



# Democracy only works if Parliament works

## Parliament as the cornerstone of public participation

*By Moira Levy and Martin Nicol*

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*IFAA recently held a colloquium on 'Democracy can only work if Parliament works – South Africa after Zondo,' which was addressed by Chief Justice of the Constitutional Court Raymond Zondo, former President of the Republic Kgalema Motlanthe and Rivonia Circle Director of Programmes Tessa Dooms.*

**I**n Defence of our Constitutional Democracy (Decode) is committed to making sure that the report of the Zondo Commission of Inquiry into state capture does not suffer the same fate as its many predecessors, including the Hugh Corder and Frederik Van Zyl Slabbert reports and the 2018 report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, which was chaired by former President Kgalema Motlanthe.

These and other commissions of inquiry, which systematically interrogated the risks and challenges facing South Africa's democracy and proposed comprehensive and much-needed reforms, have one after the other been relegated to the archives of Parliament. The objective of IFAA's Decode project is to keep the findings and recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State – commonly known as the Zondo Commission – alive and kicking in the public arena. >>



IFAA invited Chief Justice Raymond Zondo to give the keynote address at a Decode colloquium held in Cape Town in November 2023, titled “Democracy can only work if Parliament works – South Africa after Zondo”. As we explained in our invitation to the Chief Justice, the project’s aim is to “advance the reforms proposed by the Zondo Commission and follow up the work that still needs to be done in terms of the framework of the Commission ... in order to preserve, even revive, public hope that they introduce much-needed transformation in our Parliament and our beleaguered country”.

In his acceptance of the invitation, and in the subsequent public address, the Chief Justice generously “applauded” IFAA for this initiative and declared he was “very pleased to be part of this discussion,” saying “it seems to me that there could not have been a more appropriate time for a project such as this.

“The Institute for African Alternatives and other civil society organisations have made it their mission to ensure that the recommendations must not be allowed to be ignored, and have said that they would make it their business to make sure that its recommendations were implemented,” Chief Justice Zondo said.

With its focus on “Parliament as a Cornerstone of our Constitutional Democracy,” Decode singled out the 16 recommendations in the Zondo report that address Parliament and its failure to carry out its constitutional oversight duty.

“I think it is quite appropriate for an organisation of the size of this Institute to decide that out of the many recommendations of the Commission its focus would be those that concern Parliament and it seems to me that focusing on the recommendations that relate to Parliament is quite critical.



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**... to preserve, even revive, public hope that [the Zondo recommendations] will introduce much-needed transformation in our Parliament and our beleaguered country.**

“Parliament is a very important institution in any constitutional democracy. It makes laws by which all of us are bound but apart from that it has a constitutional obligation to oversee executive action and to hold the executive to account.”

He referred to the challenges that Members face that were identified by the Commission – for example, lack of capacity, skills and education. “But it seems to me that the biggest problem may have been that members of the majority party did not want to be seen by their colleagues as ‘behaving like the opposition’.”

In his speech he dealt with the contradiction between the oath of office all MPs must take before taking their parliamentary seats in which they swear to be faithful to South Africa and to uphold the Constitution of the country. On the other hand, they also make a declaration – separately – of loyalty to the party they represent.

“I have absolutely no doubt in my mind that there are many men and women in Parliament who are people of integrity and who put this country and its people first. How do we help them to change this situation so that the people of South Africa never again lose R58 billion” (an estimate of the direct costs to the country of state capture and the corrupt behaviour considered by the Commission).

He referred to the role of citizens “and the many organisations in South Africa, including the Institute for African Alternatives, which have stood up and said we will not allow this huge investment of the people of South Africa to go to waste. We will do what we can to make sure that [the Commission’s] recommendations are implemented.

“I think that all of us who want to make this country a better country ... can play a role in making sure that state capture never happens again,” Chief Justice Zondo said.

Former President Motlanthe is Director of the Board of IFAA who hosted the colloquium in conjunction with the University of the Western Cape’s Institute for Social Development. In his opening presentation, he also raised the problem of the MPs’ dual loyalties.

In his view, the “ineffectiveness of Parliament” stems from the tension between what is best for the country and what is desired by the party leadership. Reminding the colloquium that the Constitution of the Republic is supreme or preeminent over any party’s constitution he said, “we are aware that elected representatives are eternally indebted to those who have secured a high place for them in the party list. Hence the reluctance to hold party leadership to account.

“This begs the question: how seriously do Members of Parliament take the oath they swear when they become parliamentarians.”

Referring to the colloquium theme -- democracy can only work if Parliament works – the former President said this asks “whether an alternative system needs to be in place to protect the independence of public representatives. >>



“If we want democracy to work, then the duties of public representatives to the Constitution of the Republic need to be carried out within a structure of direct accountability. We must also ask what is it that jeopardises the independence of parliamentarians?”

He cited the Electoral Act – recently amended amid much controversy – which stipulates that it is parties and not individuals who contest elections. “Therefore, Parliament is made up of people on party lists who are selected on the basis of internal party processes.”

Tessa Doods, the Rivonia Circle’s Director of Programmes presented a civil society response to the presentations by the Chief Justice and former President. In her speech she challenged the notion that the party list system absolves voters from any responsibility in the selection of those who represent them.

She reminded the colloquium that the people voted for the parties who decided who would fill Parliament’s 400 seats. “We actually have some say in deciding who are sitting in those seats. Party lists are openly available to us. We need to do the work as citizens to find out about the people who are on those lists.”

The Constitution asserts South Africa is a democracy of the people, she said. “We, the people, own the House, and the people who occupy the seats do so at our behest. Yet we don’t know who they are, and that should be an anomaly in a democracy.” She said citizens must:

- Know *who* parties have nominated for election – not just their names, but their individual track records.



## ... how seriously do MPs take the oath they swear [to uphold the Constitution] when they become parliamentarians?

- Actually read their manifesto, and interrogate them.
- Object to the laziness of MPs by confronting them individually on how they intend to vote on different issues.

“We hire them. They do not get hired by the parties. They are our employees, not the parties. The parties don’t even pay them. We pay them.”

She said Parliament will never change as Members will not voluntarily accept, or enact, changes that challenge or undermine their power. “Never in history have turkeys voted for Christmas,” she said. It is up to citizens to change Parliament.

“Parliamentarians are not going to change Parliament by themselves. It’s not in their interests [to do so], but it is in our interest and we can do it.

“A fundamental reason why our Parliament is not working is because we allow it to fail. We have allowed our Parliament to descend into a vacuous place where people we don’t know do things we don’t care about.”

The Decode colloquium raised some of the consequences of the failure of Parliament and the threat that posed to the success of South Africa’s democracy:

- Citizen cynicism and apathy that results in their disinterest in holding their public representatives to account;
- Capacity deficits among MP, not only in their skills and training but most importantly in their integrity and independence when it comes to serving the people they represent; and
- The compromised principle of the separation of powers, especially when it comes to the duty of the Legislature to hold the Executive to account.

The colloquium reminded one attendee of the issue Sherlock Holmes confronted when a crime was committed, but the guard dog did not bark. This was because – as Holmes reasoned correctly – the dog knew the perpetrator. Parliament does not bark when the Executive is culpable, because the Executive is made up of the party leaders who decide who gets fed!

*IFAA thanks Fazeela Mohammed for performing as master of ceremonies and all the sponsors of the event, including the Australian High Commission, whose support enabled Decode to launch its activities in the significant year before the 2024 South African elections. NA*



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