

### Introduction: The Judiciary

- Judicial Independence: The judiciary should be independent from other branches of government. They should only be subject to the constitution/the law, and apply it without fear (**S165(2)** Constitution)

- SoP: All organs of state should ensure the judiciary's independence, impartiality, dignity, accessibility and effectiveness

- Everyone is subject to and bound by the authority of the courts

- Chief justice: Head of Judiciary and exercises responsibility over all courts. They preside over the CC

### The Judicial System

The Courts (hierarchy):

#### 1. The CC

- Highest Court

- SCA + CC jurisdiction all over SA

#### 2. The SCA

- Hears Matters of Appeal from HC

#### 3. The High Court

- May hear matters on appeal from MC

- 9 Divisions - one for each province. Each division can have multiple seats: A main seat then 1\* local seats.

- The main has jurisdiction anywhere in province, local seats have concurrent jurisdiction in smaller parts.

#### 4. The Magistrate Court

#### 5. Any court recognized in terms of Act of Parliament:

- Labour and Labour Appeal Court: disputes/appeals

- Land Claims Court: restitution of land rights bc of racial discriminatory land laws

- Electoral Courts: electoral disputes

### The Judicial System (cont)

- Tax Court

### Judicial Independence: Security of Tenure

- Guarantee that judges will not be threatened or dismissed from office for making decisions people don't like.

#### CC Judges

- non renewable term of 12 years or until they reach 70. Act of Parliament can extend this term

- s4 of Judges Rem & Con of Employ Act: Extends term to 15yrs of active service. CC judge must retire at 75.\*

- A judge that has been in active service on another court for more than 3 years will serve 12yrs on CC. A judge who has not served another court will serve 15yrs. (until 75)

#### SCA and HC

- Hold office until they are discharge from active service in terms of an act of parliament.

- s3(2) of Judges Rem & Con of Employ Act: retire at 70. If they have not completed 10yrs active service by 70, they can finish the 10yrs.

#### Premature Removal\*

- Incapacity, Grossly Incompetent, Guilty of Gross Misconduct

- NA must pass resolution w 2/3rs vote

- After NA resolution passed, president must remove judge

### Judicial Independence: Appointment of Judges

#### Judicial Service Commission (JSC):

- Involves in the appointment of all judges in CC, SCA & HC. Compromise between need to ensure judicial independence & democratic legitimacy of judges.

### Judicial Independence: Appointment of Judges (cont)

- 11 Constituents (CJ, Pres SCA, JPres HC, Cab member for Administration of Justice, 2 adv, 2 att, teacher of law from Unis, 6 NA - 3 from opp; 4 NCOP; 4 persons in cons w NA parties; When div of HC: JPres of that div + premier)

#### \*Vacancy on Court

1. CJ, as head of JSC, calls for nominations

2. Shortlisted candidates interviewed in open interview

3. JSC makes recommendations to president on who to appoint

- The appointments: Must be SAN; Must broadly reflect racial & gender composition of SA.

#### Consultation

The presidents consultation requirements differ between different offices.

- When appointing CJ and DCJ: Required to consult JSC & leaders of parties represented in NA

- When Appointing Pres & Dep Pres of SCA he only needs to consult JSC

- Other CC judges: CJ + leaders of NA parties. But there is prior procedure:

- JSC must nominate 3+ names for president. Pres makes appointments from this list.

- Should he deem any nominee unacceptable he should advise JSC with reasons. In this case JSC must supplement list. Pres will appoint from that list.

- On HC: On advice of JSC

#### Legislation:

- Superior courts appointed in terms of Cons provisions relating to JSC. Other judicial officers appointed in terms of Act of Parliament.

### Helen Suzman Foundation v JSC

Rules 53 record includes docs, evidence, arguments & other information b4 tribunal relating to the Q under review, at the time of the making of the decision & **filed to bolster an applicant's right of access to the courts** by ensuring both that the court has the relevant information before it & that there is equality of arms between the person challenging a decision and the decision maker.

- HSF wanted JSC to file deliberation recordings appointment of HC judges. JSC says these are confidential.

#### Judgement

- Purpose of R53: is in fav of applicant. Enables them + court to have full & proper record of decision making process in question.

- JSCs argument for blanket concession unfounded and conflicts w rule of law & con values of accountability, responsiveness & openness.

- There was no need deliberations should be shielded of disclosure at any point. No need for confidentiality established by JSC.

- JSC instructed to comply with R53 and have over recordings

### Financial Security

- Conditions of employment remain stable - may not be reduced.

- Ensures do not fear cuts bc of an unpopular decision

### Impartiality

Judges should interpret and apply the law with open minds and free of bias

- When hearing matter, a judge should not should not have already decided the outcome of the matter

### S and Others v Van Rooyen and Others

VR convicted of theft & possession (6yrs).

Appealed decision on grounds that MC does not have judicial independence required by Con bc Mag Comm was subject to control of min of justice which limited their independence.

#### Judgement

- Impartiality is important in terms of actual independence/impartiality but also whether there is an appearance/acceptance of such.

In testing for impartiality, court must ask whether a **reasonable, informed and objective person would deduce that the judge will be bias**

The Magistrates Commission comprised similarly to JSC. That that Exec has influence over appointment to exec, does not mean MC lacks independence.

- Diverse composition indicates this. No objective reason to believe MC would not administer justice impartially. Thus case dismissed.

