

## Freedom of speech and public interest, not allegiance, should underpin science advisement to government

South Africa (SA) is Africa's science heavyweight, leading the continent in scientific output, and ranks in the top 40 globally in research productivity.<sup>[1-3]</sup> Not surprisingly, SA's scientific and academic communities have become deeply involved in the country's response to COVID-19. Such involvement has included, among others, clinical trials for drug therapies and vaccines, data analysis tracking the evolution of the pandemic, provision of critical advisory support to government policymaking on COVID-19 and on the trade-offs between strategies to manage the pandemic and the economic consequences thereof. This inevitably has led to the participation of many of the country's academics in ministerial advisory committees. The most significant of these committees has been Zweli Mkhize's Ministerial Advisory Committee (MAC) on COVID-19, which involves leading biomedical scientists.<sup>[4]</sup> Such participation exemplifies the notion of science solidarity and participatory democracy.

The country's robust science system owes its success, in part, to academic freedom, a hard-fought right that is enshrined in SA's Constitution.<sup>[5]</sup> SA's response to COVID-19 has been swift and science based, and merits praise. This is particularly important to highlight and single out, as so many other governments around the world have not grounded their response to the pandemic in science and evidence. But this praiseworthy scientific response to the pandemic has been tarnished in recent days. The train of events began when the President of the South African Medical Research Council (MRC), Glenda Gray, a member of MAC, criticised aspects of the government's COVID-19 lockdown strategy in a media interview on 16 March 2020.<sup>[6]</sup> While the MRC President later clarified that her criticism was focused on the rationality of particular regulations passed in accordance with the country's Disaster Management Act, and not the lockdown itself, the damage was done.<sup>[7]</sup> The Minister of Health responded with a sharp, but fair, public rebuke,<sup>[8]</sup> which is his right. Scientists and academics can, of course, be challenged by public officials and politicians, as long as this is done as part of a rational, critical engagement. It could be also argued that, given the seniority of her office, the MRC President should have engaged government officials and the Minister, prior to articulating her concerns publicly. This was highlighted by the Minister, and his public response was therefore broadly interpreted to be a firm but fair expression of public engagement and accountability.

However, the follow-up action on the part of Anban Pillay, the acting Director-General (DG) of the National Department of Health (DoH), crossed the line. Essentially, the acting DG wrote to the Chairperson of the MRC Board on 21 May 2020, alleging that the MRC President had made 'a number of false allegations against government', which the DoH 'consider as very serious'.<sup>[9]</sup> Noting that the 'MRC is an entity of the National Department of Health', the acting DG urged the Board to investigate 'the conduct of the President on this matter given the harm it has caused to South Africa's COVID response'.<sup>[9]</sup> Such a move is vindictive, disproportionate and reflects an intolerance to criticism. There is a fundamental difference between holding someone accountable and conducting a witch-hunt. If one were cynical, it could be argued that the DG's action is a choreographed chess move to precipitate the MRC President's removal. Such an intervention amounts to executive interference in the governance of the MRC. The complaint

to the MRC Chair is calculated to shame and intimidate the MRC President. It also has the effect, by extension, to silence other MAC members, or at least constrain the nature of their public commentary. Such actions echo the bullying of scientists in the USA under the Trump administration<sup>[10]</sup> and represent a dangerous threat to critical thought, scientific autonomy and freedom of speech in SA. It merits strong censure.

In his letter to the Chair of the MRC Board, the acting DG claimed that the MRC is an 'entity of the National Department of Health'.<sup>[9]</sup> This is incorrect. While the MRC is part of an ensemble of public health institutions, it is not simply an organ of state. There is a distinction between state institutions and public institutions, and the Minister and DG's authority is relatively constrained in relation to a public institution. It is worth noting that health is a key portfolio of cabinet, and, as is the case with other ministries, its existence as a dedicated, self-standing ministry is the prerogative of the country's President. Section 91 of SA's Constitution empowers the country's President to appoint cabinet members.<sup>[11]</sup> Following SA's elections in May 2019, upon assuming office, the country's President, Cyril Ramaphosa, merged 10 ministries into five.<sup>[12]</sup> The President does not require parliamentary approval for such a reconfiguration. The President could, if he so wished, have merged the health and social welfare portfolios, as is the case in other settings, such as Tanzania and the Gambia, or subsumed health under the home affairs portfolio, as is the case in Switzerland. Such is his executive prerogative.

On the other hand, the President has no such unfettered prerogative with regard to the MRC, which is a creature of Parliament, not the Executive, and is governed by its own statute,<sup>[13]</sup> and neither do his cabinet members have this authority. While the Minister of Health is currently the accountable minister of the MRC Act, his powers in this regard are not unfettered, but restricted to what is outlined in the Act. Neither the Minister of Health, nor his DG, has authority over the MRC President or the management of affairs of the MRC. Section 6(1) of the MRC Act vests such authority in the MRC's Board. The MRC President is a member of the MRC Board by virtue of her office. The Minister of Health has the authority to appoint two Board members, and, with the concurrence of the Board, may at any time discharge a member of the Board from office if he is of the opinion that such a member is incompetent to fulfil her/his duties or is guilty of misconduct. The Minister may then, subject to the provisions of the Act, appoint a person in that vacant position for the unexpired period of the discharged person's term of office. However, while the MRC President is a Board member, the hats the incumbent wears as a Board member and CEO/President, are distinct. The Minister has no authority in law to discharge the holder of the MRC Presidency. The MRC Act only empowers the Board to appoint another person to the position of MRC President if the MRC President is absent or unable to carry out his/her duties, or the MRC President resigns. While the Minister may request that the MRC Board Chair convene a special meeting of the Board, the Chair is not obliged to do so, with the Act affording the Board Chair sole discretion with regard to time and place for the convening of such meeting. The DG also has no authority in law to convene a special meeting or to direct the Chair of the Board to do so. Procedural protocols aside, critical commentary on matters such as government's COVID-19 containment strategy is in the public interest. Such action does not bring the MRC into

disrepute, and accordingly, is not ground for an ‘investigation’ or disciplinary offence. This is especially true if the comments are made in a personal capacity and not on behalf of an organisation. The Board should not be baited or intimidated by health officials into believing so.

Our argument does not change now that the Board of the MRC has issued a formal response on the matter. In its response to the acting DG, dated 22 May 2020, the Board distanced itself from the MRC President’s statements and affirmed its support of the Minister of Health and the Ministerial Advisory Committee in responding to COVID-19. This is legitimate and within their governance authority. But, of concern, is that the MRC Board then proceeded to strip the MRC President and other MRC staff of their right to interface with the media until all issues relating to the public comments made by the MRC President were resolved. In doing so, the MRC Board has become complicit in squashing freedom of expression. The Board also confirmed that it would commission an investigation to guide it in determining the nature of the damage done to the MRC and the national COVID-19 response as a result of the MRC President’s comments. In so doing, the Board, too, has crossed a line. It would have been more appropriate for the Board to have acted purely on political principles and within its governance mandate, rather than in a sycophantic manner aimed at political appeasement. One exemplar of such a principled approach is the statement issued by the Academy of Sciences of South Africa, which, while not necessarily supporting Prof. Gray’s comments, nevertheless stood firm on the principle of academic freedom.

In his letter to the Chair of the MRC Board, the acting DG noted that he had ... ‘also received calls from persons regarding Prof Gray’s conduct at the MRC on other matters which I will share with once I receive more details from them.’<sup>[9]</sup> Such comments are deeply concerning. The actions of the DG can be interpreted as calculated to not only cast aspersions on the character of the MRC President, but also to unconstitutionally dig dirt on her on unrelated matters and use this as a means of intimidation. This is untenable. If DoH officials have previously received complaints about the incumbent of the MRC Presidency, they should have acted thereon. They cannot now use these unrelated complaints as a means to impair the incumbent’s reputation and thereby silence or remove her from office. This would constitute inappropriate behaviour unbecoming of a state office bearer such as a DG, and could warrant investigation by the Public Service Commission, and/or the Office of the Public Protector.

The Minister of Health should demonstrate his commitment to freedom of expression by distancing himself from his DG’s actions, and directing the DG to withdraw his complaint. If health officials continue to interfere in the affairs of the MRC, the Minister should instruct his officials to withdraw. If the Minister is himself implicated, then the State President should intervene. While the administration of the MRC Act is currently assigned to the Minister of Health, this assignment is not sacrosanct. In terms of the MRC Act, the State President may, by proclamation in the *Government Gazette*, assign the administration of the MRC Act to any Minister.<sup>[14]</sup> Section 91 of the country’s Constitution also empowers the President, by proclamation, to transfer to a member of the Cabinet the administration of any legislation entrusted to another member; or any power or function entrusted by legislation to another member.<sup>[11]</sup> Statutory science councils, such as the Council for Scientific and Industrial Research and the Human Sciences Research Council, and the Academy of Sciences of South Africa, which is a statutory science advisory body, are politically accountable to the Minister of Science and Innovation.

The President also has the discretion to assign the MRC to the Science and Innovation Ministry. This should be considered if the MRC or its Board faces undue pressure or continued interference from health officials. But none of this is necessary if health officials behave with the necessary measuredness and decorum required of them as state officials. We are in the middle of a pandemic and all hands are required on deck. Rationality and common sense must prevail.

Governance concerns aside, the acting DG’s actions towards the MRC President also raise concerns about academic freedom and freedom of expression, which are constitutionally enshrined rights in SA.<sup>[15]</sup> An attack on the office of the MRC President today could embolden errant officials to attack other science leaders and academics tomorrow. The experience of the USA under the Trump administration has seen science leaders sidelined<sup>[16]</sup> or dismissed<sup>[17]</sup> if they demonstrate dissent. This must never be tolerated here. If we don’t speak out on principle, and early and strongly against administrative interference in public science councils, we risk going down a governance slippery slope from which recovery will be challenging. Our scientists should never be faced with the binary choice of ‘you’re either with us or against us’.

SA scientists have a proud history of questioning government policies. Such critiques stimulate debate and move the country forward. In the aftermath of the MRC President critiquing the country’s regulations, the MAC Chair, Salim Abdool Karim, who was himself involved in bruising battles with health officials during the Mbeki Presidency,<sup>[18]</sup> and who preceded Gray as MRC President, went on the record to state: ‘Differences of opinion within the MAC are not only important, but are fundamental to arriving at the best advice. Many different views are encouraged in the MAC. These differences ensure that all points of view are considered and that a variety of opinions are presented ... Further, members of the MAC are welcome to share their personal views, both in MAC meetings and publicly.’<sup>[19]</sup> We welcome the comments of the country’s President, who in a televised address to the nation on 24 May 2020, noted: ‘We appreciate the diverse and sometimes challenging views of the scientists and health professionals in our country, which stimulate public debate and enrich our response.’<sup>[20]</sup> Health officials and the MRC Board would be wise to heed this sage advice. It is unlikely that MAC’s terms of reference require loyalty and secrecy, and prohibit dissent. To dispel any misimpression that they do, MAC’s full terms of reference should be published, in the interests of transparency.<sup>[21]</sup> If Gray is not qualified to speak on lockdown regulations, as the DG argued,<sup>[22]</sup> the Minister of Health should populate the MAC with multidisciplinary expertise who are qualified to speak on such issues.<sup>[21,23]</sup> This will necessitate the involvement of experts from academia outside of the biomedical sciences, and statutory bodies such as the Council for Scientific and Industrial Research, the Human Sciences Research Council and the Academy of Sciences of South Africa.

Notwithstanding the concerns raised above, the Minister of Health’s management of the country’s COVID-19 pandemic, to date, is laudable. However, his DG’s actions with regard to Gray – proxy action or not – are short-sighted. Perceived victimisation of the MRC President will lead to a backlash from the scientific community, including the resignations of fellow MAC members, in protest and solidarity. It will also cost the MRC Board its credibility and undermine the institution. This should be avoided at all costs. The country needs unity and solidarity now, more than ever. The acting DG needs to unconditionally withdraw the complaint he lodged against the MRC President with the MRC Board, as a matter of urgency.

## Conclusions

SA is facing a rapidly escalating public health crisis. Its people are being asked to place enormous trust in the country's elected officials and the scientists who advise them. A fallout between the two, or perceived reprisals on the part of one against the other, could irrevocably erode such trust and faith. The country needs level heads in this time of crisis. Officials in the Health Ministry need to put their wounded pride behind them, and members of MAC need to be more sensitive and sensible about how they engage in the public domain. If both camps do not do so as a matter of urgency, the cost will be public trust and confidence. We cannot afford such collateral damage at this critical juncture in our fight against the COVID-19 pandemic. The government has repeatedly stressed that its primary goal in managing the pandemic is to save lives. But it needn't kill speech to save lives.

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