

President must establish Integrity Commission – before it’s too late

By Paul Hoffman

Paul Hoffman SC is director of Accountability Now. After 26 years at the Cape Bar he became Director of the Centre of Constitutional Rights, working with the Institute for Accountability in Southern Africa on cases such as the ‘Glenister Case’, the ‘Arms Deal Case’ and the ‘Bread Case’.



Paul Hoffman SC does not hold back in a hard-hitting critique of the National Prosecuting Authority. He suggests the ANC has not shown the necessary political will to combat corruption. He asks if the unity of the ANC enjoys precedence over the proper administration of the criminal justice system.

Shortly before her term of office as Public Protector ended in October 2014, Thuli Madonsela gave a parting gift to the people of South Africa in the form of her ‘State of Capture’ report which called for the appointment of a commission of inquiry into grand corruption, kleptocracy and state capture. Three years and five months later the Zondo Commission got underway.

The revelations to the commission by Angelo Agrizzi appear at least to have reminded the National Prosecuting Authority (NPA) that the Special Investigating Unit (SIU) asked for prosecutions of those involved in the Bosasa shenanigans. Four miscreants, including former Bosasa operations chief turned whistleblower Angelo Agrizzi, have appeared in the dock for what they did back then and the matter has been postponed.

Apart from this long overdue development, the NPA has remained as paralysed as it was when Jacob Zuma was president. Although, 14 years down the line, Zuma is now facing trial, there has been no prosecution following the removal of the NPA head, Mloxi Nxasana. The crooked funding

of Nkandla renovations also goes unpunished.

Although corruption is a serious crime and corrupt activities carry severe penalties, combating the corrupt is essentially a matter of political will. In South Africa, corruption manifests as theft from the poor. Rigged tenders, backhanded bribes, corrupt use of public money to build palaces and security walls abound. Prosecutions do not.

It seems there is insufficient political will to end the impunity enjoyed by the corrupt state capturers; that the unity of the ANC enjoys precedence over the proper administration of criminal justice. Our president pays lip service to the rule of law but does very little, beside window dressing, to tackle the corrupt. He knows many of those involved in corruption are senior members of the ANC. Why does the state not bring them to book? Is this because he fears going down in history as the leader who presided over the disintegration of the ANC?

Faith to the tenets of the national democratic revolution continue to trump the proper implementation of the promises of the Constitution and the Bill of Rights. As long ago as 2011, >>

“

Although corruption is a serious crime and corrupt activities carry severe penalties, combating the corrupt is essentially a matter of political will.

the Constitutional Court ruled that the state is obliged to keep and maintain adequately independent anti-corruption machinery of state that effectively and efficiently investigates and prosecutes the corrupt. This machinery – a dedicated, specialised, adequately resourced and well trained unit – is required. But no such entity exists: the Hawks are a risible replacement for the Scorpions, the Anti Corruption Task Team is dysfunctional and unconstitutional, while the new Investigative Directorate of the NPA has yet to get out of the starting blocks. SA is still without hope of seeing compliance with what its highest court requires to end the impunity of the corrupt.



The main reason is the lack of the necessary political will to make the decisions needed to comply with the rule of law. In March 2019, during question time in parliament, President Cyril Ramaphosa promised to mull over the notion of the best practice compliance with the court findings by establishing an Integrity Commission to investigate and prosecute grand corruption in all its forms. He found the notion, provided chapter and verse, in a letter from Accountability Now. The letter, available on the Accountability Now website, goes unacknowledged and the ‘mulling over’ apparently continues.

Lack of political will to counter corruption in a constitutionally

compliant manner is the most reasonable explanation. The NPA remains partly captured, underfunded and lacking in experienced and properly qualified prosecutors. Its leadership spends an inordinate amount of its time and energy explaining why it can’t do its job, instead of doing what it can. The president prefers to maintain party unity even if this reduces the country to junk status, scares off much needed new investment and places South Africa at risk of becoming a failed state. He would do so much better for his people, his party and his country by announcing the establishment of an Integrity Commission now, before it is too late.

www.accountabilitynow.org.za NA

