

From awareness to orange overalls

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At a panel discussion in Stellenbosch recently, veteran prosecutor Gerrie Nel had a sobering reflection on the possibility of prosecutions following the reports of corruption surfacing almost daily. It is one thing to be aware of wrongdoing, he said, but something very different to secure a conviction in a criminal court. If anybody should know, it is Nel. Being indignant and outraged is one thing, having a solid legal case is something else.

Investors who have been trying to join the class action against Steinhoff can testify to the almost impossible hoops they have to jump through just to get into the court process. Again, one can be outraged at Steinhoff, but the preparation of a successful legal claim is onerous.

So, it is a long road from being aware of wrong-doing to seeing someone in orange overalls.

How long is illustrated by events in Germany. The first raid on Steinhoff offices in that country took place in November 2015. Nearly two years later, in August 2017, the German magazine *Manager-Magazin* reported that the German authorities were investigating employees, including CEO Markus Jooste, for possible accounting fraud. The company famously denied the report as “drivel”. Four months later the company’s share price was an ash heap. To this day, the Germans have not yet brought charges.

Citizens are impatient to see looters and thieves in orange overalls, but it is in the nature of legal processes that it will take time.

A lot happening

That does not mean that in the meantime nothing is happening.

We keep a rolling list of people who have lost their jobs because of public scrutiny, without any criminal proceedings (yet). It makes for very revealing reading.

Over the last two years, since May 2017 when the first resignations took place at Eskom, literally hundreds of people have lost their jobs. Irrespective of criminal conviction, this means the loss of reputation, status and income. Those people are unlikely to be employed any day soon. No orange overalls, but certainly punishment.

Just think of a few names: Brian Molefe, Anoj Singh and Matshela Koko at Eskom; Tom Moyane and James Makwakwa at SARS; Hlaudi Motsoeneng and James Aguma at the SABC; Dan Matjila at the PIC; Dudu Myeni at SAA... we have forgotten how prominent many of them were in our daily lives. They are all gone.

Eskom particularly has seen a lot of action. This week Eskom chief Phakamani Hadebe disclosed that 1 049 disciplinary investigations have resulted in 300 people having left the organisation. That includes 14 senior executives and managers “believed to be involved in state capture”. Eskom and the SIU (Special Investigating Unit) are probing thirteen companies who were paid a total of R75 billion by Eskom. Eight of the companies were involved in building Medupi and Kusile. (Hadebe stressed that not all the R75 billion was being targeted for recovery. McKinsey has already repaid R1 billion).

In the private sector too, there were people who lost their jobs at KPMG, McKinsey, Bain, SAPS and others. An involuntary clean-up has taken place, thanks to public exposure.

Political pressure

A howl of protest went up when some of the departed luminaries made it back onto the ANC list as parliamentary candidates. Public reaction has been so intense that the party’s National Executive Committee has referred all the election lists to their integrity commission. Clearly “a vigilant jury of public opinion” is having an effect.

Once candidates are on the list with the IEC, nothing prevents them from being elected. But party and caucus pressure can. Fikile Mbalula, head of the ANC’s election campaign, reiterated that if the Integrity Commission decided that a candidate should step aside, they would have to do so. This matter will not be settled legally, but through party political pressure.

Significantly, Mbalula has admitted that the list issue is hurting the party. The Ace Magashule revelations, both in investigative journalist Pieter-Louis Myburgh's book, *Gangster State*, and by witnesses before the Zondo commission, cannot help either. As is standard procedure, Magashule has denied all allegations. Me thinks it is safe to say the jury on Magashule is still out.

Taking a longer view

In the secret negotiations between the ANC and the old South African establishment, a particularly interesting meeting occurred in December 1988 at Flitwick, Bedfordshire, England. In that meeting a member of the ANC delegation, Thabo Mbeki, said, "Liberation from a dictatorship inevitably entails corruption. South Africa's liberation will be plagued by corruption." He referred to several states where post-independence elites had enriched themselves at the expense of the poor and made the point that people who have been oppressed and disadvantaged believe they are entitled to 'make up for it'.

Mbeki's prediction has come true in a way that he himself probably did not expect. Over a decade or more, brave journalists, whistle blowers, public representatives and others alerted the nation to growing corruption and the undermining of state institutions. We grew accustomed to outraged denials from the suspects, professing their innocence, trying to sweep the reports under the carpet.

Then in 2017 a tipping point was reached. Several developments came together: the many court judgements on the Nkandla saga; the Public Protector's report on state capture; the persistent reports of shenanigans at Eskom and other SOEs; and then the Gupta emails and Jacques Pauw's book, *The President's Keepers*. The reaction against all the corruption helped to carry Cyril Ramaphosa into the presidency.

After Pres Ramaphosa's inauguration in February 2018 things really started rolling officially. No fewer than four commissions of inquiry commenced their work. One commission's report is public (SARS), one still under wraps with the president (two deputies at the NPA), and two are still hearing evidence (state capture and the PIC). The head of the NPA was replaced (remember Shaun Abrahams...?)

The new national director of prosecutions has already allocated prosecutorial resources to focus on cases arising from the commissions' proceedings and the President has gazetted a special unit in the NPA for that. 2020 promises to be the year of prosecutions.

It is sobering and gratifying to think that it was only two years ago, in May 2017, that these cleaning up processes started. Could it be that the liberation-corruption-plague that Thabo Mbeki referred to is running its course? We do not know yet, but that there is a revulsive reaction, is for sure.

So What?

- Proving a case in law is very different from revelations at a commission of enquiry. The Germans have been investigating Steinhoff for nearly three and a half years now, but no charges have been brought yet.
- Naming-and-shaming at commissions is having an effect. Many suspects have lost their jobs and livelihoods, their reputation and status. The fact that nobody is in orange overall yet, does not mean that nothing is happening.
- 2017 was the year of exposure, 2018 and 2019 the years of confirmation of allegations, 2020 may very well be the year of prosecutions.
- The public reaction to some names on the ANC list has forced the party to take cognisance. This may not lead to anything, but the ANC is going against the tide.
- The public response indicates that fighting corruption is also about developing common values. Maybe the exposures since 2017 are helping to reverse the trend Mbeki predicted in 1988. It is a space to watch.