

### Ch9 Key Provisions

**s181(2):** Independent and subject only to Con/Law. Must be impartial and perform powers w/o fear.

**s181(3):** Must be protected to ensure independence, impartiality, dignity

**s193 and s194 :** Appointment and Removal  
- same as CC Judge

Institution	Power
1. <b>Public Protector</b>	Take appropriate remedial action (binding?)
2. <b>SAHRC</b>	Take steps to secure appropriate redress where HR have been violated (recommendatory power)
3. <b>Cultural Commission</b>	Advise and report on issues concerning (Advisory power)
<b>Gender Commission</b>	Advise and report on... (advisory)

### Role of Ch9 Institutions

1. Checking on/being a watchdog of Govt
2. Contributing to transforming SA into a society where SJ prevails
3. They recommend, do not have power of review/set aside leg
4. They do not have power to take disciplinary action against govt officials.
5. Role is Investigatory and Administrative
6. Important in terms of realising constitutional individual rights
7. Assist organs of state in adhering to new constitutional dispensation

### Independence of Institutions

Often Conflict will arise as they are meant to act as watchdogs on gov and also work with exec and leg

### Independence of Institutions (cont)

- Constitution guarantees their independence in saying that they are only subject only to law and Con

- they are accountable to NA and must report on their performance annually

- Parliament sets their budget - financial independence

### Aslam Commission

Concerned with efficiency & Cost of bodies as there was an overlap in mandate & resources were not used well

Questions enforcement rights and whether the bodies had the "teeth" to do their work.

### Recommendations

- Merge gender, HRC and Cultural Com

- Add youth com and lang board

### The Auditor - General

- Supreme audit institution in country

- Produces financial and compliance audits of provincial and national departments, municipalities, public entities etc.

- Ensures the proper use of public funds as these public reports indicate how arms of government managing their budgets.

- Regulated by Public Audit Act

- AG appointed for a fixed non renewable term between 5-10yrs

### SAHRC

- Designed to protect and promote human rights

- HR Commission Act empowers commission to resolve disputes by mediation, conciliation, or negotiation.

- Can rectify any act or omission in relation to a fundamental right.

- Has power to make recommendations and findings which are not binding.

### SAHRC (cont)

- Public bodies have constitutional duty assist in effectiveness and recommendations are usually acted on

### CGE

- Must promote respect for GE & the protection, development & attainment of GE

- CGE Act which sets out the details of the commission's functions and powers:

- 1) to monitor; 2) to educate; 3) investigate and settle complaints; 4) to conduct research; 5) to advocate for gender equality; 6) to report, advise and make recommendations 6) to litigate

### CRLC

- Stands for The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

- The CRLC is governed by the Constitution and the CRLC Act. Responsible for:

- 1) deepening appreciation for variation of cultures, religions and languages in SA
- 2) contributing meaningfully and constructively to social transformation and nation-building for the attainment of a South African

### The EC

The Act states that the management of elections is the primary function of the Commission

S190 states that the EC must:

1. Manage elections of legislative bodies in accordance with legislation
2. ensure that those elections are free and fair;
3. declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible and more

The EIC must be composed of at least three persons up to 5



### The Public Protector

Intermediary between state and citizens by receiving complaints against an organ of state.

Thereafter, they can investigate, report back on and take appropriate remedial action against relevant organ

Regulated by the PP Act and s182 of Constitution.

Appointed for 7yrs - non renewable

- Important in fight against corruption as litigation not possible for many citizens - she their voice

- Must have have resources to do this job.

- National Legislation cannot water down powers offered to PP in **Con s182(2 &3)**

#### EFF/DA v Speaker of NA

**Facts:** PP received complaints abt security upgrades at Zuma's Nkandla home & investigated. Conclusion was the Zuma breached con obligations in s96 by knowingly deriving undue benefit from state resources.

**RAction:** President must determine reasonable costs of non-security improvements, repay a reasonable percentage of these costs, reprimand ministers involved, and to report to the NA in 14 days.

NA set up 2 ad hoc committees to examine report. Endorsed report by Minister which exonerated the President. The president did not comply w action

EFF wanted legally binding effect of the PP's report confirmed, an order that the President comply with the report and a declaration that the President/NA were in breach of their constitutional obligations. The DA launched a similar application

CC has exclusive jurisdiction: only court that can decide whether president has failed to fulfil constitutional obligation and in so far as matters relate to NA

#### President of RSA v Office of PP

### The Public Protector (cont)

**Facts:** Pres seeks review of PP's 'State of Capture' report abt complaints of alleged unethical conduct by the pres, certain state functionaries & the Guptas

**RAction** President was to appoint of commission of inquiry to investigate the matters in her report.

The President's argued tha PP couldnt delegate powers to a commission of inquiry.

Public protector act gives PP wide investigatory powers once she receives a complaint, and recommending action

**Concl:**PP did not delegate powers to a Col. She responded to 3 complaints, made prima facie findings and then her remedial action was the Col..

+PPA empowers her to get assistance in investigations.

Breach of the Ethics Act? No, She investigated & found this the appropriate action. The taking of remedial action by PP isnt contingent upon a finding of injustice. She is expressly empowered to make findings/reccs on the basis of preliminary or PF findings

Her action is binding

#### Legal Affect of RAction

- PP is empowered to take action that has effect if its the best attempt at curing the cause of the complaint.

- Contradiction to s181/182 which says her recommendations can be disregarded on rational basis. However, Rule of Law states that decisions cannot be disregarded if based on constitution.

- NA can investigate correctness of findings, but must comply with resolutions unless a court of law set them aside.

#### DA v PP

### The Public Protector (cont)

The Estina Vrede Dairy Project was established to direct public funds to empower indigent farmers in the FS & develop local agriculture. The aim of this R250 million project was to empower black farmers however no bank statements can prove this. A shell corporation through which money was siphoned.

National treasury investigated and compiled a report.

- Findings relating to misconduct of many officials within the department of the Free States

- Public protector report on the issue- taken over by Mkhwebane who narrows scope of the investigation

- Finds gross negligence, irregularities, maladministration and reccs some disciplinary action against certain officials, but doesnt investigate link between the project & Gupta family, claiming she didn't have resources. But a lot of the work already done by Treasury/Madonsela

- Irrational by ignoring important complaints & failing constitutional duty

- Did not prove she had open mind that her goal was to ascertain the truth.

Report is criticised as being unconstitutional, set aside, public protector office to pay costs, with Mkhwebane paying some personally

