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Zondo commission – Zondo hears that Parliament is open to change

National Assembly Speaker Thandi Modise has told the state capture commission that she is open to a mechanism within Parliament that is dedicated to holding the office of the president accountable, but the difficulty will come from how such is constituted. She appeared on Monday as part of the parliamentary oversight stream of evidence.

Modise said the president's role is that of a coordinator of the work of his cabinet and premiers, and both levels are accountable to their respective legislatures. Furthermore, most of the work that the president does is largely covered in some of the portfolio committees. "Strictly speaking, the president is not a member of the house. He must have enough space to coordinate the three arms because he heads the executive, but in fact I would argue that he cedes most of this heading of the executive responsibility to the leader of government business and that is why when we have issues of the legislature, we go to the leader of government business."

Equally, the drawback of creating too many avenues of accountability such as portfolio committees, is that it creates a disadvantage for smaller parties whose members are spread thin and thus cannot participate in all of them, which defeats the purpose of a multi-party assembly.

On the table was a question on whether or not the ANC majority in Parliament could ever be encouraged to vote as individuals, to remove a sitting president who is found to be in contravention of the values of his office.

This was posed after utterances by ANC chairperson Gwede Mantashe before the commission last week that the party's MPs could never be encouraged to vote against party lines in motions of no confidence brought against a sitting president, as it would collapse the state. Modise said she encourages the empowerment of individual MPs, who should equip themselves and get involved in the inner workings of the portfolios they serve on, as this would help them identify gaps in service delivery by the executive.

She acknowledged, though, as put to her by commission chairperson Deputy Chief Justice Raymond Zondo, that for some, the extent to which they can be seen to scrutinise the executive may be career-limiting.

"Perhaps if we were to be able to move in such a way that the third arm of the state actually unfolds, and can really get the resources that it needs to do its job, you might not find that members want to become cabinet ministers and therefore don't ask unnecessary questions."

In her own experience as chairperson of the national council of provinces (NCOP) in the previous parliament, she had the experience of dealing with an incorrigible minister who undermined the process, ignoring calls to appear before it. Later, when it was time for her department to table its budget, the NCOP refused to carry out the task, and the matter was taken through parliamentary channels to be resolved.

Zondo asked at this point: "What should be done by a member of Parliament who wants to do his/her job properly in this instance, who happens to be a member of the majority party?"

"I think if the member is not too sure that they will not be treated like they are not loyal to the party … in the first instance there is the chief whip that they can go to. In fact in every portfolio committee there is a whip that is of a party and all parties try to put somebody in there. They can take a stand there," Modise said, adding that they can even approach presiding officers for a resolution.

"Sometimes you're new in Parliament and not sure, and sometimes you're really not certain you will be intimidated. But if you know that you are right, you can take this matter up right there in Parliament, in your party structures, and have your battles there."

But what of the efforts of opposition party members who in 2016 called on the portfolio committee on public enterprises to investigate media reports claiming the undue influence of the Gupta family on the president, and thus government, asked evidence leader Advocate Alec Freund.

"Portfolio committees have powers to investigate. Naturally we would have expected that immediately there is something like this, the committees would investigate without being prompted. But I think what worried us were it wasn't just your usual maladministration and petty thieving. A new term was creeping in," Modise said, in relation to state capture.

"When the [GuptaLeaks] e-mails were leaked, it was no longer just propaganda or playing political games. It became real."

The matter relating to the naturalisation process of members of the Gupta family by the Department of Home Affairs also alarmed Parliament, said Modise. "The home affairs one was more serious. If your population register is contaminated, you have a serious issue of going to the elections and being sure that these people who are sending public representatives should have been the people who sent."

Against that background, could Parliament not have done more to encourage the establishment of the commission into state capture, seeing as there was reluctance from the president of the time?

"Parliament does not have the powers to establish a commission. They can make noise and urge the president to do that … they can put pressure on the president. In the meantime, nothing would deter the committees to do the little bit that they can," Modise responded, inviting probing form Freund on the reference to the "little bit", given, he argued, that Parliament has the powers to subpoena people that they think can help bolster their investigation.

Modise qualified her earlier response by arguing the information in Parliament's possession in 2016. "The little bit I'm talking about is that at the time, most of the information that is now in the public domain and within the reach of Parliament was not there. Most of the issues which we are now confronting, we still get shocked [over]."

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