

## CHAPTER 9

### STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

#### Establishment and governing principles

181. (1) The following state institutions strengthen constitutional democracy in the Republic:
- (a) The Public Protector.
  - (b) The South African Human Rights Commission.
  - (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
  - (d) The Commission for Gender Equality.
  - (e) The Auditor-General.
  - (f) The Electoral Commission.
- (2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.
- (3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.
- (4) No person or organ of state may interfere with the functioning of these institutions.
- (5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

#### Public Protector

##### Functions of Public Protector

182. (1) The Public Protector has the power, as regulated by national legislation—
- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

- (b) to report on that conduct; and
- (c) to take appropriate remedial action.
- (2) The Public Protector has the additional powers and functions prescribed by national legislation.
- (3) The Public Protector may not investigate court decisions.
- (4) The Public Protector must be accessible to all persons and communities.
- (5) Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

#### Tenure

183. The Public Protector is appointed for a non-renewable period of seven years.

### South African Human Rights Commission

#### Functions of South African Human Rights Commission

184. (1) The South African Human Rights Commission must—
- (a) promote respect for human rights and a culture of human rights;
  - (b) promote the protection, development and attainment of human rights; and
  - (c) monitor and assess the observance of human rights in the Republic.
- (2) The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power—
- (a) to investigate and to report on the observance of human rights;
  - (b) to take steps to secure appropriate redress where human rights have been violated;
  - (c) to carry out research; and
  - (d) to educate.
- (3) Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.
- (4) The South African Human Rights Commission has the additional powers and functions prescribed by national legislation.

**Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities**

**Functions of Commission**

185. (1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are—
- (a) to promote respect for the rights of cultural, religious and linguistic communities;
  - (b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
  - (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.
- (2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.
- (3) The Commission may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation.
- (4) The Commission has the additional powers and functions prescribed by national legislation.

**Composition of Commission**

186. (1) The number of members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and their appointment and terms of office must be prescribed by national legislation.
- (2) The composition of the Commission must—
- (a) be broadly representative of the main cultural, religious and linguistic communities in South Africa; and
  - (b) broadly reflect the gender composition of South Africa.

### **Commission for Gender Equality**

#### **Functions of Commission for Gender Equality**

187. (1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.
- (2) The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.
- (3) The Commission for Gender Equality has the additional powers and functions prescribed by national legislation.

### **Auditor-General**

#### **Functions of Auditor-General**

188. (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of—
- (a) all national and provincial state departments and administrations;
  - (b) all municipalities; and
  - (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.
- (2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of—
- (a) any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
  - (b) any institution that is authorised in terms of any law to receive money for a public purpose.
- (3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.
- (4) The Auditor-General has the additional powers and functions prescribed by national legislation.

**Tenure**

189. The Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years.

**Electoral Commission**

**Functions of Electoral Commission**

190. (1) The Electoral Commission must—
- (a) manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;
  - (b) ensure that those elections are free and fair; and
  - (c) declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible.
- (2) The Electoral Commission has the additional powers and functions prescribed by national legislation.

**Composition of Electoral Commission**

191. The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation.

**Independent Authority to Regulate Broadcasting**

**Broadcasting Authority**

192. National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society.

**General Provisions**

**Appointments**

193. (1) The Public Protector and the members of any Commission established by this Chapter must be women or men who—

- (a) are South African citizens;
  - (b) are fit and proper persons to hold the particular office; and
  - (c) comply with any other requirements prescribed by national legislation.
- (2) The need for a Commission established by this Chapter to reflect broadly the race and gender composition of South Africa must be considered when members are appointed.
- (3) The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances and public administration must be given due regard in appointing the Auditor-General.
- (4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and the members of—
- (a) the South African Human Rights Commission;
  - (b) the Commission for Gender Equality; and
  - (c) the Electoral Commission.
- (5) The National Assembly must recommend persons—
- (a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and
  - (b) approved by the Assembly by a resolution adopted with a supporting vote—
    - (i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor-General; or
    - (ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission.
- (6) The involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1)(a).

#### **Removal from office**

194. (1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on—
- (a) the ground of misconduct, incapacity or incompetence;
  - (b) a finding to that effect by a committee of the National Assembly; and
  - (c) the adoption by the Assembly of a resolution calling for that person's removal from office.

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- (2) A resolution of the National Assembly concerning the removal from office of—
  - (a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or
  - (b) a member of a Commission must be adopted with a supporting vote of a majority of the members of the Assembly.
- (3) The President—
  - (a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and
  - (b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal.