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Zondo Commission – Civil society pointers on oversight for Zondo

From the appointment processes of senior government leaders, to a renewed approach in the fight against corruption, the commission of inquiry into state capture heard from civil society and research institutions on Thursday on ways that these objectives could be achieved. Submissions by Corruption Watch and the Council for the Advancement of the South African Constitution (Casac) were among those heard.

Corruption Watch executive director David Lewis and his Casac counterpart Lawson Naidoo gave recommendations to the commission on how oversight systems in government could be tightened up to achieve greater accountability and help prevent corruption.

Lewis's evidence, given later in the day, focused on Corruption Watch's experiences with Parliament and its handling of the appointment processes of senior managers of government institutions. He praised the ad hoc parliamentary committee appointed in 2016 to manage the appointment of the public protector for its ability to accommodate civil society, going against the normal grain of shunning such contributions. But, said Lewis, while that opportunity ensured that civil society thrived in engaging Parliament on policy and process matters, the pattern has not necessarily been maintained in other appointment processes that followed after 2016, such as the national police commissioner and the head of the Independent Police Investigative Directorate, for which appointments were made in 2017 and 2020 respectively.

In the Corruption Watch submission, said Lewis, a recommendation is made for a single piece of legislation that cuts across different structures of government and governs the appointment of leadership. "At the moment there is no single piece of legislation that governs the appointment of senior officials. It's spread throughout legislation," he said, noting that the feasibility of a single law would still have to be tested.

Lewis conceded, however, that although his organisation's submission does not tackle the placement of power in appointments, be they done in Parliament or by the president, it does recommend that whichever structure finalises the process takes inspiration from the Judicial Service Commission (JSC) model for the appointment of judges. The JSC's multi-functionary make-up helps to keep political interference out of the process to a larger extent than what has happened in Parliament.

There is a requirement for fair and transparent processes in the appointments of the leaders of key institutions, he added, that to date has been taken for granted or left to the whim of the dominant political voice. The vetting process for candidates for these positions must include integrity and skills tests that ensure that only the best suitable candidates are considered.

“There are well tested HR methods for testing for things like integrity, elusive as these may seem, but they are well tried and tested mechanisms for doing so. How one can appoint the head of some of these institutions without integrity testing really boggles the mind.”

Furthermore, the principle of public participation must always prevail in the appointment processes, again to ensure little room for political manipulation.

Commission chairperson Deputy Chief Justice Raymond Zondo agreed with Lewis that this area of oversight required the commission’s attention. “The recommendations that you have just made now seem to cover the important pillars as I would call them that need to be looked at if one wishes to improve the quality of the candidates who get appointed to some of the institutions.”

Earlier in the day, he had engaged Naidoo on Casac’s recommendation for a single, multi-skilled agency to be established in the interest of tackling corruption in the public sector. According to Naidoo, the existing structures including the Hawks and the Special Investigating Unit, among others, are limited in their mandates and processes, despite having the correct and necessary skills to attack corruption.

“We have a plethora of agencies at the moment that have either a constitutional or legal mandate to fight corruption, and perhaps the problem is that we have too many of those institutions,” he said.

“The proposal in terms of a dedicated anti-corruption agency is that a multi-agency approach is replaced with a multi-disciplinary approach within an umbrella structure.”

While his proposal means that the existing structures in their current form would have to be discontinued and possibly integrated into a more robust one, it did not mean that the skills and experience gained thus far would go to waste.

Furthermore, the disconnect in the work of the existing agencies meant, among other things, that Parliament has failed in evaluating their objectives and achievements, because they in turn report to different structures, even within Parliament.

“We’ve seen an entrenchment of a culture of following the party line, and I don’t think we can say it’s an issue that is unique to the majority party. We see it in a number of the larger parties that there is a consensus of opinion, while an opinion that deviates from the consensus is marginalised and is not given proper consideration,” said Naidoo.

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