

Parliament 'failed' due to structural flaw

In his address to the workshop, Associate Professor of Public Law at the University of Cape Town Richard Calland reminisced about his involvement in the early 1990s around Parliament's first code of conduct, which was drafted by former cabinet minister and legal scholar Kader Asmal.

Prof Calland also drew attention to declining public levels of trust in elected representatives

in Parliament, calling this a global phenomenon which obviously has local repercussions. In an extract from his presentation Calland had this to say:

"The system in which Parliament sits is a hugely important contextual point. The Zondo commission grappled with that in its useful diagnostic analysis of Parliament's failure. And it was a significant failure. Parliament was asleep at the wheel as the Executive arm of government was being captured. It allowed that to happen. It failed in its constitutional duty.

"The main point I made in my expert testimony to the Zondo commission was that part of Parliament's failure was a systems failure because our electoral system in this country unfortunately mitigates against the constitutional obligation and authority that resides in Parliament to conduct meaningful oversight over the Executive arm of government.

"It is partly a systems failure – the system is fundamentally flawed – and partly a product of our electoral system and the fact that parties are dominant in that system. The seat in Parliament is not owned by the person who sits on it. It is owned by the party on whose list the person was placed at election time.

"That is a structural flaw in our system [and] the system needs to find a way of insulating individual Members of Parliament from the tendency of their party bosses to dominate them, reduce their independence and diminish their ability to exercise their constitutional duty.

[Referring to the Brics summit underway in Johannesburg at the time and the expansion of Brics to include six new members he said], "potentially momentous events are unfolding ... [but] one would struggle to say, even at a stretch, that even three of them are parliamentary democracies. The others are clearly not.

"I would argue that South Africa is the most liberal democracy of the 11. Our constitutional arrangements, our institutional arrangements, our electoral system, the fact that we are sitting here and having this conversation about Parliament today, indicates that we are still a fundamentally liberal democracy, but one with its own local characteristics.

"All this talk about codes of conduct, about rules and ethics is only relevant if the institutions over which those rules of governance apply are themselves powerful and relevant and important. The trend, whether it be through declining trust or system failures like those we have had in the South African Parliament over the last 15 years, would suggest that unfortunately in these institutions that is not the case."

Listen to Richard Calland's speech in full on IFAA's YouTube page at <https://youtu.be/MRQC7GR7DGk>

IFAA thanks the Australian High Commission (Pretoria) for its generous support for DECODE via its Direct Aid Program.

IFAA also thanks the Rosa Luxemburg Foundation and the Catholic Parliamentary Liaison Office for their support for the project.



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