

Zondo report recommends new anti-corruption agency

The first part of the report of the Judicial Commission of Inquiry into Allegations of State Capture has recommended the establishment of a single, multifunctional, properly resourced and independent anti-corruption authority by government with a mandate to "confront the abuses inherent in the present system".



The report handed over to President Cyril Ramaphosa on Tuesday by the Commission's Chairperson, Acting Chief Justice Raymond Zondo, said that the authority could be called the Anti-Corruption Authority or Agency of South Africa (Acasa) and could be modelled along the lines of the Competition Commission.

"The Agency or Authority, like the Competition Commission structure, must include specialised departments with particular mandates but which collectively represent a comprehensive response to the challenges which arise," the report suggested.

The Commission's Chairperson said that it is a fundamental feature of the Agency that it be independent.

"There has, however, been lengthy judicial debate on the question whether such independence can be achieved within a government department or by an entity under Ministerial control. That debate requires careful consideration," said the report.

South Africa requires an anti-corruption body free from political oversight and able to combat corruption with fresh and concentrated energy.

"Public trust will not otherwise be re-established in the procurement system. The ultimate responsibility for leading the fight against corruption in public procurement cannot again be left to a government department or be subject to Ministerial control.

"What is required are specialised oversight and monitoring authorities which operate upon the basis that they are independent in the full and untrammelled sense, ie. that they are subject only to the Constitution and the Law," according to the report.

The report suggested that the choice of officials who will lead and staff such bodies should not be left to the discretion of government.

"Such appointments must be in accordance with a transparent procedure in a public process," the report said.

Access to resources

The report identified inadequate funding and unfilled vacancies as some of the ways in which such an agency could be prevented from doing its job effectively and properly.

"These measures, taken together, have been responsible in a large measure for preventing wrong-doers being held accountable for their actions.

"In order to ensure that the Agency is able to do its work effectively and properly, it will be necessary to ensure that the adequacy of its funding is proof against political interference. This may be achieved by protections built into the enabling legislation and by providing for sources of revenue additional to Parliamentary funding," it said.

In leading the fight against corruption, the Agency will provide an essential service for both the public and the private sectors, and both should contribute in some appropriate way to its funding.

“There should be no objection to the imposition of a levy payable to the Agency by every person seeking a procurement contract or participating in a tender process. This will provide the Agency with necessary additional funding beyond that supplied by Parliament and other sources,” the report said.

Recommendations for consideration by the President

The Commission further recommended that government, in consultation with the business sector, prepare and publish a National Charter against corruption in public procurement.

The Charter would include a Code of Conduct setting out the ethical standards which apply in the procurement of goods and services for the public.

The commission has further recommended that government introduce legislation for the establishment of an independent Public Procurement Anti-Corruption Agency (PPACA), which will constitute the Agency as an independent body, subject only to the Constitution and the law, which has jurisdiction throughout the Republic, is impartial and must perform its functions without fear, favour or prejudice.

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