



VISIONARY Kader Asmal was a principled man and human rights champion

RELENTLESS ADVOCATE FOR HUMAN RIGHTS

We have to honour Kader Asmal's legacy and the work he did by implementing the recommendations of the Asmal report, writes **Lawson Naidoo**

June this year marked the tenth anniversary of the passing of Professor Kader Asmal. Possessed with a deep intellect, incisive wit and not averse to a deprecatory put-down of his political opponents, Asmal was a genuine larger-than-life figure.

With an unshakeable commitment to principled positions on the universality of human rights and the rule of law, he often epitomised the conscience of both the ANC and government, which he served from 1994 to 2004.

Former colleagues remember him as being the only one who assiduously read all Cabinet documents. He had a nuanced understanding of every issue, and was unafraid of expressing his views, often to the embarrassment of his colleagues whose line responsibility it was.

Asmal publicly criticised the ANC's position on the disbanding of the Scorpions - the erstwhile anti-corruption law enforcement unit - as well as the Protection of State Information Bill, commonly referred to as the Secrecy Bill, pursued relentlessly by the securocrats in the governing party.

It is a credit to activists such as Asmal in civil society that this odious piece of legislation, which has the potential to undermine our democracy, has yet to be signed into law.

It would have been a useful tool in the state capture project, threatening journalists and whistle-blowers with up to 25 years in prison for revealing "classified" documents exposing wrongdoing.

This year also marks the fourteenth anniversary of the report by the ad hoc committee on the review of chapter 9 and associated institutions. Asmal chaired this committee and the Asmal report, long ignored by the National Assembly, is in danger of becoming part of its folklore.

By way of background, the report states: "Ten years into the new democracy, government thought it was opportune to assess the extent to which society had been transformed and human rights entrenched through the operation of these institutions.

"Such a review would identify their effectiveness and relevance, individually and collectively, and the requirements to strengthen them further to ensure that they were best able to achieve their objectives."

The report recommended that a single human rights body be established, comprising the Human Rights Commission (HRC), the Commission for Gender Equality (CGE), and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CLR), as well as the Pan SA Language Board and the National Youth Commission, now called the National Youth Development Agency (NYDA).

This recommendation was premised on the uneven spread of resources and capacities that affected the efficiency of these institutions as they currently exist. These constitutional arrangements caused fragmentation and resulted in a duplication of approaches to the Bill of Rights.

SINGLE HUMAN RIGHTS BODY

The single human rights body would address several of the shortcomings identified in the review. It would minimise the risk of the duplication of roles due to an overlap between the different institutions' mandates.

Bringing these bodies under one institution would also deliver many additional benefits. These would include:

- Cutting the cost of running separate institutions;
- Streamlining the appointment of commissioners with appropriate expertise and experience;
- Easing the process of laying complaints;
- Standardising the remuneration of commissioners, easing their administrative burdens; and

• The creation of a holistic and integrated approach to the vindication, protection and promotion of human rights.

It would also be directly accountable to Parliament, with a budget determined by the National Assembly, minimising the risk of executive interference.

In the wake of the recent insurrectionary unrest in KwaZulu-Natal and Gauteng, both the HRC and the CLR have launched investigations.

While both commissions have said their interventions are based on their respective mandates, this duplication of efforts highlights the failure of coordination despite the existence of the Forum for Institutions Supporting Constitutional Democracy, a body comprising all chapter 9 institutions.

The two commissions have latterly agreed on their respective investigations without clarifying why a joint investigation was not possible.

INTERNAL SQUABBLES

The current squabbling within the CGE - reported on extensively in this newspaper in recent weeks - among commissioners and staff, with Parliament being dragged into the fray, is a further example of dysfunction.

Allegations of workplace misconduct by certain commissioners, maladministration, poor management and allegations of interference with its functions by Parliament's portfolio committee on women, youth and people living with disabilities have surfaced.

Several women's rights and gender advocacy groups have written to Parliament, requesting an independent inquiry into the CGE's affairs.

They have accused the commission of not delivering on its mandate by, among other things, failing to intervene successfully in fighting against widespread violence against women and girls.

This drama follows hot on the heels of the resignations of several commissioners who complained of the untenable working environment at the CGE.

We can also reflect on the impeachment of the

incumbent Public Protector Busiswe Mkhwebane by Parliament and the sometimes chaotic manner in which recent appointments to the NYDA were conducted to demonstrate the wisdom of the key Asmal recommendation.

What public confidence can repose in such institutions? Promoting, nurturing and entrenching a culture based on rights does not appear to be among their priorities. Unfortunately, more than 14 years after the release of the chapter 9 review report, Parliament has failed to implement the reforms and establish a single human rights body.

Attempts by Parliament to engage with the

recommendations of the Asmal report have been thwarted in recent years by deeply vested interests, and the can has been kicked down the road.

To honour Asmal's legacy and the work he did in proposing reforms to the structure of chapter 9 institutions, the Council for the Advancement of the SA Constitution has again called on Parliament to consider and implement the recommendations of the Asmal report. A formal submission was recently made to the Constitutional Review Committee to this effect.

Chapter 9 institutions are a vital component of our constitutional architecture and should work to keep our democracy in good health. They can only do that if they

are properly capacitated, funded and led, in line with constitutional precepts and without needless friction.

The recommendations in the Asmal report achieve exactly that. An overhaul is necessary and overdue. Parliament must now act.

Naidoo is the executive secretary of Council for the Advancement of the SA Constitution. This year's Kader Asmal Human Rights Lecture will be delivered by Professor Salim Abdool Karim on Tuesday at 6pm via YouTube under the topic Covid-19 and Human Rights - A Tiny Virus Magnifies Society's Inequalities