

Dear Comrade President Ramaphosa,

We at the Institute for African Alternatives (IFAA) are writing to you, with the greatest respect, to appeal to you to use your authority to send an important message to Parliament. We ask you to encourage every member of the Portfolio Committees to read the last 200 pages of part VI of the Zondo report.

We are fully aware that this is a controversial request because it is you who is supposed to account to Parliament – on behalf of the executive. Yet here we are, South Africans committed to our Constitution, urging you to just this once disregard principles around the separation of powers to tell Parliament what it needs to do, as a matter of urgency.

IFAA's particular interest in the Zondo Commission's report stems from a research project we began in 2019 called "Checks and Balances". The project was initiated by IFAA's founder, the late former MP, Professor Ben Turok, shortly before he passed away. It set out to examine why the checks and balances written into the South African Constitution have failed when it comes to acting on the recommendations of the Auditor-General to reduce "irregular, unauthorized and fruitless and wasteful expenditure" in the public sector.

IFAA notes with keen interest the Zondo Commission's uncompromising statement that Parliament's Portfolio Committees are key to parliamentary oversight over the executive. The

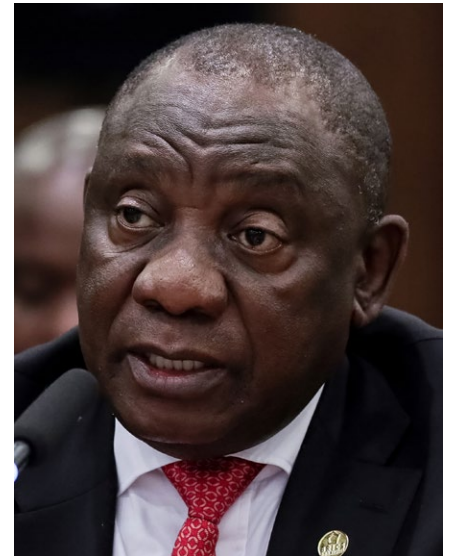
report states, "The evidence before the Commission is overwhelmingly in support of the view that the institution that is key to the performance of parliamentary oversight over the executive in South Africa is the Portfolio Committee" (RSA, VI(II): para 755).

If oversight failed in the case of state capture – as manifestly it did – the locus of that failure is the Portfolio Committee. The Zondo Commission firmly asserts that state capture was the result of the failure of the Portfolio Committee system in Parliament and makes it clear that fixing Parliament's Portfolio Committee system is urgent and of utmost importance.

Parliament – and its Portfolio Committees – for over two decades now, have signally failed to hold the executive to account for its abuse of public funds and assets. There are no consequences for the corrupt, the incompetent, the feckless, the careless accounting officers and executive authorities that are culpable in the waste of resources. These are the precious and scarce means that our people have asked the government they elected to muster for national development and improvements in the lives of citizens. Yet these resources have been plundered and are still being wasted – and nothing is done about it.

We at IFAA have wasted long months since we released our research findings, some time before any Zondo reports, trying to get Parliament to engage fully with the recommendations and urgings of the Auditor-General.

We were very lucky to get input and support for our research from the current chairperson of SCOPA, Mr Mkhuleko Hlengwa of the Inkatha Freedom Party, the Auditor-General at the time, the late Mr Kimi Makwetu, and a number of opposition MPs, but we have been singularly unlucky in



securing the assistance of the Speaker, the former Speaker, the Deputy Speaker and the House Chairperson of Committees, Mr Cedric Frolick, despite our repeated attempts.

IFAA is not calling on the Hawks and the National Prosecuting Authority, the war rooms and the command councils. We are simply calling for elected MPs, in their Portfolio Committees, to read Part Six, Volume 2, pages 287 to 483 of the Zondo report – and to, as Committees, agree on what to recommend to the National Assembly on the way forward.

One of the features of the Zondo Report is the way it outlines deep and ongoing problems since the very start of the democratic era in holding the executive to account. Paragraph 937 of the sixth instalment covers how the Mbeki Parliament prevented oversight over the arms deal from 1999, and goes on to the most egregious abuse of Parliament ever, in 2016, when the Constitutional Court, most embarrassingly, had to tell Parliament it was not doing its job. This was the Nkandla judgment.

Zondo shows in painstaking detail



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how state capture unfolded as Portfolio Committees' checks and balances broke down. In its meticulous analysis of the Portfolio Committee system the Zondo report holds up a mirror to Parliament that exposes weaknesses in a new and graphic way.

The Zondo report is respectful of Parliament's key role in our system of checks and balances. A Commission can only operate according to the mandate given to it by the President. It cannot force the President (or Parliament) to do anything specific. The judiciary cannot tell Parliament how to do its job – it is only allowed to tell Parliament when it has acted in defiance of the Constitution and that it must fix the problem. (Unfortunately this has happened a lot!) The executive, similarly, cannot tell Parliament what to do. It can propose laws and ask Parliament to consider them. It can report to Parliament and invite comments. It can (indeed must) respond to questions that are posed in Parliament.

Since the start of democracy in South Africa we have believed the Portfolio Committees are the “engine room” of Parliament. They go through every clause in every law before they approve it. They look at the annual budgets, plans and reports of departments and state-owned companies that are attached

to the Minister whose “portfolio” they oversee. Portfolio Committees have very considerable powers to get information from the executive – but they do not wield these powers effectively in many instances, as the Zondo analysis outlines.

Problems with the performance of Portfolio Committees are not new. Parliament has itself commissioned at least four studies that have made concrete recommendations on how Committees, and Parliament broadly, could improve their oversight work. The first report was in 1999 at the end of the first term of parliamentary democracy. This was the “Corder report” which is frequently referenced, and praised, in the Zondo report. Other reports – each initiated by the National Assembly itself or its Speaker – came out in 2007, 2009 and 2018.

After Corder, came the Asmal *Ad Hoc* Committee on how Chapter Nine institutions could work better with Portfolio Committees. Parliament implemented only one recommendation. Then came the Independent Review of Parliament in 2009, which endorsed the decade-long effort to craft an effective Oversight and Accountability (OVAC) model for Parliament. It was put on the shelf after the most minor changes were made to the parliamentary rules. And you will remember that Comrade Kgalema Motlanthe chaired a “High Level Panel” – funded by Parliament – to make recommendations on what Parliament should do so that more of the old freedom promises were addressed by our democracy. The Panel held expensive hearings all over the country. They told Parliament what they found. They made constructive suggestions – and Parliament did ... NOTHING.

The Zondo report called on Parliament to revisit the Corder report and to review its own rules, its operating “traditions” (many of which were developed by parliamentary bureaucrats, not by Members), and the proposed OVAC model for Parliament.

Comrade President, as an ex-*MP* – and as a negotiator of our Constitution – you know that since 1994 every Portfolio Committee has had a majority of ANC MPs. So one could blame the ANC (which is easy, and what everyone does, including Zondo) – or you could say that true responsibility for state capture lies with the Portfolio Committees of Parliament, which have failed to exert checks and balances over the executive.

We are not telling Parliament *how* to respond. We are under no illusions how challenging it will be to get a response from the Portfolio Committees – but we know it can be done. In what the Zondo report refers to as “The Frolick Letters” we are presented with a clear demonstration of both Parliament's successes and failures in this regard.

As you know, in mid-2017, Mr Frolick in consultation with his ANC colleagues, addressed the stories emerging in the media based on leaked emails from the Gupta business empire. He wrote to four Portfolio Committees – Home Affairs, Mineral Resources, Public Enterprises and Transport – asking them to urgently probe “recent accusations of state capture linked to alleged emails involving a number of Ministers”. The committees were told to ensure “immediate engagement with the concerned Ministers to ensure that Parliament gets to the bottom of the allegations”. The committees were told to report back to the National Assembly.

Only one committee, Public Enterprises, did so and the Zondo report looks in detail at why and how it succeeded while the other three failed. In so doing, it exposes the reasons why MPs of the majority ANC were “disincentivised” by parliamentary rules, by the ANC itself and by the electoral system from scrutinising the actions of the executive, government departments and state-owned entities. The report explains why it was so difficult for Portfolio Committees ever to hold the executive to account on key >>



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failings, which ultimately led to wide-scale state capture. This was all to the disadvantage of our people and to the disgrace of the liberation movement.

The Zondo report tells a compelling story of parliamentary malfunction that every Member of Parliament needs to understand because it is current MPs who will implement any recommendations of the Zondo report on parliamentary oversight.

Portfolio Committees lie at the root of why Parliament “dropped the ball” and the Zondo Commission makes it abundantly clear that fixing Parliament's Portfolio Committee system is of the utmost importance.

IFAA believes this finding of the Zondo Commission into state capture is the most consequential of all its recommendations for the future of our democracy.

In our view, the Zondo report Part VI(II) on Parliamentary Oversight is a truly excellent piece of work. We must make sure we use it to build a better future for our people and our democratic system of government.

In solidarity,
IFAA

A version of this letter from IFAA to President Cyril Ramaphosa appeared in Daily Maverick on 1 September 2022. Please [click here to read more](#). 