

## Draft conference resolution on countering corruption in South Africa

*Having met and deliberated at Nelson Mandela University on 14 and 15 April 2025.*

### THE CONFERENCE NOTED THAT:

1. The government of national unity (GNU) in South Africa is bound to be loyal to the supremacy of the Constitution and the rule of law. In addition, the oaths of office (or solemn affirmations) of cabinet members and members of parliament bind them to uphold the Constitution and the rule of law.
2. The constitutional order of SA is based on openness, accountability and responsiveness. It requires the state to respect, protect, promote and fulfil the rights guaranteed to all in the Bill of Rights.
3. This constitutional order is intended to reflect the resolve of South Africans to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life. The nation aims for security, peace, sustainable progress and shared prosperity.
4. These requirements and goals are **unachievable while rampant grand corruption continues to enjoy impunity** in South Africa. In 2011, in the case now known as *Glenister Two*, the Constitutional Court noted that: *“(t)here can be no gainsaying that corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order”*. Former Chief Justice Zondo, who chaired a commission of inquiry into state capture and who delivered the keynote address at this conference has warned in November 2023 that: *“The levels of corruption in our country have reached completely unacceptable proportions, and unless something very drastic and effective is done soon, we will have no country worth calling our home.”* When the first tranche of the report of the commission was handed to him in January 2022, the president described it as *“a defining moment in our country’s effort to definitely end the era of state capture and to restore the integrity, credibility and capability of our institutions, but more importantly, our government”*.
5. The Constitution means, in the final analysis, what the Constitutional Court interprets it to mean and thus the Constitutional Court has so interpreted and decided, in the *Glenister* litigation, in a manner that binds the government, that corruption must be dealt with in South Africa by **a body outside the control of the executive branch of government**.
6. The Constitutional Court also ruled that the **international anti-corruption treaty obligations** of South Africa, be they to the UN, the AU, SADC (and even the OECD, in respect of bribery of foreign officials), **oblige government to establish and maintain an independent body to counter corruption**. The Constitutional Court further found that **countering corruption is a human rights issue**.
7. The well-known *Glenister* litigation rules, laid down by that court in March 2011, and confirmed by it in November 2014, specify the **criteria** by which that body must be known.
  - It must be populated by dedicated **specialists** who are

- properly **trained in countering corruption**;
  - located in a structurally and operationally **independent** entity;
  - **resourced** in guaranteed fashion and
  - with personnel who are **secure** in their tenure of office.
8. These **STIRS criteria** (as they are known) are at present conspicuously absent in South Africa, despite the taking of a “stopgap measure” in 2024 by legislating the establishment of the **Investigating Directorate Against Corruption (IDAC)**.
  9. IDAC is a body located within the National Prosecuting Authority (NPA) which is unconstitutional due to the complete absence of any of the STIRS criteria in it and in the NPA which is under the final responsibility of the minister of justice with the director general of the department of justice as its accounting officer.
  10. **No STIRS compliant body has ever been established** in South Africa. Government is accordingly in breach, since 2012, of the binding decisions made in the Glenister litigation in 2011. This breach exists despite the stipulations requiring respect for the binding nature of court decisions contained in Section 165(5) of the Constitution and the tenets of the doctrine of judicial precedent.
  11. In the absence of such a body, corruption and state capture, particularly during what the president describes as “the Nine Wasted Years” of the Zuma presidencies (from 2009 to 2017), have flourished during the recent years in South Africa. As a result, **poverty and inequality have been exacerbated, joblessness has grown** to alarming proportions, especially among the youth. State capture itself has been and is being attempted by rogue politicians, public servants and those in business with the state and state owned enterprises.
  12. The loot of state capture and ongoing grand corruption can be measured, dating back to the arms deals of 1999. The loot has been estimated in **trillions of rand and that loot has not, in large measure, been recovered** for the benefit of the people of South Africa. According to the presidency, by December 2023 only R5,4 billion of the loot of state capture had been recovered. This is a small fraction of the actual loot.
  13. All manner of corrupt activities continue with impunity to this day because of the past lack of political will to set up the body the Constitutional Court required in 2011 in terms that bind government.
  14. The Hawks (the Directorate of Priority Crime Investigation) set up in 2009 to investigate serious corruption have not been a success at so doing. The Hawks are not STIRS compliant, they are a police unit under the control of the SAPS national commissioner.
  15. The NPA has been gutted by state capture. It lacks the skills and resources to counter serious corruption. The director of IDAC has inappropriately exhorted her staff to “fake it until you make it.” The multi-agency approach toward countering the corrupt has been a failure.

16. Economic growth has been severely stunted and business confidence has all but evaporated, to the detriment of new investments and job creation.
17. **On 2 April 2025 Songezo Zibi, Chairman of the National Assembly’s Standing Committee on Public Accounts (SCOPA), has pointed out in parliament that the country “has debt service costs (interest the country pays) of R442-billion per year, or R8.5-billion per week.”** The Gini-coefficient marking inequality of South Africans has never been larger.
18. **Respect for human dignity, the pursuit of the achievement of equality and the enjoyment of the human rights guaranteed to all in the Bill of Rights have all suffered setbacks due to corruption.** All of these phenomena as listed above have occurred despite the obligations of the state to respect, protect, promote and fulfil all of the rights set out in detail in the Bill of Rights. These obligations cannot be properly fulfilled in the absence of constitutionally compliant anti-corruption machinery in a state that functions effectively and efficiently to deliver, inter alia, education, health care, housing and social security.
19. The failure to deal with corruption in the manner required by the Constitutional Court has **diminished the quality of life** of most who live in South Africa. The impunity with which legal prescripts are flouted and the failure to bring people to justice seriously undermine the **Rule of Law**. This is underscored by the frequency with which whistleblowers are either killed or otherwise “cancelled”, including people such as Pamela Mabini, Athol Williams, Babita Deokaran, Jimmy Mohlala, Martha Ngoye, Paul Theron, Moses Phakwe, Xola Banisi, Cynthia Stimpel and many others. Government should no longer delay the establishment of safeguards for whistleblowers and the provision of effective witness protection.
20. **The GNU cabinet** should pay due attention to the **resolution of the ANC’s NEC** which, in August 2020, instructed the cabinet in the Sixth Parliament to establish a single stand-alone constitutionally compliant anti-corruption body that does comply with the STIRS criteria, the international anti-corruption treaty obligations and the constitutional requirement that promotes the use of public resources in a manner which is efficient, economic and effective (as required by section 195(1)(b) of the Constitution).
21. **The Seventh Parliament** should have regard to that which is noted in the 20 paragraphs above when it debates the bills for the establishment and enablement of a new **Chapter Nine Anti-Corruption Commission** which are currently pending before it.

**THE CONFERENCE ACCORDINGLY RESOLVED THAT:**

- A. A copy of this resolution be made available to the:
- National Cabinet
  - Speaker of Parliament
  - Co-chairs of the Justice Portfolio Committee of the National Assembly
  - Chair of the National Council of Provinces
  - National Director of Public Prosecutions
  - National Commissioner of Police





