Corruption and South Africa's Foreign Policy

By:

Penelope Andrews

March 25, 2021

The 2011 White Paper on South Africa's Foreign Policy declares in its Preamble that South Africa is a *multifaceted, multicultural and multiracial country that embraces the concept of Ubuntu*. The White Paper further states that ubuntu, affirming both the humanity of South Africans and others, has been vital in the process of nation building and the construction of the newly democratic State. Regarding South Africa's global role, the White Paper continues:

Since 1994, the international community has looked to South Africa to play a leading role in championing values of human rights, democracy, reconciliation and the eradication of poverty and underdevelopment.

South Africa's foreign policy therefore appears to be animated (at least rhetorically) by ubuntu and a commitment to the broad principles of human rights and economic justice.

My contribution to this symposium, which explores the role of the constitution and courts in the making and implementing of South Africa's foreign policy, is

somewhat of a curtain raiser. My modest purpose in this essay is to contemplate the question of corruption as a foreign policy issue. I draw this question from the recent activities and intermittent reports of the Judicial Commission of Inquiry into Allegations of State Capture (the Zondo Commission), as well as the Constitutional Court's 2011 *Glenister* judgement.

The Zondo Commission has investigated and unearthed a trove of illicit activities of corruption and maladministration within and outside South Africa, all relating to the capture of the South African State by a range of individuals almost entirely associated with the African National Congress, and particularly former President Jacob Zuma. The corruption, although embedded in the capture of the South African State, evinces a transnational financial imbroglio with tentacles in major financial centers across the globe. Examples include the notorious arms procurement deals in the late 1990s, involving companies in several European companies; the systematic looting of State-owned enterprises like South African Airways, Transnet and Eskom and funds being funneled to foreign banks; and the allegedly insidious role of prominent auditing firms like KPMG, McKinsey, Deloitte and others in enabling State capture on a monumental scale.

I revisit *Glenister* to highlight what Justices Moseneke and Cameron observe in their opinion, namely, that the State's failure to stem corruption infringes on an assortment of rights, including the rights to equality, human dignity, freedom, security of the person, administrative justice and a range of socio-economic rights including the rights to education, housing and health care.

The purpose of my essay is to flesh out why the issue of corruption should be the preeminent foreign policy issue for the South African government – in line with the imperatives of the Constitution and furthered by the jurisprudence of the Constitutional Court and other courts, as well as giving effect to its own commitment of human rights in its most recent Foreign Policy White Paper (mentioned earlier). Moreover, South Africa has ratified the United Nations Convention Against Corruption which was adopted in 2003 and came into force in 2005.

So why should corruption be the foreign policy issue and what is the relation to the constitution and the courts? Although there is not an expansive

constitutional jurisprudence regarding foreign policy, the courts in South Africa have confronted the issue of corruption in a range of situations, including those involving the former President, Jacob Zuma. In addition, as evidenced by the copious evidence produced by the Zondo Commission, corruption will prove to be the most urgent issue facing the South African State. This is so for two key reasons. First, as Klaaren and Halim note in “Foreign Policy Under the Constitution of South Africa” human rights provide the guiding principles for South Africa's foreign policy. This human rights framework falls squarely within the design of the architects of the Constitution, namely, to craft a human rights State that is primarily animated by human rights norms [Mutua (1997)].

Corruption severely proscribes the ability of the South African State to pursue its commitment to national economic development by draining resources away from economic development goals. The Zondo Commission has highlighted in great detail the astounding amounts of money that has flowed from the State coffers into the hands of corrupt, rent-seeking politicians and their conspirators in the public and private sectors. This loss of revenue has tremendous consequences for the economy, including a negative impact on economic growth, lost jobs, the explosion of public debt and higher borrowing costs because of diminished credit ratings, and the diminution of investor confidence, especially investors from abroad.

These consequences disproportionately affect the most economically marginalized and the poor. In the era of a pandemic, this devastation is exacerbated. Corruption therefore contributes to human rights abuses. As the United Nations has underscored,

... corruption both drives human rights abuses and hinders the effective discharge of human rights obligations. It can be closely connected to the maintenance and proliferation of violent and discriminatory social orders which disproportionately impact on persons who are marginalized or in otherwise vulnerable or precarious situations.

Since human rights provide the *raison d'etre* for South Africa's foreign policy, corruption deeply erodes the human rights project, and without its eradication, not only will national goals be hindered, the lives of the poor will not be improved.

Second, corruption has tarnished South Africa's image abroad and removed the moral leadership that the government under Nelson Mandela once exercised. This was particularly pronounced in the first decade of democracy in South Africa, where for a period South Africa enjoyed a leading role as a peacemaker in the regional and international arena. That is no longer the case. To take one example, this corrosion of moral leadership was demonstrated by South Africa's inadequate foreign policy response to Zimbabwe in a range of ways, starting with President Mbeki's denial of human rights abuses, including voter repression by the Mugabe government, and the failure by President Ramaphosa to censor the continuing violations by current President Mnangagwa.

Failing to deal decisively with corruption and its consequences precludes the South African government from giving effect to its constitutional mandates as well as its own goals as articulated in the White Paper.

My comments may appear utopian at this particular moment in light of the herculean task of rooting out corruption that faces the South African government. The Zondo Commission has outlined in detail, sometimes extraordinary disturbing detail, the level of the breadth, the depth, and the insidious way that South Africa's major public and private institutions have been captured by a corrupt leadership and a range of enablers. But a priority for South Africa, as it attempts to crawl out of the pandemic generated crisis, is to stem the corruption through accountability measures, including targeted convictions, and then to institutionalize policies and a range of procedural and other mechanisms that will ensure accountability, transparency and effective implementation of the goals articulated in the Constitution and foreign policy documents.

As Nicole Fritz notes in "*The Courts and Foreign Policy Powers*", the courts have already illustrated their willingness to subject South Africa's foreign policy to the same level of review as it has with other areas of government policy. And in cases like *Glenister* and others, the courts have not been hesitant to challenge government and public officials, including against the President, to root out corruption.

View online: Corruption and South Africa's Foreign Policy

Provided by Afronomicslaw