Act 121 of 1998, sec 63.

59 Prevention of Organised Crime Act 121 of 1998, sec 69A(1)(a).

established in 2000⁶⁰ within the NPA. The Directorate investigates and assists with the prosecution of organised crime, other prescribed crimes, and categories of crime. In 2009, despite the Khampepe Commission of Inquiry's 2006 findings and recommendations to retain the Directorate of Special Operations (DSO) within the NPA, the DSO was disbanded under the NPA Amendment Act.⁶¹ It was replaced by the Directorate for Priority Crime Investigation (DPCI), which was established the following year under the South African Police Service Amendment Act.⁶²

In the *Glenister v President of the Republic of South Africa*, the CC was called upon to decide whether the legislation that created the DPCI and disbanded the DSO was constitutionally valid.⁶³ The majority⁶⁴ held that Chapter 6A of the South African Police Service Act is inconsistent with the Constitution and invalid to the extent that it fails to secure an adequate degree of independence for the DPCI. The CC further found that the Constitution and international law, to which SA is a state party, impose an obligation on the State to establish and maintain an independent body to combat corruption and organised crime. The Bill of Rights, which binds all organs of the State, imposes a duty on the State to "respect, protect, promote and fulfil" the rights in the Bill of Rights.⁶⁵ The CC also found that the DPCI was not adequately independent as it is not sufficiently insulated from political influence in its structure and functioning. The legislation determined that the activities of the DPCI must be coordinated by a Ministerial Committee, which may establish policy guidelines for the DPCI's functioning and the selection of national priority offences. The DPCI's conditions of service also expose employees to a significant risk of political influence.

4. GENERAL FAILURE BY THE NPA TO PERFORM ITS MANDATE

The Prosecution Policy and the NPA's Code of Conduct⁶⁶ are public documents. The provisions of the Prosecution Policy "are meant to ensure consistency by preventing unnecessary disparity, without sacrificing the flexibility that is often required to respond fairly and effectively to local

60 Sec 7 of the NPA Act.

61 Act 56 of 2008; Justice Khampepe S (February 2006) *Khampepe Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations (The DSO): Final Report*, available at https://www.gov.za/sites/default/files/gcis_document/201409/khampeperptfinal-feb061.pdf (accessed 6 December 2025).

62 National Prosecuting Authority Amendment Act 57 of 2008.

63 *Glenister v President of the Republic of South Africa* 2011 (3) SA 347 (CC).

64 Moseneke DCJ and Cameron J, in which Froneman J, Nkabinde J and Skweyiya J concur.

65 Sec 7(2) of the Constitution; see also secs 8(1) and sec 39(1)(b) (the Courts must consider international law when interpreting the Bill of Rights) and sec 231 (an international agreement that Parliament approves "binds the Republic").

66 NPA Code of Conduct, <https://www.npa.gov.za/npa-code-conduct> (accessed 19 December 2025).

conditions”.⁶⁷ In deciding whether to institute criminal proceedings in the public interest, prosecutors are required to “assess whether there is sufficient and admissible evidence to provide a **reasonable prospect of a successful prosecution**. There must indeed be a reasonable prospect of a conviction, otherwise the prosecution should not be commenced or continued”.⁶⁸

The rational choice to commit political corruption will, by necessary implication, involve the perpetrator assessing whether the benefits of the crime outweigh its costs.⁶⁹ Indeed, the concept of utility maximisation dictates that offenders typically seek to assess and mitigate the perceived risk of detection and the possible consequences, such as prosecution and punishment.⁷⁰ The risk is further mitigated when the corrupt exchanges involve particular social relationships with minimal reciprocal trust between the participants. As a result, offenders desire control and influence over institutions within the criminal justice system, such as law enforcement and prosecution agencies, or to sufficiently weaken or repurpose one or more of these institutions to either remove or reduce the risk of being held accountable for their actions.

As a result, the NPA has been subjected to interference by politicians since its creation. It is undeniable that the instability, interference and strategic appointments intended to capture the NPA were severe under the President Zuma administration.⁷¹ The economic competencies and skills necessary for the efficient functioning of a professional, independent, accountable and credible prosecuting authority, essential to the rule of law, were progressively diminished. The repurposed role of the NPA introduced conditions that reduced the primary legal factors that should have influenced prosecutorial discretion, thereby making corruption more convenient and less risky. As a direct consequence of the weakened NPA, very few prosecutions occurred despite the ruling party's involvement in 21 major scandals over 24 years.⁷²

67 NPA (2013) “Prosecution Policy” at 3.

68 NPA (2013) at 5.

69 Cornish D & Clarke RV (2010) “Rational Choice Theory” in Cullen FT & Wilcox P (Eds) “Encyclopedia of Criminological Theory” Vol. 2 at 216-220, SAGE Publications, Inc.

70 Søreide (2014).

71 Commisison of Inquiry into State Capture (2022) “Judicial Commission of Inquiry into State Capture Report: Part VI Vol. 2: State Capture Established, President Ramaphosa's Evidence and the Role of the ANC and Parliamentary Oversight”, available at https://www.gov.za/sites/default/files/gcis_document/202206/electronic-state-capture-commission-report-part-vi-vol-ii.pdf (accessed 6 December 2025).

72 Haffajee, F (12 June 2019) “Corruption is eating the ANC’s soul – can Ramaphosa save it?” *Daily Maverick*, available at <https://www.dailymaverick.co.za/article/2019-06-12-corruption-is-eating-the-ancs-soul-can-ramaphosa-saveit/> (accessed 6 December 2025).

4.1 Discretion to Prosecute

The NPA claims broad discretion in its prosecutorial decisions. The NPA's Code of Conduct states that prosecutorial discretion not to prosecute should be exercised freely, even of "judicial interference".⁷³ This discretion must be exercised independently, fairly, and impartially, and must be subject to review; failing which, the potential for abuse exists.⁷⁴ It has been argued that the prosecutorial decision to decline to prosecute has been systematically diluted over time, resulting in proportionally fewer cases being placed on the court roll and brought to trial each year. Fewer persons have been convicted, mainly due to the failure to prosecute.⁷⁵ The discretion to decline to prosecute politically connected persons on implausible grounds creates the appearance of the NPA's lack of independence.

4.2 Specific Instances of the Failure by the NPA to Perform its Mandate

4.2.1 *S v Shaik*

It was foreseen that the prosecution of Shaik could lead to the eventual prosecution of former president Zuma. The judgment in the Shaik matter did indeed refer to Zuma on numerous occasions.⁷⁶ Nonetheless, the NPA delayed the decision to prosecute Zuma, arguing that it lacked sufficient evidence. The matter became further complicated as Zuma and others further sought to delay the prosecution. These actions created doubt and scepticism about the legal system and the NPA.⁷⁷ Zuma was only charged with numerous counts of corruption in 2006 after the finalisation of the prosecution of Shaik. The matter was, however, struck off the roll due to repeated requests for postponements by prosecutors. The appeal brought by Shaik against his conviction on corruption and fraud charges was dismissed in the SCA, and his 15-year prison sentence was upheld.⁷⁸

73 NPA Code of Conduct at para B.

74 NPA Code of Conduct at para B.

75 "Prosecutorial Independence and the Prosecution of Corruption" (2024) Dullah Omar Institute at 11, <https://dullahomarinstitute.org.za/acjr/prosecutorial-independence-and-the-prosecution-of-corruption-report-2-dec.pdf> (accessed 18 December 2025).

76 *S v Shaik and Others* 2007 (1) SACR 142 (D); *S v Shaik* [2007] 2 All SA 150 (SCA).

77 *S v Shaik and Others* 2007 (1) SACR 142 (D); *S v Shaik* [2007] 2 All SA 150 (SCA).

78 *S v Shaik and Others* (Criminal Appeal) (62/06) [2006] ZASCA 105

4.2.2 Robert McBride

McBride was the head of the Independent Police Investigative Directorate (IPID).⁷⁹ McBride was, in 2016, accused of fraudulently amending a report that effectively exonerated certain Hawks officials⁸⁰ of the alleged illegal rendition of Zimbabwean nationals.⁸¹ McBride maintained that the charges were baseless, stating that:

I have already expressed my concern that Advocate Sello 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).⁸²

The NPA, however, later withdrew the charges, believing it was unable to prove fraud against McBride. The implication is that the initial charges and decision to prosecute were not supported by sufficient evidence.⁸³ The timing of the criminal matters brought against McBride concurred with McBride's investigation of corruption charges against the then national police commissioner. It is reasonable to conclude that the efforts to prosecute McBride were politically motivated.⁸⁴

5. CONCLUSION

Political corruption in South Africa, particularly when perpetrated by politically connected persons, has undermined the very constitutional foundations of accountability, transparency, and the rule of law. Despite the existence of progressive institutions and an adequate legal framework, the persistence of impunity within the criminal justice system, especially within SAPS and the NPA, has allowed systemic corruption to become entrenched. The culmination of these challenges has

79 South African Government (2014) "Minister Nathi Mthethwa announces Robert McBride as new Head of Independent Police Investigative Directorate", <https://www.gov.za/news/media-statements/minister-nathi-mthethwa-announces-robert-mcbride-new-head-independent-police> (accessed 18 December 2025).

80 Anwa Dramat and Shadrack Sibiya.

81 "Incorrect report used to suspend former Hawks head Anwa Dramat – State capture inquiry hears (12 April 2019) News24, <https://www.polity.org.za/article/incorrect-report-used-to-suspend-former-hawks-head-anwa-dramat-state-capture-inquiry-hears-2019-04-12> (accessed 18 December 2025).

82 Pather R (1 September 2022) "Unaccountable 00034: Sello Maema" Open Secrets, <https://www.opensecrets.org.za/unaccountable-00034-sello-maema/#:~:text=Holding%20Maema%20to%20account,Unaccountable%2C%20we%20have%20not%20forgot ten> (accessed 15 December 2025).

83 NPA drops fraud charges against Robert McBride" TimesLive, <https://www.timeslive.co.za/politics/2016-11-01-npa-drops-fraud-charges-against-robert-mcbride/> (accessed 18 December 2025).

84 Pather R (1 September 2022) "Unaccountable 00034: Sello Maema" Open Secrets, <https://www.opensecrets.org.za/unaccountable-00034-sello-maema/> (accessed 15 December 2025).

resulted in the emergence of a parallel network of political and economic elites who exploit public power for private gain.⁸⁵ The Minister of Health recently labelled the looting of Thembisa hospital, a government public hospital,⁸⁶ by some connected persons as amounting to treason. This statement follows reports indicating that R2 billion was stolen from Thembisa Hospital, seriously disrupting the proper functioning of the public healthcare system. The NPA's selective inaction and the manipulation of prosecutorial discretion were neither accidental nor resource-driven but rather the result of deliberate political interference designed to protect those with influence from accountability. Several Commissions of Inquiry are a further testament to this conclusion.

In contrast, the judiciary has largely maintained its constitutional integrity, independence, and courage in the face of immense political pressure and attack from political circles. Through principled adjudication and resistance to intimidation, courts in South Africa have upheld the constitutional promise of justice, ensuring that they are the last line of defence for the vulnerable, indigent and public. Similarly, civil society organisations, investigative journalists, and individual whistleblowers have played an essential role in exposing corruption and demanding accountability. These efforts have produced positive results despite the constraints introduced by institutional inertia and the political capture of key components of the criminal justice system.

Restoring the NPA's credibility and operational independence is not merely an administrative necessity but a constitutional imperative. South Africa's long-term democratic stability and socio-economic transformation depend on dismantling entrenched corruption networks, rebuilding prosecutorial integrity, and ensuring that the rule of law prevails over political expediency. Ultimately, the efforts to counter political corruption must extend beyond institutional reform to a broader societal commitment to ethical governance, transparency, and civic vigilance. A strengthened, independent NPA, supported by a vigilant judiciary, an empowered civil society, and sincere political leaders must be fostered to regain the constitutional vision of a just, open, and accountable democratic State.

85 Chipkin I & Swilling M "Repurposing Governance" at 101-131 in Ivor Chipkin & Mark Swilling (eds) (2018) *Shadow State: The Politics of State Capture* Wits University Press.

86 SABC News (29 September 2025) "WATCH | Minister of Health Dr Aaron Motsoaledi says the Tembisa Hospital corruption, which has now ballooned to R2 billion as revealed by the Special Investigating Unit in its interim report, amounts to high treason" *X.com*, available at <https://x.com/SABCNews/status/1972707931138236425> (accessed 6 December 2025).