Conference Proceedings Report 12ᵗʰ Annual Symposium

State Capture as an Obstacle to Democratic Consolidation in Africa

Wanderers Club, Illovo, Johannesburg, South Africa
28 - 29 November 2017

Contents

1 Welcome and Official Opening

The official opening was chaired by Dr Christiana Thorpe, Chairperson of the EISA Board of Directors and former Chairperson of the National Electoral Commission, Sierra Leone.

Mr Denis Kadima, EISA's Executive Director, provided an introduction to the overarching theme of the EISA 2017 symposium – "State Capture as an Obstacle to Democratic Consolidation in Africa". Mr Kadima highlighted the diverse nature of state capture and distinguished it from simple corruption, acknowledging that it is high-level confiscation of the state, its institutions and actors throughout numerous sectors of society. The consequence of state capture is ultimately the suppression of choice for voters as external forces interfere with and discredit the electoral process, with voters losing their influence.

Mr Kadima proceeded to welcome all attendees, most notably the Guest of Honour Justice Albie Sachs, Retired Judge of the South African Constitutional Court, and the Honourable Mr Abdirahman Jibirl, the Federal Minister of Constitutional Affairs in Somalia.

2 Keynote Address

Justice Albie Sachs, Retired Judge of the South African Constitutional Court

Justice Sachs began his keynote address by recounting his experience of being the victim of a car bombing in Mozambique 1988. He found peace and encouragement in the fact that as he had survived such an ordeal, he would recover in the same way as South Africa would in future.

Justice Sachs then proceeded to acknowledge the huge contribution made by neighbouring African countries in aiding South Africa's liberation from the apartheid regime. He stated "it shouldn't be seen as people paying with their blood all over Southern Africa, but also in economic destruction, destruction of infrastructure …"

Justice Sachs went on to note the crucial role of the vote in granting South Africa and her people freedom: "sovereignty for our people, self-determination for our people came through the vote. It came through universal suffrage …" This inherently links to the mandate of EISA as a leading institution and influential player in elections monitoring and democracy. The vote was of vital importance, as it gave more than just power to the people. Sachs highlighted that the vote gave dignity of personhood and equality that would further be entrenched in South Africa's constitution, specifically the Bill of Rights.

Justice Sachs mentioned that throughout his experiences and work, which took him to the far reaches of the globe, individuals in power were susceptible to corruption. For that very reason there needed to be measures to guard against it, as he stated that the constitution alone does not make us "beautiful people", but that there is a perfectibility approach to the constitution. The individual then has to utilise the numerous bodies of the constitution to guard against corruptibility. The constitution most importantly "prepared ourselves to guard against ourselves" as people are capable of doing wrong in the name of doing right.

Therefore, in constructing South Africa's constitution great attention was paid to guarding against slippage, ambition and abuse of power. The structure of the constitution, starting from its foundational principles and then the bill of rights, was to emphasise the importance of the whole normative value structure. The need to have a strong constitutional court with robust review authorities ensuring the value system of the constitution was preeminent in all exercises of public power.

He further expanded on the Chapter 9 institutions established to protect democracy and that serve as checks and balances for government officials. He focused firstly on the Public Protector, secondly, the Judicial Services Commission and, lastly, the Independent Electoral Commission. These three bodies possess a complementary relationship used to safeguard democracy against state capture, which he noted was directly linked to the conference.

Numerous anecdotes were shared, illustrating the interlinking nature of the aforementioned bodies with specific reference to the case in which the Public Protector, Ms Thuli Madonsela, issued a report called "The State of Capture". The report documented the illicit ties President Jacob Zuma and his administration had with the Gupta family, with many anxiously waiting for a decision to be made on the case by the constitutional court.

Justice Sachs further highlighted the interplay between constitutional mechanisms and election malpractice. Such contested elections are prevalent in captured states across Africa. In concluding, it was reiterated that there is a need to have mechanisms to guard against ourselves. These mechanisms give the public confidence in the constitution and integrity of our democracy.

3 Session One: Defining State Capture

3.1 SESSION SUMMARY

❑ State capture is a form of corruption. However, state capture and corruption are not entirely synonymous.

❑ State capture goes further than plunder of state resources for private gain: it targets state institutions that would normally ensure accountability during a period of malpractice.

❑ Ending state capture is not easily achievable.

❑ Democracy or democratisation alone will not alleviate state capture, as democratic institutions can be captured.

3.2 TYPES AND FORMS OF STATE CAPTURE: A THEORETICAL FRAMEWORK

Prof. Tom Lodge, University of Limerick, Ireland, EISA Board Member

Corruption scandals and inefficiencies plague government departments in Africa and across the world. More recently, such malpractice has evolved to take on a new face – that of state capture.

The World Bank's Joel Hellman defined state capture as "the efforts of firms to shape the laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials". It is a term that has become very popular in the political and economic arena of South Africa.

In his presentation, Prof. Lodge deconstructed how the term "state capture" has been perceived in the past compared to more recent times. He identified likely "captors" and "captured" as well as documented when state capture would most likely take place, with its wide-ranging effects.

What is state capture? State capture was defined as occurring when a group secures control of the government, implying that the state loses its social autonomy. From 2000, the World Bank began using the terminology of state capture to refer to efforts by business groups to shape the "basic rules of the game" with the intention of benefiting their operations. In this sense, state capture involves reformulating rather than breaking rules.

Who are the captors and what is being captured? During state capture, the perpetrators or captors are very often firms, or directors of firms. Political parties are also often

responsible for state capture. This is seen when specific political leaders, as is the case in South Africa through President Jacob Zuma and the African National Congress (ANC), are embroiled in state capture. There are exceptional cases where illegal groups can secure control of state apparatus – examples of these are the mafia or less developed states. State bodies and public institutions most concerned with formulating or interpreting the laws, rules or regulations are victims during state capture. The aforementioned captors seek to exert decisive influence over the regulatory political process, allowing for state capture to take place.

Where does state capture occur? Recent reviews of state capture have focused on transition polities – in essence countries undergoing systemic change, particularly seen in the ex-communist bloc. It has also been noted that capturing the state is seen as more attractive if the state itself is reasonably well developed and fairly efficient. Some states can be too internally disorganised to be easily susceptible to capture by groups that are committed to securing long-term investments. Therefore, less structured states are more likely to be targeted by criminal groups.

What makes states vulnerable to capture? Prof. Lodge noted that states going through wholesale and simultaneous political and economic reform are more susceptible to state capture. Political malpractice and secretive party financing using public procurement to achieve political and social gains is a condition that increases a country's vulnerability to state capture.

Effects and consequences: The effects of state capture result in the creation of a politically privileged stratum of business. The high levels of state contracting occurring through non-traceable "private" or non-competitive channels are disadvantageous to business in general. This results in lower rates of growth, investment, and employment as business opportunities and resources are seized by these private actors.

3.3 DISCUSSION

Are there any measures that the international community can establish to combat endemic corruption and state capture? Prof. Lodge responded that although state capture is becoming more a regional problem rather than simply a local problem, there are measures that can be taken by local governments to combat it. Here reference was made to regional blocs in the case of Africa, such as the SADC, being able to hold local governments more accountable.

How do we address the issue of corruption and state capture through the repurposing of state institutions? Prof. Lodge noted that possessing a mobilised assertive citizenry that undertook large-scale collective action led by civil society would aid in realigning wayward institutions.

What measures can be taken to combat the state? He gave the example of Tunisia, which introduced major constitutional reforms in the wake of the 2011 revolution. These made significant strides in retrieving the state from captors. He also made reference to Latvia, which implemented a Corruption Prevention and Combating Bureau specifically established to combat corruption.

4 Session 2: State Capture and the Hollowing Out of Governance Institutions

4.1 SESSION SUMMARY

❑ State capture is achieved through the agency and support of crucial individuals and institutions within the state.

❑ Specific mechanisms are targeted as a method of weakening the institutional safeguards built into a country's constitutional and legal framework.

❑ State capture circumvents the institutions tasked with limiting the agency of captured decision-makers within the state – be it in the manner in which the American constitution was established; through the misconduct in the electoral process in Zimbabwe; or the affording of more privileges to key individuals or firms in the case of South Africa.

❑ The process of weakening/dissolving key state institutions leaves a country with no viable institutional course of correction should illegal practices be exposed in the public domain.

4.2 STATE CAPTURE IN THE USA: LESSONS AND CHALLENGES FOR SUSTAINABLE DEMOCRACY IN AFRICA

Prof. John Stremlau, University of the Witwatersrand, South Africa, EISA Board Member

Prof. Stremlau used examples dating back as far as the period of slave trade in the United States to the present-day Trump administration in order to highlight the nature of state capture in the USA. He noted how the constitution and its foundational principles illustrate state capture. He began by drawing comparisons and differences between the South African and American constitutions. Although written in different times and circumstances, they are useful to compare, as they served very different political aspirations that were pertinent in state capture.

The Bill of Rights (the first chapter of South Africa's constitution) is the cornerstone of democracy in the nation rooted in civic nationalism. It enshrines the rights of all people in South Africa, affirming the democratic values of human dignity, equality and freedom regardless of their inherited or chosen racial, ethnic, cultural or sexual identities. This is contrasted with the first article in the US constitution, which allocated legislative power to the 13 newly independent states and not the rights of people who live there. This is important, as only through pressure from Massachusetts were human rights incorporated through 10 amendments after the approval of the constitution. State capture in America had taken place through the selective promotion (or lack thereof) of human rights and the emasculation of these amendments, including voting rights.

In the 18th century there were two contentious points regarding states' rights and distribution of power. The first was the demand from smaller states for equal rights and treatment following the establishment of the Electoral College. However, the founders justified the Electoral College as a way to prevent state capture by a tyrant and/or populist mob. This was ironic, according to Stremlau, as it is the system that went on to empower a demagogue in 2016 (Trump and his cronies). Secondly, there is the determined regional ethnic faction committed to capturing and holding disproportionate power and an unfair national advantage.

This was entrenched in 1789 when constitutional protection was given to states whose white citizens imported, owned, exploited and traded millions of slaves. During this period the role of imported slaves resulted in a boom of the US Southern economy. This yielded the economic, political and ideological leverage to capture the states locally, regionally and nationally. Spurred by greed, the US Southern economy went on to become the world's fourth-largest economy. Fearing interference from the North, wealthy plantation owners and their local political allies then developed a regional ideology of white ethnic nationalism. This ideology established a regional alliance across the South of one-party states which were able to dominate national government, electing slave owners to the presidency and installing biased seniority as well as sympathisers of the slave trade in key congressional committees. This illustrates how state capture was entrenched through the constitution and would further manifest itself in the slave trade.

Fast forward to the present day: the influence of the Electoral College in privileging state equality over human equality led to the election of Donald Trump. By electing Trump, who is the least qualified, least appropriate, president in US history, Trump and his respective stakeholders were then able to gain access to state apparatus. Stremlau notes that even in power, Trump is not to be underestimated, as he is an ethnic nationalist himself who encourages racism, sexism and xenophobia – similar to the ideology that captured the US in the 1700s.

4.3 CAPTURE OF THE JUDICIARY: A CASE STUDY FROM ZIMBABWE

Mr Derek Matyszak, Institute for Security Studies, Zimbabwe

Mr Matyszak documented the conflation of party and state in Zimbabwe, where the two are largely indistinguishable – highlighting the capture of the judiciary, security sector and the electoral management sector through the Electoral Commission of Zimbabwe (ZEC). Specific reference was given to the case of election-rigging in the Mount Pleasant constituency (an opposition stronghold) in Harare in the 2013 elections, resulting in the subsequent win for the Zimbabwe African National Union Patriotic Front (ZANU-PF) in that constituency and across the country, which led to the re-election of Robert Mugabe. Matyszak outlines five steps through which these elections (2013) were rigged.

1. Setting the election date: The ruling ZANU-PF party took it upon itself to call the election when it was ready and the opposition was not. They moved the 2013 election to four months ahead of the expected date, leaving the opposition little time to campaign. Electoral reforms under the new constitution – which would have aided the opposition – were also unable to take place due to the revised election date.

2. Voter registration: Bringing the election forward meant that the timelines for voter registration were greatly affected and posed a logistical nightmare for the Electoral Commission of Zimbabwe. Opportunities for rigging were noted as long-deceased individuals' names appeared on the voters' roll. No audits of the voters' registers were able to take place due to the shortened period prior to the elections. This was worsened by constituencies like Mount Pleasant being perceived to be captured by members of the police and security services, who had to vote in that constituency even though they did not reside there. Essentially, 9,460 individuals were forced into the Mount Pleasant constituency illegally.

3. Securing the police vote: Police officers and security services mostly aligned to ZANU-PF were also encouraged to apply for a special vote, as they were ostensibly unable to vote on Election Day owing to the fact that they had to carry out security duties. As a result, the entire police force of 63,000 officers applied for the special vote, which was granted to all of them. However, once again due to the election date being brought forward, the special votes were not processed, resulting in the ZEC appealing to the constitutional court to allow these individuals to also vote on Election Day. Essentially, 23,000 members of the police force may have voted through the special vote and then voted once again on Election Day.

4. Polling: Furthermore, individuals were then bussed into Mount Pleasant from outside constituencies to vote. Video evidence of this can be found on YouTube, in which one of the electoral officials is seen asking these individuals where they were being bussed in from and if they could name at least one street in the constituency they were voting in to prove they were from there, which they could not do.

5. Judiciary: In the closely contested 2013 election the opposition party led by Morgan Tsvangirai appealed to the constitutional court over electoral misconduct. The constitutional court then responded by stating that only documented evidence would be admissible in this case. This posed a huge problem, as the documented evidence would need to have been supported through the ballot boxes being examined, which the constitutional court had earlier disallowed. As a result, the opposition was unable to present oral and documentary evidence, and it then withdrew its petition.

4.4 SOUTH AFRICA AND THE CAPTURE OF THE EXECUTIVE: UNDERMINING TRANSFORMATION?

Mr Mphumelelo Mkhabela, Centre for the Study of Governance Innovation, University of Pretoria, South Africa

In his presentation Mr Mkhabela unpacked the vicious cycle of state capture in South Africa through his five-point MAMCO analysis.

- ❑ Motive for capture
- ❑ Agents for and of capture
- ❑ Method of capture
- ❑ Conditions for capture
- ❑ Outcomes of capture

Motive for capture: Mr Mkhabela stated that the motives of state capture are very simple in nature. Typically, business personnel want to plunder the resources belonging to South Africa and its citizens purely for illicit material gain, but this subsequently results in controlling the state and society. He noted that this is carried out through manipulating the constitution in one's favour and subverting South Africa's sovereignty.

Agents for and of capture: More interestingly, Mr Mkhabela divided his agents of state capture into three groups: primary, secondary and tertiary agents of state capture. The primary agents at present are the Gupta family and their associates from India. The secondary agents are President Jacob Zuma, the president's son Duduzane Zuma, cabinet ministers and other state officials. These individuals are termed secondary agents, as Mr Mkhabela believed they did not conceive the motive for capture themselves. The primary agents envisaged the motives and then used the secondary agents in charge of the primary organs of state to execute capture. However, in the global society and economy we live in some transactions or services of goods or products cannot be provided domestically, which leads to the tertiary agents being multinational companies such as the China South Rail (CSR) Corporation, McKinsey and KPMG, with all three agents working together.

Method of capture: Mr Mkhabela used an analogy of a cricket being taken over by a parasite leading to its untimely demise to describe how state capture was carried out in South Africa. Through the primary agents, the Guptas, capturing the president, they essentially captured South Africa's central nervous system, as seen with the cricket the parasite targets, and it then lodges itself in the nervous system of the host. The parasite manipulates the host to build defence mechanisms to protect itself against challengers. This therefore destabilises state institutions such as the criminal justice system, leading to ideal conditions for capture.

Conditions for capture: The conditions for state capture have to be established before and during the process of actual capture. Firstly, the president, as a constitutional being, the head of state and government, lacked moral capital. Moral capital is the resource that sustains an ethical community and is the degree to which a community possesses interlocking sets of values, virtues, norms, practices, identities and institutions. The sources of the president's moral capital or lack of moral capital are then divided into cause, action, example and symbolism. A strong combination of those four sources would lead to the president being of high moral capital. As the president was to be found wanting in social capital he was more prone to state capture.

Outcomes of capture: The president is now viewed as being captured, and this not only diminishes the prestige of public office, but also results in the new rules or norms from the stakeholders during state capture becoming commonplace. Greater competition ensues, leading to the multiplication of state capture agents or parasites.

4.5 DISCUSSION

In the age of information we live in, what role do you see the people playing through resistance or protest in reversing state capture? Zimbabwe is a good example of the importance of the people. The mobilisation and sharing of information leading to the anti-Mugabe march would not have been possible without social media platforms such as Twitter, WhatsApp and Facebook. These social media platforms allowed the citizens to establish a voice, even in the face of a military coup. If the citizens had not seized the situation, it may have played out differently.

Are you not underestimating the influence of Jacob Zuma in state capture? Jacob Zuma met the Gupta family before he became president. It was a calculated move in which they approached him. The Guptas saw the potential and possibility of Zuma becoming president and bought him out with gifts for him and his family. Jacob Zuma still had to climb politically to become president, but once he became president the fruits of the deals made with the Guptas began to show. This is illustrated by the number of businesses owned by the Zumas growing exponentially soon after he was elected president of the ANC in Polokwane in 2007.

At what point should election observers interfere or pronounce their findings? Electoral supervision is tightly controlled, especially in Zimbabwe. The observation teams implemented by the SADC and the African Union did not stick to their own mandates but instead used the opportunity to show solidarity with the ZANU-PF party. In an ideal observation scenario missions should give their pronouncement on elections in the same time period that the legislation requires for election petitions to be brought that challenge election results. Therefore, the observer mission statements could be used in support of or to challenge election petitions.

5 Session 3: The Formation, Spread and Consolidation of Collusive Networks in Democratic States

5.1 SESSION SUMMARY

❑ It is rarely possible for single individuals to achieve state capture.

❑ More common is a conspiratorial network that collaboratively works towards the goal of capturing the state for its private interests.

❑ The collaborative nature of networks is nurtured over time and the control of these interests over state activities and institutions grows.

❑ Taking part in state capture is considerably risky: each new member brings with him/her the risk of partial or complete exposure.

5.2 COLLUSIVE POWER BLOCS AND THE CAPTURE OF THE POLITICAL LANDSCAPE

Prof. Roger Southall, University of Witwatersrand, South Africa

Prof. Southall documented the current pervasive use of the term "state capture". He noted how state capture can be subversive to democracy and damaging to the economy. More importantly, he stated that to undo state capture, one must first understand it. State capture draws upon a wide range of ideas intertwined within a broad range of other issues relating to power elites, corruption, military coups, party funding and political culture. Therefore, in understanding state capture a more comprehensive definition must be given.

State capture defined: State capture refers to the action of individuals, groups or firms both in the public and private sector to influence the formation of laws, regulations, decrees and other government policies to their own advantages because of the illicit and non-transparent provision of private benefits to public officials.

There are many different forms of the problem as noted. Distinctions can be drawn between the types of institutions subject to capture, the legislature, the executive, the judiciary or regulatory agencies and the types of actors engaged in the capturing such as private firms, political leaders or narrow interest groups. Yet all forms of state capture are directed towards extracting rents from the state for a narrow range of individuals, firms or sectors through distorting the basic legal framework, with potentially enormous losses for the society at large. They thrive where economic power is highly concentrated, countervailing social interests are weak and the formal channels of political influence are underdeveloped.

Given the disjunction between the new political and old economic elites, political actors in the ANC proved to be open to bribery by external forces. These criminalised elite interactions and networks extended their malign influence over the state and its institutions, whether economic or political.

The elites diverted funding from large companies operating in strategic industries such as energy, telecommunication, and transportation. Their directors, who were usually high-level political appointees, hid finances and transactions from public scrutiny, which makes it difficult to track transfers or resources. Subsequently, money is funnelled to party coffers directly from the public budget through disguised lines. Employment is also used as a source of patronage. The administrative resources of the state such as cars are also made available to officials for de facto political tasks such as voter mobilisation. Lastly, private donations from captured companies or institutions can be made to political parties, with donor businesses using their relationship with political power-brokers to seal commercial advantage – hence super profits are acquired.

The corruption of high officials through bribes, patronage and gift-giving further manifests itself in contracts and concessions being unlawfully granted to the political and economic elites. As a result, a kleptocratic state is established resembling a mafia state where criminal influences are increasingly extracting rents. The control over business and government enables the elite to generate resource advantage – for example, enacting legislation that allows for the distribution of resources.

Southall noted that South Africa is indeed a state-captured country, as the manipulation of economic conditions and public policy can be seen as a "creeping coup" in which legitimate government has been subverted through a conspiracy of a few actors who have taken over key levels of government. This has been further advanced by the neutralisation of Chapter 9 institutions' constitutionally designed checks upon the executive. State capture has been disguised as legitimate in the name of "Radical Economic Empowerment".

5.3 THE EXPLOITATION OF NATURAL RESOURCES: THE CASE OF THE 'ROSEWOOD SCANDAL' IN MADAGASCAR

Ms Randrara Rakotomalala, Assistant Programme Officer, EISA South Africa

Ms Rakotomalala documented the exploitation of rosewood in Madagascar. She unpacked the importance of the resource and the implications it had for state capture. The illicit logging of rosewood in Madagascar has been a problem for decades. It is the result of extreme poverty and government corruption in the region. Often taking the form of selective logging, the trade has been driven by high international demand for expensive, fine-grained lumber such as rosewood, which is often in high demand by China, the DRC and Mozambique. Logging exports in Madagascar have been regulated, and then ultimately banned in protected areas in 2000, by the Malagasy government due to the unsustainable exploitation of the resource.

Since then, government policy has intermittently alternated between permitting and banning exports of the resource. This fluctuating availability of Malagasy rosewood has created a market of rising and falling prices, allowing traders or "timber barons" to stockpile illegally sourced logs during periodic bans and then flood the market when the trade windows open and prices are high, resulting in the capture of state institutions to individuals' commercial advantage.

Corruption is rampant due to the legal then illegal sale of rosewood, whether through individuals, government institutions or private companies. Transparency International has rated the country between a 1.7 and a 3.4 on its 10-point Corruption Perceptions Index (CPI), with a score less than 3.0 indicating rampant corruption. There is a lack of transparency, as rosewood cartels have emerged to influence the state, especially through policy and the passing of legislation. This is also difficult to track or provide the necessary checks and balances, as the relevant institutions are not available or have been captured as well.

Worsened by the political crisis of 2009, illegal logging syndicates have been direct and even violent. Park rangers and guides have been forced from their posts at gunpoint, intimidated or even killed to allow access to loggers. Government has been subverted, as has the judiciary and parliament, which would normally provide checks and balances. Civilians are even recruited into logging. Sometimes, even in the name of democracy, logging has resumed in the region.

There has been public outcry over the exploitation of rosewood. For example, in 2009 an international outcry was generated and channelled through the internet by activist networks, such as Ecological Internet. The confiscation of illegally harvested woods is called for by Malagasy law in accordance with the Forestry Act. However, confiscation has

happened only on a small scale, and the wood usually ends up back in the hands of the timber barons either by being auctioned off to exporters or mysteriously disappearing. The state is captured, as loopholes in regulations and a lack of enforcement allow rosewood to be looted. Regulations are not clearly defined either, which makes them unenforceable. This is worsened by corruption and bribery being rife in government institutions, with many officials being bought out, allowing these illegal loggers to carry on with impunity.

5.4 THE CAPTURE OF THE MILITARY BY POLITICAL INTERESTS TO ENTRENCH POLITICAL POWER

Mr Mohamed Elgohari, Atlantic Council's Hariri Center for the Middle East, Washington D.C., United States

In his presentation Mr Elgohari argued that in order for Egypt's military to consolidate its political power and protect its private economic interests, it had to go beyond state capture to society capture. The military utilised its supreme position during the post-2011 revolution era to create a legal framework to legalise the accumulation of economic assets. This economic power was a tool to acquire legitimacy and consolidate its political authority.

Mr Elgohari examined the changing roles the military has played. In 1952 the military was held in high regard, politically and socially, as it assisted in the overthrow of the monarchy and established the First Republic of Egypt under President Gamal Abdel Nasser. The role of the army then revolved around the modernisation of the state economy. The army was tasked with conducting infrastructure and agriculture projects as well as leading the process of social change through the redistribution of wealth.

Under the next president, Anwar el-Sadat, the role of the army changed and the focus was on producing products related to the defence industry – motivated by a conflict with Israel at the time. When Hosni Mubarak assumed power in 1981 the political context had changed drastically. In this era the military's focus was on maximising its economic interests; this was seen through Mubarak incorporating the military into his political and economic regime. Retired army officers and generals were admitted into the political bureaucracy and local councils.

The army was at the centre of the political process during the 2011 revolution in which Mubarak eventually resigned, relinquishing power to the authority of the Supreme Council of the Armed Forces. The army spread the narrative that it was the guardians or leaders of the revolution. This reflected in the slogan "the army and the people are one hand". Through this course of action the army acquired a lot of power, which was further perpetuated by the lack of a strong civilian opposition. This inflated power led to

the army claiming control in the transition of power and also gaining more commercial advantage in the process.

The military proceeded further to legitimise its state capture through constitutionalising its status and legitimising its state privileges. This further expanded its economic prospects, as many army officials acquired economic assets such as land (similar to the manner in which state capture in South Africa enabled captured politicians preferential access to tenders). On the other hand, this negatively affected the public, as oppressive laws were imposed which controlled the media and policed public morals and values. State institutions as well as society more generally became militarised and were essentially captured.

5.5 AFRICA AUSTRALIS: IMPERIUM IN IMPERIO?

Prof. Anthoni van Nieuwkerk, Wits School of Governance, South Africa

Prof. van Nieuwkerk began his presentation by stating that his title asks whether "sovereignty exists within a sovereignty, or a state within a state" in South Africa. What Prof. Van Nieuwkerk was referring to by a state within a state is what is called a "deep state". This refers to when an internal organ such as the armed forces or security authorities, which for example are typically involved in intelligence, police or administrative bureaucracies, does not respond to the political civilian elected leadership but an alternative covert form of leadership.

The deep state or the state within a state can be conspiratorial in nature. It can take the form of entrenched unelected civil servants acting to further their own interests in opposition to the policies of elected officials. This is carried out by obstructing, resisting and subverting the directives of elected officials, thereby undermining democracy. The deep state operates in secrecy regardless of the change in elected officials. Prof. van Nieuwkerk's presentation explored the extent to which South Africa is afflicted by such a phenomenon.He notes that the theory of the deep state is problematic, as it has not been sufficiently explored. In the academic discourse it refers to defective democracies and authoritarian regimes, where a group of powerful individuals from the military and intelligence services collude with bureaucrats and criminal networks to run a parallel state that undermines democratic officials and state. This is done to manipulate the political course of a country but also influence the government and the implementation of policy.

Therefore, the occurrences or activities associated with state capture are very similar to that of the deep state, as seen in defective democracies where unelected, unaccountable power groups frequently curtail the power of the elected civilians they govern. Prof. van Nieuwkerk went on to state that there are not many countries that can claim to

be unaffected by a deep state; however, quite often states and their leaders are simply unaware of the phenomenon.

A criticism of the deep state is that it portrays the actors involved in the deep state as dishonorable individuals and the body or institution of the state as a "saint", which is not the case. This is problematic, because often there are elements of the deep state that might subvert the norms of democracy for the sake of protecting a country's national interest. Using the example of South Africa's energy industry, Prof. van Nieuwkerk noted that individuals could sabotage South Africa's more recent nuclear deals, as they may not be in the national interest, whether financially or diplomatically. Prof. van Nieuwkerk raised a concern about the extent to which it is possible to prove that the actors within the deep state are dishonourable and the elected actors in the state are honourable.

It was also noted that the deep state is different from state capture. State capture seeks to protect and promote private interests, where the deep state may seek to undermine government institutions for national interests. The state elements of the deep state collaborate with private enterprise or criminal groups to fund and execute the determined plan. Essentially, the objectives and motivations of the deep state differ in time and space as it once again attempts to protect state interests and security.

In closing, Prof. van Nieuwkerk made note of a post-1994 South Africa report that details the possible existence of a shadow state. This poses the question whether the term "shadow state" may actually be the deep state manifesting itself in post-apartheid democratic South Africa. The report, entitled "Betrayal of the promise: How South Africa has been stolen", suggested South Africa, just like many countries, suffers from the rise of a new patrimonial authoritarian regime where a symbiotic relationship between the constitution and a shadow state is maintained through shadow dealings that delegitimise the democratic discourse and radical economic transformation. This is seen through the ANC being captive under this shadow state under the leadership of Jacob Zuma. The shadow state is managed by clandestine networks of relationship that are held together by shared interests or activities that primarily contradict the roles of elected state officials.

5.6 DISCUSSION

What role has been played by the populace in the rosewood exploitation scandals? Due to the extreme poverty in Madagascar many civilians are recruited into rosewood logging, as it may be one of their only sources of income. Locally, it is a challenge for people to voice their problems with the rosewood logging, as government officials and institutions are substandard and riddled with corrupt officials.

Is state capture as defined by Prof. Southall synonymous with the deep and/or shadow state that Prof. Van Nieuwkerk spoke about? To a great extent. The role the capturers played in Egypt is that of a shadow state, as it delegitimised democratic practice. The crucial difference is that the dealings of the military were more overt for the public to see. However, Prof. Van Nieuwkerk also noted that in the case of South Africa the malpractice with state capture has been more covert.

What is the response from Egyptian civilians following society capture? There has been sustained oppression of the Egyptian people as a result of society capture. This oppressive atmosphere has resulted in 60,000 detainees in prison with no trial or valid cause. The wave of oppression has become so prevalent that even human rights activists have had to keep a low profile or even flee the country.

Has the role of the military changed over time? The role of the military has indeed changed from state modernisation, to defence-related production and lastly towards solidifying or entrenching loyalty. It was also noted that the mentality changed from one of seeking independence and modernising the economy to private interests due to a reduction of immediate external threats.

6 Session 4: State Capture Through Elections and Political Competition

6.1 SESSION SUMMARY

❑ When executed effectively state capture completely insulates patrons from most forms of accountability within the state.

❑ Credible elections are the last defence against the complete annexation of a state's right to govern.

❑ However, due to the nature and prevalence of state capture the electoral process is often captured too in attempt to subvert accountability.

❑ Threat detection of this sort of misconduct is also hard to track prior to elections and is noticeable only after the fact.

6.2 ENCODING RULES OF THE ELECTORAL GAME TO BENEFIT PRIVATE INTERESTS: CASE STUDIES FROM AFRICA

Ms Olufunto Akinduro, Head of Elections and Political Processes, EISA South Africa

Ms Akinduro examined state capture and its resultant impacts in the electoral space. She made note of the prerequisite conditions leading to and resulting in electoral misconduct by conceptualising elections more broadly than just simple voting, but questioning elections in the wider governance space.

The aims of state capture are the systematic distorting or displacing of the state. Ms Akinduro noted that the consequence of state capture always leads to slow and unequal development, which, in the African context, leads to increased dissatisfaction and a higher competition for scarce resources. This is where the electoral process aligns with state capture. A privileged or elite group is created, which could include firms or individuals that enter the electoral space and bend electoral rules of the game and outcomes in their own favour.

Ms Akinduro mentioned several attributes that compound or enable state capture, such as ethnic and religious politics, which creates room for the specific agenda of interest groups to grab hold of the electoral process. Clientelism politics becomes prevalent where services are provided to specific groups in return for political support. Within such contexts individuals or parties want to retain political power, as the state is the main source of financial gain. She also touched on the economic context, noting that the fact that many economies in Africa are non-diversified, for example Nigeria with oil or Madagascar with rosewood, makes state capture easier, as there is one or a few points of entry for capture. Lastly, there is a general lack of civil liberty guarantees across the continent, with only 11 countries having Freedom of Information laws, thus making whistle-blowing difficult.

She identified the following entry points for capture:

Constitutional amendments and referenda have been a successful means of capture, for example in Cote d'Ivoire, where eligibility clauses pertaining to nationality and residency of voters have been used to the advantage of certain presidential candidates, and in Uganda, where the president is seeking to remove the age limit in the constitution through financial inducement of the parliament. The electoral process by design can be easily captured, as many of the norms or principles guiding elections are not entrenched in the constitutions of many countries.

Boundary delimitation processes: allowing for new boundaries or constituencies, increasing the borders of these constituencies to impact vote weighting.

17

Appointments by the executive: The capture of the electoral process is further entrenched through executive power remaining in the hands of the president. As a result, the appointment of key personnel in parliament and in the electoral commission serves as entry points for capture. An instance is the case of Malawi, where members of the Commission were forced to go on leave by the president during key periods, allowing for malpractice.

The electoral justice and security systems: Capturing these systems is related to the issue of appointments into key positions in these sectors to diminish the safeguards set to provide checks and balances in the electoral process. She referred to the presentation on Zimbabwe as an example.

Candidate nomination processes provide an entry point within the context of clientelism politics, where different interest groups serve as gatekeepers and manipulate the rules of candidate nomination. An instance of this is the rise of political "godfathers" in Nigeria. In conclusion, she noted the need to strengthen legal frameworks, especially in the area of freedom of and access to information.

6.3   CAMPAIGN FINANCE AND CAPTURED POLITICAL INTERESTS: LESSONS LEARNED FROM THE OSCE REGION

Dr Marcin Walecki, Democratisation Department, OSCE/ODIHR, Poland

Dr Walecki began by noting that political parties are perceived to be the most corrupt institutions in the majority of the European Organisation for Security and Co-operation (OSCE) states. This is compounded by the perception that many individuals are of the opinion that government is run by a few big entities acting in their own interests, giving the impression that politics is a business.

Dr Walecki then went on to document politics as a business model. Political parties often seek party funding from oligarchs, who provide capital through donations and loans to finance huge election campaigns. This is done in return for access to state-owned agencies or enterprises (for example in the energy or finance sectors) as well as public contracts, privatisation deals and tax breaks. This ultimately channels tremendous amounts of finance from the state to the private sector run by oligarchs. He notes that currently there are around 250 influential oligarchs within Europe controlling politics in most of the eastern and southern European countries. By donating a sum of $10-20 million, for example, these oligarchs can stand to earn hundreds of millions of dollars in return through access to public enterprises.

It was also noted that in Europe one would not see bribes being paid anymore. The mode of capture is seen through loans and donations which are never paid back, illustrating the

progression of corruption in Europe. As a result organised criminal groups and politicians are now in the same bracket due to leverage from these private interest groups.

Lesson learnt? Dr Walecki notes that we have too much regulation and not enough implementation of policies in relation to combating corruption. The enforcement bodies are lacking the funds and human resources effective enough to investigate and sanction political parties.

Secondly, there is a lack of a symbiotic relationship between regulatory agencies monitoring campaign finances. The exchange of information and data is non-existent, which narrows the scope of these agencies. This is counterproductive, as many organised criminal groups have multi-layered syndicates that are spread across a region.

Another lesson learnt from European countries is that states cannot simply rely on one independent regulator. A vibrant civil society media through which watchdogs are able to investigate cases of corruption is necessary. The need for investigative journalists and non-government organisations is crucial, as 80% of exposed corruption cases began with these watchdogs publishing reports.

The public funding of political parties is predominant in Europe, and can make a notable difference in the growth and robustness of party structures. However, public funding is more challenging to monitor or control questionable corrupt financial practices.

What can be done? Sanctions are an important tool in combating corruption. In order for sanctions to be effective and enforceable there needs to be clarity on what is legally required to enforce sanctions and who is responsible for enforcement. The sanctions must also be appropriate in nature – in essence taking into consideration the amount of money involved, and whether there was resistance and whether or not it was a recurring violation. Most importantly, sanctions must be dissuasive and should serve not only to punish current perpetrators but discourage future offenders.

Broadening the reach of initiatives to combat corrupt practice is aided by collaboration and the enhancement of cooperation between financial/public integrity institutions. This is vital in fighting political finance-related corruption. Corruption has essentially become global in nature; therefore institutions need to adopt a regional approach to monitoring or investigating political and financial corruption.

6.4 PERCEPTIONS OF SYSTEMATIC CORRUPTION AND THE CORROSION OF DEMOCRATIC CULTURE AND INSTITUTIONS IN SOUTH AFRICA

Mr Sibusiso Nkomo, Institute for Justice and Reconciliation and Afrobarometer, South Africa

Mr Nkomo outlined the parameters of a survey conducted by Afrobarometer, which describe the perceptions of the extent and depth of corruption in South Africa, the democratic culture within the country's politics and the strength of its institutions. Using the survey results as a starting point, Nkomo discussed the effect of corruption on democratic participation as well as what can be deduced about how corruption affects trust in political institutions.

Mr Nkomo noted that South Africans are unwilling or wary to engage politically, but also that the majority of citizens are of the opinion that institutions and officials of organisations are corrupt. South Africans display an unexpectedly lower level of interest, participation, and action in civic and political activities apart from elections. The populace is aware of which individuals and institutions are doing wrong, but do not have trust in the safeguarding mechanisms to bring these actors to justice.

In 2015 Afrobarometer asked the question "who is corrupt in South Africa?" While opinions varied from religious and traditional leaders, the presidency, government officials, and state officials, there was a general perception (84% of respondents) that the level of corruption had increased between 2014 and 2015.

In terms of political culture, Afrobarometer found that South Africans tend to shy away from civic engagement and citizen action. 71% of respondents noted that they are not a member of or involved in any voluntary association, community or political group. This illustrates a comfort level or acceptance by South Africans in the political climate. It could also speak to the fact that in 2015, 56% of the population said they trusted the institutions around them. Independent broadcasters were the most trusted institution, with 82%, and the president the least trusted, with 34%. What Afrobarometer has also noted is that the performance of the economy is a huge factor affecting the level of confidence and trust in the political process.

When asked "what is the most effective way to fight corruption in South Africa", only 22% of the population stated they would refuse to pay bribes. More interestingly, the second-largest percentage (18%) stated that there was nothing they could do as ordinary citizens to fight corruption. This number is telling, as it shows that people are not necessarily prepared to do anything to change the political landscape in the country. This illustrates a lack of a democratic and/or political culture in South Africa.

6.5 DISCUSSION

Is it useful to examine state capture as a form of corruption? Ms Akinduro agreed that it is indeed very useful to examine state capture not only to reveal the misconduct of numerous organs of business or the state, but more importantly to reveal the covert motivations of such behaviour. It is important for the public to know such information to better prepare to take back the state.

What can be done internationally to keep states from being captured? A greater role needs to be played by regional bodies in combating state capture. The use of observer missions has been crucial, but, more importantly, these missions should be allowed to share their findings with the public to help influence decisions on the legitimacy of electoral processes. Furthermore, there needs to be greater rights of access at the regional level, and states should no longer hide behind the term sovereignty.

How does a state mobilise or organise the population to get involved in the political sphere? The Freedom House index shows that, globally, there has been a shrinking space for civil society. It has become more difficult for NGOs to work on several issues. Within the European Union there are direct attacks on NGOs, with intimidation and assassinations taking place. Therefore, support for NGOs and individuals, whether financial or through personal safety, has decreased. However, the fact that we can gather at an EISA symposium where we can discuss and share differing views is a good starting point. Mr Nkomo noted that as there were many lecturers present, the views shared can then be transferred to students, who are then able to share them with their immediate circles. This would essentially ensure that the curriculum is relevant to pressing issues in the states.

How does one balance the right to protect (secrecy) and the right to know? Dr Walecki identifies oligarchs as the specific actors that would make references to secrecy, in other words, corrupt politicians and businessmen. NGO members do not use such secret tools to hide their intentions or assets. Different standards should then be placed on top executives, as is seen in the Council of Europe. Higher standards must be placed on publicly exposed persons to increase transparency. There are mechanisms to control banking assets and financial flows. However, this information is kept secret. There are tools to monitor individuals. Unfortunately not everyone has the right to know and only special commissions are afforded this information.

7 Session 5: Institutional Accountability: The Role of Alternative Actors

7.1 SESSION SUMMARY

❑ Where state capture is deeply entrenched, normal procedures (such as resorting to legal challenges) that act as checks and balances are often rendered redundant.

❑ These procedural bodies are ineffective, as they themselves have been captured.

❑ Alternative mechanisms of accountability such as the media and non-state actors become critical in challenging state capture.

❑ This creates complexities for the media and civil society actors when relating to the state, but serve as a last line of defence for the populace.

7.2 BUYING AND MANIPULATING THE MEDIA IN KENYA

Ms Nanjala Nyabola, Political Analyst, Nairobi, Kenya

In her presentation Ms Nyabola examined state capture and the media in Kenya. She began by noting the duality in this topic: the media can be captured, but can also be a tool to alleviate state capture by spreading a specific narrative. Therefore, she examined the relationship between the media and state capture specifically in the context of the 2017 Kenyan elections.

Kenya has always had a relatively robust media space, consuming more news than any other country in Africa. However, the political robustness of Kenya's media is highly questionable due to a lack of independence in the media sphere and the freedom to criticise the state. Oligarchs – some of whom also happen to be state officials and former presidents including Mwai Kibaki – control the media enterprises. There has been a history of repression, intimidation, and violence against journalists, which has resulted in a degree of self-censorship by writers as a means of self-preservation. Between 1978 and 2002 about 80 independent media outlets writing unfavourable coverage of the state were shut down.

The media is then seen to be captured by the state through what is termed developmental journalism. Journalism is seen as part and parcel of state building. There are instances of corruption being overlooked, which was particularly the case in the Kenyatta era, in which he was portrayed as the giving father of the nation.

However, in 2007, with many Kenyans having fled the country due to electoral violence, Kenya saw heavy media suppression and deterioration in press freedom. Kenyans in the diaspora coalesced online to discuss occurrences in their homeland, as the conflict was not being adequately documented by international news. Within Kenya, the local media is still heavily monitored and intimidated. Partial and compromised coverage is also seen through the refusal to report opposition events and rallies. Therefore, social media serves as a fact checker. While the capture of traditional media is nearly complete, online spaces provide the main site for resistance to the state in controlling narratives.

7.3 THE ROLE OF CIVIL SOCIETY IN THE FIGHT AGAINST STATE CAPTURE: PRACTICAL LESSONS FROM EASTERN EUROPE

Dr Alexander Stoyanov, Centre for the Study of Democracy, Bulgaria

Dr Stoyanov's presentation centred on the concept of state capture and its repercussions in Central and Eastern Europe. He noted that anticorruption progress and the status of corruption are directly linked to the overall social, political, and economic development of societies.

Post-communist societies in Central and Eastern Europe have undergone a fundamental transformation of their economic, political, and legal systems. This has also included the structure of governance bodies such as the executive, legislative and judiciary.

Transformation has produced differentiation among countries in terms of their development and trajectory. Dr Stoyanov spoke of three groups of countries based on the depth of political and economic reforms. The first is Central Europe, which is the leading group, comprising countries such as Poland, the Czech Republic, Hungary, and Slovakia. Their reforms began in the beginning of the 1990s and initiated changes that aimed to lower the levels of corruption by government through reducing their involvement. This essentially left a larger space for the markets.

The intermediate group, comprising countries such as Bulgaria and Romania, delayed these changes for about five to eight years. This lag produced differences in the structure of the economy due to the higher levels of executive or government control. This also subsequently resulted in higher levels of corruption.

In the post-Soviet space there were slow or non-existent reforms but a strong government presence in the economy, which greatly limited the market and also increased corruption. This involved governments in Central and Eastern Europe substantially increasing their resources and opportunities through greater control. However, there was a difficulty in applying restraints on government officials, and ensuring accountability, rule of law and transparency. External pressure on these governments from the European Union and

European Commission grew, but these were countered through calls to maintain state sovereignty and national capital.

Dr Stoyanov then unpacked the case study of Estonia, in which transformation had been practised as an effort to dismantle institutions and organisations of the communist state. Pro-democratic and pro-market bodies have replaced the communist institutions. This transformation was pushed forward with the conviction that success would result in achieving independence from the Soviet Union. It would also reduce corruption and thereby revive a sustainable and rapidly growing economy. Transparency has been instilled through e-Estonia. E-Estonia refers to a movement by the government of Estonia to facilitate citizen interactions with the state using electronic solutions. E-services created under this initiative include e-Voting, e-Tax Board, e-Business, e-Banking, e-Ticket, e-School, University via internet, the e-Governance Academy, as well as the release of several mobile applications. The citizen's legislation in social sectors has also been reformed to allow for decentralised power and a chance for the populace to influence government decisions.

7.4 DISCUSSION

Could you reflect on the business capture of the media in Kenya? It is difficult to draw the line in the case of Kenya, as often business is government and government is business: many political officials own media houses in Kenya. Uhuru Kenyatta is the richest man in Kenya, while Raila Odinga, former prime minister, has also amassed great wealth in the country. This demonstrates the blurred lines between politicians' business interests and political interests. Ms Nyabola quoted a saying that "behind every successful businessman is a political career".

What are some of the strategies in civil society and in the public to maintain the integrity of the information we read and see? Ms Nyabola explained that by separating business interests from the media and politics countries would be better protected against false narratives tainting the integrity of the media. Often media houses end up tainting their own integrity in the pursuit of profit. The media would need to fight for themselves in maintaining their integrity. NGOs and civil society could serve as whistle-blowers and fact-checkers should false narratives arise. Raising knowledge and awareness of the public to fake news and how to spot it would also go a long way in holding media houses accountable.

How involved is Kenya's literary community outside of social media? There is great involvement by many Kenyan writers who fled the country during the 2007 violence and thereafter. Ms Nyabula made reference to a book written by prominent Kenyan researcher in Stellenbosch Grace Musila titled "A Death Retold in Truth and Rumour: Kenya, Britain and the Julie Ward Murder", which documents the function of rumour in

Kenya's political narrative. This is just one of the many examples of the contributions by Kenya's literary community outside of social media.

Has the digitalisation in Estonia been welcomed by the populace? Definitely, the government has been very open to change and restructuring, which was well received. The digitalisation taking place resulted in e-governance, where 99% of the public services are available online 24/7. This is most beneficial to the citizens, as often lengthy government processes are now streamlined. Due to this safe, convenient and flexible digital ecosystem, Estonia has reached an unprecedented level of transparency in governance and built broad trust in its digital society.

8   Session 6: Official Closure

8.1 SUMMARY OF PROCEEDINGS AND WAY FORWARD

Mr Miguel De Brito, Country Director, EISA Mozambique

A number of the presenters grappled with the challenges of defining what state capture is. Many of us would agree that after the symposium much of state capture looks and smells like grand corruption, Mr De Brito noted. However, he went on to say that the devil is in the detail regarding state capture, referring to the covert and sometimes-overt motivations swaying actors to engage in state capture. This is essentially what distinguishes state capture as a standalone concept different from corruption.

Prevailing themes: Mr De Brito notes that state capture is a global phenomenon that entails the take-over of essential processes in the state, its institutions, rules, and laws. This could be both at the macro level, involving firms and business, and at the micro level, capturing specific individuals of the state. Due to the acquisition of these vital state bodies there are long-term consequences that are more difficult to reverse than the impact of corruption more generally.

- **Sectoral or institutional capture** – capture of the executive, the judiciary or the military and security services – was a theme running through the symposium. Notable examples from the symposium included the cases of Zimbabwe's 2013 elections and the post-2011 revolution power structures in Egypt.

- **The process of capture** and the tools used in the capture process have also been a recurrent theme. Essentially, this speaks to how individuals proceeding into positions of power are captured in order to produce a specific outcome. The capture of the electoral process also exemplified this, and several examples of this throughout the African continent were given.

- **Funding and financing of the political processes** is an area notorious for capture and the blurring of the business-political divide. Dr Walecki, speaking from experiences in Europe, as well as Ms Nyabula, speaking about the media landscape in Kenya, noted the role played by businessmen or oligarchs in influencing political outcomes to serve their own interests.

- **Watchdog capture or intimidation** of NGOs and civil society was also discussed on multiple occasions. Several cases of the modes or tools through which state capture is exposed, for example the media, were also discussed with concern.

Multiple panellists appropriately deconstructed state capture into the Who? What? Where? and How? in differing contexts. Mr de Brito encouraged attendees to keep this same perspective when engaging with material relating to state capture, as it is such a new and interconnected concept. However, he noted that mechanisms that encompass state capture are more than 200 years old if one was to look at the presentation by Prof. Stremlau in the context of the USA. Mr De Brito also reminded participants that the level of political development in each context affects who engages in state capture, with more developed states being captured by firms and individuals as compared to less developed states being captured by cartels and/or criminal groups.

Moving forward: Mr De Brito highlighted that in future more focus should be given to instances in which there is conflation between the predominant party and the state, as this is the way in which state capture reveals itself in many African states. Essentially undoing the ills of state capture could be perceived as reversing the mechanisms of one-party states that claim to be democratic, as Mr Matyszak alluded to in his case study of Zimbabwe.

The sub-state level of capture of institutions should also be discussed in greater detail. Often state capture begins with an individual or a single group, which could possibly expand to involve other state enterprises and eventually trans-national crime. Mr De Brito used an example of the stolen car crime syndicates between Mozambique and South Africa, which includes the capture of the respective police forces.

Another phenomenon that should be more closely examined is that of the capture of natural resources: only one example of this was discussed – by Ms Rakotomalala in relation to Madagascar. The public economy sector is especially vulnerable to deals surrounding oil and gas. Agreements between the state and international foreign energy firms should be closely observed. The agreements must be carried out in a transparent manner – even more so as they are resources of the people of the country.

In terms of combating state capture, more focus must be given to the alternative forms of media such as Twitter, Facebook and WhatsApp as well as blogs. These help in informing

the populace of ills being committed by the state, as seen in the cases of the Arab Spring and more recently in the election of Donald Trump. The role of social media in our lives as a source of mobilisation as well as information-gathering is important.

Mr De Brito finally noted that there needs to be greater internalisation of democratic principles and that simply hosting elections is not enough. There must be greater transparency, more emphasis on strong independent institutions and a very vocal and active civil society. He ended by reiterating the words of Justice Sachs, who stated that the biggest safeguard against state capture is not waiting for things to happen but being proactive as the people "protecting ourselves from ourselves".

8.2 VOTE OF THANKS AND OFFICIAL CLOSING

Ms Ilona Tip, Operations Director, EISA South Africa

In closing, Ms Ilona Tip thanked Justice Albie Sachs for his attendance and contribution in setting the tone for the 2017 EISA Symposium. She also expressed appreciation to the EISA Board, senior management and staff, in addition to thanking all facilitators, speakers and representatives who attended the Symposium.

THE 12ᵗʰ EISA ANNUAL SYMPOSIUM
STATE CAPTURE AS AN OBSTACLE TO DEMOCRATIC CONSOLIDATION IN AFRICA

Wanderers Club, Illovo
Johannesburg, South Africa
28-29 November 2017

Tuesday
28 November 2018

08:30-09:00   REGISTRATION

WELCOME, OFFICIAL OPENING AND KEYNOTE ADDRESS

Session Chair: Dr Christiana Thorpe, Chair of EISA Board of Directors and Former Chairperson of the National Electoral Commission, Sierra Leone

09:00-09:15   **Welcome Remarks**
             Mr Denis Kadima, EISA Executive Director
09:15-09:45   **Keynote Address and Official Opening:**
             The Honourable Albie Sachs, Retired Justice of the South African Constitutional Court
09:45 – 10:00   **DISCUSSION**

10:00-10:30   **Group Photo followed by Tea Break**

SESSION 1:   DEFINING STATE CAPTURE

SESSION OVERVIEW:
This introductory session is intended to provide the theoretical and analytical framework of state capture. Beyond exploring the various definitions and forms of state capture, the session exposes the questions that will be discussed throughout the symposium such as what makes a state susceptible to being captured and what its effect are.

Session Chair: *Mr Sheik Abdul Carimo Sau, Chairperson of the National Electoral Commission, Mozambique, EISA Board Member*

10:30-10:50   **Types and Forms of State Capture: A Theoretical Framework**
Presenter: Prof. Tom Lodge, University of Limerick, Ireland, EISA Board Member

10:50-11:10   DISCUSSION

SESSION 2:   **STATE CAPTURE AND THE HOLLOWING OUT OF GOVERNANCE INSTITUTIONS**

Session Chair: *Dr Victor Shale, Country Director, EISA Zimbabwe*

11:10-11:30   **State Capture in the USA: Lessons and Challenges for Sustainable Democracy in Africa.**
Presenter: Prof. John Stremlau, University of the Witwatersrand, South Africa, EISA Board Member

11:30-11:50   **Capture of the Judiciary: A Case Study from Zimbabwe**
Presenter: Mr Derek Matyszak, Institute for Security Studies, Zimbabwe

11:50-12:10   **South Africa and the Capture of the Executive: Undermining Transformation?**
Presenter: Mr Mphumelelo Mkhabela, Centre for the Study of Governance Innovation, University of Pretoria, South Africa

12:10-13:00   DISCUSSION

13:00-14:00 **Lunch**

SESSION 3:   **THE FORMATION, SPREAD AND CONSOLIDATION OF COLLUSIVE NETWORKS IN DEMOCRATIC STATES**

Session Chair: *Ms Jessica Ranohefy, Country Director, Madagascar*

14:00-14:20   **Collusive Power Blocs and The Capture of the Political Landscape**
Presenter: Prof. Roger Southall, University of Witwatersrand, South Africa

14:20-14:40   **The Exploitation of Natural Resources and The Buying of Positions: The case of the 'Rosewood scandal' in Madagascar**
Presenter: Ms Randrara Rakotomalala, Assistant Programme Officer, EISA South Africa

14:40 – 15:00   DISCUSSION

15:00 – 15:15 **Tea**

Session Chair: *Dr Roukaya Kasenally, University of Mauritius, Mauritius, EISA Board Member*

15:15 -15:35 **The Capture of the Military by Political Interests to Entrench Political Power**
Presenter: Mr Mohamed Elgohari, Atlantic Council's Hariri Center for the Middle East, Arabic, Washington D.C., United States

15:35 – 15:55 **Africa Australis: Imperium in Imperio?**
Presenter: Prof. Anthoni van Nieuwkerk, Wits School of Governance, South Africa

15: 55– 16:15 DISCUSSION

18:00	**Book Launch**

Checks and Balances: African Constitutions and Democracy in the 21st Century
Edited by: Grant Masterson and Melanie Meirotti

END OF DAY ONE

Wednesday
29 November 2017

08:30-09:00 REGISTRATION

SESSION 4:   STATE CAPTURE THROUGH ELECTIONS & POLITICAL COMPETITION

Session Chair: *Prof. John Stremlau, University of the Witwatersrand, South Africa, EISA Board Member*

09:00-09:20 **Encoding Rules of the Electoral Game to Benefit Private Interests: Case Studies from Africa**
 Presenter: Ms Olufunto Akinduro, Head of Elections and Political Processes, EISA South Africa

09:20-09:40 **Campaign Finance and Captured Political Interests: Lessons learned from the OSCE region**
Presenter: Mr Marcin Walecki, Democratization Department, OSCE/ ODIHR, Poland

09:40-10:00 **Perceptions of Systematic Corruption and the Corrosion of Democratic Culture and Institutions**
Presenter: Mr Sibusiso Nkomo, Institute for Justice and Reconciliation and Afrobarometer, South Africa

10:00-10:50 DISCUSSION

10:50-11:10	**Tea Break**

SESSION 5:	**INSTITUTIONAL ACCOUNTABILITY: THE ROLE OF ALTERNATIVE ACTORS**

Session Chair: Ms Ilona Tip, Operations Director, EISA

11:10-11:30	**Buying and Manipulating the Media in Kenya**
	Presenter: Ms Nanjala Nyabola, Political Analyst, Nairobi, Kenya
11:30-11:50	**The Use of State Institutions to Repress the Media and Limit Access to Information**
	Presenter: Ms Pili Mtambalike, the Coalition on the Right to Information/ the Media Council of Tanzania, Tanzania
11:50-12:10	**The Role of Civil Society in the Fight against State Capture: Practical Lessons from East Europe**
	Presenter: Dr Alexander Stoyanov, Center for the Study of Democracy, Bulgaria
12:10-13:00	DISCUSSION

13:00-14:00	**Lunch**

SESSION 7:	**SUMMARY OF PROCEEDINGS AND CLOSING**

14:00-14:30	**Summary of Proceedings and Way Forward**
	Presenter: Mr Miguel De Brito, Country Director, EISA Mozambique
14:30-14:45	**Vote of Thanks and Official Closing**
	Presenter: Ms Ilona Tip, Operations Director, EISA South Africa

14:45	**Tea and Close**

END OF DAY TWO

SWEDEN

OPEN SOCIETY FOUNDATION
FOR SOUTH AFRICA