

The Judicial Service Commission
Office of the Chief Justice
Private Bag X10
Marshalltown
Johannesburg
2017

By email: Chiloane@concourt.org.za

22 February 2022

Dear Commissioners,

You will know that the recent Judicial Service Commission (JSC) interviews of candidates for the position of Chief Justice left the public at large and especially those of us concerned for the administration of justice disturbed. Those proceedings departed in the most fundamental of ways from generally accepted notions of fairness and justice.

Far from assisting and protecting the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness, as the JSC is constitutionally enjoined to do, these most recent interviews can only have diminished public confidence in the administration of justice.

Compounding this state of affairs is that the February 2022 interviews represent only the most recent instance of the JSC interview process that, far from safeguarding the integrity of judicial appointment, allows such process to be impugned. The April 2021 interviews for judicial appointment to the Constitutional Court were the most recent subject of legal challenge.

It is against this backdrop and in view of the urgent need to restore public confidence in the processes by which judicial appointments are made, that we take this unprecedented step of approaching the JSC and asking that no further interviews for judicial appointment to any court be considered until the following are published:

- a) a code of conduct for commissioners and the chair of JSC interview processes; and
- b) explicit criteria as to what constitutes “appropriately qualified” and “fit and proper” so as to guide assessment of the eligibility and suitability of candidates for judicial appointment.

These criteria need to reflect engagement with the constitutional imperative that the judiciary reflect broadly the racial and gender composition of South Africa within the wider context of securing a transformed, diverse and representative judiciary.

While ours is an extraordinary approach, the request we put to the JSC is not. For years now, leaders of the judiciary, the organised legal profession, academics, civil society, even the JSC itself, have identified the urgent need for such specified criteria for judicial appointment and stipulated conduct obligations on the part of the members of the JSC.

We note also that several of the candidates being considered for Chief Justice have indicated their support for the development of criteria ahead of the scheduled April round of interviews and that the JSC spokesperson has publicly confirmed that there will be a workshop intended to develop criteria before the next interviews.

For these reasons we imagine that there will be no difficulty in the JSC giving us the undertaking for which we ask: that no further interviews for judicial appointment will proceed without such criteria and without a code of conduct for the JSC being finalised. We ask that this undertaking be provided to us by no later than 8 March. In so doing the JSC will provide critical reassurance to the public that they will no longer be required to bear witness to compromised interview processes and will allow for confidence in the appointment process to be restored.

Yours sincerely,

The Ahmed Kathrada Foundation

Corruption Watch

Council for the Advancement of the South African Constitution (CASAC)

Defend Our Democracy Campaign

Freedom Under Law

The Helen Suzman Foundation

Lawyers for Human Rights

The Legal Resources Centre

The Nelson Mandela Foundation