

Asmal rights report rings the changes, but will they gain acceptance?

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CAPE TOWN — The ad hoc parliamentary committee which this week recommended the amalgamation of five commissions into a strong and powerful human rights body did so in the full knowledge that a merger will not be easy.

The 10-member, multiparty ad hoc committee under the chairmanship of former education minister Kader Asmal has resisted the intense lobbying by existing institutions to retain the status quo, and has reached its conclusions in a way that observers have described as unflinchingly objective.

As Asmal said at the launch of the document, the committee did not shirk its task “to ask the thorny question and to confront the difficulties and problems experience by some of these institutions head on”.

The committee unanimously agreed on the recommendation to amalgamate the South African Human Rights Commission (SAHRC), the Commission on Gender Equality, the National Youth Commission, the Commission for Cultural, Religious and Linguistic Communities and the Pan South African Language Board under a new umbrella institution to be called the South African Commission on Human Rights and Equality.

The institutional review took place against a background of uneven performance among the different bodies. Some have been wracked by conflict, others have been largely ineffective and unproductive.

All except the SAHRC were found to be generally ineffective, had not fulfilled their legal or constitutional mandates and in the case of the latter two institutions, duplicated functions.

The commissions concerned employ full-time commissioners and have relatively large staff complements and therefore, “institutional resistance” is to be expected. Furthermore, major amendments will have to be made to the constitution in which their establishment is enshrined.

Vested interests and staff insecurities will have to be dealt with in dissolving these institutions, and conflicts and cultural misalignments addressed if the new body is to emerge as a unified, harmonious entity.

SAHRC chairman Jody Kollapen has warned that the established good practice and accumulated institutional memories of the different com-missions should not be lost in the amalgamation.

Despite the difficulties, Kollapen has welcomed the proposal but cautioned that there would be “logistical challenges”. He suggests that it would be easier to sell the idea if all

five of the proposed bodies were dissolved and a new entity created, rather than the four being absorbed into the SAHRC.

The National Youth Commission is arguing strongly against the dissolution of the institutions, saying a separate entity is necessary to promote youth interests. The Commission for Gender Equality is also expected to resist the loss of its identity.

These concerns could be addressed if the amalgamated commission had dedicated commissioners dealing, for instance, with gender equality, disability, children, access to information and the like — as the committee is proposing.

Such a structure would ensure that issues were not marginalised, they say.

The ad hoc committee has found that the proliferation of these bodies diminished their effectiveness and created confusion in the public mind as to which body to approach. It says a single institution would overcome this fragmentation, be more cost effective and allow human rights to be addressed in an integrated and holistic way.

The committee says the proposed unified commission should be well-funded and have the necessary legal power not only to promote human rights and address systemic violations of rights but also to operate as an advice centre for those whose rights had been breached.

It should become a “strong and authoritative champion for equality and human rights”. It could also be “a real force in tackling institutional discrimination,” the committee says.

Also important to note, Asmal says, is the Constitutional Court finding that human rights are interdependent and indivisible. “The interdependence and interrelated nature of human rights means that a single body is better placed to tackle barriers and inequalities affecting several groups and to identify and promote strategic solutions to address endemic human rights abuses,” the committee says.

The committee urged government and Parliament to treat its recommendations with urgency and establish a task team to investigate how the amalgamation should be achieved and to report its findings to Parliament within a year.

“It is in the interests of all South Africans that an amalgamation of institutions is finalised within a reasonable period.”

The committee also looked at the operations of other bodies established in terms of the constitution, namely the Electoral Commission, auditor-general, public protector, Public Service Commission, Independent Communications Authority of SA and the **Financial and Fiscal Commission**, all of which the report says should remain independent.

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