

Concept Note: Symposium Series Part Four

Delivering Justice: Independence and Accountability

Introduction

The appointment and removal procedures of the heads of NPA, SAPS, the Hawks, IPID, the SIU, the judiciary (comprising both superior and lower courts), the office of the Public Protector and the Financial Intelligence Centre (“FIC”) are of immediate concern in the era of state capture.

The HSF regards the appointment and removal procedures as an integral part of its ongoing project for the Delivering Justice which commenced in 2010, and which laid the foundations for our litigation in the fight for the independence of South Africa’s criminal justice system institutions. The current initiative, as Part 4 of this symposium series, is centred on the legal gaps in the law identified in HSF’s publication of *The Criminal Justice System: Radical reform required to purge political interference*¹.

The HSF recommends legislative reform to codify the constitutionally required independence of these institutions. The HSF also strongly recommends that a modified Judicial Service Commission-type model be used in the appointment of all of the heads of the criminal justice system institutions, with strict limitations on the number of politicians as members of such appointment committees. It is further suggested that these appointment committees be made up not only of experts, but also the laity, for increased public participation in a criminal justice system which is meant to be working in the interest of the public.

Similar considerations would apply to effective removal procedures which would allow for a balance between security of tenure and holding the leadership accountable.

What are the principles which should guide our deliberations?

1. **Independence:** structural and operational autonomy secured through institutional and legal mechanisms aimed at preventing undue political interference.
2. **Security of tenure:** as a feature promoting institutional independence, this provides certainty that certain office-bearers cannot be removed from office except in exceptional and specified circumstances.

¹<https://hsf.org.za/publications/special-publications/the-criminal-justice-system-radical-reform-required-to-purge-political-interference.pdf>

3. **Accountability:** answerable to the public, with consequences for improper or incompetent conduct.

Purpose

Very general recommendations are made in the paper. This leaves room for debate on how best to address the outlined gaps in legislation, to minimise political interference and to ensure accountability in our criminal justice system in the future.

The central questions to be addressed are:

1. What effective appointment mechanisms should be established for the heads of the criminal justice system institutions?
2. What effective removal mechanisms should be established for the heads of the criminal justice system institutions?
3. Is legislative reform necessary for the improved “*transparency, efficiency and independence*” of our criminal justice system?
4. What other recommendations can be made to improve the “*transparency, efficiency and independence*” of our criminal justice system?