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# FISCAL ACCOUNTABILITY, STATE CAPTURE AND THE ROLE OF THE AO/CFO

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# Introduction

1. International crises of governance
2. Domestic crises of governance
3. The hallmarks of State Capture
4. Paying the costs of capture
5. Underlying drivers of government failure
6. The post-trauma reconstruction phase
7. “Future-proofing” the South African State

# International crises of governance (1)



- Global crisis of public trust and legitimacy
  - Trump in the US: human rights, trade wars (China), Iran, unilaralism, war
  - Rising inequality
  - Base Erosion/Profit Shifting
    - Amazon and Starbucks pay near zero taxes
  - Brexit
  - Rise of populism and right wing regimes
  - Banks in the wake of the global economic crisis
  - Wiki leaks, Panama papers etc.
- Governance profession:
  - UK Financial Reporting Council castigates KPMG, E&Y, Deloitte PWC for declining audit standards
  - Management consultants, lawyers, tax practitioners etc
  - India, UK audit quality regulators
- Innovation 4IR and AI, cryptocurrencies like bitcoin

# Domestics crises of governance



- Private and Public Sectors
  - Steinhoff
  - Competition Commission: uncompetitive practices in construction, mobile data over-pricing
  - VBS Bank
  - PIC
  - Eskom, Transnet, PRASA, SASSA, SARS
- Zondo Commission: Gupta/Bosasa
- Disaffected youth
- Governance profession:
  - KMPG, PWC etc
  - Management consultants, lawyers etc
  - General public's question: with all the expensive audits, why wasn't corruption picket up
- Intimidation/ Violent encounters
  - Political heads vs AOs/HOD: MEC Faith Muthambi, Minister Lynn Brown etc
  - AG staff held hostage
  - Culture of political assassination

# Domestic crises of governance (2)



- Assault on the National Treasury
  - Political instability and administrative attrition
  - Attempted bribery of Dep Fin Minister Mcebisi Jonas
  - Political instability: Nene, Gordhan, Van Rooyen, Gigaba, Mboweni
  - Moving budgeting to the Presidency
  - Anonymous state intelligence “dossiers”
  - The “Radical Economic Transformation and the Left
- Constitution and fiscal governance (PFMA, MFMA) seen as an impediment to economic transformation and land reform
- Assault on the Reserve Bank
  - New Public Protector Mhwebane’s overturned report
  - Nationalisation
- Large scale provincial malfeasance
  - Estina Dairies and Ace Magashule
- Local government
  - Crime syndicates and the ruling party, shell companies and assassinations
  - C. Olver 2017 “How to steal a city” – Nelson Mandela

# The hallmarks of State Capture



- “Shadow state”: formal institutions repurposed to serve elites
  - Extractive
  - Political influence for sale via monopolies
- Deployments to key institutions post 2009
  - intelligence, crime enforcement, justice, SARS, Boards of parastatals)
  - Elevation of little known, under qualified but compliant and loyal leadership
- Individuals with integrity
  - Fired, redeployed or otherwise neutralized
  - Smear campaigns via mainstream media or social media
- Involvement of foreign governments and companies
  - High Court overturns Zuma-Putin’s 2014 nuclear fleet deal
  - Russian co Rosatom and the nuclear power station
- Compromised Parliament and provincial legislatures
  - Failure to enforce the Executive Members Act of 1998
  - Failure to enforce financial legislation e.g. PFMA, MFMA
  - First protest suicide protest
- Opaque political party funding

# Paying the costs of capture: the casualties



- Service delivery squeezed:
  - Child palliative care strategy and other programmes unfunded
  - Risks of more “Esidimeni Life tragedies
  - Basic service backlog as urban transition continues
- Tax forgone
- Investment and business confidence (water, electricity) eroded
- Downgraded credit ratings to junk status, higher cost of borrowing, flight of institutional investment
- Poor maintenance of infrastructure in State Owned Entities and all spheres of government
  - Higher user charges
- Fiscal consolidation for the medium term
- Public entities squeeze out other spheres in the Equitable Share

# Underlying drivers of governance failure



- Blurring political and administrative
  - Unstable political administrative interface
  - Political interference and political infighting among factions
  - Managerial malfeasance
  - EA-AO collusion
  - Extended vacancies of municipal managers and CFOs
- Blurring party and state
  - Cadre deployment, “donations” to political parties in power
- Delivering to elites on the input side of the budget through patronage (jobs, tenders) rather than the output side of the budget
- Failure to act when material non-compliance is reported by the AG, poor fiscal leadership (MFMA Consolidated General Report)
- Incentives created by the electoral system
  - Party discipline and party dynamics in oversight
  - Little incentive for oversight over executive
- Capacity for oversight: Parliament, provincial legislature, MPACs
- Justice system subverted and/or lacking capacity
- Trends in cases to make Ministers and officials liable to costs





# Post trauma reconstruction phase

- Consequences flowing from Commissions of Enquiry?
- New appointments to SARS, NPA etc
- Professional public service
  - Skills deficit, leadership deficit, ethics deficit
- Improve oversight: MPACs and Audit Committees
  - Audit committees and evidence of outcomes?
  - MPACs and public participation in oversight?
- Checkers vs doers
  - Diminishing returns to ex-post audit activities
  - Need to improve day-to-day financial practice
    - Number of restatements, inappropriate use of consultants
  - Recurring audit issues
  - Lack of leadership
  - Lack of user friendly accessible management information (e.g. on costs)
- Forensic audit and computer audit capability
- Citizen oversight facilitated by new technologies

# Strengthening fiscal accountability



- NDP recommendations to stabilize the political administrative interface
  - Reduce the role of politicians in recruitment and performance management of AOs and eliminate for all other staff
  - In national and provincial spheres: Administrative head of the public service and PSC
  - Align Public Service Act with the PFMA
- Few criminal sanctions for EAs
- Little statutory protection of AOs and CFOs
  - Compliance responsibilities but little insulation from political pressures
- Dysfunctional system of protected disclosures
- MPACS (s79 of Structures Act)
  - Oversight complicated by legislative and executive responsibility in one authority
- Enforcing Councillor codes of conduct: Councillors prohibited from SCM
- Municipal entities and their Boards
- Long term clarity on local govt fiscal framework requires clarity on the functional framework (role of districts, provinces and public entities).

# How do we “future proof” SA?



- Transparent unaccountability
- Laws and systems can't substitute for ethics and leadership, nor are they self-enforcing
- Review PFMA, MFMA, regulations, practice notes etc
  - Consistency between Acts and regulations
  - No minimum competence for financial officials in PFMA
- Explicit sanctions for political principles and statutory protection for CFOs/AOs
  - Chapter 7 of the PFMA (s54 Executive directives having financial implications)
  - CFO role in the MFMA but not the PFMA
- Filling extended vacancies in MMs and CFOs
- Enforcing the ban on civil servants doing business with the state
- Scrutiny of politically exposed persons
- Justice system capability prosecute white collar crime
- Streamline multiple objectives in SCM e.g. VFM + BEE + Environment
- AG role changing: Audit Amendment Act
  - Forensic auditing
- Parliamentary oversight: Independent MPs and private members bills, and other forms of electoral reform



**Questions,  
comments and  
reflections?**