

The next public protector — no fear or favour

The role played by civil society in vetting the candidates resulted in interviews that focused on finding the right person for the job



SERGEANT AT THE BAR

Something strange happened in South African politics last week, which was not directly connected to the local government elections that have discomfited the ruling party. For arguably the first time in 20 years a subcommittee of the legislature did its job without fear or favour, when interviews for the soon-to-be-vacant post of public protector were conducted.

For far too many years those interviewed for public office have either gone through sweetheart questioning or have been subjected to a range of questions seemingly to have been designed to promote the image of the questioner, rather than probe the suitability of the interviewee.

Consequently, all manner of unsuitable choices have been made for key public appointments. Even the Judicial Service Commission (JSC) has hardly done itself credit with many of the interviews conducted of candidates for judicial office, with a consequence that some

of great merit failed to be appointed but others got the nod. This only confirms all the difficulties raised by the nongovernmental sector whose concerns were so studiously given a wide berth during the interviews.

This did not happen with the candidates shortlisted by the committee for the post of public protector. There are a number of reasons the committee upheld the constitutional values of transparency and accountability in a manner rarely seen in this country.

First, the chair, Dr Makhosi Khoza, presided in a most impressive and calm fashion, fair but firm to all candidates. Unfazed by the interventions of the hugely skilled Floyd Shitvambu, she conducted proceedings in a manner that speaker Baleka Mbete is simply unable to emulate.

Second, thanks to the outgoing public protector, Thuli Madonsela, the prestige of this office is such that it arguably far exceeds that of even judicial office.

Hence, the public is keenly interested in who will succeed Madonsela, realising the importance of a fiercely independent head of an institution that in the past seven years has proved critical to the vindication of the constitutional principle of accountability.



In control: Makhosi Khoza chaired the process of interviewing candidates for the post of public protector. The only flaw was that all 14 candidates were seen on the same day. Photo: Ruwan Boshoff/The Times/Gallo Images

A third reason is of particular significance — the role of civil society, specifically Corruption Watch, in producing careful examinations of the candidates who were shortlisted. To her credit, Khoza recorded on more than one occasion the value of this work.

It meant the members of the subcommittee could probe candidates on the veracity of their written applications and what they might have omitted, their temperament for the job, consistency of commitment to the vision of the Constitution, and hence whether each candidate was a fit and proper person to assume so vital a position.

The only serious criticism of the hearings was that they were conducted on one day, which was hardly conducive to a sustained level of inquiry that certainly required more than an hour per candidate.

This limitation aside, the hearings produced a public record that unquestionably limits the scope for the appointment of the kinds of pro-

executive hack who sadly have been appointed to many key positions in the recent past. Given the propensity for litigation concerning public appointments such as the national director of public prosecutions and the chief operating officer of the SABC, it should be in the minds of those responsible for the appointment of the public protector that similar litigation may follow if a person is appointed who is not fit and proper.

In turn, this means candidates, who may have manifestly answered questions incorrectly with studied ambiguity, or even where they were not able to explain failures to disclose material information, could be the subject matter of a judicial hearing, were one of them to be appointed. This then narrows the field and expands the possibility of a worthy successor to Madonsela being appointed.

The role played by organisations such as Corruption Watch needs to be replicated for all key public

appointments, particularly where a hearing is required as a precursor to an appointment. Take the appointment of judges by the JSC. It would greatly add to the process if similarly styled reports were made available to the JSC and then to the public.

In this case, information about a suitable temperament for judicial office, statements or publications of the candidate that could throw light on the kind of commitment the person has towards the nature of society envisaged in the Constitution, delays in the preparation of judgments as an acting judge or a permanent judge who seeks promotion, and the relationship with colleagues would contribute to a vastly improved process.

Of course, we may still find ourselves with a public protector that no one outside the ruling party would support but, by conducting hearings, with the full involvement of civil society, the political cost of this kind of appointment is decreased significantly.

Marikana: Moment of reckoning with whole extractive system

REDRESS

Koketso Moezi

The extractive sector in post-apartheid South Africa remains a hotbed of labour and environmental exploitation, with people still working underground in unsafe, unhealthy conditions.

Mining communities continue to be excluded from having a fair share of the wealth accumulated from the land on which they live. The Marikana massacre is one of the most significant reminders of the corporate impunity and ruthless profit-maximising ways in which the sector is run.

It is not only the mining companies that should be questioned but also those whose wealth is made from their practices, their customers and the investors who are complicit in the failures of the sector.

Marikana offers a moment to reckon with the entire supply chain of the extractive system — which, four years after the massacre, remains unchanged.

With justice elusive, earlier this year widows took their battle for justice to BASF, the largest chemical producer in the world and a principal Lonmin customer that buys platinum worth about

€450-million a year.

The chemical company describes itself as a corporate that “combine[s] economic success with environmental protection and social responsibility”.

It is also a founding member of the United Nations Global Compact, “a call to companies to align strategies and operations with universal principles on human rights, labour, environment and anti-corruption, and take actions that advance societal goals”.

Despite this, the company has failed to ensure that its supply chain adheres to these principles.

During BASF’s annual shareholder’s meeting, a South African delegation supported by thousands of Germans and shareholders put forward a countermotion asking BASF to acknowledge its responsibility in the supply chain by pushing for better working and living conditions at Lonmin.

The corporate was also asked to pay €8-million from its declared profits for 2015 into a special fund to compensate the Marikana victims, roughly the equivalent of one cent a share.

In a powerful speech Ntombizolile Mosebetsane, widow of slain miner Thabiso Mosebetsane, told those

present: “You, BASF, are saying that now it is all better. But we say to you: all is not well with us. Lonmin has not repaired the harm they have done.”

They have not paid reparations. What Lonmin has claimed they are doing to assist us has caused more harm and division among us. They have excluded some of us from what they have offered to others.”

This was a direct response to Lonmin’s claims that it has done enough, when all it has offered were pension and life benefits, which are obligatory statutory requirements for workers who die on the mines. Even the offer to have a family member replace one of those murdered is common practice on mines, so this cannot be seen as compensation.

Although Lonmin took responsibility for educating some of the children of those slain, this year the mine allegedly claimed it could no longer afford to buy toiletries for them

One of those who took up the replacement jobs is the 19-year-old daughter of Phumzile Sokanyile, who was killed in the days leading up to August 16 2012. To take up the job, she had to drop out of her final year of high school.

Although Lonmin took responsibility for educating some of the children of those slain, this year the mine allegedly claimed it could no longer afford to buy toiletries for them.

One of the widows said that “we live in fear that they will next tell us that they can no longer pay for stationery, then school fees will follow”.

Despite this and the findings of the Farlam Commission of Inquiry — as well as research from different organisations and the well-documented omissions, failures and breaches of law by Lonmin put forward during the inquiry — BASF continues to turn a blind eye to the deep injustice tainting its supply chain.

Responding to the delegation, Kurt Bock, the chairperson of BASF, said: “We understand your need ... [although] the problems that people have in South Africa ... do have a bearing on us in Germany, ... we cannot solve here all of the problems you have in South Africa. We

contribute by being a good partner for Lonmin, and we confirm that Lonmin has complied with our requirements.”

He added that a BASF probe “found that Lonmin has addressed all the main problems causing the massacre, and has assisted those harmed by it”. But the audit results have not been made public.

Their response is an important reminder that much more than fancy commitments made in annual reports is needed to change the intolerable conditions in Marikana. As we commemorate the fourth anniversary of the massacre, we should be reminded that the affected families are yet to receive compensation and that conditions remain largely unchanged.

The family members who have been employed by Lonmin continue to work in the same conditions as the slain miners did; they are not earning the living wage for which their loved ones fought.

The companies that continue to let Lonmin get away with it are part of a system of enrichment tainted by the blood of workers.

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