CASAC Submission to the Ad Hoc Committee on the appointment of the Auditor-General

INTRODUCTION

The Council for the Advancement of the South African Constitution (CASAC**)** is an initiative led by progressive people who seek to advance the South African Constitution as a platform for democratic politics and the transformation of society, and believe in the advancement of a society whose values are based on the core principles of the Constitution, namely the promotion of socio-economic rights, judicial independence, the rule of law, public accountability, and open governance.

Advancing the Constitution is premised on the pillars of accountability, transparency, public participation and commitment to the spirit and values of the Constitution.

CASAC believes that a complacent citizenry is the greatest threat to our Constitution. As responsible citizens, we should assert our right to actively campaign for the realisation of the rights enshrined in the Constitution. It is with this commitment in mind that CASAC is making this submission to the Ad Hoc Committee on the Appointment of the Auditor-General.

Chapter 9 Institutions

As a Constitutional state committed to the spirit of Constitutionalism and the rule of law, South Africa needs to continuously ensure that the conduct of its leaders lives up to the values espoused in the Constitution. This is particularly important in the exercise of public power. The role of institutions that were specifically created to support and advance democracy (Chapter 9 institutions), is important in the entire architecture not only of the Constitution but of society at large. To this end, the processes relating to the appointments, accountability and oversight of all Chapter 9 institutions are a matter of critical national importance that must be guarded fiercely by all South Africans.

Whilst all Chapter 9 institutions are important pillars of delivery on the Constitutional promise, the dire state of public finances and the mismanagement of public resources makes the Office of the Auditor-General an even more critical pillar of our democratic state. The recent rise in incidences of large-scale looting and corruption before and during the Coronavirus pandemic, has only amplified the need to ensure that the integrity Office of the Auditor-General is fiercely protected by all South Africans.

The term of office of the incumbent auditor general, Kimi Makwetu, comes to an end on the 30th of November 2020, and Parliament has initiated a process of recruiting a replacement for Mr Makwetu.

CASAC recommendations and comments

CASAC would like to acknowledge the work done by Corruption Watch in making a submission to Parliament aimed at assisting the Ad Hoc Committee refine its processes and also facilitate transparency and public participation. In its submissions (dated 30 June 2020), Corruption Watch had recommended the following points to the Ad Hoc Committee –

- The publication of the CVs of candidates on the Parliamentary website
- The adoption of objective guidelines for the shortlisting process
- The public involvement to be facilitated through a public comment window period
- A standardised questionnaire to be used as a guide for the interview process
- The adoption of an evaluation scorecard with 3 key areas of focus – technical expertise, leadership and behaviour

We would like to express our full support for the recommendations of Corruption Watch and also acknowledge the committee's attitude towards these recommendations which we observed to be receptive and collaborative.

Having observed the process since the Ad Hoc Committee commenced its programme of work we would like to commend the Committee on the transparency and professionalism illustrated so far. We also think that the process of shortlisting candidates has been objective and the Committee's list

of 8 candidates is in line with the requirements of the Constitution in relation to the position of the Auditor-General.

As CASAC, we have undertaken to evaluate the CVs of the shortlisted candidates and assess them against the guidelines of the Constitution that relate to the appointment of the Auditor-General. For reference purposes, section 193(3) states the following –

3. The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances and public administration must be given due regard in appointing the Auditor-General.

In our view, the key requirements of section 193 are the following attributes –

- fit and proper
- specialised knowledge in auditing, state finances and public administration

CASAC believes that the evaluation scorecard proposed by Corruption Watch will assist the Ad Hoc Committee in objectively evaluating the candidates on these attributes. However, we are of the view that the evolving nature of the Office of the Auditor-General – as evidenced by the promulgation of the Public Act in 2018 – requires the addition of an a separate criteria relating to the prospective candidate's understanding of the implications of the amended Public Audit Act, and the collaboration with other institutions of state from Chapter 9 institutions and other law enforcement agencies.

We have therefore evaluated the candidates against these attributes based on the information made publicly available through the Parliamentary website and through additional checks we were able to conduct from public sources.

Additional recommended questions

In addition to the assessment provided above, CASAC has identified a range of questions that can be considered by the committee for the purposes of conducting the interviews. Such questions have been sourced from Parliamentary records, public documents and from individuals with expertise in the fields of auditing, governance, public finance management, regulation and Chapter 9 institutions.

1. The business model of the AG sees auditees being expected to pay the audit fee. However, some of the auditees are entities and municipalities that struggle to raise sufficient revenues to be able to bear the cost of the audit. Do you regard this funding model as effective? Would you advocate for a different funding model for entities stuck in that dilemma?
2. As a Chapter 9 institution, the Office of the Auditor-General enjoys a role that is shared by other institutions created to protect democracy. The collective efforts of these institutions are critical in enabling the country to deliver on the Constitutional promise. Do you believe that the AG office should have closer collaborations with other Chapter 9 institutions? What would you do in your term of office to foster this?
3. Some of the biggest state-owned Enterprises that have become involved in State capture are public entities that should have been audited by the AG but were outsourced to the private sector. In your understanding, what caused that? Secondly, having seen how private sector audit firms have been found wanting multiple times, would you advocate for an abolition of this practice?
4. The Auditor General is often criticized by auditees for being too rigid in its interpretation of the auditing and accounting standards as well as interpreting the PFMA too narrowly. Some auditees have even obtained legal opinions where they disagree with the AG. In June 2020 the Western Cape government won a case against the Auditor-General based on a disagreement regarding audit outcomes. What is your response to this?

5. What role does the appointment and business model of the AG which guarantees security of tenure play in ensuring audit independence? And do you think that the alternative model practiced by private firms which does not guarantee security of tenure played a role in the type of audit outcomes we have seen particularly in entities affected by State Capture?
6. Recent events relating to other Chapter 9 Institutions have led to a number of personal cost orders being issued against the leaders of those offices. Do you think that such an approach undermines the constitutional protections offered to Chapter 9 institutions? What would you say should be the benchmark that warrants the issuing of a personal cost order against the head of the Chapter 9 institution?
7. As a Chapter 9 institution the AG enjoys unique constitutional protections that are aimed at insulating it from undue influence and external interference. What aspects of these constitutional protections do you consider as critical to the office of the AG?
8. A common criticism of the state is that it outsources its core functions to the private sector at a cost that is much higher than the cost of doing it internally. Do you think it is appropriate for entities like the AG to continue this practice? In other words, why does the AG not invest in the capacity necessary for it to run all public sector audits?
9. The amendments to the Public Audit Act bring the office of the auditor general much closer to the world of litigation. Do you think this warrants us looking for a candidate that has a blend of audit experience and legal experience?
10. Additionally, the Public Audit Act imposes an obligation on the Office of the Auditor General to be more thorough in reaching its conclusions that may now have consequences for accounting officers. Do you believe that this warrants a change in the audit process and what changes would you propose?