

Parliament ignored state capture and failed South Africans

Parliament is “ineffective, indecorous and symbolic”, its rules are inadequate and MPs were able to choose not to take action, OUTA says in report to Zondo Commission

Members of Parliament aided and abetted state capture looters by failing to uphold their constitutional duty to hold fellow MPs and the Executive to account and provide the fearless oversight South Africans expected of them.

The Organisation Undoing Tax Abuse (OUTA) has submitted a 108-page affidavit on Parliament’s role to the Commission of Inquiry into State Capture. OUTA’s Parliamentary Engagement Officer, Matt Johnston, who compiled the affidavit, says its primary objective was to illustrate systemic failures in parliamentary oversight with regards to how allegations of state capture, and the Gupta family’s involvement, were processed in the Legislature from 2013 to 2019.

“The lack of public trust in Parliament as an institution for the people is partially due to the widely held view that it is ineffective, indecorous, and symbolic, rather than practically willing and able to assure accountability and integrity of public servants,” says Johnston.

The affidavit was compiled through first-hand experiences and by reviewing minutes and audio obtained from the Parliamentary Monitoring Group, a non-profit organisation that monitors Parliament and its various committees.

“OUTA’s experience and research show that, despite knowledge of serious allegations regarding the abuse of state resources and assets involving high-ranking members of the Executive, Members of Parliament chose – or were instructed – not to take serious action. In most instances where allegations of organised corruption or state capture were indeed raised in parliamentary meeting proceedings, it is OUTA’s experience that the majority rule was often used to dismiss such matters as baseless, irrelevant, false, or misleading,” said Johnston.

His affidavit states that poorly defined parliamentary rules or limitations of parliamentary jurisdiction and powers “were used as excuses not to deal substantively” with serious allegations, or, “in countless instances, allegations were simply ignored”.

“It is our conviction that the political machinery that prevails in South Africa today is such that the Executive is not held accountable by Parliament; and it is such that Parliament is not accountable to the People – but rather to political parties. We wish to put it on record that this averment, directly contradicts the principle of government by the People and for the People enshrined in the Constitution,” he says in the affidavit.

Johnston, who has been providing independent oversight at Parliament for three years, detailed how parliamentary committees were keen to relinquish their oversight duties and when they did attempt to hold people to account, they did so with little conviction.

“An institutional culture has developed in Parliament where committees were eager to absolve themselves of any oversight and accountability duty even when the public outcry and media exposés made it politically unviable for Parliament to ignore issues entirely. Committee chairpersons were unable to assert themselves over members of the Cabinet who were sitting with MPs who outrank them within the political party they serve. Like these MPs, who were often ministers, high-ranking employees of major state-owned entities did not consider themselves to be truly accountable to Members of Parliament. They instead either mocked or attacked the legislative authority and would often at the last moment not attend,” says Johnston.

Johnston details how the rules that govern MPs are broad enough to empower the elected officials to undertake action of significant importance, or nothing at all, with no consequence either way, calling for the rules to be reviewed.

“Members of Parliament are free to act in the immense zone of the ‘permissible but not required’ without constitutional constraint. The rules of the National Assembly and the National Council of Provinces do not satisfy the constitutional provision that states they must *ensure* mechanisms that affect accountability and oversight of the Executive. Political interests and biases in the interpretation and application of these discretionary rules prevent tangible consequences resulting from them,” he said.

Despite mounting evidence in the media, the #GuptaLeaks and a host of whistleblowers describing multiple crimes involving then sitting ministers such as Mosebenzi Zwane, Bongani Bongo, Faith Muthambi and Tina Joemat-Pettersson, none were ever held to account by Parliament.

The affidavit outlines how parliamentarians acted in specific matters, including:

- The May 2013 Gupta wedding Waterkloof Airforce Base landing (which was debated in Parliament but no further action was taken);
- The failed nuclear deal with Russia (MPs avoided oversight of a deal later ruled illegal by the high court);
- The Public Investment Corporation (MPs had inadequate information for effective oversight and some of their concerns were dismissed on the basis of a shallow interpretation of their oversight role);
- The collapse of the SABC, when MPs were unable to hold the Minister to account when she simply denied responsibility;
- Inquiries into the Passenger Rail Agency of SA (PRASA) which fell flat after the board failed to turn up to the committee meetings;
- Parliament’s inquiry into Eskom was successfully completed and resulted a report to the Zondo Commission, despite the efforts of some MPs to derail it, including the alleged attempt by MP Bongani Bongo to bribe the evidence leader.
- The inquiry into the Department of Mineral Resources and the deal between Glencore and the Guptas’ Tegeta mine ran into difficulties with a Minister who tried to evade questions by calling for investigations in other forums such as the high court to take precedence, by focusing on trivia and by avoiding further meetings; this inquiry later collapsed amid problems of lack of funds and powers.
- Parliament’s inquiry into the Department of Water and Sanitation was abandoned without clear reason, although the department was on the verge of collapse after misspending billions of rand.
- The Portfolio Committee on Communications found that Minister Muthambi should face imprisonment and decided not to investigate further but to refer the matter to the Joint Committee on Ethics and Members’ Interests, which did nothing.