

Vote 27: Office of the Chief Justice

Budget Vote Debate: Tuesday, 18 May 2021

Speech to be delivered by Werner Horn (DA)

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Ten days ago our Constitution turned 25 years of age.

The adoption of this constitution was a defining moment.

A moment in which we broke decisively with our past by adopting a supreme law which promised us that, going forward, we would all be equal before the law and would all enjoy certain inalienable rights and freedoms.

To ensure that these rights and freedoms were to be realised we chose to entrust the judiciary with the all-important task of determining, when called upon, whether any exercise of public power is in breach of our constitution or not.

To be successful in acting as the ultimate guardian of our rights and freedoms it was of course always going to be important that we be served by a judiciary which itself was to be subject only to the constitution and the law.

To ensure this, our constitution firstly, in very simple terms, demanded that our judiciary be independent. A number of additional measures were introduced to support this independence.

This department, the Office of the Chief Justice, was established in order to remove the judiciary from the Department of Justice. This debate is therefore a sign of our commitment to and respect for the independence of our judiciary.

In this regard it remains a serious concern that the budgetary allocation to the judiciary has also been adversely affected by the insane political choices of this government. The decision to persist with the continuous and repetitive bail-out of dysfunctional State Owned Entities like SAA, even when facing a fiscal cliff, has had a very real and very negative impact on the ability of this government to appropriate a budget that would optimally enable the judiciary.

The administration of the OCJ is to be commended for the way it looks after the funds entrusted to it and it must be said that the fact that it will be struggling to support the judiciary in an optimal way in the year to come is in no way the result of the manner in which this department functions.

While this issue in itself has the potential to undermine the independence of our judiciary the time has come to address the more serious ways in which the trust and confidence in our judiciary is being undermined, and unfortunately so, by functionaries that are supposed to help foster the trust and confidence of the public in the judiciary.

When our constitution was adopted - and to break with our authoritarian past, a past in which the Minister of Justice had an unfettered authority to appoint judges - a Judicial Services Commission was established tasked with interviewing and nominating suitable candidates for appointment as judges.

The manner in which the interviews of prospective judges has deteriorated over the last years is unacceptable in a country that professes to embrace equality and to have conclusively broken with our racially divisive and oppressive past.

How can we claim to be a country committed to never repeating the mistakes of our past if some members of the JSC are allowed to target white and Indian applicants with questions aimed at illustrating that such candidates should not be considered for appointment merely because they are white or Indian? The same with candidates with a specific cultural and religious background.

Add to this the way in which the merits of a specific case, in which a member of the JSC has a personal interest, was allowed recently to be traversed during these interviews by that same member and it is clear that some members of the JSC have of late been allowed to undermine and erode the integrity of this important constitutional body and its processes.

To further ensure the independence of the judiciary the JSC has also been entrusted to enforce discipline among the judges of our High Courts. Unfortunately, the manner in which issues of discipline have been handled by the JSC is equally damaging to the image of the judiciary – and remember when these matters are dealt with Members of Parliament are not present or participating.

History will judge the JSC very harshly for its failure to call for the suspension of a Judge President accused of serious misconduct. Similarly, history will not rule in favour of the JSC for not deeming the matter urgent and essential once this Judge President was finally found guilty after a misconduct hearing, which a obviously unwilling JSC was forced to conduct through legal action from civil society.

Add to this that the very same JSC allowed for this Judge President to participate in interviews of prospective judges even after its own tribunal called for his removal from office after he was found guilty of serious misconduct and it is abundantly clear that both common sense and the law was put on the altar by the JSC through its reluctance to uphold the principles of legality and equality before the law when it came to one of their own.

Over the years we have noted – and rightfully so – that in some instances our judiciary has expressed exasperation and disbelief at the brazen manner in which we, as the legislature and the executive, have failed in our constitutional obligations.

Later this year there will be a possible reset moment for the judiciary and the JSC.

All of us who hold dear our constitutional democracy will hope and pray for the selection and appointment of a Chief Justice who will appreciate the importance of leading the judiciary and the JSC in such a manner that it will not be exposed to the public asking with the same exasperation and disbelief how the judiciary can expect the rest of us to obey the constitution and the law, while not demanding the same obedience of itself.